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mrubalcaba
By _____, Deputy
Case Number:
34-2017-80002678

10 **EXEMPT FROM FILING FEES (Gov't. Code, § 6103)**

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SACRAMENTO

13 COUNTY OF BUTTE

14 Petitioner and Plaintiff,

15 vs.

16 CALIFORNIA DEPARTMENT OF WATER
RESOURCES

17 Respondent and Defendant,

18 DOES 1 THROUGH 50

19 Real Parties in Interest.

Case No.:

**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

*CEQA action subject to preference over all
other civil actions per Public Resources
Code § 21167.1*

(Code Civ. Proc., §§ 526, 1060, 1085,
1094.5; Pub. Res. Code, §§21000, et seq.;
Wat. Code, §§ 85000, et seq.)

1 Petitioner and plaintiff County of Butte (“Butte”) prays for this Court to issue its writ of mandate
2 directed against respondent and defendant Department of Water Resources (“DWR”), and to
3 provide declaratory and injunctive relief, on the following allegations:

4 INTRODUCTION

5
6 1. In this petition and complaint, Butte challenges the failure of respondent DWR to comply
7 with the California Environmental Quality Act (“CEQA,” Pub. Res. Code §§ 21000, *et seq.*), the
8 Delta Reform Act of 2009 (“Delta Reform Act” or “DRA,” Water Code section 85000, *et seq.*) and
9 other laws when it certified its Final Environmental Impact Report (“FEIR”) and rendered final
10 approval as state lead agency of the California WaterFix project (also identified herein as “Delta
11 tunnels” or “project”). Butte seeks to set aside DWR’s certification of the Final EIR for the
12 California WaterFix Project, adoption of CEQA findings of fact and overriding considerations,
13 adoption of the mitigation monitoring and reporting program, and final project approval recorded
14 in DWR’s Notice of Determination filed in the State Clearinghouse on July 21, 2017.

15 2. The FEIR challenged in this action is designated as the *Bay Delta Conservation Plan/
16 California WaterFix Final Environmental Impact Report/Environmental Impact Statement*, and
17 was jointly prepared by DWR and the federal lead agency, the Bureau of Reclamation (“Bureau”).
18 The Bureau has yet to complete its decision-making and issue a Record of Decision under federal
19 law, and is not the subject of this action. This action challenges DWR’s compliance with state law
20 in its final determinations as state lead agency.

21 3. The Delta tunnels project proposes construction of one of the most costly and risky water
22 infrastructure projects in California’s history, and in the history of the State Water Project (“SWP”)
23 managed and operated by DWR. Butte, one of the northernmost SWP water contractors, has long
24 borne extraordinary risks and uncompensated costs as the host county of DWR’s Oroville
25 Facilities. Butte is the location of Lake Oroville, the SWP’s “crown jewel,” as well as creeks, rivers
26 and groundwater basins that provide the lifeblood for agriculture, the economy and the
27 environment in the northern Sacramento Valley. Butte brings this action due to DWR’s abject
28 failure to protect these indispensable resources and others in its project review and approval.

1 4. The project proposes construction of two massive tunnels to facilitate the diversion of large
2 additional quantities of freshwater from the San Francisco Bay-Delta Estuary for export south of
3 the Delta. The proposed Delta tunnels would provide three new water intakes in the northern Delta,
4 with the capacity to divert an additional 9,000 cubic feet per second ("cfs") of water from the
5 Sacramento River. Despite that limit, these tunnels, once built, would have the potential to
6 transport approximately 15,000 cubic feet per second of water. The project, if constructed and
7 operated, would fundamentally transform the flow of water from north to south through the Delta,
8 and in turn, the manner in which DWR and the Bureau respectively operate the SWP and the
9 federal Central Valley Project ("CVP").

10 5. Despite monumental cost and complexity, the Delta tunnels project creates no new water
11 supply. The project would entrench and likely compound reliance on unsustainable water exports,
12 to the detriment of communities and water users within and upstream of the Delta. The project
13 would divert resources needed for investments in long-term water reliability, water quality, reuse,
14 storage, drought and flood protection, and ecosystem improvements. It would also frustrate efforts
15 in the northern Sacramento Valley and elsewhere to fulfill legislative duties on regional self-
16 reliance and the sustainable management of groundwater. If built and approved for operation, the
17 project's new intakes in the northern Delta may divert up to a third of the flow of the Sacramento
18 River, increasing the potential for reverse flows on the Sacramento River, harmful diversions of
19 water out of the Sacramento Valley and the Delta, and further degradation of water quality.

20 6. In certifying the FEIR and approving the project, DWR failed to heed torrents of criticism
21 from counties, communities, public agencies and expert reviewers discrediting the project's
22 environmental, economic and legal foundations. Ignoring Butte's warnings, among others, DWR
23 failed to address major risks and costs in and north of the Delta, including failure to avoid
24 impairment of beneficial and instream uses, water rights and area-of-origin rights. DWR failed to
25 clearly disclose and analyze the role of the Delta tunnels in facilitating water transfers out of the
26 northern Sacramento Valley. Although the Delta tunnels project would also redirect impacts to this
27 region, including impacts to surface and groundwater resources, the FEIR excluded analysis
28 needed to fully assess or mitigate those impacts, failing as a matter of law to meet CEQA's chief
purposes of environmental protection and informed self-government.

7. The Delta tunnels project, referenced as California WaterFix in DWR's FEIR and final

1 decision, attempts to update and modernize the “peripheral canal” concept rejected by California’s
2 voters in 1982 by a margin of 62.7 percent to 37.3 percent. This project emerged after the
3 CALFED program failed to remove major risks in and north of the Delta or to prevent major harm,
4 including the precipitous decline of the Delta’s pelagic organisms. Nearly a decade ago, when the
5 California Supreme Court narrowly upheld the 2000 CALFED EIR, it observed that the CALFED
6 program was premised on the “unproven” theory that it was “possible to restore the Bay-Delta’s
7 ecological health while maintaining and perhaps increasing Bay-Delta water exports through the
8 CVP and SWP. If practical experience demonstrates that the theory is unsound, Bay-Delta water
9 exports may need to be capped or reduced.” (*In Re Bay-Delta Programmatic Environmental
Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168.)

10 8. The project’s Draft EIR/EIS referenced an earlier version of the project as the Bay Delta
11 Conservation Plan (BDCP). BDCP was, and is, premised on the same fallacy anticipated by the
12 California Supreme Court in *In Re Bay-Delta*. That fallacy, now belied by practical experience and
13 sound science, assumes that a massive new conveyance system designed to enhance the capacity
14 for already-unsustainable exports south of the Delta can protect the Bay-Delta ecosystem and
15 qualify as “conservation.” By 2015, criticism from the Environmental Protection Agency (EPA)
16 and other scientific reviewers had undermined support for the notion that BDCP could meet the
17 rigorous federal and state requirements for a fifty-year “conservation plan” (federal HCP and
California NCCP).

18 9. Faced with the historic opportunity to work with counties and communities in the northern
19 Sacramento Valley and the Delta to develop a more sustainable path, DWR chose instead, starting
20 in 2015’s partially revised draft EIR, to redefine and rebrand the project as a new “preferred”
21 alternative, California WaterFix (Alternative 4A). This “fix” repaired little, and made some matters
22 worse. Having already failed to ensure protection of the Bay Delta, DWR eliminated almost all the
23 conservation plan included in the project, while retaining the project’s key source of adverse
24 impacts, the twin tunnel conveyance.

25 10. In its final review and approval of California WaterFix, DWR rendered its “Bay Delta
26 Conservation Plan” an oxymoron connected to an unsustainable and largely unfunded water
27 conveyance project. The abandoned BDCP remains in the FEIR, as Project Alternative 4, as a
28 reference point for flawed modeling and analysis, and as an excuse for evasive responses to

1 comments. Failing as a conservation plan also undermined BDCP's tenuous financing, which
2 largely rested on obtaining fifty-year assurances for water contractors based on those plans. DWR
3 fails to provide reliable financial assurance that required project elements and mitigation measures
4 can be implemented, or to assure that project beneficiaries will pay. Accordingly, the project risks
5 shifting major costs and hazards to others, including the county and its constituents.

6 11. Left without a clear and consistent project definition or analysis of a reasonable range of
7 project alternatives, the FEIR persists in placing a disingenuous conservation gloss around a tunnel
8 construction project that reinforces and expands the capacity of DWR and the Bureau to move even
9 more freshwater out of the northern Sacramento Valley and the Delta. Among numerous other
10 problems, the Delta tunnels project would damage agriculture, fisheries and protected species,
11 damage urban and rural water quality, compound salinity problems, add to conflicts over water
12 supply, and increase dangers from human exposure to harmful algal blooms. The FEIR also
13 contains critical and prejudicial exclusions from its assessment of cumulative impacts, including
14 detailed and updated integration of the hydrologic consequences of climate change. The cumulative
15 impacts analysis avoids providing needed information and analysis of the project's consequences
16 considered in connection with other proposed upstream facilities, including the proposed Sites
17 Reservoir, which likewise would depend upon the existing Sacramento River water supply.

18 12. Following major scientific criticisms of the project and its environmental review, including
19 those of the EPA, the National Academy of Sciences ("NAS") and California's own Delta
20 Independent Science Board ("DISB"), the FEIR and final approval documents repeatedly attempt
21 to avoid mitigation responsibility or to defer it to pending or future actions. DWR strains to make
22 benign assumptions about project operations and avoidance of conflicts that will depend, in part, on
23 the outcome of still-pending proceedings, including the State Water Resources Control Board's
24 ("State Board's") review of DWR's petition to change points of diversion, and its consideration of
25 flow and salinity criteria in updates to the Bay-Delta Water Quality Control Plan. Since the
26 outcome of these proceedings could still potentially preclude lawful operation of the Delta tunnels,
27 proceeding with the project may well mean that staggering amounts could be spent developing
28 water tunnels destined to become stranded facilities.

