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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**
12

13 CENTRAL DELTA WATER AGENCY,) Case No.
SOUTH DELTA WATER AGENCY,)
14 CALIFORNIA WATER IMPACT NETWORK,)
CALIFORNIA SPORTFISHING PROTECTION)
15 ALLIANCE,)
CENTER FOR BIOLOGICAL DIVERSITY,) **PETITION FOR WRIT OF MANDATE**
16 CAROLEE KRIEGER, and JAMES CRENSHAW) **AND COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
17 Petitioners / Plaintiffs,) **RELIEF**
)
18 vs.)
) Code Civ. Proc. §§ 860, 1060, 1085,
19 CALIFORNIA DEPARTMENT OF WATER) 1094.5; Pub. Resources Code § 21000 *et*
RESOURCES and DOES 1 – 20,) *seq.* (California Environmental Quality
20 Respondents / Defendants;) Act); Gov. Code §§ 17700, 53510, 53511;
) Civ. Code § 1550; Cal. Const. Art. 16 §§ 1,
21) 6.
22 KERN COUNTY WATER AGENCY,)
KERN WATER BANK AUTHORITY,)
DUDLEY RIDGE WATER DISTRICT,)
23 KERN COUNTY WATER AGENCY)
IMPROVEMENT DISTRICT 4,)
24 PARAMOUNT FARMING COMPANY LLC,)
ROLL INTERNATIONAL CORPORATION,)
25 SEMITROPIC WATER STORAGE DISTRICT,)
TEJON-CASTAC WATER DISTRICT,)
26 TEJON RANCH COMPANY,)
WESTSIDE MUTUAL WATER COMPANY,)
27 (caption continued on next page))

1 WHEELER RIDGE-MARICOPA WATER)
STORAGE DISTRICT, and DOES 21 – 40,)

2)
3 Real Parties in Interest / Defendants;)
4)

4 ALAMEDA COUNTY FLOOD CONTROL &)
WATER CONSERVATION DISTRICT ZONE 7,)
5 ALAMEDA COUNTY WATER DISTRICT,)
ANTELOPE VALLEY – EAST KERN WATER)
6 AGENCY, CASTAIC LAKE WATER AGENCY,)
CITY OF YUBA, COACHELLA VALLEY)
7 WATER DISTRICT, COUNTY OF BUTTE,)
COUNTY OF KINGS, CRESTLINE – LAKE)
8 ARROWHEAD WATER AGENCY, DESERT)
WATER AGENCY, LITTLEROCK CREEK)
9 IRRIGATION DISTRICT, METROPOLITAN)
WATER DISTRICT OF SOUTHERN)
10 CALIFORNIA, MOJAVE WATER AGENCY,)
NAPA COUNTY FLOOD CONTROL & WATER)
11 CONSERVATION DISTRICT, OAK FLAT)
WATER DISTRICT, PALMDALE WATER)
12 DISTRICT, PLUMAS COUNTY FLOOD)
CONTROL AND WATER CONSERVATION)
13 DISTRICT, SAN BERNARDINO VALLEY)
MUNICIPAL WATER DISTRICT, SAN)
14 GABRIEL VALLEY MUNICIPAL WATER)
DISTRICT, SAN GORGONIO PASS WATER)
15 AGENCY, SAN LUIS OBISPO COUNTY)
FLOOD CONTROL & WATER)
16 CONSERVATION DISTRICT, SANTA)
BARBARA COUNTY FLOOD CONTROL AND)
17 WATER CONSERVATION DISTRICT, SANTA)
CLARA VALLEY WATER DISTRICT,)
18 SOLANO COUNTY WATER AGENCY,)
TULARE LAKE BASIN WATER STORAGE)
19 DISTRICT, VENTURA COUNTY)
WATERSHED PROTECTION DISTRICT, and)
20 DOES 41 – 60,)

21 Real Parties in Interest.)
22)
23)
24)
25)
26)
27)

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1 **INTRODUCTION**

2 1. This action challenges the approval of the Monterey Plus Amendments to the
3 Long-Term Delivery Contracts for the State Water Project (“SWP” or “Project”) by California
4 Department of Water Resources (“DWR”), recorded in a Notice of Determination dated May
5 5, 2010, and DWR’s certification of the Environmental Impact Report (“EIR”) for the Project
6 on February 1, 2010. As described below, DWR’s approval violated numerous laws,
7 including the California Environmental Quality Act (“CEQA”), Public Resources Code §
8 21000 *et seq.*, the CEQA Guidelines, title 14 California Code of Regulations, § 15000 *et seq.*
9 (“Guidelines”), as well as provisions of the California Water Code, the California Civil Code,
10 and the California Constitution.

11 2. This action also challenges the validity of the fee-simple “transfer” of the Kern
12 Water Bank¹, whose authorization became final with DWR’s Notice of Determination. This
13 component of the Project, would permanently transform that facility from statewide into
14 private control by enacting a two-part transaction: first, from the DWR to the Kern County
15 Water Agency under the Monterey Plus Amendments, and second, that agency’s immediate
16 retransfer from that agency to a novel joint powers authority, Kern Water Bank Authority.
17 While styled as a “transfer,” this hybrid transaction amounts to an unlawful and
18 unconstitutional gift of a critical state asset, ceding effective control of the country’s largest
19 groundwater storage facility to private interests, including majority control by Paramount
20 Farming Company LLC / Roll International Corporation, one of the world’s largest
21 agricultural and holding companies.

22 3. The Long-Term Water Supply Contracts for the delivery of water from the
23 State Water Project (“SWP”) were entered into between DWR and various water agencies
24

25 ¹ The term “Kern Water Bank” is most often used to refer to the operational banking facility
26 initially developed by the DWR and subsequently completed and currently operated by the
27 Kern Water Bank Authority. The term is also sometimes used to refer to the entire aquifer in
the southern San Joaquin Valley in Kern, Kings, and Tulare Counties, a large depleted section
of which is known as the Kern Fan Element. In this Petition and Complaint the terms Kern
Water Bank and Kern Fan Element are used interchangeably.

