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**34-2013-80001500**

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**ADDITIONAL COUNSEL LISTED ON NEXT PAGE**

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO

SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY and WESTLANDS WATER  
DISTRICT,

Petitioners/Plaintiffs,

vs.

DELTA STEWARDSHIP COUNCIL, and Does 1  
through 20, inclusive,

Respondents/Defendants.

Case No.

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

[Code Civ. Proc., §§ 1060, 1085,  
1094.5; Pub. Resources Code, §§  
21168, 21168.5]

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DEPARTMENT 42

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1       **I.       INTRODUCTION**

2           1.       Petitioners San Luis & Delta-Mendota Water Authority (“Authority”) and  
3       Westlands Water District (“Westlands”) and their members and/or landowners support the  
4       coequal goals of statewide water supply reliability and the restoration of a sustainable Delta  
5       ecosystem. (Wat. Code, § 85054.)

6           2.       In its current form, the Delta Plan approved by the Delta Stewardship Council  
7       (“Council”) on or about May 16, 2013 would impede, rather than further, the achievement of the  
8       coequal goals. Petitioners bring this action to require the Council to revise the Delta Plan so that  
9       it will advance the coequal goals in the manner intended by the Sacramento-San Joaquin Delta  
10       Reform Act of 2009 (“Delta Reform Act”) (Wat. Code, § 85000 et seq.).

11          3.       Petitioners recognize that it is incumbent upon water agencies and water users  
12       throughout the state to continually explore feasible opportunities to improve water use efficiency  
13       and to expand water supply portfolios. This includes efforts to increase water conservation,  
14       develop and implement advanced technology, improve use of recycled water and stormwater,  
15       carry out permitted water transfers, and formulate strategies for conjunctive use and other means  
16       to improve regional water self-reliance. At the same time, it is incumbent upon the Council to  
17       recognize that Petitioners and other water users that depend on water supplies conveyed through  
18       the Delta have been engaged in such efforts for decades. The Council’s reliance on unsupported  
19       assumptions, speculative and superficial analysis, and omission of meaningful information  
20       undermine the Council’s efforts to reach credible solutions to difficult problems.

21          4.       During the administrative proceedings leading up to the Council’s certification of  
22       the Final Delta Plan Program Environmental Impact Report (“PEIR”) and approval of the Delta  
23       Plan, Petitioners, along with various government agencies, organizations and concerned members  
24       of the public documented numerous concerns regarding the Council’s violations of applicable law  
25       including the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et  
26       seq.) and the Delta Reform Act. Among these violations are the Council’s failure to formulate  
27       the Delta Plan in a manner consistent with the Legislature’s mandate, and failure to properly  
28       prepare and certify a legally adequate EIR for the Delta Plan.



1           5.       Under CEQA, the lead agency's conclusions must be supported by substantial  
2 evidence – facts, reasonable assumptions predicated upon facts, and expert opinion supported by  
3 facts. (CEQA Guidelines, § 15384, subd. (b).) For every resource area in the PEIR, the  
4 discussions of project impacts, mitigation measures, and conclusions fail to meet this standard  
5 and violate CEQA because they consist of mere speculation and unsupported assumptions.  
6 Speculative possibilities do not constitute substantial evidence, and unsubstantiated narrative or  
7 even expert opinion saying nothing more than “it is reasonable to assume” that something  
8 “potentially may occur” is not *analysis* supported by *evidence*. (*Apartment Association of*  
9 *Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1173-1176.) The PEIR  
10 violates CEQA because it is predicated on fundamentally inaccurate and inadequate information.

11           6.       Petitioners and other public agencies, organizations, and members of the public  
12 identified numerous CEQA violations in the Council's environmental review, including but not  
13 limited to: inadequate analysis of alternatives, because the PEIR did not adequately assess the  
14 feasibility of using local sources of water supply to compensate for a presumed reduction in  
15 supplies conveyed through the Delta; inadequate analysis of impacts, because the analysis  
16 assumes reductions in water conveyed through the Delta will be made up by some other source of  
17 water; and adoption of mitigation measures that are vague, unenforceable, and are not tied to  
18 particular impacts.

19           7.       The fundamental flaw with the Delta Plan is that it goes well beyond the statutory  
20 authorities granted to the Council through the Delta Reform Act. Instead of fulfilling the  
21 primarily facilitative role established for the Council by the Legislature through the Delta Reform  
22 Act, the Delta Plan attempts to make the Council a supreme regulator. The Council's regulations  
23 would take this role even further, and include a number of provisions that fail to meet the  
24 standards of necessity, authority, clarity, consistency, and non-duplication applicable to all  
25 agency rulemaking under the Government Code.

26           8.       The Legislature established the Council pursuant to the Delta Reform Act as part  
27 of a broad package of water-related bills that also included a detailed statute focused on achieving  
28 a 20% reduction in statewide per capita water use by the year 2020, through conservation and



1 water use efficiency measures. Within this comprehensive approach, the Council was charged  
2 with developing a "Delta Plan" to further the achievement of the "coequal goals" of "providing a  
3 more reliable water supply for California and protecting, restoring, and enhancing the Delta  
4 ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the  
5 unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving  
6 place." (Wat. Code, § 85054.) In the Delta Reform Act, the Legislature set forth four significant  
7 roles for the Council in furtherance of the coequal goals: (1) the Council was to be a coordinating  
8 entity for the numerous state agencies with authorities in or related to the Delta, through the  
9 creation and operation of an Implementation Committee comprised of agency leadership, to  
10 ensure consistency of actions with the coequal goals and the Delta Plan; (2) through its Science  
11 Program, the Council was to shepherd development of a new Delta Science Plan; (3) the Council  
12 was charged with the task of prioritizing levee investments in the Delta to protect state interests;  
13 and (4) through a "covered action" consistency process, the Council could hear appeals regarding  
14 local agency actions undertaken *in the Delta* and assess their consistency with the Delta Plan.  
15 Nowhere did the Delta Reform Act authorize the Council to become a supreme regulator – a  
16 "super agency" overseeing water management activity throughout California. Indeed, the  
17 legislative history is quite clear this was *not* the intent of the Delta Reform Act, and the Delta  
18 Vision recommendation to create a "super agency" was previously rejected by then Governor  
19 Schwarzenegger's Delta Committee.

20 9. The Delta Reform Act also established a new state policy targeted at increased  
21 diversification of local water supply portfolios and reducing reliance on the Delta and its  
22 watershed to meet future water demands:

23 The policy of the State of California is to reduce reliance on the Delta in meeting  
24 California's future water supply needs through a statewide strategy of investing in  
25 improved regional supplies, conservation, and water use efficiency. Each region  
26 that depends on water from the Delta watershed shall improve its regional self-  
27 reliance for water through investment in water use efficiency, water recycling,  
28 advanced water technologies, local and regional water supply projects, and  
improved regional coordination of local and regional water supply efforts.

(Wat. Code, § 85021.)

1 Notably, this policy statement is in a *different section* of the Delta Reform Act than that in  
2 which the Legislature specifically identifies eight objectives “inherent in the coequal goals for  
3 management of the Delta.” (Wat. Code, § 85020.) Also, the words “reduce reliance” are  
4 conspicuously absent from the Legislature’s extensive and detailed description of what should be  
5 included in the Delta Plan. (Wat. Code, § 85300 et.seq.) By fiat, the Council has inappropriately  
6 imported this broad declaration of state policy into the very core of its proposed Delta Plan as  
7 Water Resource Policy 1 (“WR P1”), and seeks to enforce it without authority to do so.  
8 Furthermore, the Delta Reform Act is clear in calling for a “statewide strategy of” investment and  
9 is explicitly focused on responding to “future water supply needs.” Nevertheless, the Council has  
10 asserted authority to enforce this policy against a present-day baseline of demand through what  
11 was intended and legislatively authorized only to be a *locally* focused Delta Plan.

12 10. Overall, the Delta Plan fails to further the coequal goals in a manner consistent  
13 with the authorities granted to the Council in the Delta Reform Act. Ambiguity, uncertainty, and  
14 lack of necessity permeate the Delta Plan. Instead of focusing on adding value to improve  
15 management of the Delta by facilitating and synthesizing the activities of over 200 state agencies  
16 with a policy role touching the Delta (Wat. Code, § 85001, subd. (c)), the Council has instead  
17 culminated its planning process with a Delta Plan that makes the Council yet another regulatory  
18 agency in the Delta, and presents obstacles rather than pathways to achieving the water supply  
19 reliability coequal goal as defined in the Delta Reform Act (Wat. Code, § 85302):

20 (d) The Delta Plan shall include measures to promote a more reliable  
21 water supply that address all of the following:

- 22 (1) Meeting the needs for reasonable and beneficial uses of  
23 water.  
24 (2) Sustaining the economic vitality of the state.  
25 (3) Improving water quality to protect human health and the  
26 environment.

27 11. Petitioners and others identified the ways in which the Council has  
28 seriously overstepped the limits of its statutory authority, including but not limited to

1 formulating and adopting a “reduced reliance” policy that does not adhere to the Delta  
2 Reform Act, does not define the baseline against which reduced reliance will be measured,  
3 and has potentially broad implications even for those water users who have already  
4 reduced their reliance on water conveyed through the Delta through conservation measures  
5 and other water management activities.

6 12. The Legislature directed that the Delta Plan must be based on the best available  
7 scientific information. (Wat. Code, § 85308, subd. (a).) While acknowledging there are many  
8 factors or stressors that affect the quality and sustainability of the Delta ecosystem (e.g., invasive  
9 species, predation, water quality, development, and in-Delta diversions), the Delta Plan’s  
10 regulatory scheme nevertheless focuses primarily on further constraining Central Valley Project  
11 (“CVP”) and State Water Project (“SWP”) water supplies conveyed through the Delta without a  
12 sufficient evidentiary basis to do so. This is the case despite the fact that experts, including the  
13 Delta Independent Science Board (“ISB”), recommend a more comprehensive strategy addressing  
14 all stressors as the best way to further the coequal goals. As a result of the misplaced focus of the  
15 Delta Plan and PEIR, they fail to address the broader issues critical to improving conditions in the  
16 Delta in both the short-term and long-term as intended by the Delta Reform Act.

17 13. As described in further detail below, the Council’s certification of the PEIR and  
18 approval of the Delta Plan violated CEQA and the Delta Reform Act. Petitioners therefore seek a  
19 writ of mandate directing the Council to vacate and set aside its actions. Petitioners also seek  
20 declaratory relief in the form of a finding that the Council’s actions violated CEQA and exceeded  
21 the Council’s statutory authority pursuant to the Delta Reform Act and other applicable laws.

22 14. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of  
23 law. Unless this Court grants the requested writ of mandate to require the Council to set aside its  
24 certification of the PEIR and approval of the Delta Plan, the Council’s decisions will remain in  
25 effect in violation of state law.

## 26 **II. PARTIES**

27 15. Petitioner SAN LUIS & DELTA MENDOTA WATER AUTHORITY  
28 (“Authority”) is a joint powers agency formed pursuant to Government Code section 6500 et seq.



1 and is a public entity organized and operating under the laws of the State of California. The  
2 Authority consists of 29 member public agencies, 27 of which contract with the U.S. Bureau of  
3 Reclamation for water supply from the CVP for distribution and use within areas of San Joaquin,  
4 Stanislaus, Merced, Fresno, Kings, San Benito, and Santa Clara Counties. Collectively, the  
5 member agencies of the Authority deliver water to more than 1 million residents and more than  
6 2,000,000 acres of agricultural lands.

7 16. Petitioner WESTLANDS WATER DISTRICT (“Westlands”) is a public agency of  
8 the State of California formed pursuant to Water Code section 37823 and is a member of the  
9 Authority. It is the mission of Westlands Water District to provide a timely, reliable and  
10 affordable water supply to its landowners and water users. Westlands encompasses more than  
11 600,000 acres of farmland in western Fresno and Kings Counties. Water is delivered to  
12 Westlands through the CVP, a federal water project that stores water in large reservoirs in  
13 northern California for use by cities and farms throughout California. More than 90 percent of  
14 the water delivered to Westlands farms is used directly by crops. Westlands farmers have one of  
15 the highest seasonal application efficiency ratings in the nation, with a 20-year average of  
16 approximately 83 percent. Westlands farmers produce more than 60 high quality commercial  
17 food and fiber crops sold for the fresh, dry, canned and frozen food markets, both domestic and  
18 export. More than 50,000 people live and work in the communities dependent on Westlands’  
19 agricultural economy. The communities in and near Westlands’ boundaries include Mendota,  
20 Huron, Tranquillity, Firebaugh, Three Rocks, Cantua Creek, Helm, San Joaquin, Kerman,  
21 Lemoore, and Coalinga.