13. DWR substantially understates potential project impacts, and avoids making further
findings of significant impacts, only by relying heavily on several techniques that undermine the

1 completeness of DWR's FEIR and the accountability of its project decision. These include (1)
2 vaguely defined "environmental commitments" that largely repeat existing obligations, and
3 conflate the roles of project components and mitigation; (2) a segmented Eco-Restore program that
4 places almost all accountability for conservation outside DWR's decision on the Delta tunnels; and
5 (3) a poorly defined "adaptive management" plan that lacks essential details and flouts devastating
6 criticisms made by NAS, DISB, and other scientific reviewers. DWR's misuse of adaptive
7 management to avoid hard issues is better described as maladaptive and unlawfully deferred
8 mitigation.

9 14. Proceeding with the Delta tunnels project would also renege on many of the Delta Reform
10 Act's central commitments. For example, the project threatens to undermine fulfillment of the "co-
11 equal" goals of "providing a more reliable water supply for California and protecting, restoring,
12 and enhancing the Delta ecosystem." (Wat. Code, § 85054.) The project likewise threatens to
13 weaken the regional self-reliance of the northern Sacramento Valley (Wat. Code, § 85021), the
14 commitment to avoid impairing water rights and area-of-origin rights (Wat. Code, § 85031), and
15 the duty to honor the constitutional principle of reasonable use and the public trust doctrine (Wat.
16 Code, § 85023.)

17 15. Butte seeks a writ of mandate and declaratory and injunctive relief under California Code of
18 Civil Procedure sections 526, 1060, 1085, and 1094.5, directing DWR to vacate its approval of the
19 Delta tunnels project, the Findings and Statement of Overriding Considerations for the WaterFix
20 Tunnels, and the July 21, 2017 certification of the FEIR, and to revise its findings to conform with
21 the law.

22 **PARTIES, JURISDICTION AND VENUE**

23 16. Petitioner County of Butte is a political subdivision of the State of California, charged by
24 the California Constitution with the duty to protect the environment and economy of the people and
25 resources within its jurisdiction, and the reasonable and beneficial uses of surface water and
26 groundwater. Butte County, governed by a five-member Board of Supervisors, provides services to
27 residents through 23 departments. Butte is also the second northernmost of 29 State Water
28 Contractors that signed and still hold long-term contracts for water deliveries with DWR.

1 17. Butte is located in the Sacramento River Hydrological Region, which includes the
2 Sacramento River, the longest river system in the State of California and its tributaries, including
3 the Pit, Feather, Yuba, Bear and American Rivers. The Sacramento River Hydrological Region is
4 the main water supply for much of California's urban and agricultural areas.

5 18. Butte's surface water resources include a network of creeks and rivers that are tributary to
6 the Sacramento River, which feeds into the Bay Delta. Butte is situated in the northern Sacramento
7 Valley region, which serves as the area of origin for much of the water flowing through the Delta.
8 Butte and its constituents have a strong interest in the health and stewardship of the northern
9 Sacramento Valley basin and the Delta.

10 19. Butte and its constituents also have a strong interest in the health and stewardship of
11 groundwater resources, which serve approximately 75 percent of its residential water supply. Butte
12 has monitored groundwater quality since 2002, in response to the Butte County Groundwater
13 Ordinance, chapter 33 of the Butte County Code.

14 20. Butte serves as the host county for DWR's Oroville Facilities, and has borne many of the
15 major costs and risks associated with those facilities. Originally licensed in 1957 and completed in
16 1967, Oroville Dam, located within Butte County on the Feather River, is the tallest earth-filled
17 dam in the country. Oroville Dam generates annual net power benefits that the Federal Energy
18 Regulatory Commission (FERC) has valued at almost \$26 million annually.

19 21. The reservoir formed by Oroville Dam impounding the Feather River, known as Lake
20 Oroville, serves as the keystone water storage facility in the DWR-managed State Water Project
21 (SWP). Sometimes described as the SWP's "crown jewel," Lake Oroville, the SWP's largest
22 reservoir with a capacity of 3.5 million acre-feet, holds eight percent of the state's reservoir
23 capacity and plays an important role in flood management, water quality, and the health of fisheries.
24 This reservoir provides water, valued conservatively in hundreds of millions of dollars annually, to
25 state water contractors serving more than 23 million Californians.

26 22. DWR's Oroville Facilities, while providing benefits largely concentrated in southern
27 California, and south of the Bay-Delta estuary (Delta), have created substantial environmental, land
28

1 management, and water use impacts within Butte County, as well as major socioeconomic impacts
2 producing significant environmental consequences. Butte has borne millions of dollars annually in
3 environmental and services costs stemming from Oroville operations, which DWR has never
4 mitigated. In February 2017, failure of the main and emergency spillways at Oroville Dam led to
5 the temporary evacuation of 188,000 people living near the dam.

6 23. Butte County has sought for more than a decade to hold DWR financially and legally
7 accountable for major costs and risks to the county and its constituents from Oroville's operation.
8 Butte has also sought to ensure careful review the full range of hydrologic conditions, including
9 growing extremes of floods and droughts impacting Oroville Dam operation during DWR's
10 proposed new 50-year license term. Oroville Dam's previous long-term license from the Federal
11 Energy Regulatory Commission ("FERC") expired in 2007 (FERC license P-2100). DWR
12 approved its Oroville Facilities relicensing project as state lead agency and certified its Final EIR
13 for that project in August 2008. FERC has not yet completed its decision-making as federal lead
14 agency on DWR's proposed Oroville relicensing.

15 24. Butte and Plumas Counties' challenge to DWR's 2008 Oroville Facilities EIR and decision
16 as state lead agency, commenced nine years ago, is fully briefed and remains pending in a separate
17 action in the Third District Court of Appeal. (*Butte County v. Department of Water Resources*,
18 C071785.) Commentators have noted Butte's longstanding efforts in this challenge and in other
19 proceedings to hold DWR accountable for Oroville Dam's operation under realistic 21st century
20 conditions:

21 • I. James, *Oroville Dam Unprepared for Climate Change, critics warned years before crisis*,
22 The Desert Sun, February 20, 2017;

23 [http://www.desertsun.com/story/news/environment/2017/02/14/dangerously-false-oroville-dam-](http://www.desertsun.com/story/news/environment/2017/02/14/dangerously-false-oroville-dam-isnt-prepared-global-warming-2008-lawsuit-says/97903842/)
24 [isnt-prepared-global-warming-2008-lawsuit-says/97903842/](http://www.desertsun.com/story/news/environment/2017/02/14/dangerously-false-oroville-dam-isnt-prepared-global-warming-2008-lawsuit-says/97903842/)

25 • J. Little, *California Dam Crisis Could Have Been Averted*, Scientific American (online),
26 February 20, 2017; [https://www.scientificamerican.com/article/california-dam-crisis-could-have-](https://www.scientificamerican.com/article/california-dam-crisis-could-have-been-averted/)
27 [been-averted/](https://www.scientificamerican.com/article/california-dam-crisis-could-have-been-averted/)

28 • J. Christian-Smith, *Learning from Oroville*, Water Deeply (online), February 20,
2017, [https://www.newsdeeply.com/water/community/2017/02/20/learning-from-oroville-water-](https://www.newsdeeply.com/water/community/2017/02/20/learning-from-oroville-water-board-proposes-climate-change-resolution)
[board-proposes-climate-change-resolution.](https://www.newsdeeply.com/water/community/2017/02/20/learning-from-oroville-water-board-proposes-climate-change-resolution)

1
2 25. Respondent and defendant Department of Water Resources, created through California
3 legislation in 1956, is a department of the State of California charged with the duty to operate and
4 manage the SWP consistently with state law. DWR operates and manages the SWP by
5 constructing, maintaining and owning its facilities, and by contracting with each of 29 local state
6 water contractors, including petitioner Butte. DWR's operation and management of the SWP is
7 subject to the requirements and limitations of the Burns-Porter Act (Wat. Code, § 12930, *et seq.*),
8 the Central Valley Project Act (Wat. Code, §§ 11100, *et seq.*), and other requirements of state and
9 federal law.

10 26. DWR serves as state lead agency for the project, and would be principally responsible for
11 constructing, maintaining and operating the project. DWR has asserted that in administering the
12 project, it may partake in discretionary actions related to coordination with the Bureau and its 13
13 Central Valley Project ("CVP") contractors. DWR has also asserted that it may also engage in
14 "other actions related to contract amendments" to fund the project. The FEIR prepared by DWR as
15 CEQA lead agency must also serve as a legally adequate decision-making document for any
16 discretionary determinations of responsible and trustee agencies subject to the requirements of
17 CEQA, including but not limited to the State Board and the Department of Fish and Wildlife.

18 27. Does 1 through 50, inclusive, may have an interest or claim to the project whose specific
19 details are not presently known to the petitioners and plaintiffs. Their true names and capacities,
20 whether in individual, corporate, associate, governmental, or other designations, are not presently
21 known to plaintiffs and petitioners, and are therefore referenced here by fictitious names. Should
22 their true names and capacities later be ascertained, petitioners and plaintiffs will seek to amend
23 this petition and complaint to identify their true names and capacities.

24 28. This civil action is brought pursuant to Code Civ. Proc., §§ 526, 1060, 1085, and 1094.5;
25 CEQA, Public Resources Code section 21000 *et seq.*; and the Delta Reform Act, Water Code
26 section 85000 *et seq.*

27 29. Pursuant to Code of Civil Procedure sections 393, 394 and 395, venue for this action is
28 appropriate in Sacramento County Superior Court. DWR is a state agency whose principal office is

1 located in the City of Sacramento, within Sacramento County. Sacramento County is the most
2 convenient venue for this action, which addresses matters of statewide import. The affirmative acts
3 of DWR recorded in its notice of determination resulted in wrongs that were felt, at least in large
4 part, in Sacramento County as well as in Butte and elsewhere.

