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FEDERATION OF FISHERMEN’S ASSOCIATIONS, and SAN FRANCISCO
8 CRAB BOAT OWNERS ASSOCIATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SACRAMENTO

11 CALIFORNIA DEPARTMENT OF WATER)
RESOURCES,)

12 Plaintiff,)

13 v.)

14 ALL PERSONS INTERESTED IN THE MATTER)
15 of the Authorization of Delta Program Revenue)
Bonds, the Issuance, Sale and Delivery of Delta)
16 Program Revenue Bonds Series A, Series B and)
Subsequent Series, the Adoption of the Delta)
17 Program Revenue Bond General Bond Resolution)
and the Supplemental Resolutions Providing for the)
18 Issuance of Delta Program Revenue Bonds, and the)
Proceedings Related Thereto)
19

CASE NO. 34-2020-00283112

**VERIFIED ANSWER OF DEFENDANTS
NORTH COAST RIVERS ALLIANCE,
WINNEMEM WINTU TRIBE,
INSTITUTE FOR FISHERIES
RESOURCES, PACIFIC COAST
FEDERATION OF FISHERMEN’S
ASSOCIATIONS, and SAN FRANCISCO
CRAB BOAT OWNERS ASSOCIATION
TO COMPLAINT FOR VALIDATION**

20
21 Defendants NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU TRIBE, INSTITUTE
22 FOR FISHERIES RESOURCES, PACIFIC COAST FEDERATION OF FISHERMEN’S
23 ASSOCIATIONS, and SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION (“defendants”)

24 hereby answer the Complaint for Validation filed by the California Department of Water Resources
25 (“DWR”) as follows:

26 **Nature of the Action**

27 1. Paragraph 1 consists of DWR’s description of its case, to which no response is required
28 because DWR’s Complaint for Validation speaks for itself. To the extent a response is required,

1 defendants deny each and every allegation therein.

2 2. In response to paragraph 2, defendants admit that DWR issued a Notice of Preparation
3 purportedly initiating its environmental review under the California Environmental Quality Act
4 (“CEQA”), Public Resources Code section 21000 et seq., of revenue bond financing for its proposed
5 single-tunnel Delta water conveyance facility on January 15, 2020. Defendants deny any implication that
6 DWR has otherwise acted in compliance with CEQA.

7 3. Paragraph 3 characterizes the “importance” of DWR’s request for validation, a legal
8 argument to which no response is required. To the extent a response is required, defendants deny each
9 and every allegation of paragraph 3.

10 4. Paragraph 4 characterizes the purpose of DWR’s validation action and poses a legal
11 conclusion, to which no response is required. To the extent a response is required, defendants deny each
12 and every allegation of paragraph 4.

13 5. Defendants lack information and belief sufficient to answer the allegations of paragraph 5,
14 which claims DWR’s validation action has two objectives, and on that basis deny each and every
15 allegation therein.

16 6. Defendants deny the allegations of paragraph 6, which claims DWR has legal authority to
17 authorize and issue revenue bonds for its Project.

18 The Parties

19 7. Defendants admit the allegations of the first sentence of paragraph 7, and deny the
20 allegations of the second sentence of paragraph 7.

21 8. Defendants admit the allegations of paragraph 8.

22 9. Paragraph 9 characterizes the defendants to this validation action, to which no response is
23 required. To the extent a response is required, defendants lack information and belief sufficient to answer
24 the allegations of paragraph 9, and on that basis deny each and every one of them.

25 Jurisdiction and Venue

26 10. Defendants deny the allegations of paragraph 10, which claims that the Court has
27 jurisdiction over this case.

28 11. Defendants deny the allegations of paragraph 11, which claims that this action is entitled

1 to preference over all other civil actions.

2 12. Defendants admit the allegations of paragraph 12, which claims that venue is proper in
3 Sacramento County Superior Court.

4 13. Defendants lack information and belief sufficient to answer the allegations of paragraph
5 13, which claims that this action is related to another previously dismissed action, and on that basis deny
6 each and every allegation therein.

7 **The Project**

8 14. Defendants admit the allegations of the first sentence of paragraph 14, which alleges that
9 DWR operates water storage, transport and delivery facilities throughout California. Defendants lack
10 information and belief sufficient to answer the allegations of the second sentence of paragraph 14, and on
11 that basis deny each and every allegation therein.

12 15. Paragraph 15 consists of legal conclusions to which no response is required. To the extent
13 a response is required, defendants deny each and every allegation therein, and state that Water Code
14 sections 11100 et seq. and 12930 et seq. speak for themselves.

15 16. Paragraph 16 consists of legal conclusions to which no response is required. To the extent
16 a response is required, defendants deny each and every allegation therein

17 17. Defendants lack information and belief sufficient to answer the allegations of paragraph
18 17, and on that basis deny each and every one of them.

19 18. Defendants lack information and belief sufficient to answer the allegations of paragraph
20 18, and on that basis deny each and every one of them.

21 19. Defendants lack information and belief sufficient to answer the allegations of paragraph
22 19, and on that basis deny each and every one of them.

23 **The Delta Program**

24 20. Paragraph 20 quotes a portion of Water Code section 85002, to which no response is
25 required, since this section speaks for itself.

26 21. Paragraph 21 quotes a portion of Water Code section 85001(c), to which no response is
27 required, since this section speaks for itself.

28 22. Paragraph 22 quotes portions of Water Code sections 85004(a) and (b), to which no

1 response is required, since these statutory passages speak for themselves.

2 23. Paragraph 23 quotes a portion of Water Code section 85020, to which no response is
3 required, since this section speaks for itself.

4 24. Defendants deny the allegations of paragraph 24.

5 25. Defendants deny the allegations of paragraph 25 to the extent they imply that the proposed
6 single tunnel conveyance facility would “modernize” conveyance of water through the Delta.

7 26. Paragraph 26 consists largely of DWR’s definitions of the terms it uses to describe its
8 proposed Delta conveyance revenue bond financing Project along with its interpretation of CEQA
9 Guidelines section 15126.6. As such, this paragraph requires no response. To the extent a response is
10 required, defendants state that CEQA Guidelines section 15126.6 speaks for itself, and as to the other
11 allegations of paragraph 26, defendants lack information and belief sufficient to answer them, and on that
12 basis deny each and every one of them.

13 27. In response to paragraph 27, defendants lack information and belief sufficient to answer
14 DWR’s allegations regarding the reasons why DWR brought this validation proceeding, and on that basis
15 deny each and every one of them. With regard to DWR’s allegation that CEQA review is not at issue in
16 this validation proceeding, defendants deny the allegation. Defendants expressly raise DWR’s lack of
17 CEQA compliance both in this denial, and as a separate affirmative defense. DWR’s previous, and
18 continuing, claim that CEQA compliance may not be raised in a validation proceeding is contrary to law
19 and was squarely rejected by the Third District Court of Appeal in *County of Imperial v. Superior Court*
20 (2007) 152 Cal.App.4th 13, 40.

