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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

Plaintiff,

vs.

ALL PERSONS INTERESTED IN THE
MATTER of the Authorization of Delta
Program Revenue Bonds, the Issuance, Sale
and Delivery of Delta Program Revenue
Bonds Series A, Series B and Subsequent
Series, the Adoption of the Delta Program
Revenue Bond General Bond Resolution and
the Supplemental Resolutions Providing for
the Issuance of Delta Program Revenue
Bonds, and the Proceedings Related Thereto,

Defendants.

Case No.: 34-2020-00283112

**VERIFIED ANSWER OF SOUTH DELTA
WATER AGENCY AND CENTRAL
DELTA WATER AGENCY TO
COMPLAINT FOR VALIDATION**

(Cal. Code Civ. Proc., §§ 860-870.5)

Department: 31
Judge: Honorable Gerrit Wood
Complaint Filed: August 6, 2020

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1
2 **INTRODUCTION**

3 The South Delta Water Agency and Central Delta Water Agency (collectively, “Delta
4 Agencies”) would be adversely affected by DWR’s premature and prejudicial attempt in this
5 validation action to create binding obligations through revenue bonds under the Central Valley
6 Project Act (“CVP Act,” Wat. Code, §§ 11100, *et seq.*) to finance the planning, environmental
7 review and capital costs of a Delta Conveyance Project as the centerpiece the so-called (“Delta
8 Program”). There is nothing in DWR’s “Delta Program” that would do anything other than
9 irreversibly injure the Delta, its inhabitants, species and ecosystems. It is undeniable that the
10 entire purpose of Delta Program is to construct an isolated Delta Conveyance Project that
11 would route significant amounts of freshwater inflow under the Delta through a massive
12 tunnel, thereby robbing the Delta of its lifeblood.

13 DWR’s request for validation is premature, lacking in critically needed detail and a
14 blatant attempt to establish irreversible political momentum for a Delta Conveyance Project.
15 While alleging that the Delta Conveyance is merely in the planning stage, and no decisions
16 have been made by DWR in favor of isolated conveyance, DWR seeks validation of
17 unbounded bond resolutions for all aspects of its Delta Program including the capital costs of a
18 Delta Conveyance Project with a preliminary cost estimate of \$15.9 billion. The Delta
19 Agencies herein submit this Verified Answer to Complaint for Validation (“Complaint”) filed
20 by DWR and allege as follows:

21
22 **ANSWER TO COMPLAINT FOR VALIDATION**

23 **Nature of the Action**

24 1. Answering Paragraph 1 of the Complaint, Delta Agencies admit that the
25 Complaint purports to commence a validation action under Code Civ. Proc. § 860 et seq. and
26 Gov. Code § 17700 and that DWR seeks a judgment confirming the validity of a proposed
27 revenue bond to finance the “Delta Program” as defined in the Complaint. Other than as
28 expressly admitted, Delta Agencies deny each and every other allegation of Paragraph 1.

1 SOUTH DELTA WATER AGENCY (“SDWA”) is a political subdivision of the
2 State of California created by the California Legislature under the South Delta
3 Water Agency Act, chapter 1089 of the statutes of 1973 (Wat. Code, Appendix,
4 116-1.1, et seq.), by the provisions of which SDWA came into existence in January
5 of 1974. SDWA’s boundaries are specified in Water Code Appendix section 116-
6 9.1 and encompass approximately 148,000 acres, which are located entirely within
7 both the south-western portion of San Joaquin County and the “Sacramento-San
8 Joaquin Delta” as defined in California Water Code section 12220. While the lands
9 within the agency are primarily devoted to agriculture, said lands are also devoted
10 to numerous other uses including recreational, wildlife habitat, open space,
11 residential, commercial, municipal and institutional uses. SDWA is empowered to
12 “sue and be sued” and to take all reasonable and lawful actions, including pursuing
13 legislative and legal actions, that have for their general purpose: (1) to protect the
14 water supply of the lands within the agency against intrusions of ocean salinity;
15 and/or (2) to assure the lands within the agency a dependable supply of water of
16 suitable quality sufficient to meet present and future needs. The agency may also
17 undertake activities to assist landowners and local districts within the agency in
18 reclamation and flood control matters. (See Wat. Code, Appendix, 116-4.2, subd.
19 (b) & 116-4.1, subds. (a) and (b), respectively.) SDWA may assist landowners,
20 districts, and water right holders within its boundaries in the protection of vested
21 water rights and may represent the interests of those parties in water right
22 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,
24 Appendix, 116-4.2 subd. (b).)

25
26 The Delta Agencies further allege that:

27 CENTRAL DELTA WATER AGENCY (“CDWA”) is a political subdivision
28 of the State of California created by the California Legislature under the

1 Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat.
2 Code, Appendix, 117-1.1, et seq.), by the provisions of which CDWA came
3 into existence in January of 1974. CDWA's boundaries are specified in
4 Water Code Appendix section 117-9.1 and encompass approximately 120,000
5 acres, which are located entirely within both the western portion of San
6 Joaquin County and the "Sacramento-San Joaquin Delta" as defined in
7 California Water Code section 12220. While the lands within the agency are
8 primarily devoted to agriculture, said lands are also devoted to numerous
9 other uses including recreational, wildlife habitat, open space, residential,
10 commercial, and institutional uses. CDWA is empowered to "sue and be
11 sued" and to take all reasonable and lawful actions, including pursuing
12 legislative and legal action, that have for their general purpose: (1) to protect
13 the water supply of the lands within the agency against intrusion of ocean
14 salinity; and/or (2) to assure the lands within the agency a dependable supply
15 of water of suitable quality sufficient to meet present and future needs. The
16 agency may also undertake activities to assist landowners and local districts
17 within the agency in reclamation and flood control matters. (See Wat. Code,
18 Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and (b), respectively.)
19 CDWA may assist landowners, districts, and water right holders within its
20 boundaries in the protection of vested water rights and may represent the
21 interests of those parties in water right proceedings and related proceedings
22 before courts of both the State of California and the United States to carry out
23 the purposes of the agency. (See Wat. Code, Appendix, 117-4.2, subd. (b).)

24 Jurisdiction and Venue

25
26 10. Answering Paragraph 10 of the Complaint, Delta Agencies allege that the cited
27 code sections speak for themselves and that the allegations contain legal conclusions and
28 statements of law to which no response is required. To the extent a response is required, Delta

1 Agencies deny the allegations.

2 11. Answering Paragraph 11 of the Complaint, Delta Agencies allege that the cited
3 code section speaks for itself and that the allegations contain legal conclusions and statements
4 of law to which no response is required. To the extent a response is required, Delta Agencies
5 deny the allegations.

6 12. Answering Paragraph 12 of the Complaint, Delta Agencies admit the allegations
7 therein.

8 13. Answering Paragraph 13 of the Complaint, Delta Agencies allege that the cited
9 rule of court speaks for itself and that the allegations contain legal conclusions and statements
10 of law to which no response is required. To the extent a response is required, Delta Agencies
11 deny the cases are related since the prior case was dismissed and the underlying project was
12 withdrawn by DWR and the subject project is materially different and seeks approval of
13 different financing resolutions.