5 30. Butte has exhausted all administrative remedies by submitting written comments during
6 several stages of the project approval and EIR processes, including but not limited to written
7 comments objecting to approval of the project and highlighting potential violations of requirements
8 of law, including CEQA and the Delta Reform Act. All issues raised in this petition were raised by
9 Butte, or by other public entities, members of the public, or both, prior to DWR's final approval of
10 the project and certification of the EIR.

11 31. Butte has complied with Public Resources Code section 21167.5 by prior service of a notice
12 upon DWR indicating their intent to file this petition. Proof of Service of this notification, with the
13 notification, is attached as Exhibit A to this petition.

14 32. Butte has complied with Public Resources Code section 21167.7 and Code of Civil
15 Procedure section 388 by serving a copy of this petition on the Attorney General. Butte brings this
16 action on behalf of the county, its constituents, and members of the public, to enforce important
17 rights affecting the public interest.

18 33. Butte elects to prepare the record of proceedings in the above-captioned proceeding or to
19 pursue an alternative method of record preparation pursuant to Public Resources Code section
20 21167.6(b)(2).
21

22 PROCEDURAL HISTORY

23
24 34. DWR commenced planning for the project then known as the Bay Delta Conservation Plan
25 (BDCP) during 2006. As originally conceived, BDCP proposed adding new points of diversion
26 from the Sacramento River within the north Delta, and establishing a "conservation plan"
27 protecting species affected by the project meeting the requirements of the federal Endangered
28 Species Act (ESA) and state California Endangered Species Act (CESA). DWR anticipated that

1 BDCP would include a fifty-year conservation plan meeting the requirements of a Habitat
2 Conservation Plan (HCP) under the ESA, and a Natural Community Conservation Plan (NCCP)
3 under California's Natural Community Conservation Planning Act (NCCPA). The plan would have
4 required obtaining incidental take authorization under section 7 of the ESA.

5 35. In March 2008, DWR published a Notice of Preparation (NOP) of the EIR for BDCP,
6 anticipating preparation of a joint EIR/EIS. That notice followed the Bureau's January 2008
7 publication in the Federal Register of a Notice of Intent to prepare an EIS. DWR published a
8 revised NOP for the BDCP in February 2009.

9
10 36. In August 2008, Butte County submitted comments to the Delta Vision Blue Ribbon Panel
11 on the Delta Vision Strategic Plan, expressing hope for development of a conservation plan
12 through BDCP that could restore the Delta ecosystem consistently with the needs of water users
13 north of the Delta.

14 37. In May 2009, Butte County submitted scoping comments to DWR on the BDCP. The letter
15 expressed concerns over a lack of project specifics, scientific uncertainty of the project options, and
16 a "disregard for assuring protections throughout the Delta watershed." Butte underscored the
17 importance of the northern Sacramento Valley, which serves as the area of origin for much of the
18 water flowing through the Delta. Butte warned that ignoring protection of the upstream portion of
19 the Delta watershed would be counterproductive to BDCP's ecosystem goals, and would likely
20 result in redirecting impacts upstream.

21 38. In December 2010, Butte County submitted comments to the California Natural Resources
22 Agency on the first public release draft of BDCP. Emphasizing the importance of protecting water
23 resources in Butte and the northern Sacramento Valley region, Butte advised against attempts to
24 finesse disagreements by shifting impacts and burdens outside the plan area. Butte noted that the
25 BDCP steering committee had ignored its concerns. Butte described BDCP's November 2010
26 progress report as "ambiguous, legally suspect and potentially harmful to northern Sacramento
27 Valley."
28

1 39. In 2011, the National Academy of Sciences (NAS) published a report on the draft BDCP
2 entitled *A Review of the Use of Science and Adaptive Management in California's Draft Bay Delta*
3 *Conservation Plan* (2011); [https://www.nap.edu/catalog/13148/a-review-of-the-use-of-science-](https://www.nap.edu/catalog/13148/a-review-of-the-use-of-science-and-adaptive-management-in-californias-draft-bay-delta-conservation-plan)
4 [and-adaptive-management-in-californias-draft-bay-delta-conservation-plan](https://www.nap.edu/catalog/13148/a-review-of-the-use-of-science-and-adaptive-management-in-californias-draft-bay-delta-conservation-plan). NAS identified critical
5 gaps in BDCP's scope and analysis. The report found that "much of the BDCP appears to be a
6 post-hoc rationalization of the water supply elements of the BDCP," and noted that favoring a
7 conveyance option detached from the science informing the selection would place "the cart before
8 the horse."

9 40. The 2011 NAS report also identified deficiencies in BDCP's adaptive management
10 program. NAS cited research showing that more than 100 adaptive management programs had
11 failed "primarily because of institutional problems that include lack of resources necessary for
12 expanded monitoring; unwillingness of decision makers to admit and embrace uncertainties in
13 making policy choices; and lack of leadership in implementation." NAS concluded that the
14 evidence did not demonstrate that BDCP's adaptive management program was "properly designed"
15 or followed the guidelines provided by BDCP's own Independent Science Advisors.

16 41. In August 2012, Butte County's Board of Supervisors passed a resolution in opposition to
17 BDCP, after concluding that the proposed BDCP would not fulfill its intended goals and would
18 harm Butte and much of the northern Sacramento Valley region. Butte also explained the grounds
19 for its opposition to BDCP in letters sent to California's Governor, the Secretary of California's
20 Natural Resources Agency, and the Secretary of the United States Department of Interior. These
21 letters noted the failure to conduct a specific assessment of BDCP's consequences for Lake
22 Oroville, which remains integral to the "recreation, economy, and ecosystem" of those in the
23 SWP's area of origin. Butte also concluded that BDCP needed, and still lacked, enforceable means
24 to ensure the protection of area of origin and water rights in the northern Sacramento Valley.

25 42. In December 2013, DWR and the Bureau jointly released the Draft BDCP and BDCP Draft
26 EIR/EIS. Numerous commenters, including Butte, submitted timely public comments identifying
27 major deficiencies in these draft documents.
28

1 43. Butte's July 2014 comments on the Draft BDCP and BDCP Draft EIR/EIS concluded that
2 the draft did not meet the requirements of CEQA, NEPA, the NCCPA, and the ESA, and
3 threatened to extract water resources upstream of the Delta without fully assessing or mitigating the
4 impacts of that extraction. Butte noted the failure of BDCP to demonstrate the viable financial
5 commitments needed for its conservation plan, which depended in part on still-unmade
6 commitments from water contractor beneficiaries. Butte referenced parallel proceedings
7 illuminating this uncertainty, in pending proceedings in which DWR seeks to extend SWP
8 contracts past 2035, restructure project management, and modify SWP financing.

9 44. Butte's July 2014 comments identified specific deficiencies under CEQA, such as problems
10 with the project description, and deficient analysis of impacts to ground water basins and impacts
11 from changes to storage in Lake Oroville. Butte noted the draft's failure to analyze its BDCP-
12 related transfers upstream of the Delta, and groundwater substitution transfer programs. Butte also
13 identified BDCP's failure to provide the "viable financial commitments" required for a lawful state
14 or federal conservation plan, noting that "[m]ost, if not all" of BDCP's identified funding sources
15 remained speculative, particularly that of BDCP's ostensible SWP contractor beneficiaries. In
16 September 2014, staff at Metropolitan Water District of Southern California (MWD) described
17 proposed SWP contract amendments as a necessary step in financing BDCP. (See MWD, Special
18 Committee on Bay-Delta, Presentation Re. Review Status of BDCP Cost Allocation Discussions
19 (September 23, 2014) <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003735248-1.pdf>.)

20 45. In July 2015, DWR and the Bureau jointly released the Recirculated Draft
21 EIR/Supplemental Draft EIS (RDEIR/SDEIS). This draft followed extensive public and agency
22 criticism of the BDCP and BDCP Draft EIR/EIS, including "red flag" reviews from federal
23 agencies, among others. See, e.g., EPA's August 26, 2014 BDCP letter; State Board's July 29,
24 2014 BDCP and EIR/EIS comments; United States Army Corps of Engineers, comment letter, July
25 16, 2014; Environmental Water Caucus, comment letter, June 11, 2014; National Marine Fisheries
26 Service, *Progress Assessment and Remaining Issues Regarding the Administrative Draft BDCP*
27 *Document*, April 4, 2013). California Advisory Committee on Salmon and Steelhead Trout,
28 comments to the Department of Fish and Wildlife (February 2014); Pacific Fishery Management
Council, BDCO comments, March 2014. Taken together, these analyses suggested that BDCP

1 would be incapable of qualifying its “conservation plan” as a federal HCP or state NCCP providing
2 fifty-year assurances of species viability. DWR did not provide a redline version of the Draft
3 EIR/EIS identifying changes in the new document. The RDEIR/SDEIS analyzes three new
4 alternatives (2D, 4A, and 5A) not requiring a conservation plan, which instead anticipated
5 consultations under ESA section 7 and an “incidental take permit” under section 2081(b) of CESA.
6 The RDEIR/SDEIS identifies one of these alternatives not requiring a conservation plan
7 (Alternative 4A) as the new “preferred alternative,” and brands that alternative as California
8 WaterFix. The new “preferred alternative,” like its BDCP predecessor, proposes construction of
9 two tunnels and conveyance facilities with three diversion points in the north Delta. However, the
10 RDEIR/SDEIS indicated that the revised project, like BDCP earlier, would fail to improve Delta
11 flows, would increase average exports, and would risk further deterioration of flows, making them
12 worse during critical time periods.

13 46. DWR and the Bureau received approximately 21,700 comment letters on the
14 RDEIR/SDEIS. In its timely comments submitted in October 2015, Butte concluded that the
15 RDEIR/SDEIS deficiently addressed the environmental and related socioeconomic impacts of the
16 project, and particularly in its avoidance of key problems directly affecting Butte and others in the
17 northern Sacramento Valley. Butte noted that the revised environmental review continued to avoid
18 major problems previously raised in Butte’s comment letters, and that in the discussion germane to
19 these concerns, little had been addressed or corrected from the problems Butte and others identified
20 with the BDCP Draft EIR/EIS.