21 28. In response to paragraph 28, defendants lack information and belief sufficient to answer
22 DWR’s allegations regarding the purpose and effect of its revenue bond Delta conveyance financing
23 Project, and on that basis deny each and every one of them.

24 29. In response to paragraph 29, defendants deny each and every allegation therein.

25 30. In response to paragraph 30, defendants deny each and every allegation therein.

26 31. In response to paragraph 31, defendants deny each and every allegation therein.

27 32. In response to paragraph 32, defendants deny each and every allegation therein.

28 33. In response to paragraph 33, defendants deny each and every allegation therein.

1 34. In response to paragraph 34, defendants deny each and every allegation therein.

2 35. In response to paragraph 35, defendants deny each and every allegation therein.

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

4 36. In response to paragraph 36, defendants deny each and every allegation therein.

5 37. Paragraph 37 quotes from Water Code section 11201, and describes the sections
6 encompassed by Chapter 2 of the Central Valley Project Act. No response is required, since these
7 sections of the Water Code speak for themselves.

8 38. Paragraph 38 quotes from Water Code section 11260. No response is required because
9 this section speaks for itself.

10 39. Paragraph 39 quotes from Water Code section 11454 and a California Supreme Court
11 decision. Since this section and this ruling speak for themselves, no response is required.

12 40. Paragraph 40 quotes from Water Code section 11126. Since this section speaks for itself,
13 no response is required.

14 41. Paragraph 41 characterizes DWR's powers under the Central Valley Project Act. Since its
15 allegations are legal argument, no response is required. To the extent a response is required, defendants
16 deny each and every allegation of paragraph 41.

17 42. In response to paragraph 42, defendants deny each and every allegation therein.

18 43. Paragraph 43 quotes from Water Code section 11700 and advances a legal argument based
19 on this section. Since section 11700 speaks for itself and no response to DWR's legal arguments is
20 required, no response to paragraph 43 is required. To the extent a response is required, defendants deny
21 each and every allegation of paragraph 43.

22 44. Paragraph 44 quotes from Water Code section 11761, and advances legal argument based
23 on this section. Since this section speaks for itself, and no response to legal argument is required, no
24 response to paragraph 44 is required. To the extent a response is required, defendants deny each and
25 every allegation of paragraph 44.

26 45. Paragraph 45 quotes from Water Code section 11701, and characterizes the effect of this
27 section. Since this section speaks for itself, and its effect is a question of law, no response is required.
28 To the extent a response is required, defendants deny each and every allegation of this paragraph.

1 **The Delta Program Revenue Bond Financing**

2 46. Defendants lack information and belief sufficient to answer the allegations of paragraph
3 46, and on that basis deny each and every allegation of paragraph 46. In further response to paragraph 46,
4 defendants state that DWR Resolution No. DWR-DPRB-1, Exhibit 1 to DWR’s Complaint for
5 Validation, speaks for itself, and no response is required.

6 47. Paragraph 47 quotes from DWR Resolution No. DWR-DPRB-1. Since this resolution
7 speaks for itself, no response is required. To the extent a response is required, defendants deny each and
8 every allegation of this paragraph.

9 48. Paragraph 48 alleges that DWR authorized the issuance of the Delta Program Revenue
10 Bonds pursuant to DWR Resolution No. DWR-DPRB-1, and quotes from Section 203 of that resolution.
11 Since DWR’s contention that it authorized the subject bonds pursuant to this resolution is a legal
12 conclusion, and this resolution speaks for itself, no response is required. To the extent a response is
13 required, defendants deny each and every allegation of this paragraph.

14 49. Paragraph 49 quotes from DWR Resolution No. DWR-DPRB-1, and alleges that the
15 quoted passage of the resolution is “in accordance with Water Code section 11701.” Since DWR’s
16 contention that this passage is authorized by Water Code section 11701 is a legal conclusion, and the
17 quoted passage from the resolution speaks for itself, no response is required. To the extent a response is
18 required, defendants deny each and every allegation of this paragraph.

19 50. Paragraph 50 quotes from DWR Resolution No. DWR-DPRB-1. Since the quoted passage
20 from the resolution speaks for itself, no response is required. To the extent a response is required,
21 defendants deny each and every allegation of this paragraph.

22 51. Paragraph 51 quotes from Section 204(B)(3) of DWR Resolution No. DWR-DPRB-1.
23 Since the quoted passage from the resolution speaks for itself, no response is required. To the extent a
24 response is required, defendants deny each and every allegation of this paragraph.

25 52. Paragraph 52 quotes from DWR Resolution No. DWR-DPRB-1, and alleges that the
26 quoted passage of the resolution is “in accordance with Water Code section 11701.” Since DWR’s
27 contention that this passage is in accordance with Water Code section 11701 is a legal conclusion, and the
28 quoted passage from the resolution speaks for itself, no response is required. To the extent a response is

1 required, defendants deny each and every allegation of this paragraph.

2 53. Paragraph 53 quotes from DWR Resolution No. DWR-DPRB-1. Since the quoted passage
3 from the resolution speaks for itself, no response is required. To the extent a response is required,
4 defendants deny each and every allegation of this paragraph.

5 54. Paragraph 54 characterizes and quotes from Section 205(B) of DWR Resolution No.
6 DWR-DPRB-1. Since the resolution speaks for itself, no response is required. To the extent a response
7 is required, defendants deny each and every allegation of this paragraph.

8 55. Defendants lack information and belief sufficient to answer the allegations of paragraph
9 55, and on that basis deny each and every allegation of paragraph 55. In further response to paragraph 55,
10 defendants state that DWR's First Supplemental Resolution, Exhibit 2 to DWR's Complaint for
11 Validation, and DWR's Second Supplemental Resolution, Exhibit 3 to DWR's Complaint for Validation,
12 speak for themselves, and no response is required.

13 56. Paragraph 56 quotes from DWR's First Supplemental Resolution. Since this resolution
14 speaks for itself, no response is required. To the extent a response is required, defendants deny each and
15 every allegation of this paragraph.

16 57. Paragraph 57 quotes from Section 1304 of DWR's First Supplemental Resolution. Since
17 this resolution speaks for itself, no response is required. To the extent a response is required, defendants
18 deny each and every allegation of this paragraph.