22 17. Petitioners bring this action on behalf of themselves and their members and/or  
23 landowners whose interests are adversely affected by the Council’s actions in approving the Delta  
24 Plan, due to violation of applicable laws including but not limited to the Delta Plan’s  
25 inconsistency with the Delta Reform Act and inadequate environmental review of the Delta Plan  
26 pursuant to CEQA.

27 18. Respondent DELTA STEWARDSHIP COUNCIL (“Council”) is a California  
28 public agency established by the Delta Reform Act, subject at all times to the obligations and

1 limitations of all applicable state and other laws, including but not limited to CEQA, the  
2 Government Code, the Public Trust Doctrine, and the California Constitution. The Council acted  
3 as the lead agency for environmental review of the Delta Plan pursuant to CEQA.

4 19. Petitioners currently are unaware of the true names and capacities of DOES 1  
5 through 20, inclusive, and therefore sue those parties by such fictitious names. DOES 1 through  
6 20, inclusive, are those persons or entities who are responsible in some manner for the conduct in  
7 this petition, or other persons or entities presently unknown to Petitioners who claim some legal  
8 or equitable interest in the project that is the subject of this action. Petitioners will amend this  
9 petition to show the true names and capacities of DOES 1 through 20 when such names and  
10 capacities become known.

### 11 **III. JURISDICTION AND VENUE**

12 20. This court has jurisdiction over this action pursuant to Code of Civil Procedure  
13 sections 1060, 1085 and 1094.5, and Public Resources Code sections 21168 and 21168.5.

14 21. Venue is proper in Sacramento County Superior Court pursuant to Code of Civil  
15 Procedure sections 393, 394, and 395, because Respondent Delta Stewardship Council's office is  
16 located in the City of Sacramento; the Council is represented by the Office of the Attorney  
17 General, which maintains an office in the City of Sacramento; and the Council's actions and  
18 resultant impacts are of statewide significance and scope such that no other venue would be more  
19 appropriate or convenient.

### 20 **IV. STANDING**

21 22. The water supply functions of and/or water use by Petitioners and their members  
22 and/or landowners will be directly and adversely affected by the Council's actions in certifying  
23 the PEIR and approving and implementing the Delta Plan in its current form.

24 23. Petitioners and their members and/or landowners have a direct and beneficial  
25 interest in the Council's full compliance with CEQA, the Delta Reform Act, and all other  
26 applicable laws in formulating, reviewing, approving and implementing the Delta Plan.

27 24. The basic purposes of CEQA are summarized in section 15002 of the CEQA  
28 Guidelines and include the following:

1           a.     Inform governmental decision-makers and the public about the potential  
2 significant environmental effects of proposed activities.

3           b.     Identify ways that environmental damage can be avoided or significantly  
4 reduced.

5           c.     Prevent significant, avoidable damage to the environment by requiring  
6 changes in projects through the use of alternatives or mitigation measures when the governmental  
7 agency finds the changes to be feasible.

8           d.     Disclose to the public the reasons why a governmental agency approved  
9 the project in the manner the agency chose if significant environmental effects are involved.

10         25.     Petitioners and their members and/or landowners will be directly and substantially  
11 affected by the adverse environmental impacts of the Council's actions, which include, but are  
12 not limited to, impacts on agricultural resources, air quality, biological resources, greenhouse gas  
13 emissions and climate change, water supply and water quality. Petitioners seek to promote and  
14 enforce the informational purposes of CEQA in this action, which purposes are defeated by the  
15 Council's attempt to make regulatory decisions as part of a comprehensive Delta management  
16 plan without sufficient or accurate information. Ascertaining the true facts about the  
17 environmental impacts of projects and disclosing those true facts to decision-makers and the  
18 public are purposes that are within the zone of interests CEQA was intended to protect.

19         26.     Petitioners and their members and/or landowners rely upon water that falls within  
20 the Sacramento River watershed that is conveyed through the Sacramento-San Joaquin River  
21 Delta, and along with the California Department of Water Resources, U.S. Bureau of  
22 Reclamation, and other public water agencies, Petitioners are proponents of the Bay Delta  
23 Conservation Plan ("BDCP"). The BDCP is intended to provide environmental benefits in the  
24 Delta while also protecting and restoring water supplies of Petitioners and their members and/or  
25 landowners, among others, that have been limited as a consequence of regulatory constraints  
26 imposed in recent decades – goals that are congruent with, even though established years prior to,  
27 the Legislature's establishment of the coequal goals as state policy in the Delta Reform Act.  
28 Pursuant to the Delta Reform Act, the BDCP shall be incorporated into the Delta Plan if specific



1 criteria are satisfied. Petitioners recognize the close connection between the ecosystem health of  
2 the Delta and the ability to provide crucial water supplies to water users throughout the state.  
3 Petitioners and their members and/or landowners thus are directly and beneficially interested in  
4 the effective formulation of the Delta Plan consistent with the provisions of the Delta Reform  
5 Act, and adequate evaluation of the Delta Plan's impacts pursuant to CEQA.

6 27. The Council has a mandatory and public duty to comply with CEQA, the Delta  
7 Reform Act, and all other applicable laws when certifying the PEIR and approving the Delta Plan.  
8 The issues in this action under CEQA and the Delta Reform Act are issues of public right and the  
9 object of the action is to enforce public duties in the public interest.

10 28. Petitioners bring this action as private attorneys general pursuant to Code of Civil  
11 Procedure section 1021.5, and any other applicable legal theory to enforce important public rights  
12 affecting the public interest.

13 **V. EXHAUSTION OF REMEDIES**

14 29. Petitioners have performed or are excused from performing any and all conditions  
15 precedent to the filing of this action, including compliance with Public Resources Code section  
16 21177, and have fully exhausted all administrative remedies by submitting to the Council written  
17 and oral comments and testimony on the Delta Plan, requesting that the Council comply with  
18 CEQA and the Delta Reform Act, including requesting the Council to formulate a plan consistent  
19 with the Legislature's statutory direction and coequal goals, and to complete proper and adequate  
20 environmental review. All issues raised in this action were raised before the Council by  
21 Petitioners, other public agencies or organizations, or members of the public prior to the  
22 Council's approval of the Delta Plan and its regulatory policies and certification of the PEIR.

23 30. Petitioners have complied with Public Resources Code section 21167.5 by prior  
24 service of notice upon the Council indicating their intent to commence this action. The notice and  
25 proof of service are attached hereto as Exhibit A.

26 31. Petitioners request preparation of the record of proceedings pursuant to Public  
27 Resources Code 21167.6(a), pursuant to the request filed concurrently herewith.

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1           32.    This action is timely filed in accordance with Public Resources Code section  
2 21167.

3 **VI.    FIRST CAUSE OF ACTION (Violations of CEQA)**

4           33.    Petitioners hereby incorporate by reference each and every allegation set forth  
5 above, inclusive.

6           34.    The purpose of an EIR is to provide public agencies and the public in general with  
7 detailed information about the likely effects of a proposed project on the environment. (Pub.  
8 Resources Code, § 21061.) An EIR must fully analyze and disclose all of the project's potentially  
9 significant environmental effects. (Pub. Resources Code, § 21100, subd. (b)(1).) The EIR should  
10 be prepared with a sufficient degree of analysis to provide decision-makers with information that  
11 enables them to take action that intelligently accounts for environmental consequences. (CEQA  
12 Guidelines, § 15151.)

13           35.    CEQA requires the lead agency to adequately evaluate potentially feasible  
14 mitigation measures and alternatives to the proposed action, to adopt all feasible mitigation  
15 measures and/or alternatives, to determine whether the proposed mitigation measures are, in fact,  
16 feasible and whether they will or will not be effective in avoiding or substantially lessening the  
17 project's significant environmental impacts, to make conclusions regarding impact significance  
18 based on adequate analysis and substantial evidence, and only then to make an adequate and  
19 supported statement of overriding considerations for those significant environmental impacts  
20 deemed unavoidable. (Pub. Resources Code, §§ 21002.1, subd. (b), 21100, subd. (b)(3); CEQA  
21 Guidelines, §§ 15092 and 15093.)

22           36.    CEQA contemplates an interactive process of assessment and responsive  
23 modification that must be genuine. Use of the environmental review process to advocate for and  
24 justify project approval violates CEQA. The Council's PEIR provides very little, if any,  
25 meaningful analysis or evidence to support its conclusory statements advocating in favor of the  
26 Delta Plan. The absence of analysis results in internal contradictions, speculative assumptions  
27 and conclusions, and vague, unenforceable mitigation measures. The Final Delta Plan PEIR fails  
28 to minimally satisfy the basic informational purposes of CEQA.

1           37. For the following reasons, the Council prejudicially abused its discretion and  
2 failed to proceed in the manner required by law in its review and approval of the Delta Plan.  
3 (Pub. Resources Code, §§ 21168, 21168.5.)

4                                   **Failure to Provide an Accurate and Adequate Description**  
5                                   **of the Project and the Affected Environment**

6           38. CEQA requires an accurate, stable, and finite project description, which must  
7 embrace the “whole of the action” and include a description of the entire scope of the proposed  
8 project. (CEQA Guidelines, § 15124.) The adequacy of an EIR’s project description is closely  
9 linked to the adequacy of the EIR’s analysis of the project’s environmental effects. Indeed, the  
10 project description sets forth the analytical foundation for the entire EIR; as such, an accurate,  
11 well-conceived, stable and finite project description is essential. (*County of Inyo v. City of Los*  
12 *Angeles* (1977) 71 Cal.App.3d 185, 192-193.) In this case, the lack of meaningful information  
13 regarding the project makes it impossible for the PEIR to serve its fundamental purpose as an  
14 informational document. The PEIR fails to provide an accurate and adequate description of the  
15 true scope of the project, and is deficient in numerous areas including but not limited to the  
16 following:

17           (a) The PEIR’s 100+ page project description provides no information regarding the  
18 fourteen regulatory policies of the Delta Plan, and instead oscillates between inconsistent  
19 statements as to whether future individual projects are caused and therefore part of the Delta Plan,  
20 or whether they would be planned even without the Delta Plan, and finally, whether current  
21 proposed projects are actually part of the Delta Plan. These statements are merely a distraction  
22 from what the Delta Plan actually proposes – fourteen “mandatory” or “regulatory” policies  
23 (which the PEIR’s project description fails even to identify) – the implementation of which will  
24 result in reasonably foreseeable indirect and cumulative significant adverse environmental effects.  
25 The PEIR’s project description violates CEQA because it fails to identify these fourteen  
26 regulatory policies as the basic elements of the proposed action. (CEQA Guidelines, § 15124;  
27 *County of Inyo, supra*, 71 Cal.App.3d at pp. 192-193.) Contrary to CEQA, the PEIR’s  
28 description of the basic elements of the proposed action – the “Policies and Recommendations of



1 the Proposed Project” – is buried in an appendix. “The decision makers and general public  
2 should not be forced to sift through obscure minutiae or appendices in order to ferret out” the true  
3 nature of the proposed project. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007)  
4 149 Cal.App.4th 645, 659.) Moreover, the PEIR’s analysis bears little, if any, relationship to the  
5 potential impacts of these proposed policies. The PEIR therefore is fundamentally defective as an  
6 informational document.

7 (b) The Council’s description of the project in the PEIR has been shifting, unstable,  
8 and internally inconsistent throughout the CEQA process as well as fundamentally misleading.  
9 For example, the project description misrepresents the scope of authority delegated to the Council  
10 in the Delta Reform Act. Nothing in the Delta Reform Act allows the Council to impose  
11 mandatory requirements on other public agencies regarding mitigation or to delay implementation  
12 of another agency’s project; the Council’s authority in this regard is limited to the process for  
13 consistency determinations set forth in Water Code sections 85255 through 85255.30.

14 39. A draft EIR “must include a clear statement of ‘the objectives sought by the  
15 proposed project,’ which will help the lead agency ‘develop a reasonable range of alternatives to  
16 evaluate in the EIR and will aid the decision makers in preparing findings or a statement of  
17 overriding considerations, if necessary.’” (*San Joaquin Raptor Rescue Center, supra*, 149  
18 Cal.App.4th at pp. 654-655, quoting CEQA Guidelines, § 15124, subd. (b).) The project  
19 objectives are crucial to proper consideration and analysis of the proposed action, especially in  
20 relation to the formulation and evaluation of project alternatives. As discussed in comments on  
21 the PEIR by Petitioners and others, the Council’s interpretation of project objectives conflicts  
22 with the Delta Reform Act and improperly constrains the range of potentially feasible  
23 alternatives.