21 47. In its October 2015 comments on the RDEIR/SDEIS, Butte highlighted the following
22 problems, which the RDEIR/SDEIS failed to disclose, analyze, or both:

23 • The project will necessitate extraction of more water from the northern Sacramento Valley,
24 depleting upstream reservoirs and in some cases drawing them down to dead pool conditions. In so
25 doing, it will jeopardize the regional self-reliance of the northern Sacramento Valley, thwarting
26 fulfillment of the statewide policy noted in Water Code section 85021.

27 • The project will create conditions preventing other water users (including those with
28 seniority over DWR’s underlying SWP water rights) from obtaining water supplies and serving
beneficial uses, abrogating the Legislature’s commitment in the Delta Reform Act not to impair or
diminish water rights or area of origin rights (Wat. Code, § 85031.)

1 • The project will lead to increases in transfers and groundwater use in the Sacramento
2 Valley to make up for shortfalls in Central Valley Project contractors' surface water supplies. But
3 the environmental review fails to disclose and assess groundwater impacts upstream of the Delta,
4 and even excludes the Sacramento Valley from key parts of its modeling and analysis. (See also
5 October 2015 comments of AquAlliance on the RDEIR/SDEIR ("the project purpose remains the
6 same: drain as much water as possible from the Sacramento River watershed and the Delta to
7 continue some of the most destructive forms of desert agriculture, urban sprawl, and industrial
8 extraction").

9 • The project will entail large increases in transfers out of the Sacramento Valley, and will
10 encourage groundwater substitution transfer programs, whose impacts are improperly excluded
11 from environmental review and mitigation. However, the environmental review fails to recognize
12 and address the cumulative impacts of the project along with implementation of the Sustainable
13 Groundwater Management Act, 2014 Stats., ch. 346, SB 1168 (Pavley); ch. 347, AB 1739
14 (Dickinson); ch. 348, SB 1319 (Pavley), as amended by 2015 Stats., ch. 255 (SGMA).

15 • The project will lead to operational changes at Lake Oroville, whose environmental and
16 related socioeconomic consequences remain unanalyzed and unmitigated by DWR.

17 • The project depends on speculative and undefined funding sources.

18 48. In an October 2015 letter to the Bureau from Jared Blumenfeld, EPA Region IX Director,
19 the EPA assigned to the BDCP/California Water Fix SDEIS a failing grade of 3 ("inadequate"). In
20 November 2015 the Resources Agency and DWR obtained from David Sunding of The Brattle
21 Group a study called *Cal WaterFix Economic Analysis*. It presumes that the federal government or
22 some other entity would need to provide a subsidy of \$ 6.5 billion to make the tunnels a breakeven
23 proposition for agricultural users of the water. (*Economic Analysis*, pp. 2–4). This economic
24 analysis also assumed that water yields would be multiple times higher than that assumed in the
25 RDEIR/SDEIS. A later independent study, the first comprehensive benefit-cost analysis of
26 California WaterFix, concludes that the project would only provide \$.23 of benefits for each dollar
27 of cost. (See Jeffrey Michael, Executive Director, Center for Business and Policy Research,
28 Eberhardt School of Business and McGeorge School of Law, *Benefit-Cost Analysis of the
California WaterFix* (University of the Pacific, August 2016);
<http://www.pacific.edu/Documents/school-business/BFC/WaterFix%20benefit%20cost.pdf>.)

1 49. In August 2015, without first completing the EIR, DWR submitted a Petition for Change of
2 Point of Diversion adding three new 3,000 cfs intakes on the Sacramento River for the project to
3 the State Board. DWR's petition contends that increasing conveyance capacity and diverting water
4 from potential new sources is not a new diversion of water, and leaves open the subject of what
5 specific conditions would be imposed on construction and operation of the Project. In another set
6 of related proceedings, the State Board is in the process of updating its Delta water quality control
7 plan, and reviewing evidence on salinity and freshwater flows, among other subjects. (See, e.g.,
8 *Evaluation of San Joaquin River Flow and Southern Delta Water Quality Objectives and*
9 *Implementation* (September 2016); *Working Draft Scientific Basis Report for New and Revised*
10 *Flow Requirements on the Sacramento River and Tributaries, Eastside Tributaries to the Delta,*
11 *Delta Outflow, and Interior Delta Operations* (October 2016).)

12 50. In September 2016, Butte submitted a policy statement letter to the State Board in
13 connection with its still-pending hearings on California WaterFix, reviewing DWR's petition for
14 change in the point of diversion. Butte's letter reiterated its continuing opposition to the project,
15 elaborating on the project's harm to Butte County and the northern Sacramento Valley region's
16 economy, environment and communities.

17 51. In December 2016, DWR and the Bureau released the project's Final EIR/EIS. This
18 document included more than 80,000 pages. Although DWR purported to provide a public
19 comment period on the Final EIR/EIS, the only official notice of this period appeared in the
20 Bureau's December 30, 2016 Federal Register notice. DWR also rejected requests to keep the
21 period for comment and evidentiary submission open past January 30, 2017. DWR over specific
22 protests purported to cut off evidentiary submissions on that date, despite the development of
23 evidence, testimony and reports on related matters at the State Board and in other proceedings well
24 past that date.

25 52. On January 18, 2017, EPA again sent a letter to the Bureau, this time observing that the
26 California WaterFix FEIS failed to correct major problems EPA had noted in its 2015 letter, and
27 that none of the regulatory processes mentioned had been completed, leaving the real scope of the
28 project's impacts unresolved. EPA noted the project's potential to degrade water quality. Finally,
EPA noted that the operations described in the FEIR/FEIS do not reflect "real world operational

1 scenarios,” and that the project’s consequences could become less ambiguous after the completion
2 of pending regulatory proceedings, such as those before the State Board.

3
4 53. In June 2017, the Delta Independent Science Board (DISB) released its report reviewing the
5 FEIR, following up on on reviews of the project’s previous draft documents that had identified
6 significant deficiencies in their analysis, presentation and conclusions. Despite some improvements,
7 DISB concluded that major deficiencies remained in the analysis. For example, DISB found that
8 the FEIR’s assessment of adaptive management remains lacking in details of “how it will actually
9 be done,” and that “a compelling case of adaptive management implementation to mitigate impacts
10 of the project over the long term is lacking.” DISB found that the Sustainable Groundwater
11 Management Act will have long-term effects on the proposed project that are “not addressed” in
12 the FEIR, as was the case with the consequences of long-term droughts. DISB also concluded that
13 the No Project Alternative’s analysis lacked important details, particularly those relating to climate
14 change.

14 54. On June 26, 2017, the United States Fish and Wildlife Service (“USFWS”) and NOAA
15 Fisheries (“NOAA”) issued their biological opinions for the project (“2017 FWS BO” and “2017
16 NOAA BO,” respectively) on the Project. The 2017 FWS BO authorized take of nine ESA-listed
17 species. The 2017 NOAA BO authorized take of four ESA listed species. Although USFWS
18 designated its biological opinion as “final,” that opinion employed a “mixed
19 standard/programmatic approach,” recognized the need for multiple areas of further action, and
20 deferred much of the operative project analysis and decision-making until later.

21 55. On July 21, 2017, DWR certified the FEIR and filed its notice of determination recording
22 its approval of the project. DWR also finally approved its CEQA findings, overriding
23 considerations, and mitigation monitoring and reporting program. In its findings, DWR redefined
24 its “Final EIR” to also include a new and uncirculated document of nearly 300 pages, entitled
25 *Developments After Publication of the Proposed Final Environmental Impact Report*, dated “July
26 2017.” On July 21, 2017, DWR also filed a direct validation action pursuant to Code of Civil
27 Procedure section 860, et seq. in Sacramento County Superior Court, seeking to validate: (1)
28 revenue bonds DWR has authorized to finance the capital costs of the project; (2) the resolutions
DWR adopted in connection with those bonds; and (3) the pledge of revenues for their repayment.

1 In its complaint, DWR estimates the project would require the contribution of \$7.2 billion in
2 unidentified “other sources” not covered by the proposed bonds. DWR’s complaint, which does not
3 allege that DWR “has satisfied all of the statutory and regulatory requirements to construct” the
4 project, characterizes compliance with these requirements as “not at issue” in the validation action.
5 DWR’s validation summons indicates that answers to the validation complaint are due by
6 September 15, 2017.

7 56. On July 28, 2017, DFW issued the Project’s Incidental Take Permit (“ITP”) pursuant to
8 Fish and Game Code section 2081. DWR authorized the take of eight species listed under CESA.

9
10 57. In August 2017, Metropolitan Water District released a white paper entitled *Modernizing*
11 *the System: California Waterfix Finance and Cost Allocation*. The report provides more details
12 about the project’s anticipated financing than DWR disclosed in its decision-making documents for
13 the project. MWD’s white paper described uncertainties remaining in federal, state and water
14 contractor financing for the project. MWD anticipated the need for water contractors to accrue
15 finance costs on DWR revenue bonds, if DWR is found to have the authority to issue them.
16 MWD’s paper identified DWR’s proposed revenue bonds as the “ultimate source” of the SWP
17 contractors’ share of the project’s costs.

18 **FIRST CAUSE OF ACTION:**
19 **VIOLATIONS OF CEQA**

20 **Count 1: Failure to Provide a Stable, Complete and Consistent Project**
21 **Definition**

22
23 58. Butte incorporates by reference, and realleges, each and every allegation set forth above.
24 For the reasons detailed below, DWR in its approval of the project and FEIR failed to proceed as
25 required by law, undertook arbitrary and capricious action, and made conclusions and findings of
26 fact not supported by substantial evidence.