19 58. Paragraph 58 quotes from DWR's First Supplemental Resolution, and alleges that the
20 quoted passage of the resolution is "in accordance with Water Code section 11701." Since DWR's
21 contention that this passage is in accordance with Water Code section 11701 is a legal conclusion, and the
22 quoted passage from the resolution speaks for itself, no response is required. To the extent a response is
23 required, defendants deny each and every allegation of this paragraph.

24 59. Paragraph 59 quotes from DWR's Second Supplemental Resolution. Since this resolution
25 speaks for itself, no response is required. To the extent a response is required, defendants deny each and
26 every allegation of this paragraph.

27 60. Paragraph 60 quotes from Section 1704 of DWR's Second Supplemental Resolution.
28 Since this resolution speaks for itself, no response is required. To the extent a response is required,

1 defendants deny each and every allegation of this paragraph.

2 61. Paragraph 61 quotes from DWR's Second Supplemental Resolution. Since this resolution
3 speaks for itself, no response is required. To the extent a response is required, defendants deny each and
4 every allegation of this paragraph.

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

6 62. Paragraph 62 alleges that Code of Civil Procedure sections 860 and 864 authorize this
7 validation action. Since these sections speak for themselves, and the allegation that they authorize this
8 action is a legal conclusion, no response is required. To the extent a response is required, defendants
9 deny each and every allegation of this paragraph.

10 63. Paragraph 63 alleges that Water Code section 120 and Government Code section 11700
11 authorize DWR to bring this validation action. Since these sections speak for themselves, and the
12 allegation that they authorize this action is a legal conclusion, no response is required. To the extent a
13 response is required, defendants deny each and every allegation of this paragraph.

14 64. Defendants admit the allegations of paragraph 64.

15 65. Paragraph 65 alleges that Government Code section 17700 and Code of Civil Procedure
16 section 860 authorize DWR to bring this *in rem* validation action. Since these sections speak for
17 themselves, and the allegation that they authorize this action is a legal conclusion, no response is
18 required. To the extent a response is required, defendants deny each and every allegation of this
19 paragraph.

20 66. Paragraph 66 characterizes the "fundamental purpose" of a validation action, and quotes
21 *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842-843, to support this allegation. Since
22 the purpose of a validation action and the holding of *Friedland v. City of Long Beach, supra*, are
23 questions of law, and the applicable authorities speak for themselves, no response is required. To the
24 extent a response is required, defendants deny each and every allegation of this paragraph.

25 **Service by Publication of Summons**

26 67. Paragraph 67 alleges the notice requirements of the Validation Statute. Since the notice
27 requirements of the Validation Statute are questions of law, and this statute speaks for itself, no response
28 is required. To the extent a response is required, defendants deny each and every allegation of this

1 paragraph.

2 68. Paragraph 68 describes DWR’s proposed notice. Defendants lack information and belief
3 sufficient to answer DWR’s allegations that the described notice will in fact be carried out, and on that
4 basis, deny each and every one of them.

5 69. Paragraph 69 alleges that DWR’s intended notice “exceeds the notice required by law and
6 is a method most likely to give notice to persons interested in these proceedings.” Defendants lack
7 information and belief sufficient to answer DWR’s allegations, and on that basis, deny each and every
8 one of them.

9 70. Paragraph 70 alleges that DWR also proposes additional notice. Defendants lack
10 information and belief sufficient to answer DWR’s allegations that the additional described notice will in
11 fact be carried out, and on that basis, deny each and every one of them.

12 71. Paragraph 71 alleges that “the Court should order” DWR to email or mail, as DWR
13 “chooses in its discretion,” its proposed “Approved Notice” to undisclosed “persons or entities identified
14 on interested parties lists maintained by [DWR]” to secure the Court’s jurisdiction over all persons
15 interested in the matter of the subject Delta Program Revenue Bonds. Defendants lack information and
16 belief sufficient to answer DWR’s allegations that the described notice will in fact and in law be
17 sufficient to apprise all such persons of this action and to secure this Court’s jurisdiction over them, and
18 on that basis, deny each and every one of them.

19 **First Cause of Action**

20 72. Defendants reallege and incorporate by reference their responses to paragraphs 1 through
21 71 above as though fully set forth herein.

22 73. Defendants deny the allegations of paragraph 73.

23 74. Defendants deny the allegations of paragraph 74.

24 75. Defendants deny the allegations of paragraph 75.

25 76. Defendants deny the allegations of paragraph 76.

26 77. Defendants deny the allegations of paragraph 77.

27 78. Defendants deny the allegations of paragraph 78

28 79. Defendants deny the allegations of paragraph 79.

1 80. Defendants deny the allegations of paragraph 80.

2 81. Defendants deny the allegations of paragraph 81.

3 82. Defendants deny the allegations of paragraph 82.

4 83. Defendants deny the allegations of paragraph 83.

5 84. Defendants deny the allegations of paragraph 84.

6 85. Defendants deny the allegations of paragraph 85.

7 86. Defendants deny the allegations of paragraph 86.

8 87. Defendants deny the allegations of paragraph 87.

9 88. Defendants deny the allegations of paragraph 88.

10 **Prayer for Relief**

11 89. In response to paragraphs 89 through 94, defendants deny that DWR is entitled to either
12 the relief requested or to any relief at all.

13 90. Except as otherwise admitted or denied herein, defendants deny each and every allegation
14 contained in paragraphs 1 through 94.

15 **AFFIRMATIVE FACTUAL ALLEGATIONS**

16 **Defendants**

17
18 91. Defendant NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit
19 unincorporated association with members throughout Northern California. NCRA was formed for the
20 purpose of protecting California’s rivers and their watersheds from the adverse effects of excessive water
21 diversions, ill-planned urban development, harmful resource extraction, pollution, and other forms of
22 degradation. Its members use and enjoy California’s rivers and watersheds for recreational, aesthetic,
23 scientific study, and related non-consumptive uses. The interests of NCRA and its members have been,
24 are being, and unless the relief requested herein is granted, will be adversely affected and injured by the
25 issuance of bonds for the Project.

26 92. Defendant WINNEMEM WINTU TRIBE is a Native American Tribe reorganized by the
27 State of California whose aboriginal territory encompasses the upper watersheds of the Sacramento River
28 including the McCloud River. The Winnemem Wintu Tribe was traditionally dependent on salmon

1 fishing for both subsistence and cultural purposes, and maintains a deep cultural, spiritual and
2 recreational interest in the continued viability of California’s salmon runs that pass through the Delta.
3 The Project assumes and depends upon continued inundation of the McCloud River by Shasta Reservoir
4 and the blocking of McCloud River salmon runs by Shasta Dam. DWR has ignored the Winnemem
5 Wintu’s vital historic and cultural interest in restoration of the historic salmon runs that the Project will
6 preclude. The Winnemem Wintu Tribe is a strong proponent of Delta restoration, including construction
7 of fishways around Shasta Dam to restore historic McCloud River salmon runs through the Delta. The
8 Winnemem Wintu Tribe will be harmed by the reduction in fresh water flows in the Delta, degradation of
9 its water quality, and loss of its fish and wildlife species that issuing bonds allowing the Project to
10 proceed would cause.