1 and districts (“SWP Contractors”) beginning in November, 1960. As originally approved
2 and validated, the contracts imposed a set of obligations that guaranteed that the SWP
3 Contractors would be responsible for the repayment of the taxpayer investment in the SWP,
4 would protect the public’s ownership and interest in the SWP and public trust resources,
5 including the freshwater resources of the State, and would allocate water deliveries in
6 consideration of the needs of the environment and the effected ecosystems, the seasonal
7 cycles of wet and dry months, and the periodic cycles of drought and wet years. These
8 constitutionally protected obligations were to remain in effect at least so long as the SWP’s
9 general obligation bonds remain outstanding—no earlier than 2035.

10 4. The Monterey Plus Amendments, if allowed to become permanent, would
11 eliminate and/or alter key provisions of these contracts, including provisions that (1) remove
12 the “urban preference” provision that ensures urban SWP Contractors more water in times of
13 drought; (2) remove the contract’s principal safeguard against “paper water” allocations; (3)
14 remove the provision preventing reliance on so-called “surplus water” to build permanent
15 economies; (4) facilitate the gift of the Kern Fan Element of the Kern Water Bank to a
16 privately-controlled joint powers authority; (5) expand the opportunity of local water
17 contractors to transfer and sell what would otherwise be water restricted to agricultural use;
18 and (6) restructure SWP financing in a manner that will deprive the state of vast resources
19 that local contractors would otherwise have been obligated to pay. These and other alterations
20 of the original long term contracts, which would largely transform a system founded in public
21 and statewide accountability to one serving local and private interests, are causing and will
22 cause major environmental impacts.

23 5. Because DWR failed to comply with CEQA, Petitioners petition this Court for a
24 writ of mandate under Code of Civil Procedure sections 1085 and 1094.5, directing DWR to
25 vacate and set aside its approval of the Project and EIR certification.

26 6. In addition to its mandate action, Petitioners bring a reverse-validation action to
27 declare the Kern Fan Element two-part transfer agreement invalid, and to impose a

1 constructive trust to restore financial and environmental accountability to the Kern Water
2 Bank and State Water Project.

3 7. Petitioners also challenge the validity of the Monterey Plus Amendments on the
4 ground that their fundamental alterations of the original long-term contracts violate
5 constitutionally protected obligations ratified by California’s voters and Legislature, and
6 abandon the principle of “substantial uniformity” among the SWP contracts.

7
8 **JURISDICTION AND VENUE**

9 8. This Court has jurisdiction over this action pursuant to Cal. Code Civ. Proc. §§
10 1085 and 1094.5 and Pub. Resources Code §§ 21168 and 21168.5. This Court has the
11 authority to issue a writ of mandate directing Respondents to vacate and set aside its approval
12 of the Project and certification of the EIR for the Project under Code Civ. Proc. §§ 1085 and
13 1094.5.

14 9. For the purposes of Petitioners’ Reverse Validation Action, jurisdiction over of
15 all interested parties may be had by publication of summons pursuant to Gov. Code § 6063 in
16 a newspaper of general circulation designated by this Court. (Code Civ. Proc. § 861.)
17 Petitioners shall publish the summons served on Defendant pursuant to Code Civ. Proc. § 861.

18 10. Venue for the CEQA actions contained herein properly lies in the Sacramento
19 County Superior Court because Respondent DWR is located in Sacramento and because the
20 Real Parties in Interest reside throughout the State, making no location more appropriate or
21 convenient.

22 11. Venue for the “reverse-validation” actions and the constitutional action
23 contained herein properly lies in the Sacramento County Superior Court pursuant to Gov.
24 Code § 17700(c) and Code Civ. Proc. § 860, because Defendant DWR is located in
25 Sacramento.

26
27 **PARTIES**

1 12. Petitioner and Plaintiff CENTRAL DELTA WATER AGENCY (“CDWA”) is a
2 political subdivision of the State of California created under the Central Delta Water Agency
3 Act, Chapter 1133 of the Statutes of 1973 as amended. The CDWA encompasses
4 approximately 120,000 acres within San Joaquin County, all of which is within the Bay-Delta.
5 The lands within CDWA jurisdiction are primarily agricultural but also contain recreational
6 developments, significant wildlife habitat and some residential development. The lands are
7 dependent on the water supply in the channels of the Bay-Delta (“in-channel water supply) for
8 irrigation and other beneficial uses. The in-channel water supply is dependent on the flow and
9 quality of both the Sacramento and San Joaquin River systems. All of the lands within the
10 CDWA are contiguous to the channels and sloughs within the CDWA and/or the underground
11 flows of those channels. The water rights pertaining to the lands are principally riparian and
12 are in-part covered by pre-1914, “prior vested” water rights, which enjoy seniority over post-
13 1914 water rights and those rights of DWR. The lands are further entitled to statutory water
14 rights including area of origin preferences pursuant to Water Code sections 11460 *et seq.* and
15 12200 *et seq.* CDWA is empowered to assist landowners to protect and assure a dependable
16 supply of water of suitable quantity sufficient to meet present and future needs. CDWA’s in-
17 channel water supply quality was and continues to be degraded and the reliability of the
18 supply has been and is being harmed by the increased withdrawals from the Delta due to
19 enactment of the Monterey Plus Amendments and privatization of Kern Water Bank. CDWA
20 would be directly, adversely and irreparably harmed by the Project and its components, as
21 described herein, until and unless this Court provides the relief prayed for in this petition.