24 40. The Final Delta Plan PEIR includes “master responses” to comments concerning  
25 the Council’s project description, overall approach to environmental review, and alternatives. In  
26 that context, “the meaning of the coequal goals is explored,” but the Council made no substantive  
27 changes to the project objectives. The Delta Plan and objectives as stated in the PEIR fail to  
28 reflect the clear legislative direction as summarized in Water Code section 85302, which states in

1 subdivision (d) as follows:

2 The Delta Plan shall include measures to promote a more reliable water supply that  
3 address all of the following:

- 4 (1) Meeting the needs for reasonable and beneficial uses of water.
- 5 (2) Sustaining the economic vitality of the state.
- 6 (3) Improving water quality to protect human health and the environment.

7 These are fundamental outcomes established by the Legislature in the Delta Reform Act to  
8 measure achievement of the coequal goal of water supply reliability. The Delta Plan and its  
9 PEIR, in their approach and substance, do not adequately advance these water supply objectives  
10 as expressed by the Legislature. The Council's failure to formulate a Delta Plan consistent with  
11 the Legislature's direction in the Delta Reform Act results in a one-sided and overbroad  
12 regulatory framework that is likely to impede and potentially prevent successful formulation and  
13 implementation of other crucial planning efforts, including but not limited to the BDCP. This  
14 outcome is wholly contrary to the Legislature's specific statutory direction regarding the content  
15 of the Delta Plan and its intent in creating the Council.

16 41. An EIR must include a clear statement of the existing baseline of environmental  
17 conditions in order to determine the significance of potential environmental impacts. (See, e.g.,  
18 CEQA Guidelines, § 15125; *Madera Oversight Coalition v. County of Madera* (2011) 199  
19 Cal.App.4th 48.)

20 42. In describing the existing environmental setting in which it proposes to undertake  
21 and implement the Delta Plan, the Council's PEIR gives no description of the existing physical  
22 environmental conditions or how the baseline for the PEIR's analysis was determined, and thus  
23 omits critical information regarding existing water use, infrastructure, and supplies, existing  
24 conservation plans and the status of their implementation, and other basic information necessary  
25 to describe the physical baseline conditions in which the Delta Plan would be implemented.

26 43. The PEIR fails to disclose its foundational baseline assumptions, fails to account  
27 for variable hydrology or the rapidly changing circumstances affecting water supply in the state,  
28 and does not explain, for example, whether it assumes that the existing conditions in which the

1 Delta Plan would be implemented are drought conditions or normal conditions, whether  
2 conveyance through the Delta was assumed to be curtailed by operational permit constraints  
3 and/or various biological opinions or not, or what assumptions were made regarding capacity of  
4 existing storage and transport facilities. Without an accurate description of the project or its  
5 environmental setting, an EIR cannot achieve the foremost objective of CEQA, that is, the  
6 analysis, disclosure, and mitigation of project-related impacts on the environment. (CEQA  
7 Guidelines, §§ 15002, 15125.)

8 44. The limited description of the environmental setting that is presented in the PEIR  
9 is inaccurate and misleading and in direct conflict with actual facts, such as the accurate division  
10 of hydrologic regions presented in the California Water Plan and the well-documented history of  
11 local water supplies, which in many areas of the state were insufficient to meet then existing  
12 demand. Inadequate and unreliable supplies resulted in significant adverse environmental  
13 impacts, mitigated by development of supplies of supplemental water, such as the CVP and SWP.  
14 Importantly, the water supply made available for use through the CVP and SWP does not  
15 originate in the Delta as misstated in the PEIR; rather, it is water diverted far upstream and  
16 ultimately conveyed through the Delta.

17 **Failure to Adequately Analyze and Disclose the Delta Plan's Impacts**

18 45. CEQA requires that an EIR analyze and disclose all possible significant  
19 environmental impacts of a proposed project. (Pub. Resources Code, § 21100, subd. (b)(1);  
20 CEQA Guidelines, § 15126.) The significant impacts should be discussed with emphasis in  
21 proportion to the severity and probability of occurrence. (CEQA Guidelines, § 15143.)

22 46. CEQA requires an analysis of impacts that is accurate, objective, and supported by  
23 substantial evidence to ensure that environmental truth is not compromised or lost when  
24 environmental initiatives are being considered by public agencies. It is therefore well-settled that  
25 a CEQA document must provide the public and the decision-maker with adequate information to  
26 fully assess the direct, reasonably foreseeable indirect, and cumulative impacts of a proposed  
27 action. (CEQA Guidelines, §§ 15064, subd. (d), 15126.2, subd. (a), 15130, 15355, 15358;  
28 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) An EIR must



1 “avoid minimizing” impacts and “must reflect a conscientious effort to provide ... adequate and  
2 relevant detailed information about them.” (*San Franciscans for Reasonable Growth v. City and*  
3 *County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) An agency violates CEQA if its  
4 decision is reached without individual consideration and balancing of environmental factors, fully  
5 and in good faith. “[F]ailure to provide enough information to permit informed decision-making  
6 is fatal.” (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91  
7 Cal.App.4th 342, 361.) The Council’s PEIR is fatally defective because it attempts to satisfy  
8 CEQA by focusing on potential impacts associated with construction and operation of projects  
9 that the Council has no authority to implement and admits are speculative. CEQA requires  
10 analysis of the potentially significant impacts of the Council’s proposed action – the proposed  
11 regulatory policies of the Delta Plan. The PEIR’s project description fails even to identify those  
12 policies, and the document’s analysis of potential impacts makes no mention of them whatsoever.  
13 To minimally comply with CEQA, the PEIR must disclose, analyze, and avoid or substantially  
14 lessen the environmental impacts of the Delta Plan’s proposed policies, including but not limited  
15 to effects of reduced surface water supplies on agricultural resources, impacts of the use of  
16 substitute water sources such as groundwater, subsidence and water quality issues, adverse  
17 impacts to air quality from increased dust and particulate matter, public health and safety, and  
18 social and economic impacts of reduced water supplies on local communities.

19 47. The duty to investigate, analyze and disclose the potentially significant impacts of  
20 the proposed action lies with the lead agency, not the public and not the other public agencies  
21 whose service capabilities may be adversely impacted. (Pub. Resources Code, §§ 21002, 21080,  
22 subd. (d), 21082.2, subd. (d), 21100, subd. (a), 21151; *Sunnyvale West Neighborhood Assn. v.*  
23 *City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1372; *Sierra Club v. State Board of*  
24 *Forestry* (1994) 7 Cal.4th 1215, 1233.) “[U]nder CEQA, the lead agency bears a burden to  
25 investigate potential environmental impacts.” (*County Sanitation Dist. No. 2 v. County of Kern*  
26 (2005) 127 Cal.App.4th 1544, 1597.) In so doing, the lead agency must consult with any public  
27 agency that has jurisdiction over natural resources or other potential environmental impacts of a  
28 project – including, in this case, the state and local agencies that submitted expert testimony and

1 evidence of potentially significant adverse effects, which the Council simply dismissed. (*Berkeley*  
2 *Keep Jets, supra*, 91 Cal.App.4th at p. 1370.)

3 48. Where, as here, a project's physical impacts may cause severe economic and social  
4 consequences, the magnitude of the latter is relevant in determining the significance of the  
5 proposed action's physical environmental impacts. (CEQA Guidelines, § 15131, subd. (b).)  
6 Reduced surface water supplies result in public health and safety impacts in both urban and rural  
7 communities. In agricultural communities, reduced surface water supplies result in fallowing of  
8 agricultural land, abandonment and/or destruction of crops, overdraft of groundwater, subsidence,  
9 and potentially permanent loss of agricultural resources. These physical environmental impacts  
10 lead to lost jobs and increased unemployment, lost business and tax revenue, and increased  
11 demand for government services. Meeting the needs of reasonable and beneficial uses is an  
12 express directive of the Delta Reform Act. (Wat. Code, § 85302.) Particularly given the  
13 Legislature's mandate that "[t]he Delta Plan shall include measures to promote a more reliable  
14 water supply that address" and sustain "the economic vitality of the state," the Council must  
15 ensure that the impacts of its proposed actions on local communities have been adequately  
16 evaluated. (Wat. Code, § 85302, subd. (d); CEQA Guidelines, § 15131, subd. (b).)

17 49. The PEIR failed to address, or inadequately addressed, significant impacts of the  
18 Delta Plan's policies, including but not limited to impacts on agricultural resources, air quality,  
19 biological resources, greenhouse gas emissions and climate change, hydrology and water  
20 resources. The PEIR does not adequately assess or analyze the feasibility of developing local or  
21 regional supplies to replace water supplies conveyed through the Delta. The PEIR does not  
22 adequately assess the impacts of developing and using local or regional supplies to replace water  
23 supplies conveyed through the Delta. Reasonably foreseeable direct, indirect, and cumulative  
24 impacts of implementation of the Council's actions include without limitation: (1) reduced  
25 reservoir storage and thus limited cold water for temperature requirements for salmon  
26 downstream; (2) a reduction of previously stored and unappropriated water to meet terms and  
27 conditions in water rights and other regulatory requirements (i.e., biological opinions); (3)  
28 reduced water supply for municipal, industrial, and agricultural uses, likely causing land



1 following, increased land subsidence, and increased dust and particulate emissions; (4) reduced  
2 water supply for environmental purposes (in-stream needs in areas otherwise served from the  
3 Delta, refuges); (5) reduced hydropower generation; (6) instability in California's energy grid  
4 caused by reduced summertime hydropower production; and (7) increased reliance on fossil fuel  
5 production due to a loss of hydroelectric generation and resulting air quality impacts.

6 50. The PEIR failed to address, or inadequately addressed, significant cumulative  
7 impacts of the Delta Plan's policies. As defined in section 15355 of the CEQA Guidelines, a  
8 cumulative impact consists of an impact resulting from the proposed action in combination with  
9 other actions causing related impacts. In assessing the cumulative impacts of a proposed action,  
10 the lead agency must properly analyze the incremental impacts of the proposed action in order to  
11 consider them in combination with other past, present, and reasonably foreseeable future projects.  
12 Because the PEIR's analysis of project-level impacts is fundamentally defective, its attempt to  
13 assess cumulative effects of the Delta Plan also is inherently flawed.

14 51. The lead agency must identify appropriate geographical boundaries for each  
15 resource category in which to consider applicable related projects (for example, a watershed's  
16 geographical boundaries with its particular set of related projects would be substantially different  
17 than that for related projects found in certain air basins, in order to conduct hydrological and air  
18 quality cumulative impacts analyses, respectively), and must focus the evaluation of cumulative  
19 impacts upon *other actions that are closely related in terms of impact on the resource*— not  
20 closely related project types. (CEQA Guidelines, § 15130, subs. (a)(2), (a)(3), and (b).) The  
21 PEIR fails to comply with CEQA's requirements for cumulative impacts analysis because  
22 although its "list" of related actions, programs, and projects includes biological opinions on the  
23 long-term operations of the CVP and SWP related to delta smelt and other fish species, the PEIR  
24 focuses solely on the asserted environmental benefits of those actions. The PEIR provides no  
25 meaningful evaluation of the overall impacts of the project with other listed projects and fails to  
26 describe the Delta Plan's cumulative effects.

27 52. The PEIR fails to discuss the cumulative effects of the proposed Delta Plan's  
28 regulatory policies in combination with other actions, such as the biological opinions and other



1 regulatory measures presently restricting the amount of water supplied via the Delta. These  
2 policies and programs are causing severe water shortages and are closely related to the water  
3 supply policies of the proposed action in terms of their environmental effects, including but not  
4 limited to effects on agricultural resources, water resources and water quality, subsidence and  
5 soils, air quality, greenhouse gas emissions and climate change, public health and safety,  
6 biological resources, and related socioeconomic impacts. None of these effects is analyzed as  
7 CEQA requires. (CEQA Guidelines, §§ 15130, 15355.) The analysis and discussion is so  
8 qualitative and general that it fails to capture the magnitude or intensity of the reasonably  
9 foreseeable environmental harms resulting from implementation of the Delta Plan in combination  
10 with other projects in the cumulative scenario. The PEIR further fails to examine feasible options  
11 for mitigating or avoiding the project's contribution to these significant cumulative effects.

12 **Failure to Identify and Adopt Feasible, Effective, and Enforceable Mitigation Measures**

13 53. Public Resources Code section 21002 requires agencies to adopt feasible  
14 mitigation measures (or feasible environmentally superior alternatives) in order to avoid or  
15 substantially lessen otherwise significant adverse environmental impacts. (Pub. Resources Code,  
16 §§ 21002, 21081, subd. (a); CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2),  
17 15091, subd. (a)(1).) To effectuate this requirement, EIRs must identify mitigation measures that  
18 decision-makers can adopt at the findings stage of the CEQA process. (Pub. Resources Code, §  
19 21100, subd. (b)(3); CEQA Guidelines, §§ 15126, subd. (e), 15126.4, 15370.)