27 59. CEQA requires the lead agency reviewing a project to provide a consistent, stable and
28 accurate definition of the project under review. Under CEQA Guideline section 15124, the FEIR’s

1 description of the project must also contain sufficient specific information to allow the public and
2 reviewing agencies to evaluate and review the project's environmental impacts. The description of
3 a project must contain the "precise location and boundaries of the proposed project" on a detailed
4 map, as well as a "general description of the project's technical, economic, and environmental
5 characteristics." *Id.* The FEIR must not employ a tautological description of the project objectives
6 that skews the project toward approval. The project objectives must illuminate all elements of the
7 project's underlying purpose, and may not be so narrowly defined that they preclude consideration
8 of reasonable alternatives for achieving the project's underlying purpose.

9 60. In the FEIR and CEQA findings, DWR inaccurately describes the project setting and
10 objectives, as well as existing and foreseeable project conditions. The project definition is
11 inconsistent, unstable and inaccurate in at least the following respects, amounting to a failure to
12 proceed as required by CEQA:

13 • The project definition improperly favors export capacity over protection of the Delta and
14 upper watersheds. Despite criticism, the FEIR did not remove a misleading reference to delivering
15 "up to full contract amounts." That reference misrepresents the capacity of the SWP to reliably
16 meet "full" contract deliveries, and perpetuates "paper water" export assumptions that can only add
17 to water conflicts in times of scarcity. (See *Planning and Conservation League v. Department of*
18 *Water Resources* (2000) 83 Cal.App.4th 892, 908, 914); see also EPA Comments on BDCP
19 Purpose Statement (June 10, 2010), 3-5 (rejecting purpose premised on full contract amounts.) If
20 rigorously adhered to as a project objective, all alternatives—even California WaterFix
21 (Alternative 4A) —would need to be rejected as infeasible.

22 • The project definition impermissibly incorporates numerous concepts relied upon for
23 project mitigation into the description of the project. The FEIR and final approval documents
24 misleadingly label these concepts "environmental commitments," a nebulous non-CEQA term that
25 lacks the rigor and accountability of enforceable mitigation measures subject to the requirements of
26 CEQA. Some of these "commitments" simply repeat existing obligations.

27 • The project definition is skewed by a faulty objective referencing, in pertinent part, "new
28 operations and a new configuration for conveyance of water entering the Delta from the

1 Sacramento River watershed to the existing SWP and CVP pumping plants in the southern Delta
2 by considering conveyance options in the north Delta....” This reference to conveyance
3 groundlessly foreclosed consideration of non-conveyance alternatives that might otherwise have
4 met project purposes. DWR inaccurately assumes that Water Code section 85024(f) requires
5 construction of a new conveyance, which is not supported by that provision’s reference to
6 “improving” the water conveyance system.

7 • The project definition fails to fully and accurately account for the whole of the action.
8 DWR fails to consistently identify the facilitation of water transfers as an underlying purpose of the
9 project requiring complete assessment in the FEIR, including transfers originating upstream from
10 the Delta and groundwater substitution transfers.

11 • The project’s description is lacking essential technical details needed to allow for reasoned
12 and informed decision-making on DWR’s preferred California WaterFix alternative (4A). It is also
13 shifting and inconsistent on the still-unresolved central questions about how costs of the project
14 will be borne and allocated. While DWR has sometimes suggested that beneficiaries will pay
15 project costs, other sources, including the Brattle Group’s economic analysis of the project and
16 DWR’s own pending validation action on revenue bonds, indicate that a public subsidy will be
17 necessary for the project to proceed at all, and that no assurance exists that beneficiaries will cover
18 project costs.

19 • The project definition fails to disclose DWR’s heavy reliance on an adaptive management
20 program that remains too vague and incomplete to meaningfully guide project performance and
21 establish enforceable performance standards, which should have been in place prior to the project
22 decision to justify DWR’s reliance on them. DWR prejudicially certified the EIR and adopted the
23 project without heeding the cautionary guidance of the National Academy of Sciences, the Delta
24 Independent Science Board, and other analyses noted by commenters including warnings about the
25 potential misuses of adaptive management. See, e.g., E. Biber, *Adaptive Management and the*
26 *Future of Environmental Law* (2013) 46 AKRON L.R. 933; J. Lund, et al., *Adaptive management*
27 *means never having to say you’re sorry*; available at
<http://californiawaterblog.com/2011/07/21/adaptive-management-means-never-having-to-say->

1 you%E2%80%99re-sorry/.) As a result, “adaptive management” as DWR employs it in the project
2 is more accurately described as maladaptive avoidance of project impacts.

- 3 • The project’s environmental setting analysis fails to fully account for factors affecting
4 project operation at upstream reservoirs.

5
6 **Count 2: Faulty Assessment of Project Baseline**

7
8 61. Butte incorporates by reference, and realleges, each and every allegation set forth above.

9
10 62. The project baseline plays a foundational role in environmental review under CEQA, since
11 omission of required information from the baseline or reliance on inaccurate assumptions can
12 undermine an EIR’s ability to accurately evaluate environmental impacts. The baseline must be
13 “realistic” and give the “most accurate picture possible” of the project’s likely impacts. (*Neighbors*
14 *for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal. 4th 439, 505, 507.)
15 Baseline conditions must be based on accurate information and defensible reasoning, and
16 deficiencies cannot be cured after a project decision is made (See *Great Basin Res. Watch v. BLM*
17 (9th Cir. 2016) 844 F.3d 1095.)

18 63. CEQA requires lead agencies to compare the impact of a proposed project to the “physical
19 environmental conditions in the vicinity of the project, as they exist at the time the notice of
20 preparation is published.” (CEQA Guidelines, § 15125.) The description of the project’s baseline
21 ensures that the public has “an understanding of the significant effects of the proposed project and
22 its alternatives.” (CEQA Guidelines § 15125, subd. (a).)

23 64. DWR’s project baseline fails CEQA’s requirements of realism and accuracy in key
24 respects:

- 25 • The baseline description of existing water conditions is fundamentally flawed and
26 artificially limited. DWR relies heavily on hydrologic modeling with dispositive and limiting
27 assumptions constraining the model’s operational criteria, and misapplies its existing models.
28 Although the project’s new intakes in the north Delta would expand the opportunity to transfer

1 water out of reservoirs upstream from the Delta, DWR misleadingly equates exports under the
2 project with exports in the modeling for the no action alternative. This unrealistic modeling
3 assumption, among others, contributes to the FEIR's failure to analyze and mitigate project impacts
4 associated with the use of upstream reservoirs.

5 • The water supply analysis often consists of abstractions from modeling results that do not
6 resemble reality, as EPA recognized in assigning the FEIR/FEIS a "failing" grade. The analysis
7 repeatedly assumes and finesses the meeting of regulatory standards, from water quality to salinity,
8 which are frequently violated or avoided, particularly during drought. This issue is addressed, for
9 example, in the January 2017 comments of the San Joaquin Agencies on the FEIR, which reference
10 the case-in-chief and testimony of California Water Research in the State Board change petition
11 proceedings. Moreover, the model DWR applies in the FEIR (CALSIM II) does not cover
12 "emergency operational criteria," such as those the State Board employs when it approves
13 relaxation of standards case-by-case under a Temporary Urgency Change Petition (TUCP). This is
14 a major loophole, since it underscores that the modeling does not account for the likelihood that
15 regulatory standards will be lowered in practice during water-short years.

16 • The baseline analysis of existing conditions makes misleading assumptions about
17 conditions affecting the supply and demand for surface water and groundwater. It prejudicially
18 incorporates existing exports of water that are unsustainable and unlawful, and fails to account for
19 over-allocation of water entitlements that can leave a "huge gap between what is promised and
20 what can be delivered." (*PCL v. DWR*, 83 Cal.App.3d at 903; see also *Vineyard Area Citizens for
21 Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432 ("speculative sources
22 and unrealistic allocations are insufficient bases for decision-making under CEQA");
23 T. Grantham and J. Viers, *100 years of California's water rights system: patterns, trends and
24 uncertainty*, 9 ENVIRON. RES. LETT. 084012 (2014); available at
25 https://watershed.ucdavis.edu/files/biblio/WaterRights_UCDavis_study.pdf)

26 • The baseline assumptions about project operation fail to realistically address other pending
27 proceedings affecting the circumstances in which the project can lawfully operate. In a response to
28 comment (RECIRC 2502, comment 7), the FEIR conceded that the range of potential outcomes
from the State Board's update of the Water Quality Control Plan were "not included in the

1 analysis.” Following completion of the plan update, the response conceded, operations under the
2 state and federal projects “would need to be reviewed to determine if operations continue to
3 comply with the new regulation.” (*Id.*) Project operation may also be constrained based upon the
4 future determinations relating to the take of species, which are referenced and not resolved in the
5 project’s biological opinions.

6 **Count 3: Faulty Assessment of No Project Alternative**

7
8 65. Butte incorporates by reference, and realleges, each and every allegation set forth above.

9
10 66. Analysis of the no project alternative must include an assessment of existing conditions, as
11 well as the reasonably foreseeable future conditions that would exist if the project were not
12 approved. (CEQA Guidelines, § 15126.6(e).)

13 67. DWR’s assessment of the no project alternative violated CEQA in at least these respects:

14
15 • The FEIR conflates the assessment of project baseline with assessment of the no project
16 alternative.

17
18 • As recognized in DISB’s review of the FEIR, DWR’s analysis of the no project alternative
19 is lacking in critical details. These include missing analysis needed to consistently account for
20 climate change under 21st century conditions and provide a consistent comparison between the “no
21 project” and project alternatives.

22
23 **Count 4: Failure to Analyze a Reasonable Range of Alternatives**

24 68. Butte incorporates by reference, and realleges, each and every allegation set forth above.