22 13. Petitioner and Plaintiff SOUTH DELTA WATER AGENCY (“SDWA”) is a
23 political subdivision of the State of California created by the California Legislature under the
24 South Delta Water Agency Act, Chapter 1089 of the Statutes of 1973 as amended. The
25 SDWA encompasses approximately 148,000 acres within San Joaquin County, all of which is
26 within the Bay-Delta. The lands within SDWA jurisdiction are primarily agricultural but also
27 contain recreational developments, significant wildlife habitat areas, and residential. The

1 lands are dependent on the water supply in the channels of the Bay-Delta (“in-channel water
2 supply) for irrigation and other beneficial uses. The in-channel water supply is dependent on
3 the flow and quality of both the Sacramento and San Joaquin River systems. All of the lands
4 within the CDWA are contiguous to the channels and sloughs within the CDWA an/or the
5 underground flows of those channels. The water rights pertaining to the lands are principally
6 riparian and are in-part covered by pre-1914, “prior vested” water rights, which enjoy
7 seniority over post-1914 water rights and those rights of DWR. The lands are further entitled
8 to statutory water rights including area of origin preferences pursuant to Water Code sections
9 11460 *et seq.* and 12200 *et seq.* SDWA is empowered to assist landowners to protect and
10 assure a dependable supply of water of suitable quantity sufficient to meet present and future
11 needs. SDWA’s in-channel water supply quality was and continues to be degraded and the
12 reliability of the supply has been and is being harmed by the increased withdrawals from the
13 Delta due to enactment of the Monterey Plus Amendments and privatization of Kern Water
14 Bank. SDWA would be directly, adversely and irreparably harmed by the Project and its
15 components, as described herein, until and unless this Court provides the relief prayed for in
16 this petition.

17 14. Petitioner and Plaintiff CALIFORNIA WATER IMPACT NETWORK (“C-
18 WIN”) is a non-profit, public benefit corporation formed under the laws of the State of
19 California for the purpose of protecting and restoring fish and wildlife resources, scenery,
20 water quality, recreational opportunities, agricultural uses, and other natural environmental
21 resources and uses of the rivers and streams of California, including the San Francisco Bay-
22 Delta estuary, also known as the Sacramento-San Joaquin Bay-Delta (“Bay-Delta”), its
23 watershed and its underlying groundwater resources. Officers of the C-WIN reside in, use,
24 and enjoy the Bay-Delta estuary and its watershed, and also pay through their individual bills
25 from their local water service providers for water delivered by the California State Water
26 Project, and are concerned about the cost, quality, allocation, and origins of water delivered
27 from this statewide water system. Members and officers of the California Water Impact

1 Network are deeply concerned about the public interest consequences of continuation of
2 Monterey Plus agreement principles and water project contract amendments implementing it.
3 Consequently, the California Water Impact Network and its members would be directly,
4 adversely and irreparably harmed by the Project and its components, as described herein, until
5 and unless this Court provides the relief prayed for in this petition.

6 15. Petitioner and Plaintiff CALIFORNIA SPORTFISHING PROTECTION
7 ALLIANCE (“CSPA”) is a non-profit organization with more than 2500 members throughout
8 California dedicated to protecting, preserving and enhancing the fisheries and associated
9 aquatic and riparian ecosystems of California waterways, including the Central Valley rivers
10 leading to the Bay-Delta. CSPA and its members actively participate in water rights and
11 water quality processes, engage in education and organization of the fishing community,
12 conduct restoration efforts, and vigorously enforce environmental laws enacted to protect
13 fisheries, habitat and water quality. CSPA’s members reside and own property throughout
14 California as well as those areas served by the State Water Project, and use the waters and
15 lands affected by the State Water Project, including the Bay-Delta, for recreational, wildlife
16 viewing, scientific, and educational purposes. CSPA owns about 20 acres in Collinsville on
17 the Sacramento River near the confluence with the San Joaquin in the Delta. CSPA and its
18 members would be directly, adversely and irreparably harmed by the Project and its
19 components, as described herein, until and unless this Court provides the relief prayed for in
20 this petition. In addition, CSPA’s associated riparian interest in the Sacramento River is
21 directly harmed by the altered management practices of the Monterey Plus Amendments.

22 16. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is
23 a non-profit, public interest corporation with over 42,000 members and offices in San
24 Francisco, Los Angeles, and Joshua Tree, California, as well as offices in Arizona, New
25 Mexico, Oregon, Vermont, and Washington, D.C. CBD and its members are dedicated to
26 protecting diverse native species and habitats through science, policy, education, and
27 environmental law. CBD members reside and own property throughout California as well as

1 those areas served by the State Water Project, and use the waters and lands affected by the
2 State Water Project, including the Bay-Delta, for recreational, wildlife viewing, scientific, and
3 educational purposes. CBD and its members would be directly, adversely and irreparably
4 harmed by the Project and its components, as described herein, until and unless this Court
5 provides the relief prayed for in this petition.

6 17. Petitioner and Plaintiff CAROLEE KRIEGER resides in and is a resident of the
7 City of Santa Barbara, California who has been assessed, and has paid, taxes to the State
8 within the past year. Currently president of Petitioner C-WIN, Carolee Krieger has been an
9 advocate for sound water policy and conservation in California for over 20 years. Carolee
10 Krieger's conservation and taxpayer interests are harmed through both the Monterey Plus
11 Amendments and the transfer of Kern Fan Element. Carolee Krieger would be directly,
12 adversely and irreparably harmed by the Project and its components, as described herein, until
13 and unless this Court provides the relief prayed for in this petition.

14 18. Petitioner and Plaintiff JAMES CRENSHAW is a resident of the State of
15 California who owns property in the Central Valley of California and has been assessed, and
16 has paid, taxes to the State within the past year. James Crenshaw is a farmer and life-long
17 sport fisherman, and has been president of Petitioner and Plaintiff California Sportsfishing
18 Protection Alliance since the mid-1980s. James Crenshaw's conservation and taxpayer
19 interests are harmed through both the Monterey Plus Amendments and the transfer of Kern
20 Fan Element. James Crenshaw would be directly, adversely and irreparably harmed by the
21 Project and its components, as described herein, until and unless this Court provides the relief
22 prayed for in this petition.

