

1 Jason R. Flanders (SBN 238007)
AQUA TERRA AERIS LAW GROUP
2 409 45th Street
Oakland, CA 94609
3 Phone: 916-202-3018
4 Email: jrf@atalawgroup.com

5 Michael B. Jackson (SBN 53808)
P.O. Box 207
6 75 Court Street
Quincy, CA 95971
7 Phone: 530-283-1007
8 Email: mjatty@sbcglobal.net

9 *Attorneys for Petitioners and Plaintiffs AquAlliance and*
10 *California Sportfishing Protection Alliance*

11 Patrick M. Soluri (SBN 210036)
Osha R. Meserve (SBN 2014240)
12 SOLURI MESERVE, A LAW CORPORATION
1010 F Street, Suite 100
13 Sacramento, CA 95814
Phone: (916) 455-7300
14 Email: patrick@semlawyers.com; osha@semlawyers.com

15 *Attorneys for Petitioners and Plaintiffs Local Agencies of the North Delta,*
16 *Central Delta Water Agency, South Delta Water Agency*

17 **IN THE UNITED STATES DISTRICT COURT FOR THE**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 AQUALLIANCE; CALIFORNIA
SPORTFISHING PROTECTION
20 ALLIANCE; CENTRAL DELTA WATER
AGENCY; SOUTH DELTA WATER
21 AGENCY; LOCAL AGENCIES OF THE
22 NORTH DELTA,

23 Petitioners and Plaintiffs,

24 v.

25 The UNITED STATES BUREAU OF
RECLAMATION; SAN LUIS & DELTA-
26 MENDOTA WATER AUTHORITY; SALLY
JEWELL, in her official capacity; and DOES 1
27 – 100,

28 Respondents and Defendants.

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

(National Environmental Policy Act, 42 U.S.C.
§ 4321 *et seq.*; Administrative Procedure Act, 5
U.S.C. §§ 701 *et seq.*; Central Valley Project
Improvement Act, Public Law 102- 575;
California Environmental Quality Act, Cal.
Pub. Resources Code §§ 21167, 21168,
21168.5; Cal. Code Civ. Proc. §§ 1060, 1085,
1088.5, 1094.5)

1 Petitioners and Plaintiffs AquAlliance, California Sportfishing Protection Alliance, Local
2 Agencies of the North Delta, Central Delta Water Agency and South Delta Water Agency
3 (collectively, “Plaintiffs” or “Petitioners”) hereby allege as follows:

4 **I. INTRODUCTION**

5 1. This is a civil suit brought pursuant to the National Environmental Policy Act
6 (“NEPA”), 42 U.S.C. §§ 4321 et seq., the Administrative Procedure Act (“APA”), 5 U.S.C. §§
7 701 et seq., the Central Valley Project Improvement Act (“CVPIA”), Public Law 102 - 575, and
8 the California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000 et seq.

9 2. This action is brought by several California water resource management and
10 conservation organizations to challenge defendants’ environmental review and approval of a 10-
11 year water transfer program to move water from sellers located upstream of the Sacramento/San
12 Joaquin Delta (“Delta”) to willing buyers south of the Delta (the “Project”). A 19th Century
13 solution that flies in the face of modern 21st Century understanding of water as a limited natural
14 resource, these water transfers would drain both surface and groundwater resources from the
15 Sacramento River and San Joaquin River watersheds, imposing significant and irreversible threats
16 to the people and sensitive species that rely on these water resources and associated aquatic and
17 riparian habitats.

18 3. The Project will likely have devastating impacts to the Delta. The Delta faces
19 interrelated problems of inadequate water supplies, instream flow deficits, water quality
20 impairments, and degraded aquatic habitats. This Project would worsen those existing problems
21 because of the inadequate water accounting that is proposed would allow more water to be
22 diverted out of the estuary than is allegedly being put into the system by Defendant/Respondent
23 United States Bureau of Reclamation (“USBR”) for transfer. As a result, less water will flow into
24 the Delta than is assumed by USBR and the San Luis Delta Mendota Water Agency in the
25 environmental and other documents prepared for the Project, further reducing freshwater flows
26 and increasing the already deleterious effects of the diversions in the south Delta operated by the
27 state and federal water projects.

28

1 4. Many of the groundwater aquifers that previously supported ecosystem processes
2 across the Bay Delta watershed, including the Sacramento Valley, that provided water users with
3 a hedge against drought have been overdrawn and depleted to historic levels. The extreme
4 drought of the past three years has produced precipitous declines in groundwater elevations
5 statewide, including level decreases of more than 42 feet for some monitored wells in the Project
6 area. Land subsidence associated with groundwater overdraft not only impacts infrastructure,
7 water quality, and ecosystems, but also permanently reduces the State's capacity to store water
8 underground. Water transfers would worsen each of these conditions.

9 5. The environmental impacts of the Project were purportedly assessed in an
10 "Environmental Impact Statement/Environmental Impact Report" ("EIS/EIR") prepared pursuant
11 to both NEPA and CEQA, but which is so riddled with impermissibly narrow project goals,
12 flawed assumptions, reliance on outdated and inapplicable methodologies, and cursory treatment
13 of reasonable alternatives as to render the EIS/EIR fatally defective as an information document
14 under either statute. As a result, the public remains very much in the dark about the potentially
15 devastating environmental impacts associated with the water transfers authorized by the Project
16 and the viability of more modern alternatives to addressing current drought conditions.

17 **II. JURISDICTION AND VENUE**

18 6. This Court has jurisdiction pursuant to 28 U.S.C § 1331 (federal question), 28
19 U.S.C § 1346 (United States as defendant), 28 U.S.C § 2201 (declaratory relief), 28 U.S.C § 2202
20 (injunctive relief), and the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

21 7. This Court has supplemental jurisdiction over state law claims pursuant to 28
22 U.S.C. § 1367(a) because the state law claims are related to the federal law claims and form part
23 of the same case or controversy. Such state law claims include a claim under the California
24 Environmental Quality Act, Public Resources Code §§ 21000 et seq., and California Code of
25 Civil Procedure §§ 1060, 1085, 1088.5, and 1094.5.

26 8. Venue is appropriate in the Eastern District of California pursuant to 28 U.S.C. §
27 1391(e) because defendant U.S. BUREAU OF RECLAMATION is located in Sacramento
28

1 County, and a substantial part of the events or omissions giving rise to the claims alleged in this
2 Complaint occurred and will continue to occur in this judicial district.

3 9. This complaint is timely filed within any and all applicable statutes of limitations.

4 **III. INTRADISTRICT ASSIGNMENT**

5 10. Pursuant to Local Rule 120(d), intradistrict assignment of this matter to the
6 Sacramento, Redding, or Fresno Divisions of the Court would be appropriate in that the events or
7 omissions which give rise to Plaintiffs' claims occurred, are occurring, and/or will occur in Butte,
8 Colusa, Fresno, Glenn, Kings, Merced, Placer, Sacramento, San Benito, San Joaquin, Santa Clara,
9 Shasta, Stanislaus, Sutter, Tehama, Yolo, and Yuba Counties.

10 **IV. PARTIES**

11 11. Petitioner and Plaintiff AQUALLIANCE is a California Public Benefit Corporation
12 organized to protect waters in the northern Sacramento River's watershed to sustain family farms,
13 communities, creeks and rivers, native flora and fauna, vernal pools, and recreation. AquAlliance
14 has approximately 320 members who rely on Sacramento Valley groundwater for their
15 livelihoods and live, recreate and work in and around waters of the State of California, including
16 the Sacramento River, its tributaries, and the Sacramento-San Joaquin River Delta ("Delta").
17 AquAlliance's mission is to defend northern California waters and to challenge threats to the
18 hydrologic health of the Sacramento River watershed. AquAlliance is especially focused on
19 confronting the escalating attempts to divert more and more water from the northern Sacramento
20 River hydrologic region to other parts of California.

21 12. Petitioner and Plaintiff CALIFORNIA SPORTFISHING PROTECTION
22 ALLIANCE ("CSPA"), which is a non-profit public benefit corporation organized under the laws
23 of the State of California with its main office in Stockton, California. CSPA has approximately
24 2000 members who live, recreate and work in and around waters of the State of California,
25 including the Sacramento River, San Joaquin River, the Delta, Suisun Bay and San Pablo Bay.
26 CSPA is dedicated to the preservation, protection, and defense of the environment, the wildlife
27 and the natural resources of all waters of California. To further these goals, CSPA actively seeks
28 federal and state agency implementation of the Act and other laws and, where necessary, directly

1 initiates enforcement actions on behalf of itself and its members. CSPA has been actively
2 engaged in proceedings relating to the environmental impact of the SWP as well as the federal
3 Central Valley Project.

4 13. Petitioner and Plaintiff CENTRAL DELTA WATER AGENCY (“CDWA”) is a
5 political subdivision of the State of California created by the California Legislature under the
6 Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix,
7 117-1.1, et seq.), by the provisions of which CDWA came into existence in January of 1974.
8 CDWA’s boundaries are specified in Water Code Appendix section 117-9.1 and encompass
9 approximately 120,000 acres, which are located entirely within both the western portion of San
10 Joaquin County and the “Sacramento-San Joaquin Delta” as defined in California Water Code
11 section 12220. While the lands within the agency are primarily devoted to agriculture, said lands
12 are also devoted to numerous other uses including recreational, wildlife habitat, open space,
13 residential, commercial, and institutional uses. CDWA is empowered to “sue and be sued” and to
14 take all reasonable and lawful actions, including to pursue legislative and legal action, that have
15 for their general purpose either: (1) to protect the water supply of the lands within the agency
16 against intrusion of ocean salinity; and (2) to assure the lands within the agency a dependable
17 supply of water of suitable quality sufficient to meet present and future needs. The agency may
18 also undertake activities to assist landowners and local districts within the agency in reclamation
19 and flood control matters. *See* Wat. Code, Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and
20 (b), respectively. CDWA may assist landowners, districts, and water right holders within its
21 boundaries in the protection of vested water rights and may represent the interests of those parties
22 in water right proceedings and related proceedings before courts of both the state of California
23 and the United States to carry out the purposes of the agency. *See* Wat. Code, Appendix, 117-4.2,
24 subd. (b). Operation of the Central Valley Project (“CVP”) and the State Water Project (“SWP”)
25 adversely affect flows, circulation, levels, and quality of water in the channels within the
26 boundaries of the CDWA to the detriment of agricultural and other beneficial water users. By
27 statute, regulation and permit, the USBR and the California Department of Water Resources
28 (“DWR”) are supposed to fully mitigate their impacts on such other uses as well as maintain

1 various water quality standards intended to protect the Delta estuary and in-Delta users. The CVP
2 and SWP fail to meet these obligations on a regular basis, and the proposed Project may
3 exacerbate DWR and USBR's continued failure to meet their obligations, resulting in further
4 impaired water flow, circulation, levels, and quality of water.

5 14. Petitioner and Plaintiff SOUTH DELTA WATER AGENCY ("SDWA") is a
6 political subdivision of the State of California created by the California Legislature under the
7 South Delta Water Agency Act, chapter 1089 of the statutes of 1973 (Wat. Code, Appendix, 116-
8 1.1, et seq.), by the provisions of which SDWA came into existence in January of 1974. SDWA's
9 boundaries are specified in Water Code Appendix section 116-9.1 and encompass approximately
10 148,000 acres which are located entirely within both the south-western portion of San Joaquin
11 County and the "Sacramento-San Joaquin Delta" as defined in California Water Code section
12 12220. While the lands within the agency are primarily devoted to agriculture, said lands are also
13 devoted to numerous other uses including recreational, wildlife habitat, open space, residential,
14 commercial, municipal and institutional uses. SDWA is empowered to "sue and be sued" and to
15 take all reasonable and lawful actions, including to pursue legislative and legal actions, that have
16 for their general purpose either: (1) to protect the water supply of the lands within the agency
17 against intrusions of ocean salinity; and/or (2) to assure the lands within the agency a dependable
18 supply of water of suitable quality sufficient to meet present and future needs. The agency may
19 also undertake activities to assist landowners and local districts within the agency in reclamation
20 and flood control matters. *See* Wat. Code, Appendix, 116-4.2, subd. (b) & 116-4.1, subds. (a) and
21 (b), respectively. SDWA may assist landowners, districts, and water right holders within its
22 boundaries in the protection of vested water rights and may represent the interests of those parties
23 in water right proceedings and related proceedings before courts of both the state of California
24 and the United States to carry out the purposes of the agency. *See* Wat. Code, Appendix, 116-4.2
25 subd. (b). Operation of the CVP and the SWP adversely affect flows, circulation, levels, and
26 quality of water in the channels within the boundaries of the SDWA to the detriment of
27 agricultural and other beneficial water users. By statute, regulation and permit, the USBR and
28 DWR are supposed to fully mitigate their impacts on such other uses as well as maintain various

1 water quality standards intended to protect the Delta estuary and in-Delta users. The CVP and
2 SWP fail to meet these obligations on a regular basis, and the proposed Project may exacerbate
3 DWR and USBR's continued failure to meet their obligations, resulting in further impaired water
4 flow, circulation, levels, and quality of water.