14 **The Project**

15 14. Answering Paragraph 14 of the Complaint, Delta Agencies admit DWR
16 operates, manages and oversees projects which store, transport, and deliver water to urban and
17 agricultural water agencies statewide. The Delta Agencies lack sufficient knowledge to admit
18 or deny the remaining allegations of Paragraph 14, and on that basis, deny each and every
19 remaining allegation.

20 15. Answering Paragraph 15 of the Complaint, it contains legal conclusions and/or
21 statements of law to which no response is required. To the extent a response is required, Delta
22 Agencies deny the allegations.

23 16. Answering Paragraph 16 of the Complaint, Delta Agencies allege it contains
24 legal conclusions and/or statements of law, and opinion to which no response is required. To
25 the extent a response is required, Delta Agencies deny any such allegations.

26 17. Answering Paragraph 17 of the Complaint, Delta Agencies admit the allegations
27 therein.

28 18. Answering Paragraph 18 of the Complaint, Delta Agencies admit the allegations

1 therein.

2 19. Answering Paragraph 19 of the Complaint, Delta Agencies admit the allegations
3 therein.

4 **The Delta Program**

5 20. Answering Paragraph 20 of the Complaint, Delta Agencies allege that the
6 allegations contain conclusions of law to which no response is required, and that the language
7 of the Delta Reform Act speaks for itself. To the extent, a response is required, Delta Agencies
8 deny the allegations.

9 21. Answering Paragraph 21 of the Complaint, Delta Agencies allege the language
10 of the Delta Reform Act speaks for itself and that the best evidence of the intent of the Act is
11 found therein. The Delta Agencies further allege the paragraph contains legal conclusions
12 and/or statements of law, and opinion to which no response is required. To the extent a
13 response is required, Delta Agencies deny the allegations.

14 22. Answering Paragraph 22 of the Complaint, Delta Agencies allege that the
15 language of the Delta Reform Act, speak for itself.

16 23. Answering Paragraph 23 of the Complaint, Delta Agencies allege that the
17 language of the Delta Reform Act, speak for itself.

18 24. Answering Paragraph 24 of the Complaint, Delta Agencies allege the language
19 of the Delta Reform Act speaks for itself and that the best evidence of the intent of the Act is
20 found therein. The Delta Agencies further allege the paragraph contains legal conclusions
21 and/or statements of law, and opinion to which no response is required. To the extent a
22 response is required, Delta Agencies deny the allegations.

23 25. Answering Paragraph 25 of the Complaint, Delta Agencies lack sufficient
24 information to admit or deny the allegations and, on that basis, deny the allegations.

25 26. Answering Paragraph 26 of the Complaint, Delta Agencies admit that
26 DWR issued a Notice of Preparation on January 15, 2020. The Delta Agencies further admit
27 that CEQA requires the consideration of a reasonable range of project alternatives including a
28 no project alternative. As to the remaining allegations contained in Paragraph 26, Delta

1 Agencies lack sufficient knowledge to either admit or deny the remaining allegations of said
2 Paragraph and on that basis deny each and every remaining allegation of Paragraph 26.

3 27. Answering Paragraph 27 of the Complaint, Delta Agencies admit that DWR has
4 authorized, whether appropriately or not, a mechanism to fund the Delta Program and that
5 DWR brought the validation action in an attempt to confirm its purported legal authority to
6 issue revenue bonds to finance the Delta Program. The Delta Agencies deny each and every
7 other allegation set forth in Paragraph 27.

8 28. Answering Paragraph 28 of the Complaint, Delta Agencies admit that the Delta
9 Conveyance Project, referenced in DWR's January 15, 2020, NOP, remains the subject of
10 pending environmental review, and that DWR has conceded that preparation of an
11 Environmental Impact Report, project approval by DWR, and compliance with "all applicable
12 statutory and regulatory conditions (including CEQA compliance)" would be required to
13 proceed with that project. Delta Agencies allege that the three resolutions attached to the
14 Complaint provide the best evidence of what DWR claims to have authorized, and that
15 Paragraph 28 sets forth legal conclusions to which no response is required. Other than as
16 admitted herein, Delta Agencies deny each and every allegation of Paragraph 28.

17 29. Answering Paragraph 29 of the Complaint, Delta Agencies allege that the
18 allegations therein set forth legal conclusions or statements of law to which no response is
19 required. To the extent a response is required Delta Agencies deny each and every allegation.

20 30. Answering Paragraph 30 of the Complaint, Delta Agencies allege that Water
21 Code section 11260 speaks for itself, and that the Complaint is the best evidence of what DWR
22 seeks in this validation action. Otherwise, Delta Agencies deny every allegation of Paragraph
23 30.

24 31. Answering Paragraph 31 of the Complaint, Delta Agencies allege the allegations
25 therein set forth legal conclusions or statements of law to which no response is required. To
26 the extent a response is required, Delta Agencies deny each and every allegation of Paragraph
27 31.

28 32. Answering Paragraph 32 of the Complaint, the allegations therein set forth legal

1 conclusions or statements of law to which no response is required. To the extent a response is
2 required, Delta Agencies deny each and every allegation of Paragraphs 32.

3 33. Answering Paragraph 33 of the Complaint, Delta Agencies allege the allegations
4 therein set forth legal conclusions or statements of law to which no response is required. To
5 the extent a response is required, Delta Agencies deny each and every allegation of Paragraph
6 33.

7 34. Answering Paragraph 34 of the Complaint, Delta Agencies allege the allegations
8 therein set forth legal conclusions or statements of law to which no response is required. To
9 the extent a response is required, Delta Agencies deny each and every allegation of Paragraph
10 34.

11 35. Answering Paragraph 35 of the Complaint, Delta Agencies allege the allegations
12 therein set forth legal conclusions or statements of law to which no response is required. To
13 the extent a response is required, Delta Agencies deny each and every allegation of Paragraph
14 35.

15 **Statutory Authority for the Financing of the Delta Program**

16 36. Answering Paragraph 36 of the Complaint, Delta Agencies allege the allegations
17 therein set forth legal conclusions or statements of law to which no response is required. To
18 the extent a response is required, Delta Agencies deny each and every allegation of Paragraph
19 36.

20 37. Answering Paragraph 37 of the Complaint, Delta Agencies allege that the
21 provisions of Central Valley Project Act, including Water Code sections 11200 through 11295,
22 speak for themselves. To the extent a response is required, Delta Agencies deny all allegations
23 of Paragraph 37.

24 38. Answering Paragraph 38 of the Complaint, Delta Agencies allege the allegations
25 therein set forth legal conclusions or statements of law to which no response is required. To
26 the extent a response is required, Delta Agencies deny each and every allegation of Paragraph
27 38.

28 39. Answering Paragraph 39 of the Complaint, Delta Agencies allege the allegations

1 therein set forth legal conclusions or statements of law to which no response is required and
2 allege the statute and court ruling speak for themselves. To the extent a response is required,
3 Delta Agencies deny the allegations of Paragraph 39.