25
26 69. CEQA requires that an EIR describe a reasonable range of alternatives that could feasibly
27 attain most of the project’s basic objectives, while avoiding or lessening any significant effects of
28

1 the project. (CEQA Guidelines § 15126.6.) The EIR must also evaluate the comparative merits of
2 the alternatives studied.

3
4 70. In at least these respects, DWR's assessment of project alternatives failed the requirements
5 of CEQA:

6 • Faulty project objectives, including the objective to "restore and protect" delivery of "full
7 contract amounts" from the SWP and CVP, and the objective assuming the need for construction of
8 a new conveyance, irreparably and artificially truncated the EIR's complete assessment of project
9 alternatives.

10 • Modeling assumptions that avoided focus on the project's impacts upstream of the Delta,
11 particularly the exclusion of the Sacramento Valley from key parts of the hydrologic modeling,
12 contributed to the final document's failure to analyze an alternative that fully protected water rights
13 and beneficial uses upstream of the Delta, as well as reservoirs and groundwater basins..

14
15 • The FEIR prejudicially failed to analyze an alternative that reduced exports while feasibly
16 achieving all or most of the project's lawful objectives, despite recommendations from the NAS
17 and other commenters identifying the need for that analysis.

18 • The FEIR prejudicially failed to develop and analyze reasonable and feasible alternatives to
19 the redefined project, California Water Fix (Alternative 4A). This need was not met in the scant
20 analysis in the FEIR of Alternatives 2D (which would have allowed three rather than five intakes to
21 be constructed) and 5A (which proposed even more unreasonable diversions up to 15,000 cfs, far
22 in excess over existing deliveries and Alternative 4A as well).

23 **Count 5: Faulty and Incomplete Assessment of Project Impacts**
24

25 71. Butte incorporates by reference, and realleges, each and every allegation set forth above.
26

27 72. CEQA requires that an EIR identify and describe the project's direct, indirect, and long-
28 term significant environmental effects. The FEIR's failure to evaluate the project's significant

1 impacts undermines the EIR as an informational document, and constitutes a failure to proceed in
2 the manner CEQA requires.

3
4 73. In at least the following respects, foundational problems with the FEIR resulted in the
5 exclusion of analysis essential to informed decision-making on the project:

6 • The hydrologic modeling informing the assessment of project impacts was prejudicially
7 constrained, artificially excluding key areas upstream of the Delta, including the northern
8 Sacramento Valley.

9
10 • The FEIR failed to include specific analysis of water supply, and the amount available for
11 export, that fully accounted for the enforcement of all applicable regulatory requirements. It also
12 lacked essential analysis of the project's effect on local water supplies.

13 • The FEIR recognized that the project is likely to increase demand for water exports south of
14 the Delta, but limited impact analysis to the areas receiving water, and excluded analysis in areas
15 where transfers would originate.

16 • The FEIR prejudicially excluded analysis of the project's facilitation of groundwater
17 substitution transfer programs.

18
19 • The FEIR failed to fully account for the project's impacts to surface water and
20 groundwater, particularly in areas upstream of the Delta. With respect to groundwater, the FEIR
21 also fails to disclose and analyze impacts on groundwater recharge from the permanent removal of
22 up to half the flow of the Sacramento River in areas near the project.

23 • The FEIR erroneously concluded that the project would not significantly impact upstream
24 water rights, area of origin rights, achievement of regional self-reliance, and adherence to the
25 public trust doctrine and the constitutional principle of reasonable use (Art. X, § 2.) Moreover, the
26 FEIR failed to conduct analysis of the impact of enforcing these legal principles upon the operation
27 of the project.

1 • The FEIR recognized that the project could substantially change Lake Oroville releases,
2 shifting substantial releases from summer to spring months under some conditions. But the FEIR
3 excludes analysis of the impacts stemming from changes in timing, including the erosion of the
4 region's economic, recreation and ecosystem benefits. The FEIR recognized up to five-foot
5 episodic lowering of groundwater levels beneath the Sacramento River due to the project, but fails
6 to fully model and analyze the environmental consequences of that change. Expert comments in the
7 State Board's proceedings on the petition for change of use concluded that application of the model
8 referenced in the FEIR actually showed up to 44 feet of reductions in groundwater. (Sur-Rebuttal
9 Testimony of Dr. Stefan Mehl, SCWA-200, p. 4.)

10 • The FEIR failed to fully account for consequences of climate change. As an illustration, the
11 FEIR failed to analyze how the speed, magnitude, and intermittent nature of climate change may
12 alter project outcomes and exacerbate other project impacts. The EIR also failed to clearly and
13 consistently analyze the hydrologic consequences of climate change. DWR, based on its defective
14 FEIR, failed to ensure protection of fully protected species (Fish & Game Code, § 3511) and
15 lawfully inform and secure California's compliance with CESA (Fish & Game Code, § 2050, *et*
16 *seq.*)

17 • The FEIR failed to account for significant harm to ratepayers and to cities and counties due
18 to the high potential for cost overruns, unreliable sources of funding, and failure to provide
19 assurances that beneficiaries will bear costs, as well as the high cost of the project's environmental
20 impacts.

21 • In numerous other respects, the FEIR failed to account for the project's direct, indirect, and
22 long term significant environmental effects, missed the potential for significant impacts on the
23 environment, and undermined the FEIR's value as an informational document. These prejudicial
24 defects include, but are not limited to, the following resource areas: water quality, geology and
25 seismicity, soils, fish and aquatic, terrestrial and biological, land use, agriculture, recreation,
26 cultural resources, transportation, public services, energy, air quality, noise, hazardous materials,
27 public health, and environmental justice.
28

1 **Count 6: Faulty and Incomplete Assessment of Cumulative Impacts**

2
3 74. Butte incorporates by reference, and realleges, each and every allegation set forth above.

4
5 75. CEQA requires the lead agency to assess the cumulative impacts of the project.
6 Cumulative impacts from several projects refer to the change in the environment which results
7 from the incremental impact of the project when added to other closely related past, present, and
8 reasonably foreseeable probable future projects. Cumulative impacts can result from individually
9 minor but collectively significant projects taking place over a period of time. CEQA Guidelines, §
10 15355. Even when the individual effects of a project are limited, CEQA requires them to be
11 analyzed where they are "cumulatively considerable," meaning that the incremental effects of an
12 individual project are considerable when viewed in connection with the effects of past projects, the
13 effects of other current projects, and the effects of probable future projects. Pub. Res. Code, §
14 21083(b)(2). CEQA requires an inquiry into significant adverse environmental impacts, whether
15 they are project-specific, or caused by combination with the impacts of other projects.

16
17 76. The cumulative impact assessment prejudicially fails the requirements of CEQA in at least
18 the following respects:

19 • The FEIR failed to analyze the cumulative impacts of the project in connection with the
20 long-term operation of the SWP and CVP, including changes in the operation of upstream
21 reservoirs. It failed to heed the EPA's observation that all direct and indirect impacts related to
22 changes in upstream operations must be addressed.

23 • The FEIR failed to disclose and analyze the cumulative impacts of the project in connection
24 with proposed new upstream facilities, including but not limited to Sites Reservoir, Temperance
25 Flat, and enlargement of Shasta Dam.

26 • The FEIR avoided required assessment of the cumulative consequences of climate change,
27 prejudicially characterizing it as a reason not to attribute impacts to the project rather than fully
28 analyzing how changing climate and hydrology may exacerbate other project impacts. The analysis
in the FEIR failed to fully study project impacts in the context of climate change, especially as they

1 related to runoff, sea level rise, changing storm conditions and temperatures, and a widening range
2 of hydrologic extremes affecting the context in which the project will operate.

3
4 • The FEIR failed to clearly disclose the project's cumulative impacts by dispersing its
5 analysis and failing to provide a single, integrated section on cumulative impacts.

6
7 • The FEIR failed to fully analyze and disclose cumulative impacts associated with plans
8 referenced in the California Water Plan, including but not limited to implementation of the Delta
9 Plan, EcoRestore, and as implementation of biological opinions and other regulatory requirements.

10
11 • The FEIR failed to fully analyze and disclose the cumulative impacts of the project in
12 connection with implementing relevant groundwater laws, including but not limited to county
13 groundwater requirements, such as those enacted by Butte, and California's Sustainable
14 Groundwater Management Act (SGMA), as amended.

15 **Count 7: Failure to Mitigate Significant Impacts**

16 77. Butte incorporates by reference, and realleges, each and every allegation set forth above.

17
18 78. CEQA requires that a project EIR identify and describe all feasible mitigation measures to
19 reduce the potentially significant environmental effects of a project. (CEQA Guidelines, §
20 15126(c).) Under CEQA, public agencies should not approve projects as proposed if there are
21 feasible alternatives or feasible mitigation measures available which would substantially lessen the
22 significant environmental effects of such projects. (Pub. Res. Code, § 21002.) DWR must also
23 adopt an adequate mitigation monitoring and reporting program. CEQA does not allow for
24 deferred mitigation, except in limited circumstances where the agency has already committed to
25 specific feasible and enforceable performance measures that ensure timely compliance with CEQA.

26 79. DWR prejudicially failed to mitigate significant impacts as required under CEQA in at least
27 the following respects:

1 • The FEIR undermined the credibility and accountability of its project mitigation by (1)
2 relying repeatedly on nebulous and evasive “environmental commitments” that are conflated with
3 the project itself, yet relied upon to determine that numerous project impacts produce less than
4 significant impacts; and (2) relying heavily on a vague, incomplete and scientifically discredited
5 “adaptive management” program that fails recognized conditions of successful adaptive
6 management and is better understood as maladaptive avoidance.

7 • The FEIR repeatedly relied on unlawful deferral of mitigation measures until after approval
8 of the project, without committing to meaningful performance measures that might potentially
9 support that deferral.