23 19. Respondent and Defendant CALIFORNIA DEPARTMENT OF WATER
24 RESOURCES is a governmental agency and political subdivision of the State of California
25 charged with the authority to regulate and administer delivery of water through the State
26 Water Project, subject at all times to the obligations and limitations of all applicable state,
27 federal, and other laws, including CEQA and the CEQA Guidelines and Planning and Zoning

1 Laws. Respondent is the lead agency under CEQA for the preparation of the EIR and for the
2 approval of the Project.

3 20. Real Party in Interest and Defendant KERN COUNTY WATER AGENCY
4 (“KCWA”), a State Water Project Contractor, a signatory to the Monterey Plus Amendments,
5 and through its Improvement District 4, a member entity of the Kern Water Bank Authority, is
6 presently and has been, at all times relevant hereto, a California special district and political
7 subdivision of the State of California organized and existing under the Kern County Water
8 Agency Act, Cal. Water Code Appendix §§ 99-1 *et seq.*, KCWA served as an intermediary
9 agency in the hybrid transaction that resulted in the Kern Water Bank Authority’s ownership
10 and operation of the Kern Water Bank.

11 21. Real Party in Interest and Defendant KERN WATER BANK AUTHORITY
12 (“KWBA”) is a Joint Powers Authority organized on October 16, 1995 and existing under the
13 Joint Exercise of Powers Act, Cal. Gov’t Code § 6500 *et seq.* The member agencies of
14 KWBA are Dudley Ridge Water District, Kern County Water Agency Improvement District
15 4, Semitropic Water Storage District, Tejon-Castac Water District, Westside Mutual Water
16 Company, and Wheeler Ridge-Maricopa Water Storage District. As a result of the two-part
17 transaction arising from the Project, KWBA presently owns, manages and operates the Kern
18 Fan Element and Kern Water Bank, and would do so on a permanent basis if the Project
19 becomes final. As a result of the two-stage transfer authorized and enacted by the Monterey
20 Plus Amendments, and currently implemented only through the Settlement Agreement and
21 Interim Implementation Agreement, KWBA holds title, deed and management responsibilities
22 for the Kern Fan Element and the Kern Water Bank, pursuant to the Joint Powers Agreement
23 for the Kern Water Bank Authority.

24 22. Real Party in Interest and Defendant DUDLEY RIDGE WATER DISTRICT
25 (“DRWD”), a State Water Project Contractor, signatory to the Monterey Plus Amendments
26 and member entity of the Kern Water Bank Authority, is a water district organized and
27 existing under the California Water District Law, Cal. Water Code §§ 39000 *et seq.*, with its

1 principal place of business in Corcoran, California.

2 23. Real Party in Interest and Defendant KERN COUNTY WATER AGENCY –
3 IMPROVEMENT DISTRICT 4 is a member of Kern County Water Agency and a member
4 entity of the Kern Water Bank Authority.

5 24. Real Party in Interest and Defendant PARAMOUNT FARMING COMPANY
6 LLC is a Delaware-based limited liability corporation, doing business at all times in
7 California. Paramount Farming Company is controlled by Real Party in Interest Roll
8 International Corporation, and is the controlling entity for Real Party in Interest Westside
9 Mutual Water Company. Paramount Farming Company LLC irrigation requirements are
10 serviced in part by SWP water provided by Westside Mutual Water Company.

11 25. Real Party in Interest and Defendant ROLL INTERNATIONAL
12 CORPORATION is a Delaware-based limited liability company and the parent corporation
13 and/or holding company for Real Party in Interest Paramount Farming Company LLC.
14 Through its subsidiary Paramount Farming Company LLC, Roll International Corporation
15 controls Westside Mutual Water Company. For the purposes of this petition and complaint,
16 Petitioners and Plaintiffs are informed and believe that Westside Mutual Water Company,
17 Paramount Farming Company LLC and Roll International Corporation are and have been, at
18 all relevant times, instrumentalities and joint ventures of each other and have been at all
19 relevant times been acting in concert with each other.

20 26. Real Party in Interest and Defendant SEMITROPIC WATER STORAGE
21 DISTRICT, a member entity of the Kern Water Bank Authority, is a water storage district
22 organized and existing under the California Water District Storage Law, Cal. Water Code §§
23 39000 *et seq.*, with its principal place of business in Wasco, California.

24 27. Real Party in Interest and Defendant TEJON-CASTAC WATER DISTRICT, a
25 member entity of Kern Water Bank Authority, is a water district organized and existing under
26 the California Water District Law, Cal. Water Code §§ 39000 *et seq.*, with its principal place
27 of business in Lebec, California. Tejon-Castac Water District is wholly controlled by Real

1 Party in Interest / Defendant Tejon Ranch Company.

2 28. Real Party in Interest and Defendant TEJON RANCH COMPANY, a publicly-
3 traded corporation incorporated in the State of Delaware at all times relevant here doing
4 business in the State of California. For the purposes of this petition and complaint Tejon
5 Ranch Company controls Real Party in Interest and Defendant Tejon-Castac Water District, a
6 member entity of KWBA, and stores water in and receives water from and/or is expected to
7 store water in and receive water from the Kern Water Bank.

8 29. Real Party in Interest and Defendant WESTSIDE MUTUAL WATER
9 COMPANY, a member entity of the Kern Water Bank Authority, is a private mutual water
10 company existing as a limited liability company under the laws of the State of California, Cal.
11 Corporations Code §§ 17060 *et seq.*, and Public Utilities Code § 2725 *et seq.*, with its
12 principal place of business in Bakersfield, California. Petitioners are informed and believe that
13 (1) Westside Mutual is a wholly owned subsidiary of Paramount Farming Company, LLC, a
14 Delaware limited liability company doing business in California at all times relevant to this
15 petition and complaint; (2) both these companies are privately owned by Roll International
16 Corporation, a Delaware company doing business in California at all times relevant to this
17 petition and complaint; and (3) Roll International is either the holding company or parent
18 company for the other entities listed in this paragraph.

19 30. Real Party in Interest and Defendant WHEELER RIDGE-MARICOPA
20 WATER STORAGE DISTRICT, a member entity of the Kern Water Bank Authority, is a
21 water storage district organized and existing under the California Water District Storage Law,
22 Cal. Water Code §§ 39000 *et seq.*, with its principal place of business in Bakersfield,
23 California.