11 93. Defendant INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-profit, tax-
12 exempt organization that works to protect and restore salmon and other fish populations and the human
13 economies that depend on them. IFR maintains its principal place of business in San Francisco,
14 California. IFR both funds and manages many fish habitat protection programs and initiatives. In that
15 capacity, IFR advocates for reforms to protect fish health and habitat throughout the West Coast of the
16 United States and has successfully advocated for dam removals, improved pesticide controls, better
17 forestry stream protection standards, and enhanced marine and watershed conservation regulations
18 throughout the West Coast. IFR has worked tirelessly for years to restore and enhance the Delta and its
19 beleaguered fish and wildlife. IFR and its members will be directly and indirectly injured by the issuance
20 of bonds for the Project.

21 94. Defendant PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS
22 (“Pacific Coast Fishermen”) is a nonprofit membership organization incorporated in 1976 with
23 headquarters located in San Francisco, California. Pacific Coast Fishermen is composed of more than 14
24 separate commercial fishing and vessel owners’ associations situated along the West Coast of the United
25 States. By virtue of its combined membership of approximately 750 fishermen and women, Pacific Coast
26 Fishermen is the single largest commercial fishing organization on the West Coast. Pacific Coast
27 Fishermen represents the majority of California’s organized commercial salmon fishermen and has been a
28 tireless advocate for the protection of Pacific salmon and their spawning, rearing and migratory habitat

1 for more than 30 years. Pacific Coast Fishermen and its members would be harmed by the issuance of
2 bonds that would enable the proposed Project because the Project would threaten their livelihoods, which
3 depend on sustainable management of the salmonid fisheries resources of the Delta and its connected
4 ecosystems.

5 95. Defendant SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION (“San Francisco
6 Fishermen”) is a century-old association of owners and operators of small, family owned fishing boats
7 that catch Dungeness crab, wild California King salmon, Pacific herring, and other species that live in and
8 depend upon the cold waters of the Pacific Ocean, the San Francisco Bay-Delta, the Sacramento and San
9 Joaquin Rivers and their tributaries. San Francisco Fishermen is also actively involved in community
10 education and advocacy concerning fisheries resources legislation to ensure that the rich heritage of
11 commercial fishing in the Bay Area will survive for future generations. San Francisco Fishermen and its
12 members will be harmed by the issuance of bonds to enable the proposed Project because the Project
13 would threaten their continued historic use and enjoyment of the fisheries resources of the Delta and its
14 connected ecosystems.

15 **The Delta Is in Peril**

16 96. “[T]he Sacramento-San Joaquin River Delta is a natural resource of statewide, national,
17 and international significance, containing irreplaceable resources.” (PRC § 29701.) The Delta is the
18 largest and most productive estuarine system on the West Coast of North and South America, but its
19 future is in peril. For this reason, it is the State of California’s avowed policy “to recognize, preserve, and
20 protect those resources of the delta for the use and enjoyment of current and future generations.” (*Id.*)

21 97. The Delta’s imminent ecologic collapse is well-recognized and indisputable. It has two
22 principal causes. First, an unsustainable proportion of the Delta’s freshwater flows has been diverted for
23 decades by the Central Valley Project (“CVP”) and the California (or “State”) Water Project (“SWP”).
24 Second, for too long, agricultural diverters have discharged subsurface drainage and surface run-off
25 contaminated with salt, selenium, and other toxic substances into groundwater and the rivers that are
26 tributary to the Delta. This one-two punch of diminished freshwater flows and increased temperature,
27 salinity, herbicides, pesticides, and heavy metals has pushed the Delta to the brink of ecologic collapse.

28 98. Due to excessive diversions of water for consumptive use, many species of fish endemic to

1 the Delta have already gone extinct, including the Sacramento perch, formerly one of the most abundant
2 fishes of the Delta, which disappeared in the 1970s. Just 12 indigenous species remain, and these are in
3 grave danger. Since the SWP and CVP began operation, the Sacramento River winter and spring run
4 Chinook salmon, Central Valley steelhead, North American green sturgeon and Delta smelt have been
5 driven perilously close to extirpation. Winter run Chinook salmon were declared threatened under the
6 federal Endangered Species Act (“ESA”) in 1990 (55 Fed.Reg. 46515), and then due to continuing
7 population declines, declared endangered in 2005 (70 Fed.Reg. 37160). Their critical habitat in the
8 Sacramento River and its tributaries was designated in 1993. (58 Fed.Reg. 33212.) Spring run Chinook
9 salmon were declared threatened, and their critical habitat designated under the ESA in 2005. (70
10 Fed.Reg. 37160, 52488.) Central Valley steelhead were declared threatened in 2000 (65 Fed.Reg. 52084)
11 and their critical habitat was designated in 2005 (70 Fed.Reg. 52488). The Southern distinct population
12 segment (“DPS”) of North American green sturgeon was declared threatened in 2006 (71 Fed.Reg.
13 17757) and its critical habitat was designated in 2008 (73 Fed.Reg. 2084). Delta smelt were declared
14 endangered in 1993 (58 Fed.Reg. 12854) and their critical habitat was designated in 1994 (59 Fed.Reg.
15 65256).

16 99. The SWP, as originally envisioned, would have included additional dams and diversions
17 that would have destroyed the free-flowing rivers of California’s North Coast and removed additional
18 essential spawning and rearing habitat for salmon and steelhead. The unbuilt portion of the SWP was
19 expected to provide between five and 10 million acre feet of water each year to the SWP system. Thus,
20 DWR’s SWP existing contracts contemplate delivery of much more water than can be delivered in all but
21 the wettest of water years.

22 100. In addition to harming many fish species in the Delta, the excessive use of Delta water
23 exports to irrigate contaminated soils in the San Joaquin Valley pollutes ground and surface waters that
24 flow into the Delta. Irrigation leaches pollutants from the toxic soils underlying many of the areas
25 irrigated with Delta water. The subsurface drainage and surface run off from these contaminated soils
26 contain pollutants including selenium, arsenic, boron, mercury, uranium, chromium, molybdenum and
27 sodium chlorides and sulfates. The resulting pollution of the Delta and its San Joaquin Valley tributaries
28 threatens the Delta’s water quality and the fish and wildlife that are dependent on them.