10 • The FEIR failed to account for the potential undermining of mitigation commitments due to
11 (1) the project’s potential cost overruns far exceeding DWR’s estimated costs; (2) major gaps
12 remaining in the project’s anticipated financing, including still-absent commitments of water
13 contractor project beneficiaries, the federal government, and the outcome of pending proceedings
14 relating to the lawfulness and validity of DWR’s proposed revenue bonds; and (3) the absence of a
15 clear and enforceable implementation plan.

16 **Count 8: Failure to Recirculate EIR Despite Significant New Information**

17
18 80. Butte incorporates by reference, and realleges, each and every allegation set forth above.

19
20 81. CEQA requires recirculation where, as here, “significant new information” became
21 available after review by other agencies and the public, after review, but before certification of the
22 FEIR. (Pub. Resources Code, § 21092.1; see also CEQA Guidelines, §15088.5.) This standard
23 includes significant changes in the project, or evidence of new or substantially more severe
24 impacts. (*Id.*) New information is “significant” if, as a result of the information, “the EIR is
25 changed in a way that deprives the public of a meaningful opportunity to comment upon a
26 substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such
27 an effect.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6
28 Ca1.4th 1112, 1129-1130.)

1 82. The following significant new information, at minimum, should have required DWR to
2 recirculate prior to certification of the EIR and final decision-making on the project:

3
4 • The FEIR recognized that diversions from the project's new north Delta intakes may cause
5 up to five-foot episodic lowering of groundwater levels beneath the Sacramento River. Expert
6 testimony in the State Board's change of use proceedings indicated that application of the FEIR's
7 model revealed up 44 feet of lowering.

8 • The 2017 biological opinions for the project relied upon spring Delta outflow criteria not
9 used or analyzed earlier in CEQA review. Additional surface water and groundwater impacts may
10 stem from this change, and have the potential to significantly increase. Moreover, evidence
11 indicating that water exports under the project are likely to occur more in the summer months may
12 result in significant impacts that have this far eluded study.

13 • The 2017 biological opinions also significantly altered the anticipated operation of the
14 project, by deferring much of the decision-making needed on incidental take of species, rather than
15 allowing the incidental take for the whole project.

16 • The extraordinarily detailed hearings and evidentiary submissions in the State Board
17 change petition proceedings are a source of significant new information requiring recirculation.
18 State Board proceedings on Delta flow criteria also constitute an additional source of significant
19 new information.

20
21 • DWR's July 21, 2017 final approval documents included an uncirculated document from
22 the same date of nearly 300 pages. That document purported to analyze developments after
23 publication of the EIR, defying logic, evidence and common sense with its conclusion that all
24 changes to the project are merely "minor."

25 **Count 9: Improper Piecemealing of Project Analysis**

26
27 83. Butte incorporates by reference, and realleges, each and every allegation set forth above.
28

1 84. CEQA analysis is directed to the “whole” of an action, and also prohibits the piecemealing
2 of environmental analysis. A lead agency must not avoid analysis of smaller projects that are part
3 of a larger project, in order to ensure “that environmental considerations not become submerged by
4 chopping a large project into many little ones, each with a potential impact on the environment,
5 which cumulatively may have disastrous consequences.” (*Burbank-Glendale-Pasadena Airport
6 Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.)

7 85. For at least the following reasons, the FEIR failed to assess the “whole of the action” in the
8 manner CEQA requires and also provides an inappropriately piecemeal analysis:

9
10 • When DWR certified the FEIR, it sidestepped numerous pending or future proceedings
11 with the potential to alter whether, and under what circumstances, the project can proceed. These
12 include but are not limited to decisions on whether, and under what conditions, to address the
13 following with respect to the project: State Board action on DWR’s water rights change petition;
14 State Board certification under section 401 of the Clean Water Act; United States Army Corps of
15 Engineers permitting under sections 404 and 408 of the Clean Water Act; Delta Stewardship
16 Council’s determination of project consistency with the Delta Plan; United States Fish and Wildlife
17 Service and NOAA Fisheries decisions on incidental take and other ESA compliance issues
18 referenced in their biological opinions; and DFW decision on Lake and Streambed Alteration
19 Agreement.

20 • The FEIR failed to disclose or analyze the project’s reliance on approximately 1.3 million
21 acre feet of water purchases that will be required to make up flows removed from the Sacramento
22 River, as well as related water transfers, and groundwater substitution transfers.

23 • The FEIR deferred analysis of project impacts related to flooding and flood control
24 measures, referencing use of future proceedings before the Army Corps in connection with section
25 408 compliance. But DWR did not commit to independent additional environmental review. DWR
26 provided no justification for failing to perform some analysis within the FEIR, to ensure full
27 accounting for the scope of project impacts prior to DWR’s final decision-making.

28 **Count 10: Failure to Adequately Respond to Comments**

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2 86. Butte incorporates by reference, and realleges, each and every allegation set forth above.

3
4 87. CEQA requires good faith, reasoned responses to public comments identifying deficiencies
5 in the lead agency's environmental review. (CEQA Guidelines, § 15088, subd. (c).)

6 88. DWR's responses failed to meet the standard CEQA requires for at least the following
7 reasons:

8
9 • DWR's extraordinarily complex and convoluted manner of presenting responses to
10 comment precluded their effective use for public participation and informed decision-making. The
11 RDEIR did not provide responses to many thousands of comments on BDCP. The vast majority of
12 responses in the FEIR were directed, not to the DWR-preferred California WaterFix (Alternative
13 4A), but to the superseded and infeasible BDCP version of the project (Alternative 4). Many of
14 DWR's responses avoided meaningful analysis by rote assertion that the comments did not address
15 the current project.

16 • Numerous other responses to comments avoid any meaningful, good faith analysis. Many
17 responses in the FEIR resort to conclusory stock responses, or make elliptical references to
18 "environmental commitments" or "adaptive management" that lack accountability within the
19 CEQA process. Notably, DISB's final report criticizing the FEIR's approach to adaptive
20 management was not released until months after DWR arbitrarily declared a cutoff on submission
21 of comments or evidence.

22 • "Master Responses" in the FEIR often provided controversial statements of policy or
23 questionable legal conclusions, rather than reasoned responses.

24 • Responses to comments in DWR's final approval documents often consisted chiefly of
25 policy statements or unpersuasive excuses for not providing an evidence-based response. As one
26 further example, DWR failed to provide a reasoned, good faith response to comments addressing
27 the FEIR's failure to adequately analyze the Project's consistency with the Delta Plan.

1 **Count 11: Approval of Defective Findings and Overriding Considerations**

2
3 89. Butte incorporates by reference, and realleges, each and every allegation set forth above.

4
5 90. CEQA requires the lead agency to make specific findings in connection with its approval of
6 a project. (CEQA Guidelines, §15091.) These findings, as well as any overriding considerations,
7 must be supported by substantial evidence in the record, and must present some explanation to
8 supply the logical step between the ultimate finding and the facts in the record. This analysis must
9 “bridge the analytic gap between the raw evidence and ultimate decision.” (*Topanga Ass’n for a
Scenic Cmty. v. Cnty. of L.A.* (1974) 11 Cal.3d 506, 515.)

10
11 91. In at least the following respects, DWR in its findings and overriding considerations failed
12 to bridge the “analytic gap,” receive support in substantial evidence, or both:

13 • The CEQA findings lack needed analysis of numerous potentially significant impacts
14 because DWR’s environmental review improperly integrated vague statements about
15 “environmental commitments” or adaptive management, or vague mitigation measures, in order to
16 avoid a finding of significance.

17 • The CEQA findings lack any legal foundation or support in substantial evidence for the
18 contentions that refusing to build the tunnels would conflict with the constitutional doctrine
19 preventing unreasonable uses of water and unreasonable methods of diversion (Cal. Const., Art. X,
20 § 2), or frustrate adherence to the public trust doctrine. The same is the case for other findings,
21 including but not limited to the finding of no significant and unavoidable impacts on surface water
22 and groundwater supply, water quality, agriculture, climate, fisheries, and terrestrial species
23 (including the sandhill crane).

24 • No substantial evidence supports the conclusion that California WaterFix (Alternative 4A)
25 is the environmentally superior alternative, or that other alternatives are not feasible due to cost.

26
27 • No substantial evidence supports the overriding consideration that project benefits outweigh
28 the costs of the project.

1 **SECOND CAUSE OF ACTION:**

2 **VIOLATIONS OF THE DELTA REFORM ACT**

3
4 92. Butte incorporates by reference, and realleges, each and every allegation set forth above.

5
6 93. DWR's approval of the project violates the provision of the Delta Reform Act providing
7 that it "shall not diminish, impair, or otherwise affect in any manner whatsoever any area of origin,
8 watershed of origin, county of origin, or any other water rights protections." (Wat. Code,
9 § 85031(a).) Implementation of the project would diminish or impair of area of origin and water
10 rights protections, particularly in Butte and northern Sacramento Valley.

11 94. DWR's approval of the project violates the provision of the Delta Reform Act establishing
12 the declared policy of the State of California "to reduce reliance on the Delta in meeting
13 California's future water supply needs through a statewide strategy of investing in improved
14 regional supplies, conservation, and water use efficiency...." (Water Code § 85021; Cal. Code
15 Regs., tit. 23, § 5003.) The project would instead increase reliance on the Delta in meeting
16 California's future water supply needs, and increase the capacity and propensity to unsustainably
17 divert more water from upper watersheds and the Delta. DWR in its environmental review also
18 refused to perform a water reliability analysis that might have better informed adherence to the
19 statewide strategy of reducing reliance on the Delta. Moreover, costs of the project are also likely
20 to divert significant funding away from projects that would be less reliant on Delta water. As
21 MWD has recognized, water contractor beneficiaries are most likely to rely on DWR's proposed
22 revenue bonds to cover the contractor share of the costs assumed by DWR. Even if DWR could
23 overcome legal hurdles to selling these bonds, as sought in its pending validation action, water
24 contractor debt from these bonds would still reduce their ability to raise funds for other water
25 projects or conservation measures that (unlike the Delta tunnels) project, may contribute to the
26 statewide strategy of reducing reliance on the Delta.