5 15. Petitioner and Plaintiff LOCAL AGENCIES OF THE NORTH DELTA
6 ("LAND"), an unincorporated association, is a coalition comprised of reclamation, water and
7 levee districts ("districts") in an approximately 120,000 acre area of the northern geographic area
8 of the Delta. Current LAND participants include Reclamation Districts 3, 150, 307, 317, 349,
9 407, 501, 551, 554, 556, 755, 813, 999, 1002, 2001, 2067 and the Brannan-Andrus Levee
10 Maintenance District. Some of these agencies provide both water delivery and drainage services,
11 while others only provide drainage services. These districts also assist in the maintenance of the
12 levees that provide flood protection to Delta communities, homes and farms. LAND member
13 agency interests, as well as the interests of local landowners within the individual districts, will be
14 directly and indirectly adversely impacted by the Project through negative impacts to water flows,
15 circulation, levels, and quality of water in the channels within the boundaries of LAND member
16 agencies.

17 16. Respondent and Defendant U.S. BUREAU OF RECLAMATION ("USBR") is a
18 subdivision of the Department of the Interior, an agency of the United States of America, and is
19 the Project's lead agency under the National Environmental Policy Act, 28 U.S.C. section 4321 et
20 seq. ("NEPA").

21 17. Respondent and Defendant SAN LUIS & DELTA-MENDOTA WATER
22 AUTHORITY ("SLDMWA") is a joint powers agency established under California law, and
23 consists of water agencies representing federal and exchange water service contractors within the
24 western San Joaquin Valley, San Benito and Santa Clara counties in the State of California.
25 SLMDWA is the Project's lead agency under CEQA.

26 18. Defendant Sally Jewell is the Secretary of the United States Department of Interior.
27 Plaintiffs name Secretary Jewell in this action in her official capacity, for her actions or failures to
28 act in an official capacity, or under color of legal authority. Secretary Jewell is responsible for

1 ensuring that the Department of Interior’s actions comply with its obligations and with the
2 Administrative Procedure Act and the Central Valley Project Improvement Act (“CVPIA”).

3 19. The true names and capacities, whether individual, corporate, associate,
4 coconspirator, partner or alter-ego of those Defendants and Respondents sued herein under the
5 fictitious names of DOES 1 through 100, inclusive, are not known to Plaintiffs, who therefore sue
6 those Defendants and Respondents by such fictitious names. Plaintiffs will ask leave of court to
7 amend this Complaint and insert the true names and capacities of these defendants and
8 respondents when the same have been ascertained. Plaintiffs are informed and believe and on
9 that basis allege, that each of the Defendants and Respondents designated herein as a DOE
10 defendant and respondent is legally responsible in some manner for the events and happenings
11 alleged in this Complaint, and that Plaintiffs’ alleged injuries were proximately caused by the
12 defendants’ conduct.

13 **V. FACTUAL AND PROCEDURAL BACKGROUND**

14 The Project

15 20. On December 28, 2010, USBR published a “Notice of Intent” in the Federal
16 Register and on January 5, 2011, a “Notice of Preparation” for Long-Term Water Transfers was
17 published with the California State Clearinghouse. On September 30, 2014, the USBR and
18 SLDMWA released for public and agency review and comment, their “Long-Term Water
19 Transfers” Draft EIS/EIR. The Lead Agencies accepted public comment on the Draft EIS/EIR
20 through December 1, 2014. A Final EIS/EIR was released March 20, 2015. SLDMWA approved
21 the Project, certified the EIR, and filed a Notice of Determination on April 9, 2015. USBR signed
22 its Record of Decision May 1, 2015.

23 21. The Project purports to “evaluate[] the potential impacts of alternatives to help
24 address Central Valley Project (CVP) water supply shortages.” In reality, however, the EIS/EIR
25 merely provides a programmatic-level analysis of potential future water transfers between entitles
26 north of the Sacramento-San Joaquin Delta to CVP contractors south and west of the Delta and
27 one other buyer west of the Delta, over a ten-year period.

28

1 22. As described by the EIS/EIR, “A water transfer involves an agreement between a
2 willing seller and a willing buyer, and available infrastructure capacity to convey water between
3 the two parties. To make water available for transfer, the willing seller must take an action to
4 reduce the consumptive use of water (such as idle cropland or pump groundwater in lieu of using
5 surface water) or release additional water from reservoir storage.”

6 23. However, no specific water transfers are applied for or approved by the Project.
7 Instead, the Lead Agencies attempt to evaluate a number of hypothetical future scenarios in an
8 attempt to obviate necessary project-level environmental review for future water transfer projects
9 once defined.

10 24. As a result, the timing, quantity, location, method, destination, and purpose, among
11 other things, of any water transfer under the Project, is not and cannot be known at this time.
12 Accordingly, the EIS/EIR does not and cannot meaningfully evaluate the environmental changes
13 caused by any specific water transfer, or numerous transfers in conjunction.

14 25. Potential buyers under the Project include SLDMWA participating members:
15 Byron-Bethany Irrigation District, Del Puerto Water District, Eagle Field Water District, Mercy
16 Springs Water District, Pacheco Water District, Panoche Water District, San Benito County
17 Water District, San Luis Water District, Santa Clara Valley Water District, and Westlands Water
18 District; potential buyers who are not SLDMWA member districts include the Contra Costa
19 Water District and the East Bay Municipal Utility District.

20 26. Potential sellers under the Project include: Anderson-Cottonwood Irrigation
21 District, Conway Preservation Group, Cranmore Farms, Eastside Mutual Water Company, Glenn-
22 Colusa Irrigation District, Natomas Central Mutual Water Company, Pelger Mutual Water
23 Company, Pleasant Grove-Verona Mutual Water Company, Reclamation District 108,
24 Reclamation District 1004, River Garden Farms, Sycamore Mutual Water Company, Te Velde
25 Revocable Family Trust, City of Sacramento, Placer County Water Agency, Sacramento County
26 Water Agency, Sacramento Suburban Water District, Browns Valley Irrigation District, Cordua
27 Irrigation District, Butte Water District, Garden Highway Mutual Water Company, Gilsizer
28

1 Slough Ranch, Goose Club Farms and Teichert Aggregates, South Sutter Water District, Tule
2 Basin Farms, Merced Irrigation District, Reclamation District 2068, and Pope Ranch.

3 27. The USBR facilitates additional transfers between additional buyers and sellers,
4 which were excluded from review in the EIS/EIR.

5 28. Two linked water diversion systems have been constructed to move water from
6 northern California to the San Joaquin Valley and southern California – the State Water Project
7 (“SWP”) and the federal Central Valley Project (“CVP”). The federal CVP stretches from the
8 Cascade Mountains near Redding south to the Tehachapis near Bakersfield, including twenty
9 dams and reservoirs, along with numerous canals and pumping facilities.

10 29. The SWP is California’s water diversion system to reroute water from northern
11 California and San Francisco Bay south to the San Joaquin Valley and southern California. The
12 SWP includes 34 storage facilities, reservoirs and lakes, 20 pumping plants, and about 701 miles
13 of open canals and pipelines.

14 30. USBR must approve all CVP transfers. The California State Water Resources
15 Control Board (“SWRCB”) must approve water transfers involving post-1914 water rights, as
16 well as transfers of CVP water outside the CVP place of use. The California Department of
17 Water Resources (“DWR”) must approve transfers in the SWP, among other transfers.

18 Water Supply Impacts

19 31. The Draft EIS/EIR relies on the results of the SACFEM2013 groundwater
20 modeling to evaluate impacts to groundwater, users of groundwater from the same aquifer, and
21 impacts to stream flow connected to impacted aquifers. The SACFEM2013 groundwater
22 substitution transfer pumping simulation was run from water year (WY) 1970 to WY 2003 and
23 assumed 12 periods of groundwater substitution transfer at various annual transfer volumes.

24 32. The apparent baseline for analysis of groundwater pumping impacts ends with WY
25 2003 because of limitations of the CalSim II surface water operations model. The EIS/EIR uses
26 the CalSim II model to simulate operations of the CVP and SWP reservoirs and water delivery
27 systems.

28

1 33. The SACFEM2013 groundwater impact simulation inadequately predicts potential
2 impacts from each seller's groundwater substitution transfer project, and provides an insufficient
3 basis for setting impact thresholds for the groundwater monitoring required in mitigation measure
4 GW-1.

5 34. Several of the model designs and parameters selected likely influenced the model's
6 ability to predict future impacts from any groundwater substitution transfer projects within the 10-
7 year Water Transfer Program. Those include: the time period of the model, the assumptions
8 about the amount and frequency of groundwater substitution pumping, the model's nodal spacing,
9 estimates of aquifer properties, the number of streams simulated, streambed parameters, and
10 specified-flux boundaries.

11 35. Impacts to groundwater from pumping occur when a well creates a depression in
12 the surrounding aquifer, often referred to as a "cone of depression." This area of impact around a
13 pumping well is not a single point, but a region whose extent is sometimes called the "zone of
14 influence."

15 36. Stream depletion can occur when groundwater otherwise connected to a stream is
16 intercepted before reaching the stream, or when seepage from the stream is increased due to
17 groundwater depression. Thus, any monitoring of the effects of groundwater substitution
18 pumping on surface or ground water levels, rates, and areas of stream depletion, fisheries,
19 vegetation and wildlife impacts, and other critical structures, must cover an area much wider than
20 the point of any direct well water diversion. The EIS/EIR analyses, monitoring requirements and
21 mitigation measures fail to adequately consider these multidirectional and wide extent of potential
22 impacts from groundwater substitution transfer pumping.

23 37. Maps showing groundwater elevation, depth and changes in elevation are important
24 for documenting baseline groundwater conditions. Such maps were not included in the Draft
25 EIS/EIR. The Final EIS/EIR included some new information in this regard. The timing of
26 release of this new information precluded meaningful public review, and the maps still failed to
27 provide sufficient detail to analyze the full extent of all groundwater pumping impacts from the
28 Project.

1 38. The Final EIS/EIR added significant new information showing dry groundwater
2 wells and overdraft conditions in the Project area, but did not recirculate this new information for
3 public review. No information is provided describing how Project groundwater substitution
4 would avoid these depleted groundwater aquifers. Instead, the EIS/EIR relies on future wet years
5 to replenish these areas, as well as areas of significant groundwater substitution under the Project.

6 39. The EIS/EIR proposes mitigation measure WS-1 to mitigate potential impacts to
7 CVP and SWP water supplies from stream depletion caused by groundwater substitution transfer
8 pumping. WS-1 requires that a portion of transfer water be held back to offset streamflow
9 depletion caused by groundwater substitution pumping, but fails to include enforceable criteria to
10 ensure that any such mitigation measure could be effective. First, it is not clear that any transfer
11 release and the groundwater substitution pumping would simultaneously occur, in real time.
12 Specifically, if groundwater pumping causes streamflow depletion at any time other than exactly
13 when the transfer is made, then the transfer deduction amount will not avoid streamflow
14 drawdown.

15 40. Furthermore, the EIS/EIR fails to include sufficient information to determine
16 whether the applicable “streamflow depletion factor” to be applied to any single transfer project
17 will mitigate significant impacts, instead deferring development of the specific measures to future
18 agency review based on unknown future monitoring data and conditions, and without clear
19 performance standards.

20 41. The EIS/EIR proposes mitigation measure GW-1 to reduce or avoid significant
21 groundwater impacts including legal injury to adjoining groundwater users, and to reduce or
22 avoid land subsidence caused by groundwater substitution pumping. As initially proposed, GW-1
23 was so wholly deficient as to render any public evaluation of its efficacy impossible. The Final
24 EIS/EIR added several new components to GW-1 to attempt to correct these deficiencies, but this
25 significant new information was not recirculated for additional public review and comment.

26 42. The Final EIS/EIR asserts for the first time that for mitigation measure GW-1,
27 “[t]he primary triggers used to establish impacts to groundwater levels are the Basin Management
28 Objectives (BMOs) set by Groundwater Management Plans (GMPs).” Yet the Draft EIS/EIR

1 failed to indicate what “triggers” would be used to determine whether mitigation monitoring
2 would reveal a significant impact requiring actual mitigation. Without this information in the
3 Draft EIS/EIR, decisionmakers and the public have no way of knowing what actual changes to
4 groundwater levels the Project would or could cause.