1 101. Since the SWP’s inception, DWR has entertained many proposals to re-plumb the Delta to
2 divert even more water away from this struggling ecosystem. For example, California’s voters rejected
3 the Peripheral Canal in 1982. In the years since, the names and proposed methods for these diversions
4 have evolved but each concept would, at its core, remove water before it can enter the Delta, so that it can
5 be delivered to the SWP and CVP pumps in the South-Delta for delivery to South-of-Delta water users.
6 Despite continued unpopularity, concerns regarding the impacts to imperiled fish, and cost, DWR
7 continues to push for a new water conveyance system in the Delta. In the 2000s, DWR called its proposal
8 the Bay Delta Conservation Plan. Because state and federal fisheries agencies did not believe this
9 proposal qualified as a habitat conservation plan, since it diverted water away from the Delta resulting in
10 harm to its fish and wildlife, it was relabeled the California WaterFix, which DWR approved on or about
11 July 21, 2017.

12 102. Nearly 20 separate lawsuits were filed against the California WaterFix, along with
13 numerous administrative protests and objections challenging approvals that DWR required from the State
14 Water Resources Control Board and the Delta Stewardship Council to carry it out. As a result of adverse
15 court and agency rulings in these judicial and administrative proceedings that undermined DWR’s
16 approval of California Waterfix, and the consequent need to rebrand and retool its Delta water diversion
17 proposal as a single-tunnel project as Governor Gavin Newsom now proposed, on or about May 2, 2019,
18 DWR rescinded its approvals of California WaterFix and decertified its EIR.

19 103. On or about January 15, 2020, DWR issued a Notice of Preparation notifying the public
20 that it would act as the lead agency for preparation of an EIR for DWR’s single-tunnel reconfiguration of
21 its previous twin-tunnel California WaterFix. DWR has, in paragraph 1 of its Complaint for Validation,
22 defined this single-tunnel reconfiguration as the “Delta Program.”

FIRST AFFIRMATIVE DEFENSE

24 104. Whether DWR’s issuance of bonds to fund the Delta Program Project complies with the
25 Water Code, the Code of Civil Procedure, and the Government Code has already been placed in issue by
26 defendants’ foregoing denial of the allegations of the Complaint for Validation. Nonetheless, out of an
27 abundance of caution, defendants allege as their First Affirmative Defense, DWR’s violation of these
28 Codes.

1 105. DWR’s issuance of the Delta Program Revenue Bonds to finance the capital costs of the
2 Project, and all related approvals, violate the Water Code.

3 106. DWR’s issuance of the Delta Program Revenue Bonds to finance the capital costs of the
4 Project, and all related approvals, violate the Code of Civil Procedure.

5 107. DWR’s issuance of the Delta Program Revenue Bonds to finance the capital costs of the
6 Project, and all related approvals, violate the Government Code.

7 **SECOND AFFIRMATIVE DEFENSE–CEQA**

8 108. This Court may consider as an affirmative defense in this validation proceeding DWR’s
9 failure to comply with CEQA . In *County of Imperial v. Superior Court, supra*, 152 Cal.App.4th at 40,
10 the court held that “the County can mount a CEQA challenge . . . in its opposition to Imperial’s validation
11 action.” *County of Imperial* concerned actions brought by Imperial County to challenge a water transfer
12 agreement between the San Diego County Water Authority and the Imperial Irrigation District. (*Id.* at
13 18.) The trial court sustained a demurrer for failure to join two indispensable parties. Those parties –
14 California water districts with certain rights to the water at issue – stood to acquire a large amount of
15 water under the challenged transfer agreement. (*Id.* at 22.) The appellate court upheld the ruling of the
16 trial court, in part because the parties could raise their CEQA challenges in an ongoing validation action
17 regarding the water transfer. (*Id.* at 40.) The court further held that even if an ongoing parallel action
18 was dismissed for nonjoinder, the party seeking to raise CEQA challenges to a project (there, a water
19 transfer) had an adequate available “alternative remedy” in a parallel validation action. The appellate
20 court ruled that the party retained *the ability to raise CEQA challenges in opposing the ongoing*
21 *validation action regarding the water transfer.* (*Id.* at 40 (“the County can mount a CEQA challenge . . .
22 in its opposition to Imperial’s validation action”).)

23 109. DWR has put the Project cart before the environmental review horse with this validation
24 action. DWR must comply with the California Environmental Quality Act (“CEQA”), Public Resources
25 Code section 21000 *et seq.*, among other laws, before it may approve its Project.

26 110. The Project is a “project” under CEQA, Public Resources Code section 21065. CEQA is
27 California’s primary statutory mandate for environmental protection. It applies to all state and local
28 agencies, and requires them to “first identify the [significant] environmental effects of projects, and then

1 to mitigate those adverse effects through the imposition of feasible mitigation measures or through the
2 selection of feasible alternatives.” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233.)
3 Its most important substantive imperative requires “public agencies to deny approval of a project with
4 significant adverse effects when feasible alternatives or feasible mitigation measures can substantially
5 lessen such effects.” (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.)

6 111. CEQA’s mandate for detailed environmental review “ensures that members of the
7 [governmental decision-making body] will fully consider the information necessary to render decisions
8 that intelligently take into account the environmental consequences” of their proposed action. (*Mountain
9 Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133; Public Resources Code
10 §§ 21080.5(d)(2)(D), 21091(d)(2); 14 C.C.R. [CEQA Guidelines] (“Guidelines”) § 15088.) The CEQA
11 process thus “protects not only the environment but also informed self-government.” (*Citizens of Goleta
12 Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) “The foremost principle under CEQA is that
13 the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible
14 protection to the environment within the reasonable scope of the statutory language.’” *Laurel Heights
15 Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (citation omitted).

16 112. All California “public agencies” must comply with CEQA when they approve
17 discretionary projects. (Public Resources Code § 21080(a).) The City is both a “public agency” and a
18 “local agency” as those terms are defined in CEQA. (Public Resources Code §§ 21062, 21063.)
19 Therefore DWR is subject to CEQA. (*Id.*)

20 113. A proposed governmental action requires environmental review under CEQA if (1) the
21 agency is contemplating an “approval” of an action as defined by Guidelines section 15352, (2) the
22 subject matter of the contemplated approval constitutes a “project” under Public Resources Code section
23 21065 and Guidelines section 15378(a), and (3) the project to be approved does not fall within a statutory
24 exemption created by the Legislature under Public Resources Code section 21080(b) and recognized
25 under CEQA Guidelines sections 15260-15285, or a categorical exemption in the Guidelines as
26 promulgated by the California Resources Agency pursuant to Public Resources Code section 21084(a)
27 and Guidelines sections 15061(b)(2), 15300-15333 and 15354.