27 95. DWR's approval of the project cannot be reconciled with the policy of the State of
28 California, confirmed by the Delta Reform Act, that "[t]he long-standing constitutional principle of
reasonable use and the public trust doctrine shall be the foundation of state water management

1 policy and are particularly important and applicable to the Delta.” (Water Code § 85023.) Far from
2 honoring these principles, proceeding with the project would risk precipitating or compounding
3 conflicts with constitutional principle of reasonable and beneficial use (Art. X, § 2) and the public
4 trust doctrine. Construction of the Delta tunnels, with three new intakes in the north Delta added to
5 existing ones, would facilitate unsustainable and unreasonable uses of water south of the Delta,
6 while increasing the potential for damaging conflicts with reasonable and beneficial uses of water,
7 public trust resources, protected species served by the Bay Delta estuary, and upstream rivers and
8 reservoirs. Moreover, attempts to fulfill the project’s faulty objectives, which assume the need to
9 construct a new conveyance and reference delivery of “up to full contract amounts,” would
10 impermissibly perpetuate reliance on unsustainable exports and “paper water” sources. In so doing,
11 they would frustrate adherence to the constitutional reasonable use doctrine and the public trust
12 doctrine. That approach, entrenching reliance on Delta exports, would also run contrary to the
13 teaching of the California Supreme Court in *In Re Bay-Delta*, 43 Cal.4th at 1168.

13 96. DWR’s approval of the project violates the requirement of the Delta Reform Act that the
14 “‘BDCP’ means a multi-species conservation plan.” (Water Code §85053.) The project as
15 approved lacks any “conservation plan” meeting federal HCP and state NCCP requirements, and is
16 better understood as a conveyance project intended to facilitate water diversions and exports.

17 97. DWR’s approval of the project violates the “coequal goals” requirement of the Delta
18 Reform Act. This provision mandates that:

19 “Coequal goals” means the two goals of providing a more reliable water supply for
20 California and protecting, restoring, and enhancing the Delta ecosystem. The
21 coequal goals shall be achieved in a manner that protects and enhances the unique
22 cultural, recreational, natural resource, and agricultural values of the Delta as an
23 evolving place.

24 (Water Code, § 85054.) Proceeding with the Delta tunnels project as approved would significantly
25 degrade the Delta ecosystem, rather than protecting, restoring, and enhancing it. The project would
26 likely entrench and facilitate unsustainable water exports south of the Delta, removing additional
27 freshwater flows from the Delta region and from upper watersheds and reservoirs. The project
28 would also fail to meet the goal of providing a more reliable water supply. DWR failed to provide

1 water reliability analysis capable of supporting that conclusion. Moreover, as addressed above, the
2 project would likely perpetuate reliance on “paper” water entitlements and increase the likelihood
3 and intensity of conflicts over water supply. Proceeding with the project would also likely degrade
4 rather than enhance the “unique” values of the Delta referenced in the Delta Reform Act.
5 Moreover, after years of touting the project as the basis for fulfilling the Delta Reform Act’s co-
6 equal goals, the FEIR erroneously questions, without legal foundation or substantial evidence,
7 whether achievement of the co-equal goals is even necessary.

8 98. The project conflicts with the Delta Reform Act’s prohibition on incorporating BDCP
9 into the Delta Plan, as is required to establish eligibility for state funding. To meet the requirements
10 for incorporation into the Delta Plan, BDCP must comply with CEQA, and address, among other
11 required items:

- 12 • Operational requirements and flows necessary for recovering the Delta ecosystem and
13 restoring fisheries under a reasonable range of hydrologic conditions, which will identify the
14 remaining water available for export and other beneficial uses. (Wat. Code, § 85320(b)(2)(A).)
- 15 • A reasonable range of Delta conveyance alternatives, including through-Delta, dual
16 conveyance, and isolated conveyance alternatives and including further capacity and design options
17 of a lined canal, an unlined canal, and pipelines. (Wat. Code, § 85320(b)(2)(B).)
- 18 • The potential effects of each Delta conveyance alternative on Delta water quality. (Water
19 Code § 85320(b)(2)(G).)

20 DWR’s review and approval of the project has not determined the operational requirements and
21 flows necessary to recover the Delta ecosystem in order to identify the remaining water available
22 for export and other beneficial uses. DWR has not analyzed a reasonable range of alternatives, or
23 determined the potential effects of through-Delta alternatives on Delta water quality.

24 99. DWR approved the project without establishing compliance with the Delta Reform Act’s
25 prohibition on initiation of “construction of a new Delta conveyance facility” unless the exporter
26 beneficiaries have made arrangements to pay for all costs including planning, design, construction,
27 and mitigation. (Wat. Code § 85089.) Exporters have failed to make the requisite financial
28 commitments to meet all these costs. DWR has yet to secure funding for significant portions of the
project costs, even under the highly optimistic assumptions that underlie DWR’s estimates of
project costs. Federal contributions to the project costs are also anticipated by DWR, but federal

1 commitments to pay are also lacking. MWD's recent analysis of project financing confirms
2 substantial uncertainties relating to the payment of project costs, and reliance for the contractors'
3 share of costs on DWR's assumed and untested ability to authorize and sell revenue bonds. Rather
4 than ensuring exporter beneficiaries pay all project costs, DWR's project necessitates a significant
5 public subsidy to make the project viable for agricultural water users.

6 100. DWR does not use best available science, as defined under the Delta Reform Act
7 regulations. (See Cal. Code Regs., tit. 23, §5001, and subd. (f), Appendix 1A; see also Wat. Code,
8 §§ 85302, subd. (g), 85308.) DWR relied extensively on outdated data, notably in addressing the
9 impacts of climate change and future changes in hydrologic conditions. As detailed above, DWR
10 certified the FEIR and approved the project after failing to heed detailed scientific criticisms and
11 recommendations, including those provided by the NAS, EPA, and DISB. DWR's avoidance of the
12 best available science is epitomized by its frequent and misleading reliance on "adaptive
13 management," which failed to adhere to the scientific criteria needed to responsibly rely on this
14 technique. As used by DWR in its project approval, "adaptive management" transformed into a
15 policy-driven excuse for deferred mitigation and "kicking the can down the road."

16 **PRAYER FOR RELIEF**

17 WHEREFORE, petitioner County of Butte prays that this Court:

- 18 1. Issue its writ of mandate setting aside the orders of respondent, including its
19 certification of the FEIR as adequate;
 - 20 2. Enjoin DWR's project until and unless respondent Department of Water Resources
21 lawfully approves the project in the manner required by CEQA and the 2009 Delta Reform Act;
 - 22 3. Enter declaratory relief establishing that DWR violated the requirements of CEQA
23 and the 2009 Delta Reform Act;
 - 24 4. Award petitioner costs, and attorneys' fees under section 1021.5 of the Code of
25 Civil Procedure; and
 - 26 5. Grant such further relief that the Court deems just.
- 27
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Dated: August 21, 2017

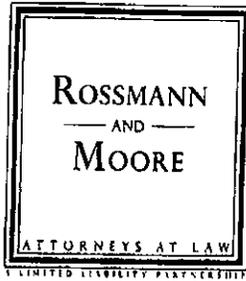
Respectfully submitted,

BRUCE ALPERT (SBN: 75684)
Butte County Counsel
ROGER B. MOORE (SBN 159992)
ROSSMANN AND MOORE, LLP

By: 
Roger B. Moore

Attorneys for Petitioner and Plaintiff County of Butte

EXHIBIT A



August 17, 2017

Grant Davis
Director, California Department of Water Resources
1416 9th Street
Sacramento, CA 95814
Via Federal Express and U.S. Mail

Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act Challenging DWR's Final EIR Certification and Approval of California WaterFix Project

Dear Mr. Davis:

This office represents the County of Butte, California ("Butte") in the above-referenced matter. Pursuant to Public Resources Code section 21167.6.5, please be advised that on or before August 21, 2017, Butte intends to commence a legal action in the Sacramento County Superior Court against the Department of Water Resources under the California Environmental Quality Act (CEQA, Pub. Res. Code, § 21000, *et seq.*) This action will challenge, and seek to set aside, DWR's certification of the Final EIR for the California WaterFix Project, adoption of CEQA findings of fact and overriding considerations, adoption of the mitigation monitoring and reporting program, and final project approval recorded in DWR's Notice of Determination filed in the State Clearinghouse on July 21, 2017.

Respectfully,

Roger B. Moore
Attorney for Butte County

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PROOF OF SERVICE BY FEDERAL EXPRESS AND U.S. MAIL

I, **Roger B. Moore**, hereby declare under penalty of perjury as follows:

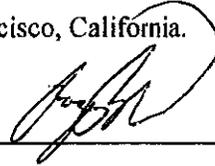
I am over the age of 18 years and am not a party to the within action. My business address is 2014 Shattuck Ave., Berkeley, CA, 94704.

On August 17, 2017 I served the following documents:

LETTER RE: NOTICE OF COMMENCEMENT OF LEGAL ACTION PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT CHALLENGING DWR'S FINAL EIR CERTIFICATION AND APPROVAL OF CALIFORNIA WATERFIX PROJECT

by federal express overnight delivery, and by first class mail postage prepaid at Berkeley, California by depositing in sealed envelope a copy to the recipient listed below.

Executed on **August 17, 2017**, at San Francisco, California.



Roger B. Moore

SERVICE LIST

Grant Davis
Director, California Department of Water Resources
1416 9th Street
Sacramento, CA 95814
Via Federal Express and U.S. Mail

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VERIFICATION

I, Roger B. Moore, am counsel of record for petitioner and plaintiff County of Butte. I am signing this verification due to petitioner and plaintiffs' absence from the county, and because facts in the petition and complaint are within the knowledge of the undersigned counsel. I have read the foregoing petition and complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day in August, 2017, in Berkeley, California.



Roger B. Moore