24 31. Real Party in Interest ALAMEDA COUNTY FLOOD CONTROL AND
25 WATER CONSERVATION DISTRICT, ZONE 7, a State Water Project Contractor and
26 signatory to the Monterey Plus Amendments, is a state agency and political subdivision of the
27 State of California, organized and existing under the Alameda County Flood Control and

1 Water Conservation District Act, Cal. Water Code Appendix §§ 55-1 *et seq.*

2 32. Real Party in Interest ALAMEDA COUNTY WATER DISTRICT, a State
3 Water Project Contractor and signatory to the Monterey Plus Amendments, is a water district
4 organized and existing under the California Water District Law, Cal. Water Code §§ 34000 *et*
5 *seq.* with its principal place of business in Fremont, California.

6 33. Real Party in Interest ANTELOPE VALLEY - EAST KERN WATER
7 AGENCY, a State Water Project Contractor and signatory to the Monterey Plus Amendments,
8 is a state agency and political subdivision of the State of California, organized and existing
9 under the Antelope Valley-East Kern Water Agency Law, Cal. Water Code Appendix §§ 98-1
10 *et seq.* (1959 Stat.), with its principal place of business in Lancaster, California.

11 34. Real Party in Interest CASTAIC LAKE WATER AGENCY, a State Water
12 Project Contractor and signatory to the Monterey Plus Amendments, is a political entity of the
13 State of California formerly known as the Upper Santa Clara Valley Water Agency, and
14 organized and existing under the Castaic Lake Water Agency Law, Cal. Water Code
15 Appendix §§ 103-1 *et seq.* (Stats. 1962), with its principal place of business in Newhall,
16 California.

17 35. Real Party in Interest CENTRAL COAST WATER AUTHORITY is a Joint
18 Powers Authority existing under the Joint Exercise of Powers Act, Cal. Gov't Code § 6500 *et*
19 *seq.* with its principal place of business in Buellton, California. The Central Coast Water
20 Authority has been assigned some obligations of State Water Contractors, although it is not a
21 State Water Contractor and is not a signatory to the Monterey Plus Amendments. The Central
22 Coast Water Authority prepared the decertified EIR for the 1995 Monterey Amendments, but
23 its current interest in the Monterey Plus Amendments is unknown to petitioners.

24 36. Real Party in Interest CITY OF YUBA, a State Water Project Contractor and
25 signatory to the Monterey Plus Amendments, is a political entity and subdivision of the State
26 of California, organized and existing under the laws thereof, with its principal place of
27 business in Yuba City, California.

1 37. Real Party in Interest COACHELLA VALLEY COUNTY WATER
2 DISTRICT, a State Water Project Contractor and signatory to the Monterey Plus
3 Amendments, is a public agency organized and existing under the California Water District
4 Law, Cal. Water Code §§ 34000 *et seq.*, with its principal place of business in Coachella,
5 California.

6 38. Real Party in Interest COUNTY OF BUTTE, a State Water Project Contractor
7 and signatory to the Monterey Plus Amendments, is a public entity and political subdivision
8 of the State of California with its principle place of office in Oroville, California.

9 39. Real Party in Interest COUNTY OF KINGS, a State Water Project Contractor
10 and signatory to the Monterey Plus Amendments, is a public entity and political subdivision
11 of the State of California, organized under the laws thereof, with its principle place of
12 business in Hanford, California.

13 40. Real Party in Interest CRESTLINE - LAKE ARROWHEAD WATER
14 AGENCY, a State Water Project Contractor and signatory to the Monterey Plus Amendments,
15 is a state agency and political subdivision of the State of California, organized and existing
16 under the Crestline-Lake Arrowhead Water Agency Law, Cal. Water Code Appendix §§ 104-
17 1 *et seq.* (Stats. 1962) with its principal place of business in Crestline, California.

18 41. Real Party in Interest DESERT WATER AGENCY, a State Water Project
19 Contractor and signatory to the Monterey Plus Amendments, is a state agency and political
20 subdivision of the State of California, organized and existing under the Desert Water Agency
21 Law, Cal. Water Code Appendix §§ 100-1 *et seq.* (Stats. 1961), with its principal place of
22 business in Palm Springs, California

23 42. Real Party in Interest EMPIRE WESTSIDE WATER DISTRICT, a State Water
24 Project Contractor that did not sign the Monterey Plus Amendments, is a political subdivision
25 of the State of California organized and existing under the California Water District Law,
26 California Water Code §§ 34000 *et seq.*, with its principal place of business in Stratford,
27 California. Empire Westside is one of two State Water Project Contractors which did not sign

1 and incorporate the Monterey Plus Amendments into its long-term SWP contract.

2 43. Real Party in Interest LITTLE ROCK CREEK IRRIGATION DISTRICT, a
3 State Water Project Contractor and signatory to the Monterey Plus Amendments, is a political
4 subdivision of the State of California, organized and existing under the laws thereof, with its
5 principle place of business in Littlerock, California.

6 44. Real Party in Interest METROPOLITAN WATER DISTRICT OF SOUTHERN
7 CALIFORNIA, a State Water Project Contractor and signatory to the Monterey Plus
8 Amendments, is a political subdivision of the State of California organized and existing under
9 the Metropolitan Water District Act, California Water Code Appendix §§ 109-1 *et seq.*
10 (Stats. 1927, reenacted 1969) with its principal place of business in Los Angeles, California.

11 45. Real Party in Interest MOJAVE WATER AGENCY, a State Water Project
12 Contractor and signatory to the Monterey Plus Amendments, is a state agency and political
13 subdivision of the State of California, organized and existing under the Mojave Water Agency
14 Law, Cal. Water Code Appendix §§ 97-1 *et seq.* (Stats. 1959), with its principal place of
15 business in Victorville, California.

16 46. Real Party In Interest NAPA COUNTY FLOOD CONTROL AND WATER
17 CONSERVATION DISTRICT, a State Water Project Contractor and signatory to the
18 Monterey Plus Amendments, is a state agency and political subdivision of the State of
19 California, organized and existing under the Napa County Flood Control and Water
20 Conservation District Act, Cal. Water Code Appendix §§ 61-1 *et seq.* (Stats. 1951), with its
21 principal place of business in Napa, California.