5 43. Due to their inadequacies the BMOs and GMPs don’t actually reduce or avoid
6 potentially significant impacts to groundwater, nor establish at what level(s) the EIS/EIR would
7 consider groundwater impacts to be significant. As the EIS/EIR notes, not all GMPs actually
8 have BMOs, in which case the EIS/EIR relies on the future formulation of performance standards
9 for mitigation measure GW-1. Moreover, the GMPs and BMOs that are in place vary
10 considerably, and do not uniformly protect other existing groundwater users, nor avoid land
11 subsidence.

12 44. One guiding criterion in GW-1 for whether groundwater pumping may be causing a
13 significant impact will be complaints from third parties, which is not a performance standard at
14 all. Even where such complaints are registered – and how third parties will be apprised of the
15 opportunity to do so is not stated – the revised mitigation measure only commits the Agencies and
16 the seller to “consider” more monitoring. The EIS/EIR provides no clear articulation of when
17 monitoring will occur, leaving it within the agencies’ unfettered discretion.

18 45. Where monitoring reveals groundwater substitution pumping to have caused or
19 contributed to groundwater overdraft, the EIS/EIR simply proposes waiting for natural recharge
20 to occur as its primary mitigation measure.

21 46. The EIS/EIR’s mitigation measures targeted towards lands subsidence are similarly
22 flawed. As presented in the Draft EIS/EIR, monitoring will only occur in “strategic (determined
23 by Reclamation) locations.” This gives the public no idea where this mitigation measure will
24 begin to occur, nor any idea what standards USBR and SLDMWA will employ to ensure that
25 monitoring will occur in areas vulnerable to subsidence. Even more troubling, however, is the
26 fact that where initial monitoring shows some decrease in surface elevation is occurring, GW-1
27 only requires more monitoring. Indeed, GW-1 repeatedly provides that monitoring will be used
28 to determine whether significant effects are occurring, although lacking technical detail on

1 exactly how. Implementation of a mitigation measure, however, cannot be delayed until after the
2 project has commenced and the impact has occurred.

3 47. Only after determining that significant effects have occurred, does GW-1 require
4 the seller to develop a “mitigation plan.” But the EIS/EIR provides no performance standards for
5 what this mitigation plan would include, and provides no explanation as to why its development
6 should be deferred.

7 48. The Final EIS/EIR adds significant new mitigation measures to attempt to reduce
8 or avoid impacts from subsidence; however, even these revised measures are inadequate. As with
9 the changes to GW-1 discussed above, these new mitigation measures are so extensive as to
10 demonstrate that any proposed mitigation measure in the Draft EIS/EIR was so wholly
11 insufficient as to render meaningful public review impossible. As such, recirculation for public
12 review of the newly-proposed subsidence mitigation measures was necessary. Indeed, the newly-
13 proposed subsidence mitigation measures themselves appear to be inadequate, and public and
14 agency review and comment is therefore needed to properly apprise the public of the Project’s
15 likely significant impacts, and to solicit further comment on how they might be improved.

16 49. By its own terms, the EIS/EIR indicates that impacts from subsidence may be
17 significant, unavoidable, and irreversible. The EIS/EIR states that “[s]ubsidence can be
18 irreversible if the reduced effective stress is lower than the historically low effective stress.
19 Typically this would be the result of groundwater levels reaching levels lower than the historical
20 low level.” But the Project does not prohibit groundwater pumping from drawing groundwater
21 levels to below historic lows. Rather, the EIS/EIR requires projects likely to bring groundwater
22 to historic lows, and projects whose monitoring indicates that groundwater levels have already
23 reached or exceeded historic lows, to engage in surface elevation monitoring. Only after
24 monitoring confirms that a threshold of 0.2 foot of ground surface elevation change is exceeded,
25 the seller shall cease groundwater substitution pumping, and only then temporarily based on
26 additional studies the EIS/EIR permits. At this point, however, significant adverse and
27 irreversible effects related to subsidence may have occurred, as the groundwater pumping will
28 already have proceeded well beyond historic lows, and the confirmed changes to surface

1 elevations will already have exceed the Final EIS/EIR’s newly proposed threshold of 0.2 feet
2 change in surface elevation.

3 50. Further compounding the inadequacy of Mitigation measure GW-1, it then allows
4 pumping to resume if the seller “completes an investigation of local infrastructure that could be
5 affected by subsidence (such as water delivery infrastructure, water supply facilities, flood
6 protection facilities, highways, etc.) indicating the local threshold of subsidence that could be
7 experience before these facilities would be adversely affected.” But this is exactly the evaluation
8 that should be contained in the EIS/EIR now, and no criteria or standards are provided in the
9 EIS/EIR revealing how and whether USBR would allow groundwater pumping to resume in this
10 situation.

11 51. The EIS/EIR further impermissibly defers the formulation of mitigation measures
12 to after such time as subsidence impacts have occurred, requiring, with no performance standards
13 or assurances of feasibility whatsoever, that “significant adverse subsidence effects caused by
14 transfer pumping activities must be addressed. A contingency plan must be developed in the
15 event that a need for further corrective action is necessary. The contingency plan must be
16 approved by Reclamation before transfer-related pumping could continue”

17 Biological Impacts

18 52. Water transfers from north of the Delta to south of the Delta would impact flows
19 and habitat within the Delta.

20 53. The Delta provides essential habitat, much of which is formally designated as
21 critical habitat, for numerous fish species. A significant number of fish species that rely upon the
22 delta for habitat are threatened with extinction. The main threat to fish habitat and the ecological
23 integrity of the Delta is the diversion of large quantities of water out of the Delta for irrigation
24 and municipal water supplies.

25 54. Fish, especially small fish such as the Delta smelt, are drawn through the Delta
26 toward the massive CVP and SWP pumps. The so-called “fish collection facilities” at the CVP
27 and SWP pumps do not prevent massive fish kills at the pumps, and the pumps also routinely
28 draw fish into areas of the Delta where temperatures and/or predators prove lethal.

1 55. Because of the massive quantities of water diverted from the Sacramento River, the
2 San Joaquin River, and the Delta, increases in water salinity in Suisun Bay, as well as within the
3 Delta, have been a serious problem, not only to fish and other aquatic life, but also to municipal,
4 agricultural, and industrial water users.

5 56. Two related standards have been developed to describe the salinity of the Bay-
6 Delta. The first standard is the Low Salinity Zone (“LSZ”). The LSZ is the transition point
7 between the freshwater flowing west from the Sacramento and San Joaquin Rivers and their
8 tributaries and the brackish, estuarine water flowing eastward on the tide from San Francisco Bay
9 and the Pacific Ocean. Salinity levels within the LSZ range from 0.5 parts per thousand to six
10 parts per thousand. The second salinity standard is known as the “X2,” “X” referring to distance
11 and “2” referring to the concentration of salt in the water. X2 represents the point in the Bay-
12 Delta at which the salinity is less than two parts per thousand (“ppt”). X2 is expressed as the
13 distance in kilometers east of the Golden Gate Bridge where salinity levels are 2 ppt. The X2
14 tends to be located towards the middle of the LSZ. The location of the X2 and the LSZ depends
15 upon how much water is flowing into the Delta and how much is being exported at the Federal
16 and state pumping facilities. The regulatory agencies use X2 as a marker for the LSZ as well as a
17 habitat indicator for fish and as a regulatory standard.

18 57. Water flow and water quality in the Delta are managed by the USBR and DWR
19 pursuant to a number of regulatory decisions, including the Delta Water Quality Control Plan,
20 two federal Endangered Species Act biological opinions (one from the National Marine Fisheries
21 Service for salmon, steelhead, and sturgeon; the other from the U.S. Fish and Wildlife Service for
22 Delta smelt), and a State Endangered Species Act Incidental Take Permit (“ITP”) for state listed
23 salmon, steelhead, and smelt (Longfin and Delta smelt).

24 58. These regulatory decisions are implemented through State Water Resources
25 Control Board (“SWRCB”) Order D-1641. Order D-1641 regulates a number of Delta flow and
26 water quality standards, including inflow, minimum Delta outflow, maximum exports through the
27 pumps, the location of the X2, and the maximum ratio of exports to inflow.

28

1 59. In regard to the minimum Delta outflow to Suisun Bay, D-1641 requires that,
2 during “critical water years”, the Net Delta Outflow Index be no less than a monthly average of
3 4,000 cubic feet per second (“cfs”) during July and no less than a monthly average of 3,000 cfs
4 during August and September. The SWRCB has deemed the current 2014 water year a critical
5 water year. Order D-1641 provides that “ $NDOI = \text{Delta Inflow} - \text{Net Delta Consumptive Use} -$
6 Delta Exports .” (Order D-1641, p. 190, Figure 3.) Each of these flow values is calculated from a
7 number of more specific values, some of which are direct measurements of flow, and others of
8 which are estimates.

9 60. In regard to salinity, Order D-1641 relies on an electrical conductivity standard as a
10 measure of the salinity level. Order D-1641 requires that, from April 1 through August 15 in a
11 critical water year, electrical conductivity in the Sacramento River at a monitoring point located
12 at Emmaton, California not exceed 2.78 EC.

13 61. In regard to Delta inflow and maximum exports, D-1641 provides that maximum
14 exports from July through January not exceed 65 percent of Delta inflow. Delta inflow is
15 determined based on combining flows into the Delta from the Sacramento River, the San Joaquin
16 River, the Sacramento Regional Treatment Plant, the Yolo Bypass, Mokelumne River, Cosumnes
17 River, Calaveras River and a number of other smaller sloughs and creeks that flow directly into
18 the Delta.

19 62. Pursuant to Temporary Urgency Change Petitions, the SWRCB has allowed
20 repeated violations of D-1641 outflow and salinity requirements in 2014 and 2015. The effect of
21 these changes is to cause the LSZ, normally located around the salinity compliance location at
22 Emmaton, to move about three miles farther east and upstream than it would have been without
23 the relaxation in standards. Thus, the LSZ ends up being closer to the CVP and SWP pumps and
24 in the interior of the Delta and where the lower outflow will cause higher water temperatures in
25 the summer. The violations in 2014 operations failed to maintain temperature control, which led
26 to the loss of ~95% of the 2014 winter-run cohort and the loss of virtually all of the 2014 spring-
27 run cohort (of fish that spawn in the Sacramento River).

28

1 63. When water quality standards for inflow, outflow, and salinity are relaxed and/or
2 exceeded, the process is further aggravated. Adding transfers during such drought conditions
3 when emergency barriers across certain waterways are in place, the DCC gates are open, low
4 inflows are occurring, and there are low outflows, further worsens conditions for fish and other
5 aquatic life.

6 64. The water to be transferred is released from multi-year storage, thus also limiting
7 the amount of carry-over storage in the coming years that is needed to sustain fish and their
8 habitat, as well as water supplies for public health and safety.

9 65. Transfer water is released from reservoirs in summer; during drought years there
10 may be limited cold-water pool to sustain downstream fish populations through the summer and
11 fall. But transfer water exported from the Delta is not the same water released from the
12 reservoirs. Water exported is a combination of Sacramento River inflow, San Joaquin River
13 inflow, and Delta low-salinity (brackish) water from the North, Central, and West Delta.
14 Sacramento River inflow includes flows from the Feather, Yuba, and American rivers, as well as
15 many smaller rivers and streams.

16 66. There are also no restrictions in moving transfer water through the Delta (other than
17 ill-defined and variable carriage water), and transfer water can make up 25% or more of Delta
18 inflow.

19 67. Transfer water exported thus takes water with fish from many Central Valley
20 habitats. Most prominently is the taking of Delta Smelt from the brackish and freshwater zones
21 of the North, Central, and West Delta. Transfer water essentially must pass through the Delta's
22 designated critical habitats to get to the South Delta export facilities

23 68. Delta Smelt are highly vulnerable in the summer of drought years because the
24 entire population is within the Delta, where water temperatures are near or above lethal levels.

25 69. The EIS/EIR admits that the Project could reduce Delta outflow, but concludes that
26 this effect will have a less-than-significant effect on threatened and endangered fish species,
27 relying on the biological opinions now in place for protection of these species. Recent data,
28

1 however, clearly demonstrates that these protections are wholly inadequate to avoid the demise of
2 delta fish species.

3 70. In addition to Delta impacts, groundwater substitution pumping under the Project
4 will significantly and adversely impact stream and riparian wildlife and habitat. The EIS/EIR
5 notes likely impacts such as significant portions of existing streams losing flows to groundwater
6 depletion, but concludes these impacts to be less than significant without reliance on substantial
7 evidence, without complete analysis, including on the ground conditions.

8 71. In addition, groundwater substitution transfers can create time delays between
9 additional groundwater pumping and potential impacts on stream systems. These delays may
10 have significant impacts on timing and availability of surface flow to resident and anadromous
11 fish species, special status species, and other fish and wildlife resources in the entire Project area.