20 54. Most, if not all, of the mitigation measures presented in the PEIR and Monitoring  
21 and Reporting Program are inadequate, either because they do not constitute mitigation as defined  
22 under CEQA, are vague and uncertain, or are improperly deferred to future environmental  
23 documents without any performance standards or specific criteria to ensure effectiveness and  
24 enforceability. (Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, §§ 15126, subd.  
25 (e), 15126.4, 15370.) Many of the so-called mitigation measures are not tethered to any  
26 enforceable program or standard, are generally beyond the Council's authority to require or  
27 implement, and fail to address the potentially significant impacts of the Delta Plan's regulatory  
28 policies. Most do nothing more than state that future projects will comply with applicable law.

1 Even for a programmatic EIR, CEQA requires much more. (CEQA Guidelines, §§ 15144, 15151;  
2 *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727-728 (“*Kings*  
3 *County*”).) The information presented is far too general, even for a programmatic document, to  
4 enable decision-makers to make required CEQA findings as to whether particular mitigation  
5 measures would be effective and enforceable, much less whether they would be feasible.

6 55. Rote and conclusory findings of “significant and unavoidable” impacts and a  
7 statement of overriding considerations unsupported by substantial evidence do not excuse the  
8 agency’s duty to analyze and disclose all it reasonably can about the project’s environmental  
9 impacts and mitigate them to the extent feasible. The mitigation measures set forth in the PEIR  
10 are meaningless, primarily as a result of the document’s inadequate project description, distorted  
11 interpretation of the project objectives, and superficial impacts analysis that fails to disclose and  
12 discuss any of the project’s significant environmental effects.

13 **Failure to Adequately Evaluate a Reasonable Range of Alternatives**

14 56. CEQA requires a lead agency to adopt feasible alternatives or feasible mitigation  
15 measures that can avoid or substantially lessen the proposed project’s significant environmental  
16 impacts. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15126.6,  
17 subd. (a); *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.) CEQA’s  
18 substantive mandate makes the mitigation and alternative sections the “core of an EIR.” (*Citizens*  
19 *of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The purpose of an  
20 environmental impact report is to identify the significant effects of a project on the environment,  
21 to identify alternatives to the project, and to indicate the manner in which those significant effects  
22 can be mitigated or avoided. (Pub. Resources Code, §§ 21002.1, subd. (a), 21061.)

23 57. The EIR must “describe a range of reasonable alternatives to the project, or to the  
24 location of the project, which would feasibly attain most of the basic objectives of the project, and  
25 evaluate the comparative merits of the alternatives.” (CEQA Guidelines, § 15126.6, subd. (a).)  
26 The discussion must focus on alternatives that avoid or substantially lessen any significant effects  
27 of the project. (CEQA Guidelines, § 15126.6, subd. (b).) EIRs “must produce information  
28 sufficient to permit a reasonable choice of alternatives so far as environmental aspects are



1 concerned.” (*San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155  
2 Cal.App.3d 738, 750-751.) The Council’s PEIR violates CEQA because it fails to comply with  
3 these requirements.

4 58. CEQA requires that an EIR describe a reasonable range of feasible alternatives to  
5 the project, or to its location, that could substantially reduce one or more of the project’s  
6 significant environmental impacts while meeting most or all of the project’s objectives. (CEQA  
7 Guidelines, § 15126.6, subd. (a).) The EIR is required to analyze the potential environmental  
8 impacts of each of the alternatives, although not necessarily at the same level of detail as the  
9 project. (CEQA Guidelines, § 15126.6.) There must be sufficient detail to be able to compare the  
10 respective merits of the alternatives. (*Laurel Heights Improvement Assn. v. Regents of University*  
11 *of California* (1988) 47 Cal.3d 376, 399-407 [alternatives discussion must “contain facts and  
12 analysis, not just the agency’s bare conclusions or opinions” and requires “meaningful detail”];  
13 *Kings County, supra*, 221 Cal.App.3d at pp. 730-737 [CEQA requires “quantitative, comparative  
14 analysis” of the relative environmental impacts of project alternatives].) General qualitative  
15 comparisons such as “greater than” or “lesser impacts” than the proposed project are inadequate  
16 and do not make a useful comparison as CEQA requires. The PEIR’s “analysis” of Delta Plan  
17 alternatives is perfunctory and meaningless, again primarily as a result of the document’s  
18 inadequate project description, distorted interpretation of the project objectives, and superficial  
19 impacts analysis.

20 59. The California Supreme Court has expressly rejected the idea that an alternative  
21 may be found “environmentally superior” because it might more effectively address existing  
22 environmental problems. (*In re Bay-Delta Programmatic Environmental Impact Report*  
23 *Programmatic Proceedings* (2008) 43 Cal.4th 1143, 1168 (“*In re Bay-Delta*”).) The Supreme  
24 Court emphasized the importance of distinguishing “between preexisting environmental  
25 problems. . . , on the one hand, and adverse environmental effects” of the proposed action or its  
26 alternatives on the other, explaining that under CEQA, existing environmental problems are part  
27 of the baseline conditions. (*Id.* at pp. 1167-1168; see CEQA Guidelines, § 15125, subd. (a);  
28 *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) The



1 PEIR's alternatives discussion violates these principles and mischaracterizes the impacts of  
2 project alternatives by ignoring the important distinction between existing environmental  
3 conditions and potential impacts of the project. This results in a skewed presentation that rejects  
4 each of the alternatives offered in the document and prevents the decision-makers from evaluating  
5 or considering any alternative other than the Council's preferred proposal. These comparisons  
6 violate CEQA because they are drafted not to promote informed decision-making, but rather to  
7 encourage approval of the project as proposed. The PEIR failed to properly consider a reasonable  
8 range of alternatives and instead revealed that the Council had predetermined its intended action  
9 regardless of its environmental consequences.

10         60. Under CEQA, the EIR must include a discussion of the "No Project" alternative,  
11 which involves consideration of existing environmental conditions *as well as what would be*  
12 *reasonably expected to occur without the proposed project*, based on existing plans and available  
13 infrastructure. (CEQA Guidelines, § 15126.6, subd. (e)(2) [italics added].) In *Planning &*  
14 *Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911-920, the  
15 court noted that "[t]he existing conditions, supplemented by a reasonable forecast, are  
16 characterized as the no project alternative. The description must be straightforward and  
17 intelligible, assisting the decision maker and the public in ascertaining the environmental  
18 consequences of doing nothing." (83 Cal.App.4th at p. 911.) The PEIR for the Delta Plan fails to  
19 analyze both the existing environmental conditions and the reasonably foreseeable future  
20 conditions that are likely to result if the proposed project is not approved. The PEIR fails to  
21 analyze the existing conservation, water quality, and other statutes that are in place and what  
22 projects are likely to occur under these existing statutes. This lack of basic information regarding  
23 the "No Project" alternative further highlights the legal inadequacy of the document's project  
24 description, which confuses whether specific existing planned and potential future projects are  
25 expected to occur as part of the proposed project or whether these projects would occur in the  
26 future regardless of the Delta Plan.

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28 ///

## Inadequate Response to Comments

1  
2           61.     CEQA requires the Council to evaluate comments on the draft environmental  
3 document(s) and provide written responses to comments that raise significant environmental  
4 issues in the final EIR. (Pub. Resources Code, § 21091, subd. (d); CEQA Guidelines, §§ 15088,  
5 subds. (a) and (c), 15132, 15204, subd. (a).) When a significant environmental issue is raised in  
6 comments that object to the draft EIR's analysis, the response must be detailed and must provide  
7 a reasoned, good faith response. (CEQA Guidelines, § 15088, subd. (a).) Failure to respond  
8 adequately to comments before approving a proposed project frustrates CEQA's informational  
9 purposes and renders the environmental document inadequate. (*Flanders Foundation v. City of*  
10 *Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Land Owners Association v. City*  
11 *Council* (1983) 143 Cal.App.3d 1013, 1020.)

12           62.     Broad statements and conclusions unsupported by factual information are not an  
13 adequate response; questions raised about significant environmental issues must be addressed in  
14 detail. (CEQA Guidelines, § 15088, subd. (c); *City of Maywood v. Los Angeles Unified School*  
15 *District* (2012) 208 Cal.App.4th 362, 391.) The need for a reasoned, factual response is  
16 particularly important when critical comments on the draft EIR have been made by other agencies  
17 or experts. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001)  
18 91 Cal.App.4th 1344, 1367, 1371.)

19           63.     The lead agency's responses to comments and the environmental document, as a  
20 whole, must reflect a good faith effort at full disclosure. (CEQA Guidelines, § 15204, subd. (a).)  
21 The PEIR for the Delta Plan fails to satisfy this standard. The Council's responses to comments  
22 gloss over important environmental issues and the Council ultimately failed to perform sufficient  
23 environmental review to satisfy CEQA's basic purpose – to adequately describe existing  
24 conditions and offer a plausible vision of the foreseeable future.

25           64.     The Council failed to respond adequately to comments submitted by Petitioners,  
26 other public agencies and organizations, and members of the public that raised significant  
27 environmental issues and offered potentially feasible, environmentally superior alternatives.  
28 Instead, the Council's responses to numerous comments are conclusory, evasive, confusing,

1 internally contradictory, or otherwise non-responsive, contrary to the requirements of CEQA. In  
2 particular, the Final Delta Plan PEIR and corresponding modifications to the Delta Plan failed to  
3 adequately address comments that the PEIR's approach to environmental review was  
4 fundamentally at odds with CEQA. The vast majority of comments made by Petitioners and  
5 others were dismissed as "comment noted" or "n/a" or with reference to a generalized "master  
6 response" without any further discussion. While master responses sometimes may be used to  
7 efficiently respond to environmental concerns that were raised in multiple comments, the  
8 Council's broad-brush summary approach is merely dismissive and superficial, and ignores a  
9 number of important, specific issues that demand a good faith, reasoned response under CEQA.  
10 As just one example, in response to Petitioners' detailed substantive comments relating to  
11 cumulative impacts, the responses to comments, with no additional discussion or analysis, merely  
12 advise reading Master Response 2 – which does not address any of the issues raised by Petitioners  
13 relating to cumulative impacts.

14         65. In the Master Responses and elsewhere, the PEIR repeatedly relies on the  
15 programmatic nature of the document to excuse the Council from performing adequate review  
16 under CEQA. The programmatic nature of the document does not excuse the Council from  
17 CEQA's requirements for sufficient substantive analysis supported by substantial evidence –  
18 actual facts – to support impact conclusions of significance or insignificance.

19         66. In addition to the Master Responses' legal insufficiency, the PEIR's few specific  
20 responses to comments also fail to comply with CEQA. For example, Comment RLO033-31  
21 points out that much of the "science" upon which the PEIR is based is inadequate,  
22 unsubstantiated, and already has been found lacking in court. The PEIR's reliance on such  
23 information is improper, as erroneous and incorrect "information" does not qualify as substantial  
24 evidence. (See *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1367 ["[b]y using scientifically  
25 outdated information . . . , we conclude the EIR was not a reasoned and good faith effort to  
26 inform decisionmakers and the public about the increase in [toxic air contaminant] emissions that  
27 will occur as a consequence of the Airport expansion".]) Rather than addressing the insufficient  
28 nature of the data upon which the PEIR relies, Response to Comment LO175-9 claims that



1 comment RLO033-31 is merely a comment on the project, not a comment on the EIR, and  
2 therefore declines to provide any response. (See also, e.g., Response to Comment LO 175-9  
3 [same defect].) The lead agency's conclusions in the EIR must be supported by substantial  
4 evidence, however, which is defined as facts, reasonable assumptions predicated upon facts, and  
5 expert opinion supported by facts. (CEQA Guidelines, § 15384.) Argument, speculation,  
6 unsubstantiated opinion, and erroneous or inaccurate information does not constitute substantial  
7 evidence, and is therefore insufficient to support the EIR's conclusions. (*Ibid.*)

8         67. In another example, the Alameda County Flood Control and Water Conservation  
9 District, Zone 7, noted in a comment letter that the Delta Stewardship Council does not have the  
10 authority to control and micromanage local water agencies as the Council asserts in its proposed  
11 Delta Plan regulatory policies. The PEIR's response to this comment dismissed it with the  
12 statement that "[t]his is a comment on the project, not on the EIR." (See Response to Comment  
13 LO169-4.) This response does not comport with CEQA. Whether the lead agency has the power  
14 to carry out an aspect of a project or mitigation measure is a relevant concern under CEQA. (See,  
15 e.g., CEQA Guidelines, §§ 15040, 15041; *Friends of Davis v. City of Davis* (2000) 83  
16 Cal.App.4th 1004, 1014-1015.) This CEQA violation is repeated in various responses to  
17 comments. (See, e.g., RTC LO175-12 [for comment that project objectives are inadequate,  
18 response erroneously states that this is a comment on the project, not the EIR]; RTC LO195-13  
19 [comment that Draft Delta Plan has changed the definition of "project," a term of art under  
20 CEQA, for the Delta Plan; response merely states that this is a comment on the project].)