22 47. Real Party in Interest OAK FLAT WATER DISTRICT, a State Water Project
23 Contractor and signatory to the Monterey Plus Amendments, is a public agency and political
24 subdivision of the State of California, organized and existing under the laws thereof, with its
25 principle place of business in Westley, California.

26 48. Real Party in Interest PALMDALE WATER DISTRICT, a State Water Project
27 Contractor and signatory to the Monterey Plus Amendments, is a public agency and political

1 subdivision of the State of California, organized and existing under the laws thereof, with its
2 principle place of business in Palmdale, California.

3 49. Real Party in Interest PLUMAS COUNTY FLOOD CONTROL AND WATER
4 CONSERVATION DISTRICT, a State Water Project Contractor that has not signed the
5 Monterey Plus Amendments, is a public agency and political subdivision of the State of
6 California, organized and existing under the Plumas County Flood Control and Water
7 Conservation District Act, Cal. Water Code Appendix §§ 88-1 *et seq.* (Stats. 1959), with its
8 principal place of business in Quincy, California.

9 50. Real Party in Interest SAN BERNARDINO VALLEY MUNICIPAL WATER
10 DISTRICT, a State Water Project Contractor and signatory to the Monterey Plus
11 Amendments, is a public agency and political subdivision of the State of California, organized
12 and existing under the laws thereof, with its principle place of business in San Bernardino,
13 California.

14 51. Real Party in Interest SAN GABRIEL VALLEY MUNICIPAL WATER
15 DISTRICT, a State Water Project Contractor and signatory to the Monterey Plus
16 Amendments, is a public agency and political subdivision of the State of California, organized
17 and existing under the laws thereof, with its principal place of business in Alhambra,
18 California.

19 52. Real Party in Interest SAN GORGONIO PASS WATER AGENCY, a State
20 Water Project Contractor and signatory to the Monterey Plus Amendments, is a state agency
21 and political subdivision of the State of California, organized and existing under the San
22 Gorgonio Pass Water Agency Law, Cal. Water Code Appendix §§ 101-1 *et seq.* (Stats. 1961)
23 with its principal place of business in Beaumont, California.

24 53. Real Party in Interest SAN LUIS OBISPO COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT, a State Water Project Contractor and
26 signatory to the Monterey Plus Amendments, is a state agency and political subdivision of the
27 State of California, organized and existing under the San Luis Obispo County Flood Control

1 and Water Conservation District Act, Cal. Water Code Appendix §§ 49-1 *et seq.* (Stats. 1945),
2 with its principal place of business in San Luis Obispo, California.

3 54. Real Party in Interest SANTA BARBARA COUNTY FLOOD CONTROL
4 AND WATER CONSERVATION DISTRICT, a State Water Project Contractor and
5 signatory to the Monterey Plus Amendments, is a state agency and political subdivision of the
6 State of California, organized and existing under the Santa Barbara County Flood Control and
7 Water Conservation District Act, Cal. Water Code Appendix §§ 74-1 *et seq.* (Stats. 1955),
8 with its principal place of business in Santa Barbara, California.

9 55. Real Party in Interest SANTA CLARA VALLEY WATER DISTRICT, a State
10 Water Project Contractor and signatory to the Monterey Plus Amendments, is a state agency
11 and political subdivision of the State of California, organized and existing under the Santa
12 Clara Valley Water District Act, Cal. Water Code Appendix §§ 60-1 *et seq.* (Stats. 1951),
13 with its principal place of business in San Jose, California.

14 56. Real Party in Interest SOLANO COUNTY WATER AGENCY (formerly
15 known as the Solano County Flood Control and Water Conservation District), a State Water
16 Project Contractor and signatory to the Monterey Plus Amendments, is a state agency and
17 political subdivision of the State of California, organized and existing under the Solano
18 County Water Agency Act, Cal. Water Code Appendix §§ 64-1 *et seq.* (1989 Stat.),

19 57. Real Party in Interest TULARE LAKE BASIN WATER STORAGE
20 DISTRICT, a State Water Project Contractor and signatory to the Monterey Plus
21 Amendments, is a water storage district organized and existing under the California Water
22 District Storage Law, Cal. Water Code §§ 39000 *et seq.*, with its principal place of business in
23 Corcoran, California.

24 58. Real Party in Interest VENTURA COUNTY WATERSHED PROTECTION
25 DISTRICT (formally known as Ventura County Flood Control District), a State Water Project
26 Contractor and signatory to the Monterey Plus Amendments, is a public agency and political
27 subdivision of the State of California, organized and existing under the laws thereof, with its

1 principal place of business in Ventura, California.

2 59. Petitioners are currently unaware of the true names and capacities of Does 1
3 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1
4 through 20, inclusive, are agents of the state government or other persons or entities presently
5 unknown to Petitioners who are responsible in some manner for the conduct described in this
6 petition. Petitioners will amend this petition to show the true names and capacities of Does 1
7 through 20 when such names and capacities become known.

8 60. Petitioners are currently unaware of the true names and capacities of Real
9 Parties in Interest / Defendants, Does 21 through 40, inclusive. Does 21 through 40,
10 inclusive, are persons or entities presently unknown to Petitioners who claim some legal or
11 equitable interest in the Project that is the subject of this action. Does 21 through 40 are also
12 Defendants to the Reverse-Validation and Constitutional Causes of Action. Petitioners will
13 amend this petition to show the true names and capacities of Does 21 through 40 when such
14 names and capacities become known.

15 61. Petitioners are currently unaware of the true names and capacities of Real
16 Parties in Interest, Does 41 through 60, inclusive. Does 41 through 60, inclusive, are persons
17 or entities presently unknown to Petitioners who claim some legal or equitable interest in the
18 Project that is the subject of this action. Petitioners will amend this petition to show the true
19 names and capacities of Does 21 through 60 when such names and capacities become known.
20

21 **GENERAL ALLEGATIONS**

22 **Project Background**

23 62. The State Water Project is a state-wide water conveyance system managed by
24 the Department of Water Resources, which allocates water to 29 State Water Contractors. In
25 general, water is stored in reservoirs in the northern part of the state and conveyed south via
26 the Feather River, Sacramento River, and the San Francisco-San Joaquin Bay Delta, from
27 which it is pumped and conveyed via the California Aqueduct to State Water Contractors in

1 the southern half of the State. These contractors in turn distribute Project water via a series of
2 canals and aqueducts to their customers.