12 72. The Project's further impacts to giant garter snake ("GGS") are similarly
13 unmitigated. The GGS is an endemic species to Central Valley California wetlands, and is listed
14 as federally "threatened" under the Endangered Species Act. Project crop idling will result in
15 significant losses to GGS habitat. The EIR/EIS, however, fails to fully describe GGS habitat and
16 range that may be impacted by the Project.

17 73. The California Department of Fish and Wildlife also commented that "cropland
18 idling/shifting could alter the amount of suitable habitat for natural communities and special-
19 status wildlife species associated with seasonally flooded agriculture and associated irrigation
20 waterways. This impact is identified as less than significant. However, cropland idling/shifting
21 could have a significant impact on habitat availability for shorebirds, resident and migratory
22 waterfowl, and special-status species in the Central Valley, especially if shifting reduces the
23 amount of seasonally flooded post-harvest rice and corn. Seasonal flooding of postharvest rice
24 and corn provides a substantial percentage of habitat and food supplies for migratory waterfowl."
25 The EIS/EIR fails to fully evaluate, disclose, mitigate, or avoid these impacts.

26 ///

27 ///

28 ///

1 **VI. LEGAL FRAMEWORK**

2 Administrative Procedure Act

3 74. The APA confers a right of judicial review on any person that is adversely affected
4 by agency action. *See* 5 U.S.C. § 702.

5 75. The APA provides that the reviewing court “shall . . . hold unlawful and set aside
6 agency action, findings, and conclusions found to be [] arbitrary, capricious, an abuse of
7 discretion, or otherwise not in accordance with law,” as well as findings that are “unsupported by
8 substantial evidence.” 5 U.S.C. § 706(2)(A), (E). Claimed violations of both NEPA and the
9 CPVIA are reviewed under the APA.

10 National Environmental Policy Act

11 76. The Project is subject to the environmental review process of NEPA, 42 U.S.C. §
12 4321. NEPA requires the Federal government to use all practicable means to improve and
13 coordinate federal activities to create and maintain conditions in which people and nature can
14 exist in “productive harmony.” 42 U.S.C. § 4331. NEPA is an environmental full-disclosure law
15 so that federal agencies must consider all environmental consequences of their decisions.

16 77. “NEPA . . . makes environmental protection a part of the mandate of every federal
17 agency and department,” *Calvert Cliffs’ Coord. Com. v. United States*, 440 F.2d 1109, 112 (D.C.
18 Cir. 1971), and is the “basic national charter for protection of the environment.” 40 C.F.R. §
19 1500.1(a). Its purpose is “to help public officials make decisions that are based on understanding
20 of environmental consequences, and take actions that protect, restore, and enhance the
21 environment.” *Id.* § 1500.1(c). The Council on Environmental Quality (“CEQ”), an agency
22 within the Executive Office of the President, has promulgated regulations implementing NEPA.
23 *See* 10 C.F.R. § 1021.103.

24 78. Among other things, NEPA requires all agencies of the federal government to
25 prepare a “detailed statement” that discusses the environmental effects of, and reasonable
26 alternatives to, all “major Federal actions significantly affecting the quality of the human
27 environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental
28 impact statement (“EIS”). An EIS must describe: (1) the “environmental impact of the proposed

1 action”; (2) any “adverse environmental effects which cannot be avoided should the proposal be
2 implemented”; and (3) any “alternatives to the proposed action.” *Id.* The environmental
3 “effects” that must be considered in an EIS include “indirect effects, which are caused by the
4 action and are later in time or farther removed in distance, but are still reasonably foreseeable.”
5 40 C.F.R. § 1508.8(b).

6 California Environmental Quality Act

7 79. CEQA has two purposes: environmental protection and informed self-government.
8 *Woodward Park Homeowners Assn., Inc. v. City of Fresno*, 150 Cal.App.4th 683, 690-691
9 (2007). CEQA is “to be interpreted to afford the fullest possible protection to the environment
10 within the reasonable scope of the statutory language.” *Mountain Lion Foundation v. Fish &*
11 *Game Com.*, 16 Cal.4th 105, 134 (1997). CEQA requires agencies to “take all action necessary to
12 protect, rehabilitate, and enhance the environmental quality of the state.” Pub. Resources Code, §
13 21001(a).

14 80. Pursuant to CEQA, a “project” is an activity which may cause either direct physical
15 change in the environment, or reasonably foreseeable indirect physical change in the environment
16 (Pub. Resources Code, § 21065(a)); and a “discretionary” project is one that is subject to
17 judgmental controls, where the agency can use its judgment to decide whether and how to carry
18 out a project. Cal. Code Regs., tit. 14, ch. 3 (“CEQA Guidelines”), § 15002(i). Prior to
19 approving any discretionary project, an agency must fully disclose and analyze all of the project’s
20 potentially significant direct, indirect, and cumulative environmental effects. *See, e.g.,* CEQA
21 Guidelines § 15002(f)), and that public agencies avoid or minimize such environmental damage
22 where feasible. CEQA Guidelines, § 15021(a). Pursuant to this duty, no public agency may
23 approve or carry out a project where one or more significant effects on the environment may
24 occur if the project is approved, unless certain narrow findings are made. CEQA Guidelines, §§
25 15091, 15093.

26 The Central Valley Project Improvement Act

27 81. In 1992, Congress passed and the President signed into law the Central Valley
28 Project Improvement Act, commonly known as “CVPIA” or Public Law 102- 575. The

1 provisions of CVPIA fundamentally altered the operation of the CVP, requiring a dedication of
2 water for fish and wildlife purposes, significant habitat and fish population goals and mandates
3 and set forth new criteria for water transfers. The water transfers comprising the Project are
4 subject to the limitations and restrictions imposed by the CVPIA.

5 **VII. STANDING**

6 82. Members of AquAlliance and CSPA reside in the Delta, the Sacramento River
7 valley, and the San Joaquin River valley. AquAlliance's members rely on groundwater, rivers,
8 and streams for their homes, businesses, recreation, to irrigate crops, and to participate in the
9 economy of the region. AquAlliance's members play an active role in water planning and
10 protection. CSPA and its members actively participate in water rights and water quality
11 processes, engage in education and organization of the fishing community, conduct restoration
12 efforts, and vigorously enforce environmental laws enacted to protect fisheries, habitat and water
13 quality. CSPA's members reside and own property throughout California as well as in those
14 areas served by the Central Valley and State Water Projects, and use the waters, including
15 groundwater, affected by the USBR and SLMWDA Project, for gardening, landscaping, and
16 growing crops. As water contractors begin pumping additional groundwater in order to replace
17 the CVP water they transfer, the Project risks degrading or lowering the groundwater in areas
18 where Plaintiffs' members operate wells or otherwise rely on groundwater to maintain their
19 properties.

20 83. Members of AquAlliance and CSPA use the Delta, the Sacramento River, and the
21 San Joaquin River to fish, sail, boat, kayak, swim, birdwatch, hike, view wildlife and engage in
22 scientific study, including monitoring activities. AquAlliance's and CSPA's members have
23 enjoyed fishing for salmon and other fish in the Delta, San Francisco Bay, and the Sacramento
24 River watershed, whose numbers and vitality depend on an intact and healthy ecosystem in the
25 Delta, San Francisco Bay, and the Sacramento River watershed. Where elements of that
26 ecosystem are reduced or eliminated, AquAlliance's and CSPA's members' recreational uses and
27 aesthetic enjoyment of those areas are reduced by their awareness of the waterways degradation.
28 As the degradation of the rivers, their tributaries, and the Delta's ecosystem is further

1 exacerbated, Plaintiffs members' catch fewer fish. The catching and killing of Delta smelt and
2 the drastic reductions in their population numbers substantially alter the ecological balance in the
3 Delta and San Francisco Bay and reduce Plaintiffs' members' aesthetic enjoyment of these areas
4 as they are boating and fishing.

5 84. CDWA, SDWA and LAND's landowners, water rights holders and beneficial
6 water users are located in the Delta and rely on surface water and groundwater for their homes,
7 businesses, recreation, to irrigate crops, and to participate in the economy of the region. These
8 landowners, water rights holders and beneficial water users use the waters, including
9 groundwater, affected by the USBR and SLMWDA Project, for agriculture, recreation, wildlife
10 habitat, open space as well as residential, commercial, municipal and institutional uses. The
11 Project impairs these beneficial uses of water by negatively impacting water quantities, levels,
12 quality, and circulation, among other impacts. The Project's impacts on biological resources also
13 impairs these Plaintiffs' use and enjoyment of the Delta region for recreational and other uses.

14 85. Thus, the interests of Plaintiffs' members, landowners and water rights holders
15 have been, are being, and will continue to be adversely affected by USBR and SLDMWA's
16 failure to comply with NEPA and CEQA and the likely dramatic impacts to groundwaters,
17 surface waters, and associated species, ecosystems, and human uses. The relief sought herein will
18 redress the harms to Plaintiffs and their members, landowners and water rights holders caused by
19 Defendants' failure to comply with CEQA and NEPA.

20 86. AquAlliance, CSPA, CDWA, SDWA and LAND, their members, officers,
21 landowners and water rights holders are deeply concerned about the adverse consequences of the
22 USBR and SLDMWA continuation of water transfers, year after year, with inadequate
23 environmental review of the adverse direct, indirect, and cumulative impacts of the continuing
24 transfers approved and facilitated by the state and federal governments. These proposed transfers
25 will require the use of additional groundwater, increase depletion of Sacramento Valley
26 groundwater basins and streams, residential and agricultural wells, and have potentially
27 catastrophic impacts on the endangered species, including but not limited to Delta smelt, and
28 winter-run and spring-run salmon. Plaintiffs' members, landowners and water rights holders will

1 be injured by the additional water diverted from groundwater basins and resulting stream impacts
2 without adequate environmental analysis. Consequently, Plaintiffs and their members,
3 landowners and water rights holders would be directly, adversely, and irreparably harmed by the
4 project and its components, as described herein, until and unless this Court provides the relief
5 prayed for in this complaint.

6 **VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 87. Plaintiffs have performed all conditions precedent to this filing and participated in
8 the administrative process. Plaintiffs actively participated in the administrative process by
9 submitting comments, along with other public agencies, organizations, and members of the
10 public, outlining the claims contained herein. As such, Plaintiffs have fully exhausted their
11 administrative remedies, to the extent such remedies exist and to the extent that exhaustion of
12 administrative remedies is legally necessary.

13 88. Plaintiffs possess no other remedy to challenge Defendants' abuses of discretion
14 and failures to comply with applicable laws and regulations.

15 **IX. NOTICE OF CEQA SUIT**

16 89. Plaintiffs have complied with California Public Resources Code section 21167.5 by
17 providing written notice of commencement of this action to defendant SLDMWA prior to filing
18 this Complaint. A true and correct copy of the notice provided pursuant thereto, with proof of
19 service thereof, is attached hereto as Exhibit A.

20 **X. ELECTION TO PREPARE RECORD**

21 90. Petitioners elect to prepare the CEQA administrative record in this proceeding
22 pursuant to Public Resources Code section 21167.6(b)(2) (attached as Exhibit B).

23 **XI. PRIVATE ATTORNEY GENERAL DOCTRINE**

24 91. Petitioners and Plaintiffs bring this action as a private attorneys general pursuant to
25 California Code of Civil Procedure section 1021.5, and any other applicable legal theory, to
26 enforce important rights affecting the public interest.

27 92. Issuance of the relief requested in this Petition and Complaint will confer
28 significant benefits on the general public by, among other benefits: (1) requiring SLDMWA to

1 properly disclose, analyze and mitigate the direct, indirect, and cumulative impacts of the Projects
2 that were not properly disclosed, analyzed or mitigated, (2) ensuring that SLDMWA properly
3 considers alternatives and/or mitigation measures to reduce or avoid the Projects' potentially
4 significant, adverse environmental effects, (3) requiring SLDMWA to implement all feasible
5 alternatives and mitigation measures to avoid such adverse effects or reduce them to less-than-
6 significant levels, and (4) ensuring that SLDMWA affords the public and affected agencies with
7 the opportunity to review and comment on potentially significant Project impacts, and receiving a
8 meaningful and complete response to any such comments on such issues, prior to the approval of
9 such projects.

10 93. Issuance of the relief requested in this Petition will result in the enforcement of
11 important rights affecting the public interest. By compelling SLDMWA to complete a legally
12 adequate analysis of the Projects, to protect public and natural resources, SLDMWA will be
13 required to properly and publicly disclose and analyze all of the Projects' potentially significant,
14 adverse environmental effects, and to ensure that all feasible mitigation measures or alternatives
15 that would reduce or avoid the Project's potentially significant, adverse environmental impacts
16 are implemented.