28 114. If a state agency such as DWR is considering approval of a project that is subject to

1 CEQA, then it must prepare an Environmental Impact Report (“EIR”) if the project “may have a
2 significant effect on the environment.” (Public Resources Code § 21151(a).) If there is substantial
3 evidence that one or more significant environmental impacts may occur, and the project proponent is
4 either unwilling or unable to mitigate them to insignificance, then the lead agency must prepare an EIR
5 analyzing those effects and suggesting feasible means, if any, of mitigating or avoiding them including
6 alternatives that would achieve most of the basic objectives of the project without causing significant
7 environmental effects. (Public Resources Code §§ 21002, 21002.1, 21061; Guidelines §§ 15080-15096,
8 15120-15132, 15160-15170.)

9 115. In applying these CEQA procedures, an agency may not segment a project to avoid
10 preparing an EIR on the entirety, or whole, of the project. (Guidelines § 15378(a), (c), (d).) CEQA’s
11 “requirements cannot be avoided by chopping up proposed projects into bite-size pieces which,
12 individually considered, might be found to have no significant effect on the environment or to be only
13 ministerial.” (*Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726.).

14 116. DWR’s proposed issuance of revenue bonds, and other actions it seeks to validate in this
15 action, would “significantly further[.]” the Project “in a manner that [would] foreclose[.]” additional or
16 modified “alternatives or mitigation measures” from being considered. (*Save Tara v. City of West*
17 *Hollywood* (2008) 45 Cal.4th 116, 138 (first quote); Guidelines § 15004(b)(2) (second quote).)

18 117. DWR asserts in paragraph 35 of its Complaint for Validation that its “adoption of the
19 Resolutions authorizing the issuance of the proposed Delta Program Revenue Bonds is not an ‘approval’
20 within the meaning of the CEQA Guidelines, in that such adoption does not commit the Department to a
21 definite course of action in regard to a project subject to CEQA (see [CEQA Guidelines] § 15352).” This
22 is incorrect. CEQA specifically directs, in Public Resources Code section 21102, that:

23 “No state agency, board, or commission *shall request funds*, nor shall any state agency, board, or
24 commission which authorizes expenditures of funds, other than funds appropriated in the Budget
25 Act, *authorize funds* for expenditure for any project, *other than a project involving only feasibility*
26 *or planning studies for possible future actions* which the agency, board, or commission has not
27 approved, adopted or funded, which may have a significant effect on the environment *unless such*
28 *request or authorization is accompanied by an environmental impact report.*

Feasibility and planning studies exempted by this section from the preparation of an
environmental impact report shall nevertheless include consideration of environmental factors.”

1 *Id.* (emphasis added).

2 118. DWR's Bond Resolutions authorize expenditures of funds for more "than a project
3 involving only feasibility or planning studies for possible future actions." The Bond Resolutions
4 purportedly authorize, in addition to "Delta Program Planning Costs," "Delta Program Capital Costs."
5 Delta Program Capital Costs are defined to mean "the cost and expense of environmental review,
6 planning, *engineering, design, and, if and when determined by the Department to be appropriate,*
7 *acquisition and construction of units for the conveyance of water in and about the Sacramento-San*
8 *Joaquin Delta.*" (DWR General Bond Resolution No. DWR-DPRB-1 (Exhibit 1 to Complaint for
9 Validation) at Section 101, pages 3-4, emphasis added.) The inclusion of engineering, design,
10 acquisition, and construction in the Bond Resolutions is alleged (and thus admitted) in paragraphs 1, 3, 5,
11 27, 28, 30, 41, 42, 53, and 59 of the Complaint for Validation, and additionally set forth in DWR's
12 General Bond Resolution No. DWR-DPRB-1 (Exhibit 1 to the Complaint for Validation) in its preamble
13 at pages 1 and 2, in Section 101 at pages 3 - 4, and in Section 804 at page 25, in DWR's First
14 Supplemental Resolution No. DWR-DPRB-2) (Exhibit 2 to the Complaint for Validation) in its preamble
15 at page 1 and in Section 1304 at pages 2 - 3, and in DWR's Second Supplemental Resolution No. DWR-
16 DPRB-3 (Exhibit 3 to the Complaint for Validation) in its preamble at page 1 and in Section 1704 at page
17 3.

18 119. DWR's Bond Resolutions also authorize expenditures of funds for "operating expenses,"
19 which include the cost of *operation and maintenance* of the Delta Program Project. Operating expenses
20 are included in DWR's General Bond Resolution No. DWR-DPRB-1 (Exhibit 1 to the Complaint for
21 Validation) in its preamble at pages 1 -2, Section 101 at pages 3, 4, and 5, Section 503 at pages 20 - 21,
22 Section 605 at page 23, and Section 804 at pages 24 -25 and Section 805 at page 25, and in DWR's
23 Second Supplemental Resolution No. DWR-DPRB-3) (Exhibit 3 to the Complaint for Validation) in its
24 preamble at page 2.

25 120. Thus, DWR's Bond Resolutions require CEQA review. Accordingly, DWR cannot obtain
26 relief in this action before the scope of its CEQA duties has been adjudicated and the courts have
27 determined DWR's compliance with CEQA, and the other laws whose violation is alleged in this
28 Verified Answer, in approving the Project.

1 **THIRD AFFIRMATIVE DEFENSE—DELTA REFORM ACT**

2 121. Just as this Court may consider in this validation proceeding DWR's failure to comply
3 with the procedural requirements of CEQA, so too this Court may consider DWR's failure to comply
4 with the procedural requirements of the Delta Reform Act, Water Code sections 85000 *et seq.* (*County of*
5 *Imperial v. Superior Court, supra*, 152 Cal.App.4th at 40.)

6 122. To address the indisputably perilous state of the Delta, in 2009 the California Legislature
7 enacted the Delta Reform Act, declaring that “[t]he Sacramento-San Joaquin Delta watershed and
8 California’s water infrastructure are in crisis and *existing Delta policies are not sustainable.*” (Water
9 Code § 85001(a), emphasis added.) The Legislature found that “‘the Delta’ . . . is a critically important
10 natural resource for California and the nation. It serves Californians concurrently as both the hub of the
11 California water system and the most valuable estuary and wetland ecosystem on the west coast of North
12 and South America.” (Water Code § 85002.) “Resolving the crisis requires *fundamental reorganization*
13 of the state’s management of Delta watershed resources.” (Water Code § 85001(a), emphasis added.)
14 Therefore, the Legislature resolved “to provide for the sustainable management of the [Delta] ecosystem,
15 to provide for a more reliable water supply for the state, to protect and enhance the quality of water
16 supply from the Delta, and to establish a governance structure that will direct efforts *across state agencies*
17 to develop a *legally enforceable* Delta Plan.” (Water Code § 85001(c), emphasis added.)