4 40. Answering Paragraph 40 of the Complaint, Delta Agencies allege the allegations
5 therein set forth legal conclusions or statements of law to which no response is required and
6 allege the statute speaks for itself. To the extent a response is required, Delta Agencies deny
7 the allegations of Paragraph 40.

8 41. Answering Paragraph 41 of the Complaint, Delta Agencies admit the Central
9 Valley Project Act confers certain powers with respect to State Water Project facilities and
10 alleges that the provisions of that Act speak for themselves. Delta Agencies deny that DWR
11 has the power to authorize the review, planning, design and engineering, acquisition, and
12 construction of the “Delta Program” as alleged in the Complaint.

13 42. Answering Paragraph 42 of the Complaint, Delta Agencies allege the allegations
14 contain legal conclusions to which no response is required. To the extent a response is
15 required, Delta Agencies deny that the Central Valley Project Act authorizes issuance of
16 revenue bonds for the “Delta Program” or “Delta Conveyance Project” as referenced in DWR’s
17 Complaint and associated resolutions.

18 43. Answering Paragraph 43 of the Complaint, Delta Agencies allege that Water Code
19 section 11700 speaks for itself and deny this provision authorizes issuance of revenue bonds
20 for “Delta Program Planning Costs or Delta Program Construction Costs.

21 44. Answering Paragraph 44 of the Complaint, Delta Agencies allege that Water Code
22 section 11761 speaks for itself and deny that this provision authorizes issuance of revenue
23 bonds for Delta Program Planning Costs or Delta Program Construction Costs. Delta Agencies
24 deny that DWR satisfied the requirements before revenue bonds can be issued under section
25 11761.

26 45. Answering Paragraph 45 of the Complaint, Delta Agencies allege that the Code
27 section speaks for itself and the allegations contain legal conclusions to which no response is
28 required. To the extent a response is required, Delta Agencies deny the allegations of

1 Paragraph 45 of the Complaint.

2 **The Delta Program Revenue Bond Financing**

3 46. Answering Paragraph 46 of the Complaint, Delta Agencies admit the
4 allegations herein.

5 47. Answering Paragraph 47 of the Complaint, Delta agencies admit the Resolution
6 defines the Delta Program as set forth in Paragraph 47. Delta Agencies lack sufficient
7 knowledge to admit or deny the remaining allegations of Paragraph 47 and, on that basis, deny
8 the remaining allegations of Paragraph 47.

9 48. Answering Paragraph 48 of the Complaint, Delta Agencies admit that Section 203
10 is included in the Resolution as alleged in Paragraph 48. Delta Agencies allege that Paragraph
11 48 contains a legal conclusion to which no response is required. To the extent a response is
12 required, Delta Agencies deny the allegations.

13 49. Answering Paragraph 49 of the Complaint, Delta Agencies allege that Paragraph
14 49 consists of a legal conclusion to which no response is required. To the extent a response is
15 required, Delta Agencies deny all allegations in Paragraph 49, and further allege that the
16 Resolution speaks for itself.

17 50. Answering Paragraph 50 of the Complaint, Delta Agencies allege that Paragraph
18 50 consists of a legal conclusion to which no response is required. To the extent a response is
19 required, Delta Agencies deny all allegations in Paragraph 50, and further allege that the
20 Resolution speaks for itself.

21 51. Answering Paragraph 51 of the Complaint, Delta Agencies allege that Paragraph
22 51 consists of legal conclusions to which no response is required. To the extent a response is
23 required, Delta Agencies deny all allegations in Paragraph 51, and further allege that the
24 Resolution speaks for itself.

25 52. Answering Paragraph 52 of the Complaint, Delta Agencies allege that
26 Paragraph 52 consists of legal conclusions to which no response is required. To the extent a
27 response is required, Delta Agencies deny all allegations in Paragraph 52, and further allege
28

1 that the Resolution speaks for itself.

2 53. Answering Paragraph 53 of the Complaint, Delta Agencies deny all allegations
3 in Paragraph 53, and further allege that the Resolution speaks for itself.

4 54. Answering Paragraph 54 of the Complaint, Delta Agencies allege that
5 Paragraph 54 contains legal conclusions to which no response is required. To the extent a
6 response is required, Delta Agencies deny all allegations in Paragraph 54, and further allege
7 that the Resolution speaks for itself.

8 55. Answering Paragraph 55 of the Complaint, Delta Agencies the allegations
9 therein.

10 56. Answering Paragraph 56 of the Complaint, Delta Agencies lack sufficient
11 information and belief to admit or deny the allegations therein and, on that basis deny all
12 allegations in Paragraph 56, and further allege that the Resolution and First Supplemental
13 Resolution speak for themselves.

14 57. Answering Paragraph 57 of the Complaint, Delta Agencies lacks sufficient
15 information and belief to admit or deny the allegations therein and, on that basis deny all
16 allegations in Paragraph 57, and further allege that the First Supplemental Resolution speaks
17 for itself.

18 58. Answering Paragraph 58 of the Complaint, Delta Agencies allege that
19 Paragraph 58 consists of legal conclusions to which no response is required. To the extent a
20 response is required, Delta Agencies deny all allegations in Paragraph 58, and further allege
21 that the Resolution and First Supplemental Resolution speak for themselves.

22 59. Answering Paragraph 59 of the Complaint, Delta Agencies lack sufficient
23 information and belief to admit or deny the allegations therein an on that basis denies all
24 allegations in Paragraph 59, and further allege that the Resolution and Second Supplemental
25 Resolution speak for themselves.

26 60. Answering Paragraph 60 of the Complaint, Delta Agencies lacks sufficient
27 information and belief to admit or deny the allegations therein an on that basis denies all
28

1 allegations in Paragraph 60, and further allege that the Second Supplemental Resolution speaks
2 for itself.

3 61. Answering Paragraph 61 of the Complaint, Delta Agencies lacks sufficient
4 information and belief to admit or deny the allegations therein and, on that basis denies all
5 allegations in Paragraph 61, and further allege that the Second Supplemental Resolution speaks
6 for itself.

7 **Statutory Authorization to Bring this Validation Action**

8 62. Answering Paragraph 62 of the Complaint, Delta Agencies allege that
9 Paragraph 62 contains legal conclusions to which no response is required. To the extent a
10 response is required, Delta Agencies deny all allegations in Paragraph 62.

11 63. Answering Paragraph 63 of the Complaint, Delta Agencies allege that
12 Paragraph 63 consists of legal conclusions to which no response is required. To the extent a
13 response is required, Delta Agencies deny all allegations in Paragraph 63, and further allege
14 that the statute speaks for itself.

15 64. Answering Paragraph 64 of the Complaint, Sacramento County admits that the
16 principal office of DWR is located in Sacramento, California. Delta Agencies allege that
17 Paragraph 64 consists of legal conclusions to which no response is required. To the extent a
18 response is required, Delta Agencies deny all allegations in Paragraph 64.