21         68. In another example, a comment on the Recirculated Draft PEIR ("RDEIR") noted  
22 that, for some environmental issues (including visual resources and geology), areas outside the  
23 Delta were not analyzed. (Comment LO232-48.) The response merely asserts that the comment  
24 is incorrect and cites pages RDEIR 8-14 (for visual resources) and RDEIR 11-4 (for geology).  
25 RDEIR page 8-14 relates to construction-related impacts, however, and has only four sentences  
26 discussing the visual impacts of these. These sentences make reference to "the river" and other  
27 visual resources in the Delta and Delta watershed. The entirety of the analysis of areas outside  
28 the Delta is that "facilities may be located in the Delta, Delta watershed, and areas outside the

1 Delta that use Delta water.” This statement is supported by no facts or actual analysis of those  
2 impacts, and therefore does not in any way address the environmental issues raised. Similarly,  
3 RDEIR page 11-4 refers to “Delta peat soil” and appears to concern only geologic, construction-  
4 related impacts in the Delta area, not the large areas outside the Delta that would be significantly  
5 impacted. CEQA requires good faith, reasoned responses to comments, and the Council’s PEIR  
6 fails to satisfy this standard.

7 69. In addition, the Council failed to provide an adequate rationale for rejecting  
8 alternatives to the proposed Delta Plan provided by commenting agencies and organizations. By  
9 failing to provide adequate responses to public comments and proposed alternatives, the Council  
10 prejudicially abused its discretion and failed to proceed in the manner required by law.

11 **CEQA Findings Not Supported by Substantial Evidence**

12 70. CEQA requires that an agency’s findings for approval of a project, including its  
13 findings regarding significant environmental impacts and feasible alternatives and mitigation, be  
14 supported by substantial evidence in the administrative record and requires that an agency provide  
15 an explanation of how the record evidence supports the conclusions that it has reached. (CEQA  
16 Guidelines, § 15091.) To make the findings required under CEQA regarding a project’s potential  
17 significant effects and the feasibility or infeasibility of mitigation measures and alternatives, the  
18 agency’s EIR first must properly identify, evaluate, assess, and analyze the project’s potential  
19 environmental impacts. The Council’s actions are in direct conflict with these requirements.

20 71. As just one example, the Council’s findings are deficient in their conclusions  
21 related to project-specific and cumulative impacts to water resources, which acknowledge that  
22 cumulative impacts to water resources will be significant, but then claim that Mitigation Measure  
23 3-2 will reduce project impacts related to the depletion of groundwater to a less-than-significant  
24 level for covered actions. For the reasons identified by Petitioners and others, however, the Delta  
25 Plan likely will significantly impact public water agencies’ ability to provide adequate water  
26 supplies, leading to increased reliance on groundwater, which likely will substantially deplete  
27 groundwater supplies in multiple areas. Mitigation Measure 3-2 is directed only at construction-  
28 related impacts to groundwater, and does not mitigate for the significant impacts to groundwater



1 due to implementation of the regulatory policies of the Delta Plan. Moreover, even the proposed  
2 mitigation for construction impacts is inadequate, because digging deeper wells does not prevent  
3 depletion of groundwater; instead it may result in *more* groundwater being depleted and thus  
4 *greater* impacts to water resources.

5 72. The Council violated CEQA, prejudicially abused its discretion and failed to  
6 proceed in the manner required by law by adopting findings that are not supported by substantial  
7 evidence in the record, including but not limited to findings of impact significance on a wide  
8 array of environmental resources, findings rejecting alternatives to the proposed Delta Plan  
9 provided by commenting agencies and organizations, and findings that various mitigation  
10 measures are feasible, effective and enforceable.

11 **Statement of Overriding Considerations Not Supported by Substantial Evidence**

12 73. Where no feasible mitigation measures or alternatives are available to avoid or  
13 reduce a project's significant environmental effects, CEQA allows an agency approving a project  
14 to adopt a statement of overriding considerations that describes how specific overriding  
15 economic, legal, social, technological, or other benefits outweigh those significant environmental  
16 effects. (CEQA Guidelines, § 15093, subd. (b).) To adopt a statement of overriding  
17 considerations, the agency's EIR first must properly identify, evaluate, assess, and analyze the  
18 project's potential environmental impacts. The Council's actions are in direct conflict with these  
19 requirements.

20 74. In approving the Delta Plan and certifying the Final Delta Plan PEIR, the Council  
21 concluded that the project would result in significant unavoidable impacts. The Council adopted  
22 a statement of overriding considerations, including findings that economic, social, and other  
23 factors justify approval of the project despite these unavoidable significant impacts. The  
24 statement of overriding considerations mischaracterizes the Delta Plan's potentially significant  
25 environmental effects and purports to justify the significant unavoidable impacts of the project  
26 without substantial evidence in support of its conclusions. There is no way for the Council or the  
27 public to know whether the asserted benefits of the Delta Plan outweigh these and the other  
28 significant impacts that have not been properly analyzed and mitigated to the extent feasible.



1           75.     In addition, there is no substantial evidence supporting the existence of the Delta  
2 Plan's assumed "benefits." For example, the statement of overriding considerations claims that  
3 the Delta Plan will have a number of benefits, including "protecting, restoring, and enhancing the  
4 Delta ecosystem by encouraging a more natural flow regime through the Delta." There is no  
5 substantial evidence in the record demonstrating that the Delta Plan will result in any such  
6 "benefit," no description in the record relating to what a "more natural flow regime" consists of,  
7 and no science demonstrating that this asserted but unidentified flow regime has *any* concrete  
8 environmental benefits. Furthermore, the exclusive authority to determine Delta flow criteria is  
9 reserved to the State Water Resources Control Board. (See, e.g., Wat. Code, 85086.) The  
10 statement of overriding considerations also states that the Delta Plan will "enhance the unique  
11 cultural, recreation, natural resources, and agricultural values of the Delta . . . by conserving  
12 farming and rural land use," "encouraging emergency preparedness, appropriate land uses, and  
13 investments in flood protection." There is no substantial evidence supporting these conclusions  
14 in light of the fact that the Draft Delta Plan PEIR, Recirculated Draft Delta Plan PEIR, and Final  
15 Delta Plan PEIR, as well as the Council's findings, all acknowledge the Delta Plan will have  
16 significant adverse impacts in these areas. When a project causes environmental harm, it can  
17 hardly be considered a "benefit" of the project.

18           76.     Regarding the significant impacts that cannot be mitigated to a less-than-  
19 significant level that the Delta Plan *does* acknowledge, these are enormous in number and scope  
20 and include significant impacts relating to biological resources, hydrology/flooding, land use and  
21 planning, agriculture, forestland, aesthetics, light and glare, air quality, pollution, cultural  
22 resources, earthquakes and landslides, soil erosion, leakage, mineral resources, noise and  
23 vibration, recreation, transportation, hazards and emergency access, adopted plans and policies,  
24 greenhouse gases and climate change, among others. The "benefits" of the project (which, as  
25 discussed above, are not actually extant) do not and cannot outweigh these many enormous  
26 environmental impacts, particularly because the PEIR minimizes and grossly understates the  
27 project's impacts.

28     ///

1           77.     The Council prejudicially abused its discretion and failed to proceed in the manner  
2 required by law by adopting findings and a statement of overriding considerations that do not  
3 comply with CEQA and by approving the Delta Plan in reliance on those inadequate and  
4 unsupported findings.

5     **VII.   SECOND CAUSE OF ACTION (Violations of the Delta Reform Act)**

6           78.     Petitioners hereby incorporate by reference each and every allegation set forth  
7 above, inclusive.

8           79.     Since the BDCP planning process was initiated in March 2006, the federal and  
9 state administrations have conducted hundreds of public meetings to develop alternatives for one  
10 of the most important water supply reliability and habitat conservation planning processes in the  
11 nation. The BDCP process is mere months away from releasing a draft EIR/EIS that will identify  
12 a preferred alternative for protecting the Delta estuary and restoring reliable water supplies for 25  
13 million Californians and millions of acres of farmland. In the Delta Reform Act, the Legislature  
14 recognized the need for conveyance improvements in the Delta and respected the ongoing BDCP  
15 process, providing that the BDCP *shall* be incorporated into the Delta Plan if the BDCP meets  
16 specified criteria. (Wat. Code, §§ 85304, 85320, subd. (e).) Indeed, at the time the Legislature  
17 passed the Delta Reform Act, the Legislature contemplated the BDCP would be completed prior  
18 to the Delta Plan, and as a result, the Delta Plan would be developed around the BDCP, assuming  
19 the statutory requirements for its incorporation into the Delta Plan were met. (See e.g., Wat.  
20 Code, § 85057.5, subd. (b)(7)(b).) Further, the Delta Reform Act expressly recognizes that the  
21 Department of Water Resources, Department of Fish and Wildlife, and agencies other than the  
22 Council are “charged with BDCP implementation,” and that the Council’s authority is limited to  
23 making recommendations to the BDCP implementing agencies regarding implementation of the  
24 BDCP as part of the overall Delta Plan. (Wat. Code, §§ 85031, 85032, 85300, 85320.)

25           80.     The Delta Plan must be consistent with the goals of the BDCP and cannot impede  
26 its effective implementation, particularly with respect to water supply and ecosystem objectives.  
27 Those objectives include restoring and protecting the ability of the CVP and SWP to deliver up to  
28 full contract amounts when hydrologic conditions result in the availability of sufficient water,



1 consistent with the requirements of state and federal law and the terms and conditions of water  
2 delivery contracts and other existing applicable agreements. The Council nevertheless took  
3 actions that will impede, rather than promote, achievement of the coequal goals, as well as  
4 impede effective implementation of the BDCP. For example, nowhere in the Delta Reform Act  
5 did the Legislature authorize the Council to assert as an objective of the Delta Plan that state and  
6 federal agencies reduce the quantity of water conveyed through the Delta. Any restrictions on the  
7 quantity of water conveyed through the Delta are governed by other statutory and regulatory  
8 requirements administered by other state and federal agencies, including the State Water  
9 Resources Control Board, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.  
10 The Council's actions violate federal and state law, including the Delta Reform Act. The  
11 Council's actions attempt to regulate the manner in which water is conveyed through the Delta,  
12 among other errors, foreclosing agency consideration of alternatives or mitigation measures prior  
13 to completion of environmental review for the BDCP.

14 81. The Delta Plan, rather than furthering the coequal goals, creates obstacles to the  
15 achievement of the water supply reliability coequal goal. Its wording also allows for ambiguity  
16 about its potential affect on the water supply improvements contemplated by the BDCP, which  
17 the Legislature expressly directed were to become part of the Delta Plan in furtherance of the  
18 coequal goals. The Council's responses to comments on its proposed regulatory policies leave no  
19 such confusion with regard to how the Delta Plan and the Council's asserted authority could  
20 potentially affect the BDCP, however. The Council offered the following example of its asserted  
21 authority:

22 As an example, a proposed project involving the export of water from the Delta, such as  
23 an increase in the size of existing Delta intakes, will generally be a covered action. The  
24 Council can, therefore, regulate that action by requiring it to be consistent with the Plan.  
25 Some comments question, however, whether the Council can require that the validity of  
26 the covered action turn on, in part, whether it is needed because, say, a Southern  
27 California recipient water supplier is failing to conserve water in accordance with the  
28 regulation. The Council's authority can be seen by using a proposed expanded Delta  
intake as an example:

- 1) Pumping water out of the Delta may have significant negative impacts on the Delta's ecosystem and an expanded intake therefore may be contrary to the



1 statutory goal of "protecting, restoring and enhancing the Delta ecosystem."  
2 (Water Code, § 85054.)

3 2) The expanded intake should nevertheless be allowed if it is needed to  
4 achieve the coequal goal of "providing a more reliable water supply for  
California." (Water Code, § 85054.)

5 3) But because in this example the water supply goal could be met through  
6 out-of-Delta measures without undermining the ecosystem goal, the expanded in-  
Delta intake is not justified and is inconsistent with the Delta Plan.