18 123. The Delta Reform Act was meant to advance the “coequal goals” of restoring the Delta
19 ecosystem and ensuring water supply reliability. (Water Code § 85054.) The Legislature found that eight
20 “objectives” were inherent in those coequal goals:

- 21 (a) *Manage the Delta’s water and environmental resources and the water*
22 *resources of the state over the long term.*
- 23 (b) *Protect and enhance the unique cultural, recreational, and agricultural*
24 *values of the California Delta as an evolving place.*
- 25 (c) *Restore the Delta ecosystem, including its fisheries and wildlife, as the*
26 *heart of a healthy estuary and wetland ecosystem.*
- 27 (d) Promote statewide water conservation, water use efficiency, and
28 *sustainable water use.*
- (e) Improve water quality to protect human health and the environment
consistent with *achieving water quality objectives in the Delta.*
- (f) Improve the water conveyance system and expand statewide water storage.
- (g) Reduce risks to people, property, and state interests in the Delta by
effective emergency preparedness, appropriate land uses, and investments
in flood protection.
- (h) Establish a new governance structure with the authority, responsibility,

1 accountability, scientific support, and adequate and secure funding to
2 achieve these objectives.

3 (Water Code § 85020, emphasis added.)

4 124. The Legislature also declared that:

5 The policy of the State of California is to *reduce reliance on the Delta in meeting*
6 *California's future water supply needs* through a statewide strategy of investing in
7 improved regional supplies, conservation, and water use efficiency. Each region that
8 depends on water from the Delta watershed shall improve its regional self-reliance for
9 water through investment in water use efficiency, water recycling, advanced water
10 technologies, local and regional water supply projects, and improved regional coordination
11 of local and regional water supply efforts.

12 (Water Code § 85021, emphasis added.)

13 125. The Delta Reform Act was passed by the Legislature in recognition of the fact that “[t]he
14 Sacramento-San Joaquin Delta watershed and California’s water infrastructure are in crisis” and that
15 “[r]esolving the crisis requires fundamental reorganization of the state’s management of Delta watershed
16 resources.” (Water Code § 85001(a).) The Legislature’s goal was “to provide for the sustainable
17 management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply
18 for the state, to protect and enhance the quality of water supply from the Delta, and to establish a
19 governance structure that will direct efforts across state agencies to develop a legally enforceable Delta
20 Plan.” (*Id.* § 85001(c).)

21 126. The Delta Reform Act requires any state agency “that proposes to undertake a covered
22 action” to “prepare a written certification of consistency with detailed findings as to whether the covered
23 action is consistent with the Delta Plan” and submit that written finding to the Delta Stewardship
24 Council. (Water Code § 85225.)

25 127. The Delta Reform Act defines “[c]overed action” as “a plan, program or project” as
26 defined by PRC section 21065 that:

27 (1) Will occur, in whole or in part, within the boundaries of the Delta or
28 Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public
agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal
goals or the implementation of government-sponsored flood control programs to
reduce risks to people, property, and state interests in the Delta.

1 (Water Code § 85057.5(a).)

2 128. While the Delta Reform Act states that “[r]outine maintenance and operation of the State
3 Water Project” is not a covered action, the Project does not qualify for that exemption because it is
4 neither routine maintenance nor routine operation of the SWP. (Water Code § 85057.5(b).)

5 129. Rather, the Project is a “covered action” because it will occur within the boundaries of the
6 Delta, will be carried out by a state agency, is covered by the Delta Plan, and will divert massive
7 quantities of fresh water around rather than through the Delta. (Water Code § 85057.5(a).) Diverting
8 vast amounts of water around the Delta that previously flowed into and through the Delta will dewater the
9 Delta and thereby harm the Delta’s ecosystem and its dependent fish and wildlife, and increase reliance
10 on continued, and potentially expanded, exports of water away from the Delta for consumptive uses. For
11 these reasons, the Project “[w]ill have a significant impact on achievement of one or both of the coequal
12 goals” of the Delta Reform Act. (Water Code § 85057.5(a)(4).)

13 130. Because the Project is a “covered action” under the Delta Reform Act, DWR must first
14 make a determination that the Project is consistent with the Delta Plan adopted by the Delta Stewardship
15 Council. DWR has not done so because DWR denies that the Project is a covered action under the Delta
16 Reform Act. Consequently, DWR disclaims any duty to make a consistency determination.

17 131. Thus, in contravention to the requirements of the Delta Reform Act, DWR approved the
18 Project without *first* making a determination of consistency with the Delta Plan. (Water Code § 85225.)
19 And, because approval of the Project deprives the Delta of freshwater flows essential to its ecological
20 restoration and recovery, while at the same time increasing reliance on continued excessive diversions of
21 water away from the Delta, without any attempt to address the Project’s conflict with the Delta Reform
22 Act’s coequal goals, the Project is inherently inconsistent with the Delta Plan.

23 132. Because DWR failed to “prepare a written certification of consistency with detailed
24 findings as to whether the covered action is consistent with the Delta Plan” as required by the Delta
25 Reform Act, its approval must be set aside. (Water Code § 85225.)

26 **FOURTH AFFIRMATIVE DEFENSE—THE PUBLIC TRUST DOCTRINE**

27 133. Just as this Court may consider in this validation proceeding DWR’s failure to comply
28 with CEQA and the Delta Reform Act, so too this Court may consider DWR’s failure to comply with the

1 Public Trust Doctrine. (*County of Imperial v. Superior Court, supra*, 152 Cal.App.4th at 40.)

2 134. Water Code section 85023 states, “the longstanding constitutional principle of reasonable
3 use and the Public Trust Doctrine shall be the foundation of state water management policy and are
4 particularly important and applicable to the Delta.”

5 135. In *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426, the court noted
6 that the public trust doctrine mandates that “before state courts and agencies approve water diversions
7 they . . . consider the effect of such diversions upon interests protected by the public trust, and attempt, so
8 far as feasible, to avoid or minimize any harm to those interests.” The *National Audubon Society* Court
9 went on to explain:

10 Just as the history of this state shows that appropriation may be necessary for efficient use of
11 water despite unavoidable harm to public trust values, it demonstrates that an appropriative
12 water rights system administered without consideration of the public trust may cause
13 unnecessary and unjustified harm to trust interests. As a matter of practical necessity the state
14 may have to approve appropriations despite foreseeable harm to public trust uses. In so doing,
15 however, the state must bear in mind its duty as trustee to consider the effect of the taking on
16 the public trust, and to preserve, so far as consistent with the public interest, the uses protected
17 by the trust.