19 65. Answering Paragraph 65 of the Complaint, Delta Agencies allege that
20 Paragraph 65 consists of legal conclusions to which no response is required. To the extent a
21 response is required, Delta Agencies deny all allegations in Paragraph 65, and further allege
22 that the statutes speak for themselves.

23 66. Answering Paragraph 66 of the Complaint, Delta Agencies allege that
24 Paragraph 66 consists of legal conclusions to which no response is required. To the extent a
25 response is required, Delta Agencies deny all allegations in Paragraph 66.
26

27 **Service by Publication of Summons**

28 67. Answering Paragraph 67 of the Complaint, Delta Agencies allege that

1 Paragraph 67 consists of legal conclusions to which no response is required. To the extent a
2 response is required, Delta Agencies deny all allegations in Paragraph 67.

3 68. Answering Paragraph 68 of the Complaint, Delta Agencies lack sufficient
4 information and belief to admit or deny the allegations therein and, on that basis denies all
5 allegations in Paragraph 68.

6 69. Answering Paragraph 69 of the Complaint, Delta Agencies allege that
7 Paragraph 69 consists of legal conclusions to which no response is required. To the extent a
8 response is required, Delta Agencies deny all allegations in Paragraph 69.

9 70. Answering Paragraph 70 of the Complaint, Delta Agencies lacks sufficient
10 information and belief to admit or deny the allegations therein and, on that basis deny all
11 allegations in Paragraph 70.

12 71. Answering Paragraph 71 of the Complaint, Delta Agencies lack sufficient
13 information and belief to admit or deny the allegations therein and, on that basis deny all
14 allegations in Paragraph 71.

15 72. Answering Paragraph 72 of the Complaint, Delta Agencies re-alleges and
16 incorporates by reference each and every response set forth in Paragraphs 1 through 71 above.

17 73. Answering Paragraph 73 of the Complaint, Delta Agencies deny all allegations
18 therein.

19 74. Answering Paragraph 74 of the Complaint, Delta Agencies deny all allegations
20 therein.

21 75. Answering Paragraph 75 of the Complaint, Delta Agencies deny all allegations
22 therein.

23 76. Answering Paragraph 76 of the Complaint, Delta Agencies deny all allegations
24 therein.

25 77. Answering Paragraph 77 of the Complaint, Delta Agencies deny all allegations
26 therein.

27 78. Answering Paragraph 78 of the Complaint, Delta Agencies deny all allegations
28

1 therein.

2 79. Answering Paragraph 79 of the Complaint, Delta Agencies deny all allegations
3 therein.

4 80. Answering Paragraph 80 of the Complaint, Delta Agencies deny all allegations
5 therein.

6 81. Answering Paragraph 81 of the Complaint, Delta Agencies deny all allegations
7 therein.

8 82. Answering Paragraph 82 of the Complaint, Delta Agencies deny all allegations
9 therein.

10 83. Answering Paragraph 83 of the Complaint, Delta Agencies deny all allegations
11 therein.

12 84. Answering Paragraph 84 of the Complaint, Delta Agencies deny all allegations
13 therein.

14 85. Answering Paragraph 85 of the Complaint, Delta Agencies deny all allegations
15 therein.

16 86. Answering Paragraph 86 of the Complaint, Delta Agencies deny all allegations
17 therein.

18 87. Answering Paragraph 87 of the Complaint, Delta Agencies deny all allegations
19 therein.

20 88. Answering Paragraph 88 of the Complaint, Delta Agencies deny all allegations
21 therein.
22

23
24 **AFFIRMATIVE DEFENSES**

25 In addition to the denials and defenses included in their responses to each Paragraph of
26 the Complaint, Delta Agencies plead the following affirmative defenses:
27

28 ///

1 **FIRST AFFIRMATIVE DEFENSE**

2 **(Failure to State a Claim)**

3 89. The Complaint, including each purported cause of action and remedy sought
4 therein, fails to allege facts sufficient to constitute a cause of action.

5 **SECOND AFFIRMATIVE DEFENSE**

6 **(Prematurity/Ripeness)**

7 90. DWR seeks to establish “valid, legal and binding obligations,” the validity of
8 which all others would be enjoined and restrained from challenging in the future. The
9 validation sought by DWR would, if granted, be premature under Code of Civil Procedure
10 section 860, *et seq.*, for at least the following reasons:

11 A. Necessary details of the Project and its financing are vague and
12 speculative.

13 B. The proposed procedure for bond repayment is vague, confusing, and
14 incomplete.

15 C. DWR fails to establish the specific amount of revenue bonds needed for
16 The Project, and to accurately disclose uncertainties in Project costs and financing and risks
17 from default and cost overruns.

18 D. Because of the prematurity of the requested validation, judgment would
19 be incapable of meeting the purpose of the validation statute (Code Civ. Proc., § 860, *et seq.*)
20 to promptly settle all questions about the validity of DWR’s action.

21 E. A validation judgment based upon DWR’s complaint and resolutions
22 would raise risks of fragmented and inconsistent rulings on validity.

23 F. A validation judgment based on DWR’s complaint and resolutions
24 would foreseeably and likely create prejudicial political, financial and bureaucratic momentum
25 in the support of the Delta Conveyance Project referenced in DWR’s bond resolutions. Such
26 prejudicial momentum will prevent or discourage DWR from objectively considering and
27 environmental consequences of the Project design, including the possibility of modifying the
28 Project or not proceeding with the Project at all, as required by CEQA and other laws. (See

1 *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135 [Allowing “bureaucratic and
2 financial momentum” to build up behind a Project can “provid[e] a strong incentive to ignore
3 environmental concerns

4 **THIRD AFFIRMATIVE DEFENSE**

5 **(Underlying Project Not Yet Approved)**

6 91. DWR’s Complaint, and the Resolution to which it refers, alleges that the
7 Requested validation is unrelated to and will have no bearing on the subsequent approvals
8 needed to implement the Delta Conveyance Project. Such contentions are highly implausible
9 and the fact that DWR seeks validation at this early stage belie DWR’s claim.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Delta Violates Protection Laws)**

12 92. Bond validation would improperly create binding obligations in furtherance of a
13 Project that cannot lawfully proceed, for many reasons including but not limited to the
14 following:

15 A. DWR has failed to account, fix and establish rates and charges to its water supply
16 contractors to pay the entire costs of the Project in addition to the Delta Conveyance
17 Project. The entire costs include, without limitation:

- 18 1) All costs and expense incurred directly or indirectly prior to, during and after
19 construction, including related studies, permitting, programs, habitat Projects, fish
20 and wildlife-related expenditures, State agency and department services paid from
21 Project revenues, the State general fund and State general obligation bond fund
22 sources;
- 23 2) All costs and expense to preserve fish and wildlife;
- 24 3) All costs and expense to mitigate for Project impacts, including WaterFix impacts;
- 25 4) All cost and expense of construction, operation and maintenance of the Project,
26 together with necessary repairs and replacements thereto;
- 27 5) All cost and expense to provide salinity control for the Delta;
- 28 6) All cost and expense to provide a San Joaquin Valley Drain to safely remove salts

1 from areas receiving water from the Project;

2 7) All cost and expense for issuance and redemption of all related bonds, including
3 timely payment of interest thereon.