7  
8 This "example" clearly illustrates the Council's view of its authority and a perspective related to  
9 the BDCP – which contemplates expansion of Delta intakes – that is contrary to the plain  
10 language and legislative intent of the Delta Reform Act.

11 82. In addition, the Council asserts that even when the BDCP is incorporated into the  
12 Delta Plan, per Legislative direction and subject to specified criteria, the activities undertaken as  
13 part of the BDCP still would be subject to the Council's "consistency review" process, even  
14 though by definition – since BDCP would be part of the Delta Plan – all BDCP actions would be  
15 consistent with the plan of which they are a part.

16 83. The Council sets forth its asserted basis for its regulatory authority in Attachment  
17 2e to its May 16, 2013 meeting agenda packet, which states that the Delta Reform Act requires,  
18 by reference to the federal Coastal Zone Management Act of 1972, 16 U.S.C. § 1451 et seq.  
19 ("CZMA"), "that the Council include a significant regulatory component in the Delta Plan." The  
20 Council makes the same claim in its Draft Master Responses to comments MR 1-4 and MR7.  
21 The Council claims the authority to supplant and amend the already comprehensive regulatory  
22 schemes being implemented by other agencies under their existing authorities. Pursuant to the  
23 express provisions of the Delta Reform Act, however, the opposite is true. The Delta Reform Act  
24 expressly recognizes the continuing authority of other state and federal regulatory regimes over  
25 the management and regulation of water and other resources in the Delta. (Wat. Code, §§ 85031,  
26 subd. (d), 85302, 85300, subd. (d).)

27 84. Attachment 2e and the Draft Master Responses correctly observe that Water Code  
28 section 85300(d)(1)(A) directs the Council to develop the Delta Plan "consistent with" the CZMA

1 or an “equivalent compliance mechanism.” If the Council adopts the Delta Plan pursuant to the  
2 CZMA, it must submit the plan to the Secretary of Commerce for approval pursuant to the  
3 CZMA. (Wat. Code, § 85300, subd. (d)(2).) To qualify for federal approval, a coastal  
4 management program must identify “the means by which the State proposes to exert control over  
5 the land uses and water uses” within the coastal zone. (16 U.S.C. § 1455(d)(2)(D).) But that does  
6 not mean, as Attachment 2e and the Draft Master Responses mistakenly presume, that the  
7 Legislature must have intended that the Council itself would have plenary powers. As the federal  
8 regulations implementing the CZMA make clear, the power to implement a coastal management  
9 program may rest in a variety of state and local entities. The CZMA regulations provide that  
10 “[t]he entity or entities which will exercise the program’s authorities is a matter of State  
11 determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act,  
12 other state agencies, regional or interstate bodies, and local governments.” (15 C.F.R. §  
13 923.40(b).) The Council has an important but circumscribed regulatory role under the Delta  
14 Reform Act— to review consistency determinations regarding covered actions. (Wat. Code, §§  
15 85225-85225.30.) The Delta Reform Act contemplates that the Delta Plan will also rely on the  
16 existing authorities of other agencies, for example, the authority of the California State Water  
17 Resources Control Board over water diversions, or the DFW under the NCCP. (See Wat. Code,  
18 §§ 85031, 85032.) Nothing in the Water Code can reasonably be read to delegate to the Council  
19 the sweeping regulatory authority it claims.

20 85. As evidenced by the Legislature’s specific word choices, there was no intent to  
21 provide or even imply a regulatory role for the Council with regard to broad water management  
22 activities throughout California. Indeed, to the contrary, the Council and the Delta Plan are  
23 directed to further the coequal goals and provide advisory recommendations to further the  
24 achievement of various pertinent state policies, with the *limited* exception of establishing an  
25 administrative scheme for reviewing appeals of consistency certifications only applicable to  
26 statutorily defined “covered actions” undertaken *in* the Delta and Suisun Marsh. Because the  
27 Council is not authorized to impose substantive mandates regarding water use through the Delta  
28 Plan, the Council’s actions exceed its statutory authority.



1           86.     The CVP and SWP are important conveyance systems in California. They move  
2 water through the Delta to support Silicon Valley, the San Joaquin Valley, and southern  
3 California. The Council's cost analysis of the Delta Plan and implementation of its regulatory  
4 policies ignores the importance of that water supply and provides no meaningful information  
5 regarding how the Council's proposed actions will affect these fundamental elements of the  
6 state's economy, as required under the Delta Reform Act. (Wat. Code, § 85302, subd. (d).) The  
7 Council cannot reasonably conclude that its actions include measures to sustain the economic  
8 vitality of the state when it has failed to evaluate the economic effects of those actions. For  
9 example, the Council's actions are based on assumptions that members of the Authority,  
10 including Westlands, can fully mitigate for the impact of reduced quantities of water conveyed  
11 through the Delta. Yet the Council has failed to analyze in any meaningful way how much  
12 replacement water would be needed to mitigate for the reduced supply, potential alternative  
13 sources and the barriers to their development and implementation, how costly such alternative  
14 sources might be, and the potentially significant environmental and economic consequences of  
15 developing those supplies. Reliability of baseline supplies is crucial to the economic health of the  
16 Silicon Valley, the San Joaquin Valley, and southern California, and the Council must analyze the  
17 economic costs and benefits of its regulatory actions.

18           87.     The cost assessment fails to address how the Council's actions will increase the  
19 cost of water supplies throughout the state, the extent to which the Council's policies will result in  
20 retirement of farmland, job losses in the San Joaquin Valley, and stranded investments (loss of  
21 investment in high efficiency irrigation technologies like drip and micro-sprinklers and loss of  
22 investment in permanent crops), where there are no or inadequate alternate supplies, or how the  
23 Council's actions may result in substantial adverse impacts to economic activities in urban areas.  
24 Instead, the cost assessment assumes, without any substantial evidence, that the Council's actions  
25 "are expected to provide substantial statewide and regional benefits to housing by increasing  
26 value due to improved flood protection, water supply reliability, and environmental amenities"  
27 and will "improve the state's prospects for jobs by providing more long-term economic benefits  
28 and stability." The Council's assumptions are lacking in evidentiary support and its perfunctory



1 cost analysis violates the requirements of the Delta Reform Act.

2 **VIII. THIRD CAUSE OF ACTION (Declaratory Relief)**

3 88. Petitioners hereby incorporate by reference each and every allegation set forth  
4 above, inclusive.

5 89. An actual controversy has arisen and exists between Petitioners and the Council, in  
6 that as more fully set forth above, Petitioners contend that the Council's adoption of the Delta  
7 Plan in reliance on the Final Delta Plan PEIR failed to comply with CEQA and the Delta Reform  
8 Act and other applicable laws including but not limited to the Public Trust Doctrine, California  
9 Constitution, and rulemaking requirements of the Government Code.

10 90. Petitioners are informed and believe and on that basis allege that Respondent Delta  
11 Stewardship Council disputes Petitioners' contentions as described and alleged herein.

12 91. Petitioners seek a judicial determination of the respective rights and duties with  
13 respect to the Council's compliance with CEQA, the Delta Reform Act and other applicable laws.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioners pray for relief as follows:

16 1. For alternative and peremptory writs of mandate, commanding the Council to:  
17 a. Vacate and set aside its approvals of the Delta Plan;  
18 b. Vacate and set aside its certification of the Final Delta Plan PEIR;  
19 c. Suspend any and all activity pursuant to the Council's approval of the  
20 Delta Plan until the Council complies with all requirements of CEQA, the Delta Reform Act, and  
21 all other applicable state and local laws, policies, ordinances, and regulations;

22 2. For a stay, temporary restraining order, preliminary injunction, and permanent  
23 injunction prohibiting any actions by the Council pursuant to its approval of the Delta Plan and  
24 certification of the Final Delta Plan PEIR until the Council fully complies with all requirements  
25 of CEQA, the Delta Reform Act, and all other applicable state and local laws, policies,  
26 ordinances, and regulations;

27 ///

28 ///

1           3.       For a declaration that the Council's actions certifying the Final Delta Plan PEIR  
2 and approving the project violated CEQA and that the certification and approvals are invalid and  
3 of no force or effect;

4           4.       For a declaration that the Council's actions approving the Delta Plan exceeded the  
5 Council's statutory authority pursuant to the Delta Reform Act and other applicable laws, and that  
6 the approvals are invalid and of no force or effect;

7           5.       For costs of suit;

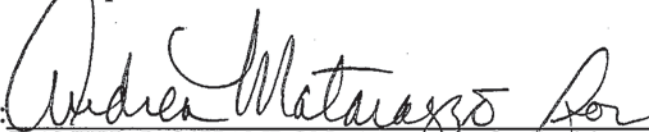
8           6.       For attorney's fees pursuant to Code of Civil Procedure section 1021.5; and

9           7.       For such other and further relief as the Court deems just and proper.

10       DATE: May 24, 2013

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation


11  
12  
13       By:

  
DANIEL J. O'HANLON, Attorneys for Petitioners  
SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY and WESTLANDS WATER DISTRICT

14  
15       DATE: May 24, 2013

PIONEER LAW GROUP, LLP

16  
17  
18       By:

  
ANDREA A. MATARAZZO, Attorneys for Petitioner  
WESTLANDS WATER DISTRICT

# EXHIBIT A



1 DANIEL J. O'HANLON, State Bar No. 122380  
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2 ELIZABETH L. LEEPER, State Bar No. 280451  
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AUTHORITY and WESTLANDS WATER DISTRICT  
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9 PIONEER LAW GROUP, LLP  
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Telephone: (916) 496-8500  
11 Facsimile: (916) 496-8500  
Attorneys for Petitioner/Plaintiff  
12 WESTLANDS WATER DISTRICT  
13

**Exempt from Filing Fees Pursuant  
to Government Code Section 6103**

14 **ADDITIONAL COUNSEL LISTED ON NEXT PAGE**

15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

16 IN AND FOR THE COUNTY OF SACRAMENTO

17 SAN LUIS & DELTA-MENDOTA WATER  
18 AUTHORITY and WESTLANDS WATER  
DISTRICT,

19  
20 Petitioners/Plaintiffs,

21 vs.

22 DELTA STEWARDSHIP COUNCIL, and Does 1  
23 through 20, inclusive,

24 Respondents/Defendants.  
25  
26  
27  
28

Case No.

NOTICE OF COMMENCEMENT  
OF ACTION

[Public Resources Code § 21167.5]

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THOMAS W. BIRMINGHAM, State Bar No. 110898  
Special Counsel

HAROLD CRAIG MANSON, State Bar No. 102298  
General Counsel

WESTLANDS WATER DISTRICT  
c/o Kronick, Moskovitz, Tiedemann & Girard  
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Senior Staff Counsel

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400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, California 95814  
Telephone: (916) 321-4519  
Facsimile: (916) 321-4555

1 TO THE DELTA STEWARDSHIP COUNCIL:

2 NOTICE IS HEREBY GIVEN that Petitioners SAN LUIS & DELTA-MENDOTA WATER  
3 AUTHORITY and WESTLANDS WATER DISTRICT intend to file a petition for writ of mandate  
4 pursuant to Public Resource Code sections 21167, 21168 and 21168.5 against Respondent DELTA  
5 STEWARDSHIP COUNCIL challenging its approval of the Delta Plan on the ground, *inter alia*,  
6 that it failed to comply with the California Environmental Quality Act (Pub. Resources Code, §  
7 21000 et seq.).

8 DATE: May 23, 2013

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation

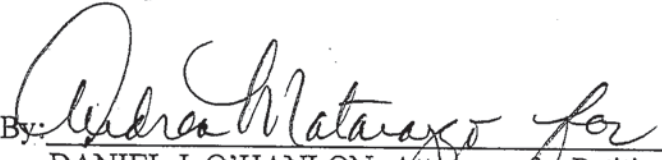
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By:   
DANIEL J. O'HANLON, Attorneys for Petitioners  
SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY and WESTLANDS WATER DISTRICT

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DATE: May 23, 2013

PIONEER LAW GROUP, LLP

By:   
ANDREA A. MATARAZZO, Attorneys for  
Petitioner WESTLANDS WATER DISTRICT



1 Re: *San Luis & Delta-Mendota Water Authority and Westlands Water District v. Delta*  
2 *Stewardship Council, and Does 1 through 20, inclusive*  
3 Sacramento County Superior Court Case No.

3 **PROOF OF SERVICE**

4 I, Jean I. Seaton, declare:

5 I am a citizen of the United States, employed in the City and County of Sacramento,  
6 California. My business address is 431 - I Street, Suite 201, Sacramento, California 95814. I am  
7 over the age of 18 years and not a party to the within action.