18 (*Id.*, citations omitted.)

19 136. “Public trust easements are traditionally defined in terms of navigation, commerce and
20 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and
21 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable
22 waters for anchoring, standing, or other purposes.” (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259.)
23 However, for nearly 50 years it has been settled law in California that public trust values also
24 “encompass[] . . . the preservation of those lands in their natural state, so that they may serve as
25 ecological units for scientific study, as open space, and as environments which provide food and habitat
26 for birds and marine life, and which favorably affect the scenery and climate of the area.” (*Id.* at 259-
27 260.)

28 137. “[A] public trust use is not any use that may confer a public benefit, but rather a use that
facilitates public access, public enjoyment, or public use of trust land.” (*Id.* at 570.)

138. Despite DWR’s baseless claims to the contrary, the Project will harm vulnerable and
irreplaceable public trust resources, including flows and habitat necessary for fish, wildlife, and public
trust uses such as recreation and fishing that will be impacted due to the Project’s diversion of freshwater

1 flows around the Delta for export south for consumptive use.

2 139. Although compliance with CEQA “may assist an agency in complying with its duties
3 under the public trust doctrine [,] CEQA review of a project does not necessarily or automatically
4 satisfy the agency’s affirmative duties to take the trust into account and protect public trust uses whenever
5 feasible.” (*San Francisco Baykeeper, Inc. v. State Lands Com., supra*, 29 Cal.App.5th at 571.) Yet
6 DWR intends to rely upon a future CEQA analysis to retroactively satisfy its public trust obligations.

7 140. Because DWR approved the Project before, rather than after, it discharged “its duty as
8 trustee to consider the effect of the [Project] on the public trust, and to preserve, so far as consistent with
9 the public interest, the uses protected by the trust,” including an examination of alternatives that would
10 feasibly reduce or avoid the Project’s foreseeable harm to public trust resources and uses, DWR failed to
11 satisfy its affirmative obligations under the Public Trust Doctrine. (*National Audubon Society v. Superior
12 Court, supra*, 33 Cal.3d at 426.)

13 141. By approving the Project despite the fact that feasible alternatives to diverting the
14 Sacramento River’s waters around the Delta exist that would achieve the Project’s purposes and still
15 preserve public trust resources to a greater extent than the Project, DWR abdicated its “affirmative duties
16 to take the trust into account and protect public trust uses whenever feasible.” (*San Francisco Baykeeper,
17 Inc. v. State Lands Com., supra*, 29 Cal.App.5th at 571.)

18 **RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES**

19 142. All affirmative defenses that may be applicable to the Complaint for Validation cannot be
20 fully anticipated. Accordingly, defendants reserve the right to assert additional applicable affirmative
21 defenses to the extent permitted by law.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, defendants NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU
24 TRIBE, INSTITUTE FOR FISHERIES RESOURCES, PACIFIC COAST FEDERATION OF
25 FISHERMEN’S ASSOCIATIONS, and SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION
26 pray that:

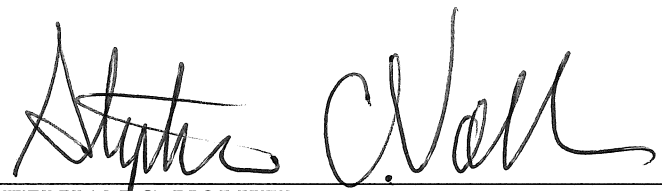
- 27 1. Judgment be entered in favor of defendants;
- 28 2. The Court enter judgment invalidating DWR’s actions purporting to approve and issue

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- Delta Program Revenue Bonds to finance the capital costs of the Project;
- 3. DWR's request for a judgment validating its approval and issuance of Delta Program Revenue Bonds to finance the capital costs of the Project be denied;
- 4. DWR take nothing by its Complaint for Validation;
- 5. Defendants be awarded their costs of suit incurred herein;
- 6. Defendants be awarded their attorney fees incurred herein; and
- 7. Defendants be awarded such other and further relief as the Court deems just and proper.

Dated: October 28, 2020

Respectfully submitted,

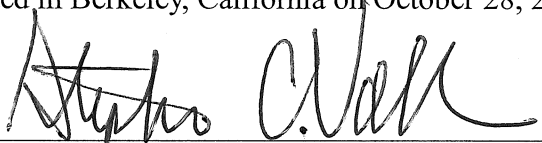


STEPHAN C. VOLKER
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NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU
TRIBE, INSTITUTE FOR FISHERIES RESOURCES, PACIFIC
COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS,
and SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION

VERIFICATION

1
2 I, Stephan C. Volker, am the attorney for defendants in this action. I make this verification on
3 behalf of the defendants because such parties and their representatives are absent from the county in
4 which my office is located. I have read the foregoing Verified Answer of Defendants North Coast Rivers
5 Alliance, Winnemem Wintu Tribe, Institute for Fisheries Resources, Pacific Coast Federation of
6 Fishermen's Associations, and San Francisco Crab Boat Owners Association to Complaint for Validation
7 and know its contents. The facts therein alleged are true and correct to the best of my knowledge and
8 belief.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct, and that this Verification was executed in Berkeley, California on October 28, 2020.

11
12 
13 STEPHAN C. VOLKER

1 **PROOF OF SERVICE**

2 On October 28, 2020, I served a true copy of the following document:

3 **VERIFIED ANSWER OF DEFENDANTS NORTH COAST RIVERS ALLIANCE, WINNEMEM**
4 **WINTU TRIBE, INSTITUTE FOR FISHERIES RESOURCES, PACIFIC COAST**
5 **FEDERATION OF FISHERMEN'S ASSOCIATIONS, and SAN FRANCISCO CRAB BOAT**
6 **OWNERS ASSOCIATION TO COMPLAINT FOR VALIDATION**

7 in the above-captioned matter on the persons listed below by placing true copies of said document in
8 prepaid envelopes in the United States mail at Berkeley, California, addressed as follows:


9 Michael Weed
10 Orrick, Herrington & Sutcliffe
11 400 Capitol Mall, Suite 3000
12 Sacramento, CA 95814-4497
13 Tel: (916) 447-9200
14 Fax: (916) 329-4900
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Los Angeles, CA 90054
Counsel for Answering Party In Interest
Metropolitan Water District

20 I declare under penalty of perjury that the foregoing is true and correct. Executed on October
21 28, 2020 at Berkeley, California.

22 
23 Yuri Miyagawa