4 B. All cost, and expense of the Delta Conveyance Project shall be charged to the
5 water supply contractors receiving the water diverted through the intakes and tunnel thereof.

6 C. Project facilities, and the Delta Conveyance Project, cannot be used to export
7 water from the Delta if such water is necessary to provide water to which in Delta users are
8 entitled and water which is needed for salinity control and an adequate supply for Delta users.
9 (See *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 139;
10 Wat. Code, §12203.)

11 D. DWR cannot authorize the Delta Program, and particularly the Delta
12 Conveyance Project because they do not constitute a Project consisting of master levees,
13 control structures, channel improvements and appurtenant facilities in the Sacramento-San
14 Joaquin Delta for water conservation, water supply in the Delta, transfer of water across the
15 Delta, flood and salinity control and related functions. (Wat. Code, § 12934(d)(3).)

16 E. DWR cannot authorize the Delta Conveyance Project in that they would remove
17 water for export from the Delta from the “common pool” required by Water Code 12200 *et*
18 *seq.*, inconsistent with the contemporaneous interpretation of law by the Department as set
19 forth in the December 1960 Report to the California Legislature (Preliminary Bulletin 76).

20 F. DWR cannot authorize the Delta Conveyance Project in that that such
21 construction and operation would violate Water Code sections 11460 and 1216.

22 G. DWR cannot authorize the Delta Conveyance Project in that the intended
23 purpose and use is to divert water for export when such water is needed for flushing flows to
24 maintain salinity control and an adequate water supply in the Delta during drought, times of
25 sea level rise, and in the event levees fail such that ocean salinity is induced farther into the
26 Delta.

27 H. DWR cannot authorize the Delta Program, including the Delta Conveyance
28 Project, because the construction and operation would not reduce water export contractor

1 reliance on water supply from the Delta as required by the Delta Reform Act.

2 I. DWR cannot authorize the Delta Conveyance Project because it does not
3 provide a more reliable water supply for the Bay-Delta Estuary as a part of California in a
4 manner that protects and enhances the unique cultural, recreational, natural resource, and
5 agricultural values of the Delta as an evolving place.

6 J. DWR cannot authorize the Delta Conveyance Project due to their lack of lawful
7 approval, exemplified by California voters' rejection of isolated conveyance of water across
8 the Delta for export in the 1982 Referendum on SB 200.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Violation of the Delta Reform Act of 2009)**

11 93. The Delta Reform Act as codified in Water Code § 85089 mandates that:
12 Construction of a new Delta conveyance facility shall not be initiated until the persons or
13 entities that contract to receive water from the State Water Project and the federal Central
14 Valley Project, or a joint powers authority representing those entities, have made arrangements
15 or entered into contracts to pay for both of the following:

16 (a) The costs of the environmental review, planning, design, construction,
17 and mitigation, including mitigation required pursuant to Division 13 (commencing
18 with Section 21000 of the Public Resources Code) required for the construction,
19 operation, and maintenance of any new Delta water conveyance facility.

20 (b) Full mitigation of property tax or assessments levied by local
21 governments or special districts for land used in the construction, location, mitigation,
22 or operation of new Delta conveyance facilities.

23 94. Bond validation would effectively subsidize a Delta Conveyance Project,
24 without ensuring payment by beneficiaries required under the Delta Reform Act.

25 95. DWR's proposed revenue bonds, and creation of binding obligations in them, is
26 contrary to law because the Delta Reform Act requires that the persons or entities contracting
27 to receive water from the water Projects pay all costs of environmental review, planning,
28

1 design, construction, and mitigation required for the construction, operation, and maintenance
2 of any new Delta water conveyance facility.

3 96. The Delta Conveyance Project, which is the basis of the Validation Complaint,
4 is also unlawful under other provisions of the Delta Reform Act, including but not limited to,
5 sections 85021, 85023, 85053, and 85054.

6 97. DWR cannot lawfully obtain the bond validation sought here prior to judicial
7 resolution of whether DWR's actions sought to be validated is lawful under the Delta Reform
8 Act.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Validation Would be Inconsistent with the California Constitution)**

11 98. Neither the Delta Program Planning and associated costs, or the Delta Program
12 Capital Program, as part of the Delta Program, which is the subject of the Complaint for
13 validation, are part of the Central Valley Project. As such, neither the planning costs or
14 construction/capital project costs, or the bonds proposed for validation in the Complaint, are
15 voter-approved indebtedness under California Constitution Article XIII A, section 1(b)(1) or
16 Goodman v. County of Riverside (1983) 140 Cal.App.2d 900, 910. Article XIII A, section 1(a)
17 applies, unaffected by the subject validation action.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Validation would Unlawfully Prejudice California Voters and Taxpayers)**

20 99. The validation DWR seeks by its Complaint would prejudice California voters
21 and taxpayers in at least the following ways:

22 A. DWR's water supply contracts provide that when contractors are unable
23 to raise sufficient funds by other means, State Water Projects contractors are to levy
24 assessments on all property not otherwise exempt within a contractor's territory. If contractors
25 are unable to raise sufficient funds to cover costs associated with the Delta Conveyance
26 Project, DWR is likely to pressure contractors to impose property tax increases in order to
27 address the deficit. Foreseeable conflicts are likely to emerge over whether levying taxes to
28 cover costs of the Delta Conveyance Project is within the costs of "maintaining, operating and

1 replacing” the existing State Water Project. (*Goodman v. County of Riverside* (1983) 140
2 Cal.App.3d 900, 908.)

3 B. Bond validation for the Delta Program, would invite conflicts over
4 whether it overrides opportunities under Propositions 13, 26 and 218 to challenge property tax
5 increases without a public vote.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(Impairment of State Water Project Operation and Maintenance)**

8 100. The validation sought by DWR would prejudicially impair State Water Project
9 operation and maintenance, violating DWR’s Burns-Porter Act obligations and related laws in
10 at least the respects specified below:

11 A. DWR’s chief responsibilities as operator and manager of the State Water
12 Project is set forth in the Burns-Porter Act (also called the “Bond Act”), codified in the Water
13 Code following its approval by California voters in 1960. (Wat. Code, §§ 12930, *et seq.*)

14 B. The objective of the State Water Project to operate for the good of the
15 people of California were central to its approval and enactment. See P.A. Towner, *Brief*
16 *History of the Negotiation of Water Supply Contracts for the State Water Project*, presented to
17 the California Water Commission (Dec. 3, 1976). SWP Contractors is required to have taxing
18 authority. See Wat. Code, § 12937 (codifying original SWP financial commitments).

19 C. The Burns-Porter Act does not authorize revenue bonds for the Project.
20 Rather than claiming it does, DWR relies upon the Central Valley Project Act. Under the
21 Burns-Porter Act, the California Water Resources Development Bond Fund places its highest
22 priority on annual maintenance and operation. (Wat. Code, § 12937.)