8 I am familiar with the practice of Pioneer Law Group, LLP, for collection and processing  
9 of correspondence, said practice being that in the ordinary course of business, correspondence is  
10 sealed, given the appropriate postage and placed in a designated mail collection area. Each day's  
11 mail is collected and deposited in the United States Postal Service.

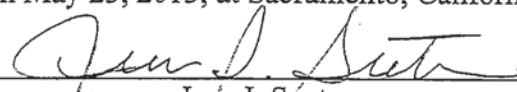
12 On May 23, 2013, I served the attached:

13 **NOTICE OF COMMENCEMENT OF ACTION**

- 14 [ X ] (VIA U.S. MAIL) I placed such sealed envelope, with postage thereon fully prepaid for  
15 first-class mail, for collection and mailing at the Pioneer Law Group, LLP, Sacramento,  
16 California, following ordinary business practices as addressed as follows, and/or  
17 [ ] (VIA PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the  
18 addressees at the addresses listed below; and/or  
19 [ ] (VIA FEDERAL EXPRESS) I caused each such envelope to be delivered via Federal  
20 Express service to the addressees at the addresses listed below; and/or  
21 [ ] (VIA FACSIMILE) I caused each such document to be sent by facsimile machine number  
22 (916) 446-4535 to the following persons or their representative at the addresses and the  
23 facsimile numbers listed below; and/or  
24 [ X ] (VIA EMAIL) I caused each such document to be sent by electronic mail to the addressees  
25 at the email addresses listed below.

26 Chris Knopp, Executive Officer  
27 Delta Stewardship Council  
28 980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
Chris.Knopp@deltacouncil.ca.gov

I declare that I am employed in the office of a member of the bar of this Court at whose  
direction the service was made. Executed on May 23, 2013, at Sacramento, California.

  
\_\_\_\_\_  
Jean I. Seaton

1 DANIEL J. O'HANLON, State Bar No. 122380  
2 REBECCA R. AKROYD, State Bar No. 267305  
3 ELIZABETH L. LEEPER, State Bar No. 280451  
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19 Attorneys for Petitioner/Plaintiff  
20 WESTLANDS WATER DISTRICT

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**05/24/2013**  
**amacias**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2013-80001500**

**Exempt from Filing Fees Pursuant  
to Government Code Section 6103**

**ADDITIONAL COUNSEL LISTED ON NEXT PAGE**

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY and WESTLANDS WATER  
DISTRICT,

Petitioners/Plaintiffs,

vs.

DELTA STEWARDSHIP COUNCIL, and Does 1  
through 20, inclusive,

Respondents/Defendants.

Case No.

NOTICE OF REQUEST TO PREPARE  
THE ADMINISTRATIVE RECORD

[Public Resources Code § 21167.6,  
subd. (a)]

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Petitioners/Plaintiffs SAN LUIS & DELTA-MENDOTA  
3 WATER AUTHORITY and WESTLANDS WATER DISTRICT ("Petitioners") hereby request,  
4 pursuant to Public Resources Code section 21167.6, subdivision (a), that Respondent/Defendant  
5 DELTA STEWARDSHIP COUNCIL ("Respondent") prepare the record of proceedings in the  
6 above-entitled action.

7 DATE: May 24, 2013


KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation

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By:   
DANIEL J. O'HANLON, Attorneys for Petitioners  
SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY and WESTLANDS WATER DISTRICT

DATE: May 24, 2013

PIONEER LAW GROUP, LLP

By:   
ANDREA A. MATARAZZO, Attorneys for Petitioner  
WESTLANDS WATER DISTRICT



**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
**720 Ninth Street Room 102**  
**Sacramento, CA 95814-1380**  
**(916) 874-5522**  
**www.saccourt.ca.gov**

**NOTICE OF CASE ASSIGNMENT**  
**Proceeding for Writ of Mandate and/or Prohibition**

Case Number : 34-2013-80001500-CU-WM-GDS

This case has been assigned for all purposes to the judicial officer indicated below pursuant to rule 3.734 of the California Rules of Court and Sacramento Superior Court Local Rule 2.01; it is exempt from the requirements of the Trial Court Delay Reduction Act and the Case Management Program under Chapter 11 of the Sacramento Superior Court Local Rules.

JUDGE	COURT LOCATION	DEPT.
Allen Sumner	Gordon D. Schaber Courthouse	42

The petitioner shall serve all parties with a copy of this order and a copy of the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs. The Guide is available in Room 102 of the courthouse, from the clerk of the department to which this matter has been assigned, and on the "Civil" page of the Sacramento Superior Court internet website ([www.saccourt.ca.gov](http://www.saccourt.ca.gov)).

**Scheduling**

Contact the clerk in the assigned department to schedule any judicial proceedings in this matter, including hearings on ex parte applications and noticed motions.

JUDGE	DEPT.	PHONE
Hon. Eugene L. Balonon	14	(916) 874-6156
Hon. Timothy M. Frawley	29	(916) 874-5684
Hon. Michael P. Kenny	31	(916) 874-6353
Hon. Allen H. Sumner	42	(916) 874-5672

**Other Information**

Pursuant to Local Rule 2.01, all documents submitted for filing in this case shall be filed in person at the Civil Front Counter (Room 102) or by mail addressed to the Clerk of the Sacramento Superior Court, Attn: Civil Division-Room 102, with the exception of certain documents filed on the day of the hearing. For specific requirements, please see the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Any administrative record must be lodged with the assigned department.

Date: 05/24/2013

Signed: /s/ A. Macias

Ana Macias, Deputy Clerk



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO  
720 Ninth Street ~ Room 102  
Sacramento, CA 95814-1380  
916-874-5522 - Website: [www.saccourt.ca.gov](http://www.saccourt.ca.gov)**

**GUIDE TO THE PROCEDURES FOR PROSECUTING PETITIONS  
FOR PREROGATIVE WRITS  
(as specified in Local Rule 2.01(E))**

This guide to the procedures for prosecuting petitions for writs of mandate and other prerogative writs in the Sacramento Superior Court is made available for your general information pursuant to Local Rule 2.01(E). A protocol for each department to which writs are assigned (hereinafter "assigned writ department") supplements these procedures with respect to the filing of documents, the scheduling of hearings, and the use of tentative rulings. The protocol is available from the assigned writ department and on the "Civil" page of the court's website under [Prerogative Writ Departments and Protocol](#).

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**Filing a Writ Petition:**

Step	Action
1.	File an original and two copies of the petition and a civil case cover sheet at the civil front counter in Room 102 on the first floor of the main courthouse. Or mail an original and two copies of the petition and a civil case cover sheet to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
2.	Pay the filing fee pursuant to Government Code section 70611 in Room 102.
3.	Receive from the civil front counter clerk a Notice of Case Assignment and a copy of this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

**Serving a Writ Petition:**

Step	Action
1.	Serve the writ petition on respondent(s) and real party(ies) in compliance with the requirements of Code of Civil Procedure (CCP) sections 1107 and 1088.5. Until compliance with these statutory service requirements is established by the filing of an appropriate proof of service, the court cannot hear or act on the petition.
2.	Along with the writ petition, serve copies of the Notice of Case Assignment and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

For service of an application for an alternative writ, see below, "Setting a Hearing on the Merits of a Writ Petition, (2) Securing issuance of an alternative writ."

**Filing Subsequent Papers:**

Step	Action
1.	File an original and two copies of all subsequent documents related to the writ petition either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814. <i>Exception:</i> Documents filed one day before or on the day of the hearing shall be filed with the courtroom clerk in the assigned writ department after any applicable fees have been paid in Room 102.
2.	File documents by fax in compliance with rule 2.303 of the California Rules of Court and Local Rule 9.20. Documents faxed directly to the court will not be filed.
3.	Specify on the first page of each document the date, time and department of any scheduled hearing to which the document applies. To set a hearing, see below, "Bringing Motions before the Hearing on the Merits of a Writ Petition" and "Setting a Hearing on the Merits of a Writ Petition."

**Noticing Related  
Writ Cases and  
Possible Consolidation:**

Step	Action
1.	When filing a Notice of Related Case pursuant to rule 3.300(d) of the California Rules of Court regarding two or more writ cases assigned to different judges in this court, file the Notice <b>in each writ case.</b>
2.	When filing a Response to a Notice of Related Case pursuant to rule 3.300(g) of the California Rules of Court, file the Response <b>in each writ case.</b>
3.	Serve the Notice or Response on <b>each party to each case.</b>

Note that the court proceeds with respect to related writ cases under rule 3.300(h)(1) of the California Rules of Court (CRC) as follows:

- The judges assigned to civil writ cases listed in a Notice Of Related Case filed and served pursuant to CRC 3.300(d) identify which one of them is assigned to the earliest filed case, information which should be included in the Notice of Related Case pursuant to CRC 3.300(c)(2). That judge proceeds under CRC 3.300(h)(1)(A) to determine whether the cases are related within the meaning of CRC 3.300(a).
- If the judge assigned to the earliest filed case determines that the cases are related, the judge orders the cases related and assigned to his or her department. That order is filed in each of the related cases and served on the parties to each of the related cases pursuant to CRC 3.300(i). In addition, an Amended Notice of Case Assignment, reassigning to the judge each of the related cases not previously assigned to him or her, is filed and served upon all parties to each reassigned case. Courtesy copies of the order and Amended Notice(s) of Case Assignment are sent to the judges previously assigned to any of the related cases.
- If the judge assigned to the earliest filed case determines that the cases are not related within the meaning of CRC 3.300(a), the judge issues a minute order stating and briefly explaining the determination. This minute order is filed in each of the cases listed in the Notice of Related Case and is served on all parties to the listed cases pursuant to CRC 3.300(i).
- In response to an order determining that the cases are not related, any party to any of the cases listed in the Notice of Related Case may file a motion pursuant to CRC 3.300(h)(1)(D) to have the cases related. The motion must be filed with the Presiding judge or a judge designated by the Presiding Judge.

**Applying for a  
Temporary Stay in  
Administrative Mandate  
Proceedings (CCP § 1094.5 (g) or (h)):**

Step	Action
1.	<p>Prepare an ex parte application for an order temporarily staying operation of the administrative decision under review in the proceeding. Identify whether the temporary stay order is requested pursuant to subdivision (g) or (h) of the CCP § 1094.5. Specify "Ex Parte" in the title of the application.</p> <p>Pursuant to rules 3.1201 and 3.1202 of the California Rules of Court and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs, an ex parte application for a stay order includes the following supporting documents and papers:</p> <ul style="list-style-type: none"> <li>▪ Endorsed copy of the petition.</li> <li>▪ Points and authorities, declarations and other supporting documents, including relevant portions of the administrative record if available.</li> <li>▪ Proposed order to show cause why the administrative decision under review in the writ petition (OSC). This proposed OSC should contain: <ul style="list-style-type: none"> <li>- blank spaces for the date and time of the hearing on the OSC,</li> <li>- an order for service of the OSC and any supporting papers not previously served with a blank space for a date of service prior to the hearing on the OSC, and</li> <li>- an order staying the administrative decision pending the hearing on the OSC.</li> </ul> </li> <li>▪ Proposed stay order.</li> <li>▪ Notice of hearing on the petition with blank spaces for date and time (unless the stay is being requested in conjunction with an application for an alternative writ).</li> <li>▪ Declaration regarding notice, as specified in rule 3.1204.</li> </ul> <p>In addition, CCP § 1094.5 (g) and (h) require that proof of service of a copy of the application on the respondent accompany an application for a stay. See subdivisions (g) and (h) for required manner of service.</p>
2.	<p>Contact the assigned writ department to reserve an ex parte hearing date and time and to determine whether the assigned writ department requires any of the documents or papers listed above in Step 1 to be filed before the hearing. Note that some writ departments hear writ matters only on Fridays.</p>
3.	<p>Notify respondent(s) and real party(ies) of the hearing on the ex parte stay application in accordance with rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice prepared pursuant to rule 3.1204.</p> <p><b>Note:</b> The court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the ex parte hearing, file and serve the documents and papers as soon as possible and no later than the time of the hearing. (See rule 3.1206 of the California Rules of Court).</p>



At the ex parte hearing, depending on the nature of the factual and legal issues raised by the stay application and the practical exigencies of the matter, the court will either rule on the stay application immediately or issue the proposed OSC with or without a temporary stay order pending the hearing on the OSC at a specified date and time.