17 94. The necessity and financial burden of enforcement are such as to make an award of
18 attorneys' fees appropriate in this proceeding. Absent enforcement by Petitioners and Plaintiffs,
19 the Project might otherwise be deemed valid despite its legally and factually inadequate
20 disclosures, analysis, conclusions, mitigation measures, and alternatives, among other things, and,
21 as a result, potentially significant, adverse environmental effects might otherwise have evaded
22 legally adequate environmental review and mitigation in accordance with the California
23 Legislature's policy, in adopting CEQA, of affording the greatest protections to the environment
24 within the scope of the statute.

25 95. Petitioners' attorneys have served a copy of its Petition and Complaint on the
26 Attorney General's office to give notice of Petitioners' intent to bring this proceeding as private
27 attorneys general under Code of Civil Procedure section 1021.5 (attached as Exhibit C).

28

1 **INJUNCTIVE AND DECLARATORY RELIEF**

2 96. Injunctive relief is necessary to prevent Defendants from continuing to engage in
3 the unlawful practices alleged herein. Defendants and persons acting in concert therewith have
4 done, are now doing, and will continue to do or cause to be done, the above-described illegal acts
5 unless restrained or enjoined by this Court. Plaintiffs have no plain, speedy, or adequate remedy
6 at law, in that pecuniary compensation alone would not afford adequate and complete relief.
7 Unless Defendants are restrained from committing further illegal acts, their above-described acts
8 will cause great and irreparable damage to Plaintiffs.

9 97. An actual controversy now exists between Plaintiffs and Defendants concerning
10 their rights, privileges, and obligations in that Plaintiffs contend that Defendants' above-
11 mentioned actions have violated and will continue to violate their rights under federal and state
12 law and Defendants contend in all respects to the contrary.

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT**

15 **(By Plaintiffs against USBR and Does 1 through 200)**

16 98. Plaintiffs incorporate by reference each and every allegation contained in
17 Paragraphs 1 through 97 as though fully set forth herein.

18 99. The USBR has failed to prepare an EIS that complies with NEPA and satisfies its
19 duty to provide good faith public disclosure of the Project's impacts. These deficiencies include,
20 without limitation, the following:

21 **The EIS/EIR Reflects Piecemealed Review of the Underlying Project**

22 100. The Project's EIS/EIR is the result of impermissible project piecemealing by the
23 USBR in violation of NEPA. CEQ regulations section 1502.4(a) states that "[p]roposals or parts
24 of proposals which are related to each other closely enough to be, in effect, a single course of
25 action shall be evaluated in a single impact statement." CEQ regulations section 1508.25(a)(1),
26 meanwhile, directs agencies to study "connected actions" in "the same impact statement," and
27 sets forth criteria for determining whether actions are "connected."
28

1 104. Even if the USBR is somehow not required to analyze the BDCP and the Project
2 together as the same project, the EIS/EIS nonetheless fails to comply with NEPA because BDCP
3 should have been analyzed in the EIS/EIR as a cumulative project.

4 105. The BDCP consists of new diversion facilities on the Sacramento River as well as
5 other actions that constitute a proposed Habitat Conservation Plan within the Sacramento-San
6 Joaquin Delta. While the diversion facilities would not be constructed within the 10 year
7 timeframe of the project, other so-called conservation measures could be implemented. The
8 cumulative effects of those aspects of the BDCP that could be implemented within the timeframe
9 of the proposed project should have been analyzed.

10 106. In particular, cumulative effects from reductions in Delta outflow should have been
11 analyzed. According to the EIS/EIR, the Project would lead to changes in Delta hydrology.
12 (Draft EIS/EIR, p. 3.8-62.) These changes should have been considered in conjunction with the
13 BDCP, which may reduce Delta outflow by increasing the amount of open water habitat in the
14 Delta. According to DWR data, open water and riparian vegetation consume about 67.5 inches
15 per year, which is much greater than most agricultural uses. The Project's potential, in
16 combination with BDCP, to reduce Delta outflow should have been analyzed in the EIS/EIR.

17 107. The cumulative effects of weed growth that results from BDCP/habitat projects in
18 the Delta and within the Seller service areas on fallowed lands should also have been analyzed.
19 The EIS/EIR seemingly assumed that invasive weeds will be managed on fallowed lands in the
20 Seller area. Invasive weeds, however, consume significant quantities of water and may result in
21 less water being available for transfer than assumed in the EIS/EIR. According to a 2004 study,
22 for instance, about "one million acre-feet of water is consumed by star thistle each year in the
23 Central Valley above and beyond what would be consumed by annual grasses." (Cal-IPC News,
24 Newsletter of the California Invasive Plant Council (Summer 2014), p. 11.) In addition to
25 analyzing the cumulative water demand of weeds in the Delta under BDCP as well as in the Seller
26 service areas, effective weed management should have been mitigated for the cumulative effect.

27 108. The EIS/EIR fails to analyze the combined effects of the Project together with: the
28 Bay Delta Conservation Plan, recent USBR Warren Act Contracts for Banta-Carbona, Byron-

1 Bethany, and Patterson; 2014 and 2015 Tehama Colusa Canal Authority Water Transfers;
2 Western Canal Water District 2012, 2014 and 2015 Water Transfers; Richvale Irrigation District
3 2012, 2014 and 2015 Water Transfers; Biggs-West Gridley Water District 2012, 2014 and 2015
4 Water Transfers; Butte Water District 2012, 2014 and 2015 Water Transfers; Yuba County Water
5 Agency 2008-2015 Water Transfers; Multi-year groundwater substitution Petitions to the
6 SWRCB such as, but not limited to, Plumas Mutual Water Company and Garden Highway
7 Mutual Water Company; and Five-Year Warren Act Contracts for Conveyance of Groundwater in
8 Tehama-Colusa and Corning Canals.

9 Inadequate Analysis of Baseline Conditions and Project Impacts

10 109. Under NEPA, Courts “review agency decisions to ensure that ‘the agency has taken
11 a “hard look” at the potential environmental consequences of the proposed action.’” *Nw. Env'tl.*
12 *Advocates v. NMFS*, 460 F.3d 1125, 1133 (9th Cir. 2006) (quoting *Klamath-Siskiyou Wildlands*
13 *Ctr.*, 387 F.3d 989, 993 (9th Cir. Or. 2004). Further, NEPA requires that the agency provide the
14 data on which it bases its environmental analysis. See *Lands Council*, 537 F.3d at 994 (holding
15 that an agency must support its conclusions with studies that the agency deems reliable. Here, the
16 DEIS/DEIR concludes that, after mitigation, the Project would result in less than significant or
17 beneficial environmental impacts for all resources. However, the DEIS/DEIR does not contain
18 sufficient information to support this conclusion for many resource areas including, but not
19 limited to, groundwater and subsidence, surface water hydrology and water quality, fisheries, and
20 biological resources.

21 a. The EIS/EIR’s geographic scope of analysis fails to include those areas that
22 are necessary for adequate analysis of impacts including (i) areas and tributaries downstream of
23 drainage from water transfer recipient service areas, (ii) areas from the reservoirs involved in the
24 Project to the upstream first impassable fish barrier, and (iii) areas impacted by interconnected
25 groundwater basins drawn down by groundwater substitution;

26 b. The EIS/EIR failed to disclose what the modeling assumptions were for the
27 geographic distribution of the estimated groundwater transfers;

28

1 c. The modeling used to assess groundwater-related impacts depends upon a
2 data set spanning 1970 to 2003. The use of this truncated data set means that recent trends and
3 current existing conditions are not appropriately taken into account in the impact analysis;

4 d. The DEIR/EIR lacks historic flows data on many smaller rivers and streams
5 that would be impacted by the Project, thereby failing to provide sufficient information regarding
6 existing conditions in order to either establish an adequate baseline or assess Project impacts;

7 e. The EIS/EIR failed to address the reality that Delta outflows are routinely
8 over estimated during dry periods, which means that water transfers authorized by the Project will
9 further impair Delta water quality;

10 f. The models relied upon in the EIS/EIR to analyze the impacts of
11 groundwater substitution fail to properly account the water available because they: (i) improperly
12 quantify the groundwater depletions that would result from groundwater extraction; (ii) fail to
13 properly account for the timing and quantity of groundwater flow that would have accreted to the
14 rivers as baseflow absent the groundwater extraction; and (iii) fail to accurately quantify the
15 effects of exfiltration from the river to groundwater. As a result of these deficient models, the
16 EIS/EIR underestimates the magnitude of groundwater depletion resulting from the Project. The
17 deficient modeling also prevents the EIS/EIS from adequately assessing the Project's impacts to
18 water levels, water quality and water circulation in the Delta;

19 g. The EIS/EIR incorrectly assumes the CV-SALTS process will decrease salt
20 entering the southern Delta in order to avoid examining the Project's impact on southern Delta
21 salinity;

22 h. The EIS/EIR fails to demonstrate that applicable water quality regulations
23 can be satisfied;

24 i. The EIS/EIR relies on "D-1641" to protect water quality even where
25 Defendants regularly have these standards waived;

26 j. The EIS/EIR fails to analyze and disclose all adverse impacts resulting from
27 Project groundwater pumping, such as injury to overlying groundwater users, injury to surface
28

1 water rights, groundwater contamination, drawdown effects to hydrologically connected surface
2 waters and ecosystems, and land subsidence;

3 k. The EIS/EIR fails to meaningfully assess where and to what extent land
4 subsidence will occur;

5 l. The EIS/EIR failed to analyze the worst case scenario that potential sellers
6 would be more geographically concentrated than the assumed even distribution, thereby resulting
7 in worse impacts from groundwater pumping than assumed;

8 m. The Project's impacts to in-stream flows will result in undisclosed
9 significant impacts to listed fish species including Chinook salmon, Central Valley steelhead,
10 green and white sturgeon, and Delta and longfin smelt;

11 n. The EIS/EIR failed to adequately address the Project's impact on increasing
12 weed pressure of exotic and invasive plant species;

13 o. The EIS/EIR fails to adequately address how crop idling/shifting will
14 contribute to habitat fragmentation;

15 p. The EIS/EIR fails to adequately address how crop idling/shifting will
16 impact migratory bird populations, shorebirds, resident and migratory waterfowl, and special-
17 status species in the Central Valley;

18 q. The EIS/EIR fails to adequately address how crop idling would reduce
19 water quality due to wind erosion and reduced agricultural return flows;

20 r. The EIS/EIR failed to adequately address how groundwater substitution
21 transfers can create time delays between additional groundwater pumping and potential impacts on
22 stream systems, which in turn may have significant impacts on timing and availability of surface
23 flow to resident and anadromous fish species, special status species, and other fish and wildlife
24 resources;

25 s. The baseline/no action assumptions in the EIS/EIR are inconsistent with
26 those from the BDCP EIS/EIS even though the USBR is the lead agency for both documents.
27 These inconsistencies thwart adequate analysis and public disclosure of the Project's impacts;

28

1 t. The EIS/EIR fails to address the impacts of climate change, including for
2 example sea level rise, precipitation or other climate change assumptions even though the BDCP
3 EIS/EIR, also prepared by USBR as NEPA lead agency, included this analysis.

4 Inadequate Mitigation

5 110. NEPA's implementing regulations require agencies to discuss potential mitigation
6 measures in their EISs and decision documents. *See* 40 C.F.R. §§ 1502.14(f), 1502.16(e)-(h),
7 1505.2(c), 1508.25(b)(3); *see also Id.* § 1508.20 (defining "mitigation"). Mitigation must "be
8 discussed in sufficient detail to ensure that environmental consequences have been fairly
9 evaluated." *Methow Valley Citizens Council*, 490 U.S. at 353. Such discussion necessarily
10 includes "an assessment of whether the proposed mitigation measures can be effective." *S. Fork*
11 *Band Council of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).
12 The EIS/EIR's analysis of proposed mitigation is defective under this standard.

13 111. The EIS/EIR states that proposed mitigation, Mitigation Measure GW-1 ("GW-1"),
14 would reduce impacts to groundwater levels and land subsidence to less than significant for all
15 groundwater basins in the sellers' service area. However, GW-1 does not constitute adequate
16 mitigation. While the EIS/EIR states that this mitigation measure would reduce impacts related to
17 natural communities in rivers and creeks in the Sacramento River Watershed, for instance (EIS/R,
18 p. 3.8-51), this mitigation measure monitors wells, not river and creek levels. The analysis also
19 assumes without any support that natural recharge will correct any environmental impacts that do
20 occur. Further, the proposed mitigation is impermissibly vague and defers the responsibility for
21 developing detailed mitigation plans to the water transfer applicants. This precludes meaningful
22 evaluation of the viability and effectiveness of the USBR's proposed approach to mitigation.

23 Inadequate Analysis of Project Alternatives

24 112. NEPA requires an EIS to discuss, among other things, alternatives to the proposed
25 action. 42 U.S.C. § 4332(2)(C). NEPA's implementing regulations describe the analysis of
26 alternatives as "the heart of the environmental impact statement." CEQ regulations, § 1502.14.
27 The range of alternatives that an EIS must consider is "dictated by the nature and scope of the
28 proposed action." *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir.