23 D. Cost overruns and failure to account for risks to customers have been
24 recurrent in the State Water Project’s history. Cost estimates for the State Water Project of
25 \$1.75 billion (the amount in general obligation funds authorized under the Burns-Porter Act)
26 have more than quadrupled under the existing Project contracts, notwithstanding DWR’s
27 subsequent recognition that the State Water Project cannot be completed as originally
28 contemplated.

1 E. DWR's bond resolutions for the Delta Program and Delta Conveyance
2 Project, which purpose funding through Central Valley Project Act revenue bonds, is based on
3 evasive and deficient accounting for costs and risks of the Delta tunnels. Among other
4 problems, the resolutions fail to account for the likelihood of major cost overruns far exceeding
5 DWR's preliminary estimates, and do not address DWR's failure to secure reliable and legally
6 required funding commitments from Project beneficiaries.

7 F. The validation sought by DWR would place additional strains on the
8 existing State Water Project's operation and maintenance, as well as its replacement reserve
9 and emergency costs, when foreseeable funding shortfalls arise and SWP contractors and their
10 customers is called upon to bear these risks. Bearing these costs may also prevent or deter
11 investment that would better support the sustainable and reliable operation of the State Water
12 Project. Bond validation would impair the sustainable operation of the State Water Project,
13 creating risks for millions of Californians depending upon its safe, affordable and
14 environmentally responsible operation.

15 **NINTH AFFIRMATIVE DEFENSE**

16 **(Violations of Due Process and/or Failure to Comply with Public Participation**
17 **Requirements and Other Procedural Requirements under California Law)**

18 101. Bond validation cannot be granted due to DWR's failure to comply with the
19 requirements of procedural due process and other applicable procedural requirements,
20 including the opportunity for public participation. Delta Agencies are informed and believe,
21 and on that basis, allege, that DWR's adoption of the Resolutions attached to and incorporated
22 in the Complaint was accomplished without complying with the statutory and regulatory
23 requirements governing promulgation and adoption of such resolutions and/or in derogation of
24 the due process rights of interested parties who were not allowed to participate in the process.

25 102. Delta Agencies are informed and believes, and on that basis, allege, that DWR's
26 adoption of said resolutions – which would result in up to \$15 billion in indebtedness for which
27 California taxpayers could become liable in whole or in part – were adopted in derogation of
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1 the rights of California voters under applicable statutes and constitutional requirements,
2 including without limitation Propositions 13, 26 and 218.

3 103. Delta Agencies are also informed and believes, and on that basis, allege, that
4 although the proposed Delta Conveyance Project will be among the costliest Projects in
5 California history, and that DWR, supported by its allied Delta Conveyance Project
6 proponents improperly circumvented California law and procedures applicable to large-scale
7 Projects in order to avoid a vote of the Legislature on either the Project or the financing scheme
8 for which DWR now seeks validation.

9 **TENTH AFFIRMATIVE DEFENSE**

10 (Underlying Project Violates CEQA)

11 104. A party may bring a CEQA challenge in its opposition to a validation action
12 separate from any mandamus petition. (*County of Imperial v. Superior Court* (2007)
13 152 Cal.App.4th 13, 40.) Accordingly, as a separate affirmative defense, Delta Agencies
14 allege that DWR's adoption of the Delta Program Revenue Bond Resolutions violated CEQA
15 (Pub. Resources Code, § 21000 et seq.), and thus this Court cannot provide DWR the relief it
16 requests to validate: (1) DWR's authority to adopt and approve the Delta Program Revenue
17 Bond Resolutions; (2) DWR's authority to review, plan, engineer, design, acquire and
18 construct Delta Program conveyance facilities as a unit of the CVP (as the CVP is defined in
19 Water Code sections 11200-11295); (3) DWR's authority to authorize the issuance of Delta
20 Program Revenue Bonds in accordance with the terms of the Delta Program Revenue Bond
21 Resolutions; (4) DWR's authority to pledge revenues from the Delta Program for the
22 repayment of the Delta Program Revenue Bonds; or (5) DWR's authority to apply Delta
23 Program Revenue Bond proceeds to Delta Program planning and constructions costs. In
24 adopting the Delta Program Revenue Bond Resolutions, DWR approved more than a mere
25 funding mechanism; it in fact approved a "project" without the requisite environmental review
26 under CEQA. DWR's approval of the Delta Program Revenue Bond Resolutions creates
27 irreversible bureaucratic and financial momentum behind the Delta Conveyance Project
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1 facilities that constrain or prevent DWR from objectively considering the environmental
2 consequences of the design and construction of the facilities, including the possibility of
3 modifying the project or not proceeding with the project at all, as required by CEQA. (See
4 Pub. Resources Code, § 21000 et seq.)

5 105. A “project” subject to CEQA is defined as “an activity which may cause either a
6 direct physical change in the environment, or a reasonably foreseeable indirect physical change
7 in the environment, and which is . . . [a]n activity directly undertaken by any public agency.”
8 (Pub. Resources Code, § 21065.) “The creation of government funding mechanisms or other
9 government fiscal activities” does not qualify as a project for purposes of CEQA only if such
10 mechanisms or activities “do not involve any commitment to any specific project which may
11 result in a potentially significant physical impact on the environment.” (Cal. Code Regs.,
12 tit. 14, § 15378(b)(4).)

13 106. CEQA requires that, prior to making a commitment to approve or undertake a
14 project, state agencies fully consider the project’s environmental effects and identify ways to
15 avoid or reduce environmental harm, including incorporating those means into the project
16 design as alternatives or mitigation measures. (Pub. Resources Code, §§ 21000(g),
17 21081(a)(1); Cal. Code Regs., tit. 14, § 15002(a).) As part of this review, an agency must
18 objectively consider the possibility of modifications to the project, including the selection of
19 the no-project alternative – essentially a decision against proceeding with the project. (Cal.
20 Code Regs., tit. 14, § 15126.6(e).) This analysis serves dual purposes: (a) to inform the
21 agency’s decision makers about the environmental consequences of a proposed project
22 compared to other options; and (b) to provide transparency and assurance to the public that the
23 agency considered, and avoided to the extent feasible, adverse environmental impacts of the
24 project. (*Ibid.*)

25 107. To achieve these purposes, CEQA requires that this environmental review of a
26 project, including the consideration of alternatives and selection of effective mitigation
27 measures, occur *before* a lead agency has committed to a project. The goals of CEQA are
28

1 frustrated when an agency commits itself to a particular project at a stage where it precludes
2 itself from considering changes to that project that could lessen the environmental impacts of
3 the project. Committing to a project in advance of environmental review allows EIRs to
4 become post-hoc rationalizations to support decisions already made. (*Laurel Heights*
5 *Improvement Assn v. Regents of University of California* (1988) 47 Cal.3d 376, 394; see also
6 *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 132.) CEQA rejects this
7 approach, and cautions that allowing “bureaucratic and financial momentum” to build up
8 behind a project can “provide[e] a strong incentive to ignore environmental concerns.” (*Save*
9 *Tara, supra*, 45 Cal.4th at p. 135 [quoting *Laurel Heights Improvement Assn, supra*, 47 Cal.3d
10 at p. 395].)