3 63. The California Legislature first approved the building of the SWP, originally
4 designated as the Feather River Project, in 1951.

5 64. In 1956 the Legislature created the DWR out of several other agencies to
6 operate and manage the SWP.

7 65. In 1959 the Legislature passed the Burns-Porter Act (formally known as the
8 California Water Resources Development Bond Act), which authorized the construction and
9 operation of the SWP, as well as the issuance, sale, and repayment of the bonds that have
10 been, and continue to be, the basis for funding the development and operation of the SWP.
11 The Burns-Porter Act was subsequently approved by California voters in November, 1960,
12 and codified in Water Code § 12930 *et seq.*

13 66. Governor Edmund G. Brown, Sr. worked with DWR to create a set of equitable
14 principles designed to manage the SWP for the good of all Californians. DWR published
15 these jointly developed “Contracting Principles for Water Service Contracts under the
16 California Water Resources Development System” in January, 1960. The Contracting
17 Principles describe the manner by which the SWP will be paid for over time. The Principles
18 set a “Delta Water Rate,” to be “based on the cost of construction and the cost of operation,
19 maintenance, and replacement” of the SWP system.

20 67. Voters relied on the Contracting Principles in approving the Burns-Porter Act.

21 68. Bondholders relied on the Contracting Principles in purchasing the bonds issued
22 by DWR. The Legislature also accepted the Contracting Principles, and with knowledge of
23 them, appropriated funds for the SWP in the Budget Act of 1960 (Stats. 1961, ch. 11, p. 20).

24 69. The Contracting Principles specify that the “capital cost component and the
25 minimum maintenance and replacement component [of the Delta Water Rate] will be
26 collected irrespective of the amount of water furnished,” while the (non-minimal) “operation
27

1 and maintenance component will be collected from the contractors receiving water in
2 proportion to the amount of water furnished.”

3 70. The repayment (plus interest) of the bonds issued for the construction, minimum
4 maintenance and replacement costs of the SWP is thus made by the water contractors
5 collectively, who each pay a share of those total costs proportionate to their allocated share of
6 water, regardless of the amount of water that they actually ever receive.

7 71. The Contracting Principles include provisions stating that the minimum project
8 yield of the SWP would increase due to added storage facilities, and that bond funds would be
9 used to construct added storage facilities.

10 72. Beginning in 1960, DWR entered into long-term delivery contracts with the
11 SWP Contractors, which then consisted of 31 agricultural and urban water contractors, of
12 which 29 presently remain. The long-term contracts were based on the 1960 Contracting
13 Principles. Key provisions in the initial long-term SWP contracts preceding the Monterey
14 Plus Amendments are substantially identical between the contracts. The provisions of these
15 contracts, and the changes to those contracts due to the Monterey Plus Amendments, form the
16 basis for this action.

17 73. The “model contract” upon which other SWP contracts were based was between
18 DWR and Metropolitan Water District of Southern California. The California Supreme Court
19 validated this prototype contract in *Metropolitan Water District v. Marquardt*, (1963) 59 Cal.
20 2d 159.

21 74. Article 45 of the MWD “Model Contract” validated in *Marquardt* is entitled
22 “Contracts to be Uniform” and states that “Contracts executed by the State for a dependable
23 supply of project water shall be substantially uniform with respect to basic terms and
24 conditions, except as otherwise provided in this article with respect to payment of the capital
25 cost component of the Transportation Charge.” This provision is known as the “uniformity
26 clause.”

27 75. In the 1961 long-term contract between DWR and Alameda County Water

1 District, the “uniformity clause” in Article 45 states that “contracts executed by the State for a
2 dependable supply of project water shall be in substantial conformity with the provisions of
3 the water supply contract between the State and the Metropolitan Water District of Southern
4 California, dated November 4, 1960, except as provided under Article 45 of that contract.”

5 76. The SWP was originally designed to deliver 4.23 million acre-feet (“MAF”) per
6 year of water. However, the majority of SWP facilities were never built. Today, the SWP is
7 capable of delivering only half or less of the amount contracted for by SWP contractors in
8 their long-term contracts. Key facilities originally contemplated for the SWP have never been
9 constructed, including additional project conservation facilities and the damming of rivers
10 now protected under the California Wild and Scenic Rivers Act (Pub. Res. Code §§ 5093.50,
11 *et seq.*)

12 77. The amount of water originally anticipated for delivery to each of the SWP
13 Contractors was set forth in Table A of the SWP contracts, and the amount of water
14 contracted for delivery between DWR and each contractor became known as the “Table A
15 amount.”²

16 78. Because the SWP can only deliver half or less of the amounts referenced in the
17 project’s goals in an average year, only a small fraction of the Table A amounts can actually
18 be delivered. The difference between water contracted for in the SWP contracts and the
19 actual water that can be delivered in any given year is known as “paper water.”

20 79. Table A amounts are used to calculate the payments made to the State by each
21 contractor, in accordance with the 1960 Contracting Principles. For the construction costs and
22 the minimal operational, maintenance and replacement costs of the SWP, the rates paid by
23 each contractor are determined in proportion to their Table A Amounts—regardless of
24 whether these amounts are ever delivered. The non-minimal maintenance and operational
25 costs are determined by the amount of water actually delivered to each contractor.

26
27 ² Although the original SWP Contracts often use the word “entitlements” when referring to the water allocated on
“Table A”, as the Contracts do not create legal entitlements to receive water, the term is not used here.

1 80. The water contractors are contractually bound to pay off the bonds that were
2 issued for the construction, operation, maintenance, and replacement costs of the SWP, and
3 must make these payments through the present contract period (until at least 2035).