1 2008). Yet agencies may not define the project's purpose and need in terms so "unreasonably
2 narrow," that only one alternative would accomplish the goals of the project. *Nat'l Parks &*
3 *Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010).

4 113. The EIS/EIR's analysis of alternatives fails to comply with NEPA because it both
5 failed to consider a reasonable range of alternatives and also impermissibly narrowed the
6 Project's purpose and need in order to avoid consideration of reasonable alternatives. These
7 violations include but not limited to the following:

8 a. The Project's purpose and need is impermissibly narrowed to consideration
9 of transfers from upstream of the Delta to water users south of the Delta and San Francisco Bay to
10 meet supplemental water supply objectives. This improperly excludes the objective consideration
11 of reasonable alternatives to developing additional water supply including, without limitation,
12 water recycling, water conservation in seller service areas to reduce water demands, and within
13 water buyer district local conjunctive use, transfers, crop idling or shifting, and land retirement;

14 b. The EIS/EIR impermissibly failed to include alternatives including all
15 reasonable measures, including land retirement, within the buyer area as well as areas of the State
16 other than upstream of the Delta;

17 c. The EIS/EIR impermissibly omitted an alternative that included all other
18 water supply source concepts except seller service area crop idling and shifting so seller service
19 area agricultural impacts from the water transfers could have been identified, characterized,
20 quantified and disclosed;

21 d. The EIS/EIR impermissibly omitted an alternative that included all other
22 water supply sources except reservoir releases so reservoir release impacts from the water
23 transfers could have been identified, characterized, quantified and disclosed. Isolating the impacts
24 of storing and conveying water is essential to complying with the requirements of the Warren Act
25 Contract assessment. As the current analysis stands, all of the alternatives except the No
26 Action/No Project included reservoir releases so these CVP reservoir-related water wheeling
27 related impacts cannot be separated from the other project impacts in order to satisfy Warren Act
28 analysis requirements;

1 e. The EIS/EIR's analysis of alternatives failed to separate crop idling from
2 crop switching thereby preventing adequate analysis and disclosure of crop switching as a viable
3 project alternative;

4 f. The USBR failed to seriously consider Alternatives 3 (No Cropland
5 Modifications) and 4 (No Goundwater Substitutions) even though these alternatives were found to
6 have less impacts than the Project.

7 114. The USBR's actions in failing to comply with NEPA are arbitrary, capricious, and
8 abuse of discretion and contrary to law in violation of the APA.

9 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATIONS OF CEQA**

12 **(By Petitioners and Plaintiffs against SLDMWA)**

13 115. Plaintiffs incorporate by reference each and every allegation contained in
14 Paragraphs 1 through 114 as though fully set forth herein.

15 116. The SLDMWA prejudicially abused its discretion in certifying the EIS/EIR. The
16 SLDMWA did not proceed in the manner required by law and its decisions in approving the
17 Project and certifying the EIS/EIR are not supported by substantial evidence. Pub. Resources
18 Code § 21168.5; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40
19 Cal.4th 412, 426 (Cal. 2007). These legal deficiencies include, without limitation, the following:

20 **The Project Description is Vague, Incomplete, and Unstable**

21 117. CEQA requires that an EIR include an accurate project description, and that the
22 nature and objective of a project be fully disclosed and fairly evaluated in an EIR. *San Joaquin*
23 *Raptor Rescue Center v. County of Merced*, 149 Cal.App.4th 646, 655 (2007). An EIR should
24 contain a "sufficient degree of analysis to provide decision-makers with information which
25 enables them to make a decision which intelligently takes account of environmental
26 consequences." CEQA Guidelines, § 15151.

27 118. The EIS/EIR's project description is deficient because numerous details of the
28 proposed Project are missing, including, without limitation, the following:

1 a. The EIS/EIR fails to disclose the amounts, modes, criteria, present and
2 future market demands, price, availability, timing, duration, monitoring of, and/or actual uses for
3 future water transfers;

4 b. The EIS/EIR fails to provide an accurate, discrete, and stable description of
5 carriage water;

6 c. The EIS/EIR segments and piecemeals portions of its Project from
7 environmental review in the EIS/EIR, such as recently past Sacramento Valley water transfers
8 from CVP, SWP, and post-1914 contractors, additional water transfers among and between the
9 Project buyers and sellers, the Sacramento Valley Water Management Plan and Agreement, the
10 Bay Delta Conservation Plan, emergency drought barriers, the Department of Water Resources
11 and Bureau of Reclamation's Temporary Urgency Change Petitions, the Stony Creek Fan
12 Conjunctive Water Management Program and the Northern Sacramento Valley Conjunctive Water
13 Management Investigation;

14 d. The EIR fails to provide sufficient locations, maps, and boundaries showing
15 precisely where transfers, crop idling, and/or groundwater substitution, will occur and result in
16 environmental effects;

17 e. The EIS/EIR fails to list all reasonably foreseeable future approvals
18 required, and all responsible trustee agencies required as part of the Project;

19 f. The EIS/EIR fails to disclose the existence and use of surface waters
20 beyond the 3.3 acre feet allowed in a crop idling transfer;

21 g. The EIS/EIR fails to describe or analyze the overarching program being
22 carried out to regulate and institutionalize the subject transfers.

23 The EIS/EIR Fails to Adequately Define the Project's Baseline

24 119. In order to determine whether a project's impacts will be significant, CEQA
25 requires lead agencies to compare the impact of a proposed project to the "physical environmental
26 conditions in the vicinity of the project, as they exist at the time the notice of preparation is
27 published." These conditions serve as the project's "baseline." CEQA Guidelines, § 15125. The
28 description of the project's baseline ensures that the public has "an understanding of the

1 significant effects of the proposed project and its alternatives.” CEQA Guidelines, § 15125(a).
2 Accurately determining the baseline environmental conditions is crucial to accurately evaluating a
3 project’s impact. *E.g., San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27
4 Cal.App.4th 713 (1994).

5 120. The EIS/EIR’s description of baseline conditions is alternatively incomplete and
6 inaccurate, infecting and invalidating the entirety of the EIS/EIR’s environmental analysis. The
7 flaws include, without limitation, the following:

8 Existing Groundwater Conditions

9 a. The EIS/EIR relies on modeling information that excludes existing and
10 recent past environmental conditions, including recent groundwater substitution and other
11 groundwater pumping, recent and existing increases in demands, and recent and existing drought
12 and climatic conditions;

13 b. The EIS/EIR relies on existing condition modeling based on unsupported
14 and/or manipulated assumptions;

15 c. The EIS/EIR fails to accurately or completely describe the groundwater
16 aquifers’ contours, flows, depth, and/or composition;

17 d. The EIS/EIR fails to disclose the proximity of known dry wells to Project
18 transfer wells;

19 e. The EIS/EIR fails to disclose the number of non-participating wells in the
20 same aquifer as Project wells, the connectivity between those wells and Project wells, or the
21 distance between those wells and Project wells;

22 f. The EIS/EIR fails to disclose sufficient information, including but not
23 limited to locations, proximity, contours, active monitoring, and flows, to assess the connectivity
24 between contaminated groundwater locations and Project wells;

25 g. The EIS/EIR provides erroneous and misleading information regarding
26 connections between groundwater and surface water flows;

27 h. The EIS/EIR presents inaccurate and incomplete information regarding
28 groundwater recharge rates and locations;

1 Existing Surface Water Conditions

2 i. The EIS/EIR fails to adequately describe, and provides misleading
3 information regarding, existing surface water quality of all surface transfer waters and transfer
4 receiving waters;

5 j. The EIS/EIR relies on modeling descriptions that fail to describe existing
6 surface water conditions;

7 k. The EIS/EIR fails to completely or accurately describe the location of all
8 surface waters affected by the Project;

9 l. The EIS/EIR lacks historic flows data on twenty-one smaller rivers that
10 would be impacted by the Project, thereby failing to provide sufficient information regarding
11 existing conditions in order to either establish an adequate baseline or assessing impacts;

12 m. The EIS/EIR fails to completely or accurately describe the biological or
13 ecological conditions of all surface waters affected by the Project;

14 n. The EIS/EIR fails to adequately describe applicable water quality
15 regulations;

16 o. The EIS/EIR fails to completely and meaningfully describe all existing
17 surface water uses, rights, and regulatory considerations for such uses that affect existing water
18 supplies;

19 p. The EIS/EIR fails to adequately describe hydrological site conditions where
20 transfers could occur;

21 Biological Conditions

22 q. The EIS/EIR fails to accurately characterize the existing seasonal habitat
23 scope and needs for delta smelt, giant garter snake, or migratory avian species;

24 Air Quality Conditions

25 r. The EIS/EIR fails to adequately describe baseline air quality conditions;

26 ///

27 ///

28 ///

1 Climate Conditions

2 s. The EIS/EIR fails to incorporate any meaningful climate change
3 information into its baseline assessment of water supplies, water demands, water quality,
4 groundwater, terrestrial habitat and species, or fisheries.

5 The EIS/EIR Fails To Adequately Analyze Significant Environmental Impacts

6 121. CEQA requires that an EIR describe the proposed project's significant
7 environmental effects. Each must be revealed and fully analyzed in the EIR. Pub. Resources
8 Code § 21100(b), CEQA Guidelines § 15126.2(a).

9 122. The EIS/EIR fails to provide decision makers with sufficient analysis in numerous
10 respects including, without limitation, the following:

11 Biological Impacts

12 a. The EIS/EIR finds that impacts to stream loss from groundwater depletion
13 to be less than significant despite resulting in significant portions of streams running dry for
14 significant periods;

15 b. The EIS/EIR fails to provide sufficient information to adequately address
16 and disclose how crop idling/shifting will impact migratory bird populations, shorebirds, resident
17 and migratory waterfowl, and special-status species in the Central Valley;

18 c. The Project's impacts to in-stream flows will result in undisclosed
19 significant impacts to listed fish species including Chinook salmon, Central Valley steelhead,
20 green and white sturgeon, and Delta and longfin smelt;

21 d. The EIS/EIR fails to incorporate climate change projections into its analysis
22 of Project impacts, including that of increased demands, decreased supplies, changing annual
23 precipitation forecasts, sea level rise, and changing habitat and species health;

24 e. The EIS/EIR fails to incorporate previously-adopted and scientifically
25 supported mitigation or avoidance measures to protect the Giant Garter Snake;

26 Groundwater Impacts

27 f. The EIS/EIR fails to evaluate and disclose all adverse impacts resulting
28 from Project groundwater pumping, such as injury to overlying groundwater users, injury to

1 surface water rights, groundwater contamination, drawdown effects to hydrologically connected
2 surface waters and ecosystems, and land subsidence;

3 g. The EIS/EIR fails to evaluate the maximum pumping rates approved by the
4 Project;

5 h. The EIS/EIR relies on modeling based on unsupported and/or manipulated
6 assumptions and outdated data;

7 i. The EIS/EIR relies on modeling with a margin of error greater than the
8 EIS/EIR's stated thresholds of significance;

9 j. The EIS/EIR fails to describe the time-drawdown and distance-drawdown
10 hydraulic characteristics of groundwater substitution effects;

11 k. The EIS/EIR fails to meaningfully evaluate the loss of groundwater
12 recharge where crop idling occurs;

13 l. The EIS/EIR fails to evaluate Project consistency with all applicable local
14 General Plans and groundwater ordinances;

15 m. The EIS/EIR fails to incorporate climate change projections into its analysis
16 of Project impacts, including that of increased demands, decreased supplies, and changing annual
17 precipitation forecasts;

18 n. The EIS/EIR fails to meaningfully assess where and to what extent land
19 subsidence will occur;

20 Surface Water Impacts

21 o. The EIS/EIR fails to adequately analyze changes to all surface water flows
22 as a result of the Project;

23 p. The EIS/EIR fails to adequately analyze impacts to senior water rights
24 holders;

25 q. The EIS/EIR relies on existing condition modeling based on unsupported
26 and/or manipulated assumptions from data that ended in 2003;

27 r. The EIS/EIR relies on surface water modeling with a margin of error greater
28 than the EIR's stated thresholds of significance;

1 s. The EIS/EIR relies on surface water modeling that fails to include all
2 necessary inputs including pumping and diversion locations, rates, volumes, times or durations;

3 t. The EIS/EIR omits consideration of stream depletion effects for streams
4 upstream and tributary surface waters caused by groundwater substitution;

5 u. The EIS/EIR identifies but ignores potentially significant impacts, such as
6 decreased delta flows, and increased salinity, without proper consideration;

7 v. The EIS/EIR improperly excludes evaluation of surface water changes of
8 less than 10 cubic feet per second;

9 w. The EIS/EIR fails to demonstrate that applicable water quality regulations
10 can be satisfied;

11 x. The EIS/EIR relies on “D-1641” to protect water quality even where
12 Defendants regularly have these standards waived;

13 y. The EIS/EIR repeatedly relies on receiving water dilution of discharged
14 water to lessen the severity of water quality impacts, but fails to provide any meaningful dilution
15 study at any relevant point of discharge;

16 z. The EIS/EIR fails to incorporate climate change projections into its analysis
17 of Project impacts, including that of increased demands, decreased supplies, and changing annual
18 precipitation forecasts;

19 aa. The EIS/EIR fails to meaningfully assess the loss of flows from irrigated
20 runoff where cropland idles;

21 bb. The EIS/EIR fails to meaningfully analyze water quality impacts caused by
22 irrigated runoff from buyers’ lands;

23 cc. The EIS/EIR fails to demonstrate consistency with Public Trust Doctrine
24 requirements;

25 Seismic Impacts

26 dd. The EIS/EIR fails to analyze the effects of Project groundwater pumping
27 upon numerous known earthquake faults;

28

1 Growth Inducing Impacts

2 ee. The EIS/EIR fails to analyze the Project's potential contributions to
3 agricultural, residential, commercial, and industrial growth and development;

4 Air Quality

5 ff. The EIS/EIR fails to employ proper thresholds of significance to air quality
6 impacts, simply selecting the most lax air district standards across the Project area, while ignoring
7 standards specifically tailored to the Project's impacts;

8 gg. The EIS/EIR excludes portions of the sellers' areas from air quality
9 analysis;

10 hh. The EIS/EIR uses inappropriate and inapplicable assessment methods to
11 determine air quality impacts.