11
12 108. Although the Complaint states that “[t]he design and physical characteristics of
13 any . . . Delta conveyance facilities are not yet determined, nor has the Department approved a
14 project for implementation” (Complaint, ¶ 28), the relevant consideration for determining a
15 public agency’s commitment to a project is, instead, an examination of “the totality of the
16 circumstances and the practical effect of the public agency’s action on its ability and
17 willingness to modify or reject the proposed project.” (*City of Irvine v. County of Orange*
18 (2013) 221 Cal.App.4th 846, 857, citing *Save Tara, supra*, 45 Cal.4th at pp. 132–133, 136,
19 138; see also *City of Irvine, supra*, 221 Cal.App.4th at p. 865 [holding that “[t]he amount of
20 detail or the advanced stage of the project’s design . . . covers only part of the analysis for
21 determining whether an agency’s action constitutes an approval under CEQA”].)

22 109. The NOP issued by DWR is a thinly-veiled reimagining of the Delta
23 Conveyance Project. The Delta Conveyance Project described in DWR’s NOP is in no
24 significant way—other than the single main tunnel—different from the Delta Conveyance
25 Project, as emphasized by the identical intake locations and sizing (3,000 cubic feet per second
26 each) and Central Tunnel Corridor alignment option, which follows the location and
27 arrangement of Delta Conveyance Project facilities.

28 110. Because the NOP describes a project that is essentially the same as the Delta

1 Conveyance Project in terms of facilities, it presents the same essential concerns with respect
2 to physical environmental effects. The proposed project as described in the NOP, if approved
3 and constructed, will impact Delta Agencies' residents, public facilities, and businesses in
4 myriad and far-reaching ways. The residents and communities of Delta Agencies will bear a
5 disproportionate burden of the likely numerous significant unavoidable environmental impacts,
6 which will benefit only agricultural and urban water users south of the Delta. The proposed
7 water infrastructure facilities will slow or prevent the realization of the Delta National Heritage
8 Area's agricultural tourism, recreation and historic preservation goals that are critical to
9 maintaining the "Delta as a Place." These impacts are in direct contravention of the State's
10 2020 Water Resilience Portfolio, which states that Delta conveyance facilities are intended to
11 "protect water quality, and improve aquatic habitat conditions while limiting local impacts."
12 (See 2020 Water Resilience Portfolio at [https://waterresilience.ca.gov/wp-](https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final_California-Water-Resilience-Portfolio-2020_ADA3_v2_av11-opt.pdf)
13 [content/uploads/2020/07/Final_California-Water-Resilience-Portfolio-2020_ADA3_v2_av11-](https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final_California-Water-Resilience-Portfolio-2020_ADA3_v2_av11-opt.pdf)
14 [opt.pdf](https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final_California-Water-Resilience-Portfolio-2020_ADA3_v2_av11-opt.pdf), p. 42, item 19.1.)

16 111. The design of the Delta Conveyance Project is within the authority of the Delta
17 Conveyance Authority, whose Board of Directors is comprised of two MWD members out of a
18 total of four members. It is undisputed that MWD is aligned with DWR in this validation
19 action and other such relevant approvals for the resulting Delta Conveyance Project. Notably,
20 MWD is responsible for 64.6 percent of the overall capital cost of the resulting Delta project
21 and owns property directly within the path of the proposed Central Tunnel Corridor—
22 specifically, Bouldin Island, which was also incorporated into the project design in DWR's
23 DSEIR. DWR has already committed \$43.2 million to the DCA since June of 2019 without
24 securing financing.

25 112. Therefore, while DWR suggests it merely seeks "to confirm [the] public
26 agency's legal authority to undertake a proposed financing" (Complaint, ¶ 66), the totality of
27 the circumstances demonstrate DWR's continued commitment to proceed with substantially
28 the same Delta Conveyance Project that it has been pursuing, and funding, for well over a

1 decade. As evidenced by the detailed proposal of the Delta Conveyance Projects facilities in
2 the NOP and the proposed facilities' striking similarity to the recent California WaterFix, and
3 emphasized by DWR's determination stated in the recitals of the Resolution that "the public
4 interest and necessity require the carrying out of the Delta Program . . ." (Complaint, ¶ 52), the
5 environmental effects that could result from adoption of the Delta Program Revenue Bond
6 Resolutions are not conceptual, diffuse, or speculative. DWR has demonstrably committed
7 itself to a course of action with respect to specifically identified Delta conveyance facilities
8 that will have devastating environmental impacts, and so unlawfully adopted the Delta
9 Program Revenue Bond Resolutions without conducting the requisite environmental review
10 and public participation required for a "project" pursuant to CEQA.

11
12 113. Moreover, while DWR is under no legal obligation to pursue validation under
13 Code of Civil Procedure Section 860, it does so now with the intention of relying on such
14 validation to incur unlimited financial obligations in furtherance of a well-defined project,
15 despite the legal requirement that ongoing CEQA review requires that it, as the CEQA lead
16 agency, leave open the meaningful possibility that the project design may, or should, be
17 substantially modified, or rejected outright. As the Complaint admits, quoting from the
18 Resolution, "[t]he aggregate principal amount of Bonds which may be executed, authenticated
19 and delivered under this Resolution is *not limited* . . ." (Complaint, ¶ 48, emphasis added).
20 DWR seeks court approval to borrow an unlimited amount of money to pay for the Delta
21 Conveyance Project, on top of its previous expenditures in furtherance of the current and
22 former Delta Conveyance Project facilities. The DCA recently estimated that the Delta
23 Conveyance Project would cost \$15.9 billion, and possibly over \$21 billion, before accounting
24 for the costs of issuing bonds and repaying interest, indicating the possible extent of the
25 financial commitment DWR authorized in adopting the Delta Program Revenue Bond
26 Resolutions. Considering the totality of the circumstances, DWR's efforts to proceed under the
27 Delta Program Revenue Bond Resolutions constitute more than a mere step in securing
28 funding, and create additional bureaucratic and financial momentum behind the Delta Program

1 that will constrain or prevent DWR from objectively considering the environmental
2 consequences of the project design.

3 114. DWR's adoption of the Delta Program Revenue Bond Resolutions violated
4 CEQA. Thus, the Court cannot provide DWR the relief it requests to validate DWR's
5 authority to pledge revenues from the Delta Program for the repayment of the Delta Program
6 Revenue Bonds.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 **(Lacks of Specificity)**

9 115. Bond validation cannot occur due to the uncertain and vague presentation of the
10 Complaint on the nature of the action to be validated and the scope of relief.