If the court grants a stay at the ex parte hearing or the hearing on the OSC, the court will sign and file the proposed stay order and set a date and time for a hearing on the merits of the petition. The court clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

If the court denies a stay at the ex parte hearing or the hearing on the OSC, the court, upon petitioner's request, will set a date and time for a hearing on the merits of the petition. The clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

**Applying for a  
Temporary Stay  
in Traditional Mandate  
Proceedings (CCP § 1085):**

Step	Action
1.	Follow the statutory and regulatory provisions for obtaining a temporary restraining order (TRO), an order to show cause why a preliminary injunction should not be issued (OSC), and/or a preliminary injunction, set forth in the Code of Civil Procedure (including but not limited to CCP §§ 525, 526, 527, 528 and 529) and rule 3.1150 of the California Rules of Court. These provisions constitute rules of practice for temporary stays in mandate proceedings brought under CCP § 1085 in the absence of temporary stay provisions specific to such mandate proceedings. (See CCP § 1109.)
2.	When following the statutory and regulatory procedures for obtaining a TRO and/or an OSC, comply with the ex parte procedures outlined above in "Applying for a Temporary Stay in Administrative Mandate Proceedings" and in rule 3.1201 of the California Rules of Court.
3.	If no TRO or OSC is sought, notice a motion for a preliminary injunction following the procedures set forth below in "Bringing Motions Before the Hearing on the Merits"

Note that a temporary stay in proceedings on a petition for a writ of prohibition may be obtained by following the procedures set forth below under "Setting a Hearing on the Merits of a Petition, (2) Securing issuance of alternative writ." An alternative writ of prohibition, unlike an alternative writ of mandate, stays specified action by the respondent until further order of the court. (See CCP §§ 1087, 1104.)

**Bringing Motions before  
The Hearing on the  
Merits of a Writ Petition:**

Motions on the pleadings and other pretrial matters brought in civil actions -- including motions for change of venue, demurrers, motions to strike, motions to dismiss, discovery motions, and motions for summary judgment -- may generally be brought in writ proceedings. (See CCP § 1109.)

Motions addressing the merits of the petition in whole or in part should be calendared for a hearing at the same time as the hearing on the merits. Motions directed at resolving issues preliminary to and distinct from the issues related to the merits of the petition, such as untimeliness of the petition under an applicable statute of limitations, should be calendared before the hearing on the merits of a writ petition. The court, in the exercise of its discretion to control the order of litigation before it, may advance the hearing on a motion to a date before the hearing on the merits or may postpone a motion to the hearing on the merits when such advancement or postponement will promote the efficient conduct and disposition of the proceeding.

Because a writ petition is usually disposed of by a hearing on the merits which is limited to oral argument on written briefs and documentary evidence, the usefulness of a motion for summary judgment or summary adjudication in economically disposing of an unmeritorious case or claim is substantially reduced in writ proceedings. Thus, before bringing a motion for summary judgment or summary adjudication, counsel should carefully evaluate whether the purpose of the motion can be achieved more directly and completely through a hearing on the merits of the petition.

Step	Action
1.	Contact the assigned writ department to reserve a date and time available on the department's calendar for a hearing on the motion. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Some assigned writ departments hear writ matters only on Fridays.
2.	<p>Notice the motion in accordance with the civil law and motion procedures in CCP § 1005 and in compliance with the California Rules of Court, including rules 3.1110 through 3.1113, 3.1115-3.1116, 3.1300, and 3.1320 through 3.1324. Comply with the page limits for memoranda set forth in rule 3.1113.</p> <p>If the assigned writ department uses the tentative ruling system, the notice of motion must contain tentative ruling language available from the department.</p>

**Setting a Hearing on the Merits of a Writ Petition:**

If a hearing on the merits of a writ petition has not been set in conjunction with an ex parte hearing on an application for a temporary stay, it may be set either by (1) noticing a hearing on the petition or (2) securing issuance of an alternative writ.

**Note:** The court prefers, as more efficient and economical for both itself and the parties, the procedure of noticing a hearing on the petition.

The date set for a hearing on the merits of a writ petition, whether by notice or alternative writ, should allow the parties to file briefs in accordance with the following schedule established in Local Rule 2.01(D):

Opening brief:	Due 45 days before the hearing
Opposition brief:	Due 25 days before the hearing
Reply brief:	Due 15 days before the hearing

Note that Local Rule 2.01(D) limits the length of each of these briefs to 50 pages instead of the page limits in rule 3.1113 of the California Rules of Court.

The date of the hearing on the merits may be expedited and the briefing schedule shortened upon an application setting forth circumstances warranting an expedited hearing. The application for an expedited hearing may be made orally at a hearing for a temporary stay or alternative writ or on an ex parte basis in accordance with rule 3.1201 through 3.1206 of the California Rules of Court.

**(1) Noticing a hearing on a writ petition**

Step	Action
1.	Contact the assigned writ department to reserve an available date and time for a hearing on the writ petition. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Writ petitions are normally heard on Fridays.
2.	Prepare and file a notice of hearing on the writ petition specifying the reserved hearing date and time. If the assigned writ department uses the tentative ruling system, the notice of hearing must contain tentative ruling language available from the department.
3.	File the notice of hearing either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
4.	Serve a copy of the notice of hearing on respondent(s) and real party(ies) no later than the time allowed for filing and serving the opening brief. If not previously served, the writ petition, the Notice of Assignment, and this Guide should also be served no later than the time for filing and serving the opening brief.

**(2) Securing issuance of an alternative writ**

The alternative writ is an order to show cause that calendars a writ petition for a hearing on the merits. With the exception of an alternative writ of prohibition issued pursuant to CCP § 1104, the alternative writ does not, in and of itself, accomplish a stay or afford any affirmative relief.

Note that, with the alternative writ method, two writs may be issued in the proceeding. First, the alternative writ is issued to set a hearing on the merits of the petition. Second, a peremptory writ may issue after the hearing on the merits.

Step	Action
1.	<p>Prepare an ex parte application for an alternative writ. Specify "Ex Parte" in the title of the application.</p> <p>As provided in rules 3.1201 and 3.1202 of the California Rules of Court and this guide, an ex parte application for an alternative writ includes the following supporting documents and papers:</p> <ul style="list-style-type: none"> <li>▪ Endorsed copy of the petition.</li> <li>▪ Points and authorities and any other supporting documents.</li> <li>▪ Proposed order directing issuance of alternative writ.</li> <li>▪ Proposed alternative writ with blank spaces for the date and time of a hearing on the petition. (Include a signature block for the clerk, not the judge.)</li> </ul> <p>Declaration regarding notice, as specified in rule 3.1204.</p>



2.	<p>Contact the assigned writ department to reserve an available date and time for an ex parte hearing on the application for an alternative writ and to determine whether the department requires the papers listed above in Step 1 to be filed before the hearing.</p> <p>Note that some writ departments hear writ matters only on Fridays. Also note that, absent a showing of good cause or waiver by the respondent(s) and real party(ies), some departments will not issue an alternative writ unless the writ petition and application for the alternative writ have been served on respondent(s) and real party(ies) at least five days before the ex parte hearing. (See CCP § 1088, requiring service of copy of petition in conjunction with application for alternative writ; CCP § 1107, providing a five-day period for respondent(s) and real party(ies) to respond to a writ petition after receiving service of the petition.)</p>
3.	<p>Notify the respondent(s) and real party(ies) of the date and time of the ex parte hearing on the alternative writ pursuant to rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice pursuant to rule 3.1204.</p> <p><b>Note:</b> The court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the hearing, file and serve on all parties the documents and papers as soon as possible and no later than the time of the hearing.</p>

If the court grants the application for an alternative writ, the court signs and files the proposed order directing issuance of the alternative writ that sets the petition for a hearing on the merits. The clerk then issues the proposed alternative writ with the date and time of the hearing and provides it to the petitioner after the petitioner has paid the issuance fee in Room 102. The writ must be served upon respondent(s) and real party(ies) in the same manner as a summons in a civil action unless the court expressly orders otherwise. (See CCP §§ 1073, 1096.) Once served, the writ must be filed with a proof of service.

**Applying for a Continuance:**

After a hearing has been set on a motion or on the merits of a petition, it may be continued only upon approval of the court. If the continuance requires a change in the briefing schedule, such change must also be approved.

Step	Action
1.	<p>Present a telephone request for a continuance of the hearing to the clerk in the assigned writ department, including the reason(s) for the continuance and any necessary changes in the briefing schedule. Present the request as far in advance of the scheduled hearing date as possible.</p> <p>Upon the court's approval, the clerk will provide available dates on the court's calendar to which the hearing may be continued.</p>

2.	<p>Promptly confer with all counsel to agree upon a mutually convenient hearing date from among the dates provided by the clerk and any necessary changes in the briefing schedule.</p> <p>If counsel cannot agree to a continuance, a new hearing date and/or changes in the briefing schedule, the party seeking the continuance may apply for a continuance by noticed motion.</p>
3.	<p>Promptly present to the court a stipulation signed by all parties, including the reason for the continuance, the agreed upon hearing date and any agreed upon changes in the briefing schedule, with a proposed order.</p> <p>Pay the filing fee for the stipulation and order pursuant to subdivision (c) of Government Code section 70617 in Room 102.</p>
4.	<p>When the stipulation and order has been signed and filed by the court, serve the stipulation and order on all parties.</p>

Note that these procedures do not apply when a motion is dropped from the calendar by the moving party. In such circumstances, the moving party must telephonically notify the court and all other parties as far as possible in advance of the date on which the motion is to be heard and send a confirming letter to the court with copies to the other parties.

**Dismissing a Writ Petition:**

Step	Action
1.	<p>Promptly notify the assigned writ department pursuant to rule 3.1385 of the California Rules of Court when a writ proceeding is settled or otherwise disposed of.</p>
2.	<p>File a dismissal of the writ proceeding in the assigned writ department within 45 days after the date of the settlement pursuant to rule 3.1385(b) or after the date specified in the notice of conditional settlement pursuant to rule 3.1385(c).</p>

**Lodging an Administrative Record:**

Step	Action
1.	<p>When securing a date and time for a hearing on the merits of the petition, inform the clerk in the assigned writ department about the size of the administrative record. Determine the department's preferences regarding the format, binding and container for the administrative record.</p>

2.	<p>Lodge the administrative record with the assigned writ department no later than 25 days prior to the hearing on the merits of a writ petition. If the record is not lodged by this time, some assigned writ departments may take the matter off calendar.</p> <p>Consult with the assigned writ department if you wish to lodge the administrative record more than 25 days before the hearing on the merits of a writ petition.</p>
3.	<p>Attach a cover sheet to the administrative record and any boxes containing the record that lists the:</p> <ul style="list-style-type: none"> <li>▪ Case name,</li> <li>▪ Case number,</li> <li>▪ Date and time of the hearing.</li> </ul>

At the hearing on the merits of the petition, the court will mark the administrative record as an exhibit and admit it into evidence. At the conclusion of the proceedings on the petition, the court may return the administrative record to the party who lodged it or destroy it pursuant to CCP § 1952 through 1952.3.

**The Hearing on the Merits:**

All hearings on writ petitions proceed by way of oral argument. If a party wishes to present oral testimony at the hearing, the party must obtain permission pursuant to rule 3.1306 of the California Rules of Court.

If the assigned writ department uses a tentative ruling system and posts a tentative ruling on the court day before the hearing on the writ petition, a party desiring to be heard must contact the clerk and request oral argument by the time designated in the posted tentative ruling. When requesting oral argument, the party must advise the clerk that all other parties have been notified.

**Appearing by Telephone:**

Parties may appear by telephone in accordance with Local Rule 9.10.

**Note** that some assigned writ departments permit telephonic appearances in hearings on motions only on a limited basis and in hearings on the merits of a writ petition only under compelling circumstances.



**Preparing a  
Judgment and  
Peremptory Writ:**

**If the court denies the writ petition,** the party designated by the court shall, pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment denying the petition.

**If the court grants the writ petition:**

<b>Step</b>	<b>Action</b>
1.	The party designated by the court prepares (1) a judgment granting the writ petition and (2) a peremptory writ. The peremptory writ includes a signature block for the clerk, not the judge.
2.	Pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment granting the petition and the peremptory writ. The judgment, when approved, will be signed by the court. The clerk will issue the peremptory writ and provide it to the petitioner for service upon respondent(s) and real party(ies) after the petitioner pays the issuance fee in Room 102.
3.	Serve a copy of both the judgment granting the writ petition and the peremptory writ on the respondent(s) and real party(ies). The writ must be served in the same manner as summons in a civil action. (CCP §§ 1073, 1097.)
4.	Return the original peremptory writ with a proof of service to the assigned writ department for filing.
5.	Prepare, serve, and file in the assigned writ department a notice of entry of judgment pursuant to CCP § 664.5(a).