12 The EIS/EIR Fails to Adequately Evaluate Cumulative Impacts

13 123. CEQA requires that the lead agency analyze cumulative impacts. Pub. Resources
14 Code § 21083(b)(2); CEQA Guidelines § 15064(h)(1). A cumulative impact is an impact created
15 as a result of the project when evaluated together with other past, present, and reasonably
16 foreseeable future projects causing related impacts. In performing a cumulative impacts analysis,
17 the EIR must assess the significance of the incremental addition of a project to the combined
18 individual effects of one or more separate projects. The analysis should provide sufficient data to
19 ensure that the cumulative effects are identified and disclosed, and should make a good faith and
20 reasonable effort at disclosing all cumulative impacts.

21 124. The EIR's cumulative impacts analysis is deficient in several respects, including
22 the following:

23 a. The EIS/EIR fails to analyze the combined effects of recent past water
24 transfer projects in combination with the Project;

25 b. The EIS/EIR fails to analyze the combined effects of the Project together
26 with: the Bay Delta Conservation Plan, recent USBR Warren Act Contracts for Banta-Carbona,
27 Byron-Bethany, and Patterson; 2014 and 2015 Tehama Colusa Canal Authority Water Transfers;
28 Western Canal Water District 2012, 2014 and 2015 Water Transfers; Richvale Irrigation District

1 2012, 2014 and 2015 Water Transfers; Biggs-West Gridley Water District 2012, 2014 and 2015
2 Water Transfers; Butte Water District 2012, 2014 and 2015 Water Transfers; Yuba County Water
3 Agency 2008-2015 Water Transfers; Multi-year groundwater substitution Petitions to the SWRCB
4 such as, but not limited to, Plumas Mutual Water Company and Garden Highway Mutual Water
5 Company; and Five-Year Warren Act Contracts for Conveyance of Groundwater in Tehama-
6 Colusa and Corning Canals.

7 c. The EIS/EIR fails to analyze or disclose the cumulative effects from
8 reductions in Delta outflow.

9 The EIS/EIR's Mitigation Measures are Legally Inadequate

10 125. "An EIR shall describe feasible measures which could minimize significant adverse
11 impacts." CEQA Guidelines § 15126.4(a)(1). An EIR may not defer the formulation of
12 mitigation measures to a future time, but mitigation measures may specify performance standards
13 that would mitigate significant effects and may be accomplished in in more than one specified
14 way. "Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or
15 orders a report without either setting standards or demonstrating how the impact can be mitigated
16 in the manner described in the EIR." *Preserve Wild Santee v. City of Santee*, 210 Cal.App.4th
17 260, 280-281 (2012).

18 126. The EIS/EIR improperly defers analysis and formulation of mitigation measures.
19 For example:

20 a. EIS/EIR mitigation measure GW-1 illegally defers analysis of the impact in
21 question to a future time, includes no meaningful criteria or performance standards by which to
22 evaluate success, and fails to demonstrate that it is feasible or sufficient to mitigate significant
23 impacts to groundwater, and to other related impacts for which the EIR relies on GW-1, including
24 but not limited to impacts to habitat, species, water quality, water supply, and land subsidence;

25 b. EIS/EIR mitigation measure SW-1 illegally defers analysis of the impact in
26 question to a future time, includes no meaningful criteria or performance standards by which to
27 evaluate success, and fails to demonstrate that it is feasible or sufficient to mitigate significant
28

1 impacts to surface water, and to other related impacts for which the EIR relies on SW-1,
2 including but not limited to impacts to habitat, species, water quality, and water supply.

3 The EIS/EIR Failed to Consider a Reasonable Range of Alternatives

4 127. An EIR must “consider a reasonable range of potentially feasible alternatives that
5 will foster informed decision making and public participation.” CEQA Guidelines § 15126.6.

6 128. CEQA further requires that, “the EIR shall also identify an environmentally
7 superior alternative among the other alternatives.” CEQA Guidelines § 15126.6(e)(2).

8 129. The EIS/EIR’s analysis of alternatives fails to comply with CEQA because it both
9 failed to consider a reasonable range of alternatives, impermissibly narrowed the Project’s
10 objectives in order to avoid consideration of reasonable alternatives, and failed to identify an
11 environmentally superior alternative. These violations include but not limited to the following:

12 a. The Project’s objectives are impermissibly narrowed to consideration of
13 transfers from upstream of the Delta to water users south of the Delta and San Francisco Bay to
14 meet supplemental water supply objectives. This improperly excludes the objective consideration
15 of reasonable alternatives to developing additional water supply including, without limitation,
16 water recycling, water conservation in seller service areas to reduce water demands, and within
17 water buyer district local conjunctive use, transfers, crop idling or shifting, and land retirement;

18 b. The EIS/EIR impermissibly failed to include alternatives including all
19 reasonable measures, including land retirement, within the buyer area as well as areas of the State
20 other than upstream of the Delta;

21 c. The EIS/EIR impermissibly omitted an alternative that included all other
22 water supply source concepts except seller service area crop idling and shifting so seller service
23 area agricultural impacts from the water transfers could have been identified, characterized,
24 quantified and disclosed;

25 d. The EIS/EIR impermissibly omitted an alternative that included all other
26 water supply sources except reservoir releases so reservoir release impacts from the water
27 transfers could have been identified, characterized, quantified and disclosed;

28

1 e. The EIS/EIR's analysis of alternatives failed to separate crop idling from
2 crop switching thereby preventing adequate analysis and disclosure of crop switching as a viable
3 project alternative;

4 f. The SLDMWA failed to seriously consider Alternatives 3 (No Cropland
5 Modifications) and 4 (No Groundwater Substitutions) even though these alternatives were found to
6 have less impacts than the Project.

7 The SLDMWA Failed to Recirculate the EIS/EIR after Adding Significant New Information

8 130. CEQA requires a lead agency to recirculate an EIR whenever the addition of
9 information, after the close of public comment, would deprive the public and public agencies with
10 the ability to comment on adverse project impacts, changes in the environmental setting, changes
11 in the project description, or additional feasible mitigation measures, that were not disclosed in
12 the draft EIR. *See, e.g., Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.*, 6 Cal.4th
13 1112 (Cal. 1993); Cal. Code Regs., tit. 14, § 15088.5(a).

14 131. SLDMWA failed to recirculate the EIS/EIR for public and agency review and
15 comment, after adding significant new information to the EIS/EIR following the close of public
16 comment, including but not limited to:

17 a. The FEIS/EIR made significant revisions to mitigation measure GW-1,
18 adding information crucial for public consideration that was missing in the DEIR, and adding
19 significant new components and requirements in an attempt to mitigate potentially significant
20 impacts;

21 b. The FEIS/EIR made significant revisions to mitigation measure WS-1,
22 adding information crucial for public consideration that was missing in the DEIR, and adding
23 significant new components and requirements in an attempt to mitigate potentially significant
24 impacts;

25 c. The FEIS/EIR added new mitigation measures to reduce the Project's
26 significant impacts to land subsidence;

27 d. The FEIS/EIR added significant new information regarding past water
28 transfer timing, location, amounts, and monitoring;

1 e. The FEIS/EIR added significant new information regarding existing
2 groundwater conditions;

3 f. The FEIS/EIR added significant new maps setting forth the existing
4 environmental conditions of the Project areas;

5 g. Significant new information following the close of public comment
6 demonstrated substantially worsened existing conditions and Project impacts to fisheries;

7 h. Significant new information following the close of public comment
8 demonstrated new and greater cumulative impacts;

9 i. Significant new information following the close of public comment added
10 Project components not analyzed by the Draft EIS/EIR.

11 The EIS/EIR Failed to Adequately Respond to Comments

12 132. The FEIS/R offers conclusory statements, unsupported by specific reference to
13 explanatory information, that are insufficient to adhere to CEQA's public participation
14 requirements. *See* Cal. Code Regs., tit. 14, § 15088(c); *People v County of Kern* 62 Cal.App.3d
15 761 (1976); 40 C.F.R. § 1503.4(a); *Piedmont Heights Civic Club v. Moreland*, 637 F.2d 430, 436
16 (5th Cir. 1981).

17 133. In particular, responses to comments including but not limited to NG01-62, NG01-
18 63, NG02-5, NG03-34, NG03-36, NG03-88, NG03-89, NG03-103, NG03-112, NG03, 113,
19 NG03-136, fail to meet CEQA standards for reasoned consideration of public input.

20 SLDMWA is Not a Proper Lead Agency

21 134. Pursuant to CEQA, "lead agency" means the public agency which has the principal
22 responsibility for carrying out or approving a project which may have a significant effect upon the
23 environment." Pub. Resources Code § 21067. As such, the lead agency must have authority to
24 require imposition of alternatives and mitigation measures to reduce or avoid significant project
25 effects, and must have the authority to disapprove of the project altogether. *Planning and*
26 *Conservation League et al. v Department of Water Resources*, 83 Cal.App.4th 892, 907 (2000),
27 citing *Kleist v. City of Glendale*, 56 Cal.App.3d 770, 779 (1976).

28

1 135. SLDMWA is an improper lead agency. The *2015-2024 Water Transfer Program*
2 impacts the long-term water supplies, environment, and economies in many California counties
3 far removed from the SLDMWA geographic boundaries. With SLDMWA designated as the lead
4 agency, and no potential sellers or source counties designated as responsible agencies, the process
5 is unreasonably biased toward the narrow functional interests of SLDMWA and its member
6 agencies. Nothing provided in the EIS/EIR suggests that SLDMWA has authority to require
7 mitigation measures or alternatives to reduce or avoid significant project impacts, for example, to
8 groundwater resources in the seller service area, as such limitations would clearly be contrary to
9 the specific interests of the SLDMWA members.

10 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

11 **THIRD CLAIM FOR RELIEF**

12 **VIOLATION OF CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

13 **(By Plaintiffs against USBR, Sally Jewell and Does 1 through 200)**

14 136. Plaintiffs incorporate by reference each and every allegation contained in
15 Paragraphs 1 through 135 as though fully set forth herein.

16 137. Water transfers made pursuant to the Project are subject to the limitations of the
17 CVPIA.

18 138. The CVPIA specifies the terms and conditions under which transfers of CVP water
19 can be made. Section 3405 of the Act allows transfers of any CVP water “under water service or
20 repayment contracts, water rights settlement contracts or exchange contracts . . .” Thus, any
21 individual or district which receives CVP water can transfer its CVP water if they or it comply
22 with Section 3405.

23 139. Section 3405 (a)(1)(I) of the CVPIA limits the transfers “to water that would have
24 been consumptively used or irretrievably lost to beneficial use during the year or years of the
25 transfer.” This limitation ensures that a transfer of water does not increase the total amount of
26 water consumed, rather it allows for the shifting of water use from one party to another.

27
28

1 140. The Project specifically allows the sellers to replace the transferred water through
2 ground water substitution. Thus, the Project violates the CVPIA by authorizing transfers that
3 result in increased consumptive use of water.