11 **TWELTH AFFIRMATIVE DEFENSE**

12 **(Estoppel)**

13 116. Bond validation cannot occur due to estoppel. Among other things, DWR has
14 recently and repeatedly assured the public and the Legislature that new Delta Conveyance
15 Project would not be financed with taxpayer money or expose California taxpayers to potential
16 costs or liability in the event that non-taxpayer financing fails or cannot cover substantial cost
17 overruns in the design, construction and/or operation of the Delta tunnels.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 **(Statutory Conditions Precedent Not Met)**

20 117. Bond validation cannot occur because statutory conditions precedents have not
21 been met.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 **(Unclean Hands)**

24 118. Bond validation cannot occur due to unclean hands. Among other unlawful
25 and/or unethical actions by DWR underlying all aspects of the proposed Project, including the
26 financing scheme, the process is corrupted by unlawful pre-determination.

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1 FIFTEENTH AFFIRMATIVE DEFENSE

2 **(Underlying Project is Not Part of the Central Valley Project Act)**

3 119. Bond validation cannot occur because the Delta Conveyance Project cannot and
4 does not qualify as a unit of the as provided for in the California Central Valley Project Act.
5 The Central Valley Project Act, originally enacted in 1933 (Water Code section 11100 *et seq.*)
6 defined no specific facilities in the Delta. The California Central Valley Project Act, originally
7 enacted in 1933 (Water Code, §§ 11100, *et seq.*), defined no specific Delta facilities. In 1951,
8 the State of California enacted Water Code Section 11260 (amended 1956, 1957, and 1959),
9 which added certain features to the previously enacted Central Valley Project authorizations.
10 Section 11260 named the Feather River and Sacramento-San Joaquin Delta Diversion projects
11 as units of the Central Valley Project.

12 120. The 1959 amendment mentioned facilities for the Feather River and
13 Sacramento-San Joaquin Delta Diversion Projects. (Wat. Code, § 11260.) The amendment
14 refers to two reports produced in 1951 and 1955. The 1951 "*Report on Feasibility of Feather*
15 *River Project and Sacramento-San Joaquin Delta Diversion Projects Proposed as Features of*
16 *the California Water Plan*" describes only aqueduct diversions. In the 1951 report, no facilities
17 in, peripheral to, or under the Delta are described for Delta conveyance. A 1955 report,
18 "*Financing and Constructing the Feather River Project,*" referenced a "*Delta Cross Channel*"
19 alignment that was never constructed and described only through-Delta flow of waters derived
20 from the Feather River Project.

21 121. In the Burns-Porter Act of 1959, approved by California voters in 1960, the
22 Legislature added Water Code Sections 12930 *et seq.*, which authorized the construction and
23 funding of portions of the Central Valley Project Act, including the Feather River and
24 Sacramento-San Joaquin Delta diversion facilities referenced above. Section 12934 (d)
25 specified which facilities were authorized to be funded/built and included in subsection (d)(3)
26 "... and appurtenant facilities in the Sacramento-San Joaquin Delta for ... transfer across the
27 Delta ... and related functions." The Act contains no reference to either a peripheral canal or a
28

1 tunnel facility with intakes in the north Delta. No other California statute authorizes either a
2 peripheral canal or the conveyance system referenced by DWR in the Delta Program or Delta
3 Conveyance Project.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 **(Reservation of Right to Add Defenses)**

6 122. Certain additional defenses to the Complaint and to the purported cause of
7 action therein stated may be available to the Delta Agencies. However, these additional
8 defenses require further discovery before they can be properly alleged. Delta Agencies
9 therefore reserves the right to assert other separate and additional defenses, causes of action,
10 and/or cross-complaints if and when they become appropriate in this action.
11

12 **DELTA AGENCIES' PRAYER FOR RELIEF**

13 **WHEREFORE, DELTA AGENCIES** respectfully request the Court enter
14 judgment as follows:

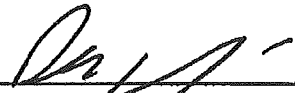
- 15 1. For a determination that DWR's request for validation of the Revenue Bonds is
16 premature and cannot be adjudicated at this time.
- 17 2. That facts and law as alleged herein by Delta Agencies be determined as alleged in
18 favor of Delta Agencies.
- 19 3. That DWR take nothing by this Complaint.
- 20 4. That Delta Agencies be awarded reasonable attorneys' fees pursuant to Code of
21 Civil Procedure section 1021.5 and/or to the extent otherwise allowed by any
22 provision of California statutory law or any common law doctrine recognized in
23 California.
- 24 5. For Delta Agencies' costs of suit herein.
- 25 6. For such other and further relief as the Court may deem just and proper.
26
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Respectfully submitted,

DATED: October 30, 2020

MOHAN HARRIS RUIZ LLP

By: 
S. DEAN RUIZ
Attorney for Defendant South Delta Water Agency and Central Delta Water Agency

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VERIFICATION

I, S. Dean Ruiz, am counsel of record for South Delta Water Agency and Central Delta Water Agency, ("Delta Agencies") parties to the foregoing Answer of Delta Agencies to Complaint for Validation ("Answer"). I sign for Delta Agencies absent from the county and/or because facts contained in the Answer is within the knowledge of counsel. I have read the foregoing Answer and know the contents thereof. The same is true of my own knowledge, except as to those matters that is alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of October, 2020, in Stockton, California.


S. DEAN RUIZ

1 **PROOF OF SERVICE**

2
3 **Sacramento County Case No: 34-2020-00283112**

4 I am employed in the County of San Joaquin, State of California, over the age of
5 eighteen years, and not a party to the within action. My business address is c/o Mohan Harris &
6 Ruiz LLP 3439 Brookside Road, Suite 208, Stockton, California 95219.

7 On the date indicated below, I served the following document(s) described as:

8 **1. VERIFIED ANSWER OF SOUTH DELTA WATER AGENCY AND CENTRAL
9 DELTA WATER AGENCY TO COMPLAINT FOR VALIDATION**

10 On the parties in this action by transmitting a true copy of the foregoing document(s) in
11 the following manner and addressed to:

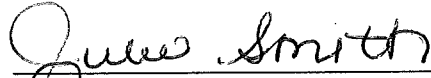
12 **MICHAEL WEED** *Attorneys for California Department of Water*
13 **ORRICK, HERRINGTON & SUTCLIFFE** *Resources*
14 **400 Capitol Mall, Suite 3000**
15 **Sacramento, CA 95814**

16 **SPENCER KENNER**
17 **CHRISTOPHER MARTIN**
18 **CDWR, OFFICE OF THE CHIEF**
19 **COUNSEL**
20 **1416 Ninth Street**
21 **Sacramento, CA 95814**

22 **BY MAIL - [CCP §1013 and 2015.5]** I enclosed the documents in a sealed envelope
23 addressed to the following persons and placed the envelope for collection and mailing,
24 following our ordinary business practices. I am readily familiar with the business'
25 practice for collecting and processing correspondence for mailing. On the same day
26 that the correspondence is placed for collection and mailing, it is deposited in the
27 ordinary course of business with the United State Postal Service, in a sealed envelope
28 with postage thereon fully prepaid at Stockton, California addressed as [above] or [in
the attached Service List of Participants].

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on October 30, 2020, at Stockton, California.

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5 _____
6 Julie Smith
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