4 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for relief as follows:

- 7 1. Enter a declaratory judgment that the USBR violated NEPA by preparing an
8 inadequate EIS;
- 9 2. Vacate the USBR's Record of Decision for the Project;
- 10 3. Issue a peremptory writ of mandate commanding SLDMWA to vacate and set aside
11 its certification of the EIS/EIR, its approval of the Project, and any and all approvals rendered
12 pursuant to and/or in furtherance of all or any part of the Project;
- 13 4. Preliminarily and permanently enjoin Defendants from approving any water
14 transfers encompassed by the Project unless and until Defendants comply with the requirements of
15 NEPA and CEQA;
- 16 5. Enter a declaratory judgment that the reliance on groundwater substitution to make
17 water available for transfer, ultimately increasing the amount of water consumed under the
18 Project, violates the Central Valley Project Improvement Act;
- 19 6. Preliminarily and permanently enjoin USBR from approving any water transfers
20 encompassed by the Project unless and until USBR complies with the requirements of the CVPIA.
- 21 7. Permanently enjoin Defendants to return the affected environment to pre-Project
22 conditions unless and until the Projects are brought into full compliance with CEQA, NEPA, and
23 the CVPIA;
- 24 8. Award Plaintiffs the costs of this action, including their reasonable attorneys' fees;

25 and

26 ///

27 ///

28 ///

1 9. Grant such other such relief as the Court deems just and proper.

2 DATED: May 11, 2015

AQUA TERRA AERIS LAW GROUP

3

4



5

Jason R. Flanders
Attorney for Plaintiffs
AquAlliance and California Sportfishing Protection
Alliance

6

7

8 DATED: May 11, 2015

SOLURI MESERVE, A LAW CORPORATION

9

10



11

Patrick M. Soluri
Attorney for Plaintiffs
Local Agencies of the North Delta,
Central Delta Water Agency, South Delta Water
Agency

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

VERIFICATION

1
2 I, Jason Flanders, am counsel of record for Petitioners and Plaintiffs AquAlliance and
3 California Sportfishing Protection Alliance. I sign for these Petitioners and Plaintiffs absent from
4 the county of counsel and/or because facts contained in the Petition and Complaint are within the
5 knowledge of counsel. I have read the foregoing Petition and Complaint know the contents
6 thereof. The same is true of my own knowledge, except as to those matters that are alleged on
7 information and belief, and as to those matters, I believe them to be true.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed this 11th day of May, 2015, in Oakland, California.

10
11 
12 Jason R. Flanders

13 I, Patrick Soluri, am one of the attorneys of record for Petitioners and Plaintiffs Local
14 Agencies of the North Delta, Central Delta Water Agency, and South Delta Water Agency in the
15 above-entitled action, and am authorized to execute this verification on their behalf. I have read
16 the foregoing petition and complaint and know the contents thereof. The same is true of my own
17 knowledge, except as to those matters which are therein alleged on information and belief, and as
18 to those matters, I believe it to be true.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed this 11th day of May, 2015, in Sacramento, California.

21
22 
23 Patrick M. Soluri

EXHIBIT A



tel: 916.455.7300 · fax: 916.244.7300
1010 F Street, Suite 100 · Sacramento, CA 95814

May 11, 2015

SENT VIA EMAIL, FACSIMILE AND U.S. MAIL

Frances Mizuno, Assistant Executive Director
San Luis & Delta-Mendota Water Authority
15990 Kelso Road, Byron, CA 94514-9614
Email: frances.mizuno@sldmwa.org
Facsimile: (209) 833-1034

**RE: Notice of Commencement of CEQA Action Against the San Luis &
Delta-Mendota Water Authority**

Dear Ms. Mizuno:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that AquAlliance, California Sportfishing Protection Alliance, Local Agencies of the North Delta, Central Delta Water Agency and South Delta Water Agency (collectively, "Plaintiffs") intend to file a petition for writ of mandate under the provisions of the California Environmental Quality Act ("CEQA") against the San Luis & Delta-Mendota Water Authority ("SLDMWA") challenging SLDMWA's certification of a Final Environmental Impact Report and approval of the "Long-Term Water Transfers" project, State Clearinghouse number 2011011010 ("Project"). The lawsuit will be based on violations of CEQA as well as the National Environmental Policy Act and the Central Valley Project Improvement Act, as discussed more fully in the Project's administrative and environmental review proceedings. The exact nature of the allegations and relief sought is described in the Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate that Plaintiffs plan to file in the United States District Court, Eastern District of California, on May 11, 2015.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:

A handwritten signature in blue ink, appearing to read "Patrick M. Soluri", is written over a horizontal line.

Patrick M. Soluri

cc: See attached Proof of Service

PROOF OF SERVICE

I hereby declare that I am employed in the City of Sacramento, County of Sacramento, California. I am over the age of 18 years and not a party to the action. My business address is 1010 F Street, Suite 100, Sacramento, California.

On May 11, 2015, I served the attached document: **Notice of Commencement of CEQA Action Against the San Luis & Delta-Mendota Water Authority**, on the following parties or attorneys for parties, as shown below:

Frances Mizuno, Asst. Executive Director
San Luis & Delta-Mendota Water
Authority
15990 Kelso Road, Byron, CA 94514-9614
Email: frances.mizuno@sldmwa.org
Facsimile: (209) 833-1034

David Murillo, Regional Director
The U.S. Bureau of Reclamation
Mid Pacific Regional Office, Federal
Office Building
2800 Cottage Way, Sacramento CA
95825-1898
Email: dmurillo@usbr.gov
Facsimile: (916) 978-5005

Sarah "Sally" Jewell, Secretary
The U.S. Department of the Interior
1849 C Street, NW, Room 6156
Washington, DC 20240
Email: exsec@ios.doi.gov
Facsimile: (202) 208-6956

✓ **BY EMAIL:** I caused each such document to be sent by email to the following persons or their representative listed above.

✓ **BY FACSIMILE:** I caused each such document to be sent by facsimile to the following persons or their representative listed above.

✓ **BY FIRST CLASS MAIL:** I am readily familiar with this business's practice of collecting and processing correspondence for mailing with the U.S. Postal Service. On the date written above, following ordinary business practices, I placed for collection and mailing at my place of business the attached document in a sealed envelope, with postage fully prepaid, addressed as shown above.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed at Sacramento, California on May 11, 2015.



Mae Ryan Empleo

EXHIBIT B

1 Jason R. Flanders (SBN 238007)
AQUA TERRA AERIS LAW GROUP
2 409 45th Street
Oakland, CA 94609
3 Phone: 916-202-3018
4 Email: jrf@atalawgroup.com

5 Michael B. Jackson (SBN 53808)
P.O. Box 207
6 75 Court Street
Quincy, CA 95971
7 Phone: 530-283-1007
8 Email: mjatty@sbcglobal.net

9 *Attorneys for Petitioners and Plaintiffs AquAlliance and*
10 *California Sportfishing Protection Alliance*

11 Patrick M. Soluri (SBN 210036)
Osha R. Meserve (SBN 2014240)
12 SOLURI MESERVE, A LAW CORPORATION
1010 F Street, Suite 100
13 Sacramento, CA 95814
Phone: (916) 455-7300
14 Email: patrick@semlawyers.com; osha@semlawyers.com

15 *Attorneys for Petitioners and Plaintiffs Local Agencies of the North Delta,*
16 *Central Delta Water Agency, South Delta Water Agency*

17 **IN THE UNITED STATES DISTRICT COURT FOR THE**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 AQUALLIANCE; CALIFORNIA
SPORTFISHING PROTECTION
20 ALLIANCE; CENTRAL DELTA WATER
AGENCY; SOUTH DELTA WATER
21 AGENCY; LOCAL AGENCIES OF THE
22 NORTH DELTA,

23 Petitioners and Plaintiffs,

24 v.

25 The UNITED STATES BUREAU OF
RECLAMATION; SAN LUIS & DELTA-
26 MENDOTA WATER AUTHORITY; SALLY
JEWELL, in her official capacity; and DOES 1
27 – 100,

28 Respondents and Defendants.

PETITIONERS' ELECTION TO PREPARE
THE RECORD OF PROCEEDINGS

(Cal. Pub. Resources Code § 21167.6)

1 **TO THE COURT AND THE PARTIES:**

2 Pursuant to California Public Resources Code section 21167.6, Petitioners and Plaintiffs
3 hereby make the required request of the Respondents and Defendants, by electing to prepare the
4 record of proceedings in the above-titled action.¹ Petitioners' election is made specifically for the
5 purpose of exercising Petitioners' statutory right to control *all* costs associated with preparing the
6 record of proceedings in this matter.² Accordingly, Petitioners expressly disavow and deny all
7 liability pursuant to California Government Code section 11523, or any other applicable law, for
8 any purported costs or other charges that may be claimed by Defendants, Respondents, or any
9 other person or entity in association with preparing the record of proceedings, unless such amounts
10 are disclosed to, and approved by, Petitioners before such costs are incurred.

11
12 DATED: May 11, 2015

AQUA TERRA AERIS LAW GROUP

13
14 

15 Jason R. Flanders
16 Attorney for Plaintiffs
17 AquAlliance and California Sportfishing Protection
Alliance

18 DATED: May 11, 2015

SOLURI MESERVE, A LAW CORPORATION

19
20 

21 Patrick M. Soluri
22 Attorney for Plaintiffs
23 Local Agencies of the North Delta,
24 Central Delta Water Agency, South Delta Water
25 Agency

26 ¹ Pub. Resources Code, § 21167.6, subs. (a) and (b)(2).

27 ² *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 447
28 (“[u]nder section 21167.6, plaintiffs ha[ve] the option of preparing the administrative record
themselves to minimize expenses”).

EXHIBIT C

1 Jason R. Flanders (SBN 238007)
AQUA TERRA AERIS LAW GROUP
2 409 45th Street
Oakland, CA 94609
3 Phone: 916-202-3018
4 Email: jrf@atalawgroup.com

5 Michael B. Jackson (SBN 53808)
P.O. Box 207
6 75 Court Street
Quincy, CA 95971
7 Phone: 530-283-1007
8 Email: mjatty@sbcglobal.net

9 *Attorneys for Petitioners and Plaintiffs AquAlliance and*
10 *California Sportfishing Protection Alliance*

11 Patrick M. Soluri (SBN 210036)
Osha R. Meserve (SBN 2014240)
12 SOLURI MESERVE, A LAW CORPORATION
1010 F Street, Suite 100
13 Sacramento, CA 95814
Phone: (916) 455-7300
14 Email: patrick@semlawyers.com; osha@semlawyers.com

15 *Attorneys for Petitioners and Plaintiffs Local Agencies of the North Delta,*
16 *Central Delta Water Agency, South Delta Water Agency*

17 **IN THE UNITED STATES DISTRICT COURT FOR THE**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 AQUALLIANCE; CALIFORNIA
SPORTFISHING PROTECTION
20 ALLIANCE; CENTRAL DELTA WATER
AGENCY; SOUTH DELTA WATER
21 AGENCY; LOCAL AGENCIES OF THE
22 NORTH DELTA,

23 Petitioners and Plaintiffs,

24 v.

25 The UNITED STATES BUREAU OF
RECLAMATION; SAN LUIS & DELTA-
26 MENDOTA WATER AUTHORITY; SALLY
JEWELL, in her official capacity; and DOES 1
27 – 100,

28 Respondents and Defendants.

NOTICE TO ATTORNEY GENERAL

(Code Civ. Proc. § 388; Cal. Pub. Resources
Code § 21167.7)

1 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

2 PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code
3 of Civil Procedure section 388, that on May 15, 2013, AquAlliance, California
4 Sportfishing Protection Alliance, Local Agencies of the North Delta, Central Delta Water
5 Agency and South Delta Water Agency (collectively, "Plaintiffs") intend to file a
6 Complaint for Declaratory Injunctive Relief and Petition for Writ of Mandate against the
7 against the San Luis & Delta-Mendota Water Authority ("SLDMWA") in the United
8 States District Court, Eastern District of California. The complaint and petition challenges
9 SLDMWA's certification of a Final Environmental Impact Report and approval of the
10 "Long-Term Water Transfers" project, State Clearinghouse number 2011011010
11 ("Project"). The lawsuit is based on violations of the California Environmental Quality
12 Act, the National Environmental Policy Act and the Central Valley Project Improvement
13 Act, and seeks recovery of Plaintiffs' reasonable costs and attorneys' fees under Code of
14 Civil Procedure section 1021.5 or other applicable theories, as discussed more fully in the
15 complaint and petition that is attached to this notice.

16

17 DATED: May 11, 2015

AQUA TERRA AERIS LAW GROUP

18

19



20

Jason R. Flanders
Attorney for Plaintiffs
AquAlliance and California Sportfishing Protection
Alliance

21

22

23 DATED: May 11, 2015

SOLURI MESERVE, A LAW CORPORATION

24

25



26

Patrick M. Soluri
Attorney for Plaintiffs
Local Agencies of the North Delta,
Central Delta Water Agency, South Delta Water
Agency

27

28