4 **The Monterey Amendments**

5 81. In December 1994, the DWR held undisclosed meetings with five water
6 contractors: Kern County Water Agency, Metropolitan Water District of Southern California,
7 Coachella Valley Water District, Tulare Lake Basin Water Storage District, and Solano
8 County Water Agency, as well as the Central Coast Water Authority, a local joint powers
9 authority which has assumed certain duties of one State Water Contractor. These meetings
10 resulted in a December 16, 1994 Statement of Principles that described a series of
11 amendments to the long-term contracts for delivery of water through the State Water Project.

12 82. Because these meetings took place in Monterey, California, the statement of
13 principles became known as the Monterey Agreement. Amendments to the SWP contracts
14 based upon these principles became known as the Monterey Amendments.

15 83. Some of the primary changes to the long-term contracts sought in the Monterey
16 Amendments were as follows (these changes are described in more detail in the “Monterey
17 Plus Amendments” subsection, below):

- 18 • Elimination of the “urban preference”: Rather than subjecting agricultural
19 contractors to cuts in their deliveries before subjecting urban contractors,
20 the Monterey Amendments would share these cuts proportionally to each
21 contractor’s Table A amounts;
- 22 • Elimination of the permanent shortage provision, requiring Table A
23 amounts to be proportionally adjusted to reflect available supplies.
- 24 • Elimination of the prohibition on reliance on “surplus” water to build
25 permanent economies.
- 26 • Permanent transfers of Table A amounts: Agricultural contractors would
27 transfer 130,000 acre-feet of Table A amounts to urban contractors and

1 KCWA and DRWD would “retire” 45,000 acre-feet of Table A amounts;

- 2 • Transfer of the Kern Water Bank to KCWA and then to KWBA;
- 3 • Facilitation of the transfer, “borrowing,” and “lending” of Table A
- 4 amounts outside of contractors’ service areas; and
- 5 • Restructuring of SWP financing to relieve contractors of substantial
- 6 payments they would otherwise have owed the State.

7 84. The Central Coast Water Authority was chosen to act as the lead agency and
8 produce an EIR for the original project. In October, 1995, the Central Coast Water Authority
9 released the final EIR for the Monterey Amendments, certifying it in December, 1995.

10 85. In December, 1995, the Monterey Amendments were added (but not
11 implemented) as “Amendment 23” to the Kern County Water Agency water supply contract
12 and “Amendment 25” to the Metropolitan Water District of Southern California’s water
13 supply contract. These contract Amendments were not implemented upon execution, due to a
14 self-imposed stay provision appearing in article 29(a) of the Monterey Amendments as
15 originally drafted, which would have prevented implementation while legal challenges filed
16 within 60 days of execution of KCWA’s and MWD’s contract amendments remained
17 pending.

18 86. Most, but not all, of the SWP contractors also approved and signed the
19 Monterey Amendments to their long-term water supply contracts in the two years following
20 the initial execution date.

21 87. Despite the relative obscurity of the Central Coast Water Authority’s approval
22 of a project with enormous statewide implications, two non-profit organizations (Planning and
23 Conservation League and Citizens Planning Association of Santa Barbara County) and a state
24 water contractor (Plumas County Flood Control and Water Conservation District)
25 (collectively, “PCL petitioners”) challenged the approval and validity of the Monterey
26 Amendments, arguing among other things that the certification of the Program EIR was
27 contrary to law and that CCWA lacked the authority to act as the state-wide lead agency for

1 the project. The petitioners also challenged the validity of DWR's initial attempt to divest the
2 Kern Fan Element from state ownership and operation.

3 88. On August 15, 1996, the Sacramento Superior Court entered judgment against
4 the PCL petitioners. Before the judgment was final in the Superior Court, DWR privately
5 arranged with the SWP contractors that had signed Monterey Amendments to remove the self-
6 imposed stay provision in Article 29(a), which had until then prevented implementation of the
7 Monterey Amendments while litigation was pending. DWR did not inform the PCL
8 petitioners of these efforts, which were also not subject to public review. In approving its
9 waiver to Article 29(a), KCWA recognized the risk that "there may be complexities
10 encountered in disengaging from implementation" in the "improbable event the judgment is
11 overturned and disengagement is required."

12 89. On or around August 8, 1996, based upon these undisclosed executive-session
13 waivers and without securing final judgment, DWR implemented the original Monterey
14 Amendments, including the relinquishment of the Kern Fan Element to KCWA, which
15 retransferred it to KWBA one day later.

16 90. The Third District Court of Appeals reversed and ruled in favor of the PCL
17 Petitioners in *Planning and Conservation League v. Department of Water Resources*, (2000)
18 83 Cal.App.4th 892. The Appeals Court ruled that CCWA's EIR prejudicially failed to
19 analyze implementation of Article 18(b)'s reductions in Table A amounts in its assessment of
20 the No Project Alternative. The Appeals Court recognized the "possibility that local decision-
21 makers are seduced by contractual entitlements and approve projects dependent on water
22 worth little more than a wish and a prayer."

23 91. The Court also agreed that the Monterey Amendments produced state-wide
24 significant impacts which could not be analyzed by a local agency, and that "the allocation of
25 water to one part of the state has potential implications for distribution throughout the
26 system." Therefore, only DWR, the agency in charge of state-wide operation and
27 management of the SWP, could act as lead agency. (*Id.*) The Court held that an entirely new

1 Program EIR had to be prepared under the direction of DWR.

2 92. In a separate section of the opinion, the *PCL v. DWR* court held that the trial
3 court erroneously dismissed the reverse-validation action on procedural grounds. (*Id.*)

4 93. On December 13, 2000, the California Supreme Court unanimously denied
5 review in *PCL v. DWR*, and summarily denied separate extraordinary writ petitions filed by
6 KCWA and Wheeler Ridge-Maricopa Water Storage District, which contested the
7 determinations in *PCL v. DWR*.

8 **Monterey Plus Amendments**

9 94. In May 2003, the PCL petitioners and DWR reached a settlement agreement
10 (“Settlement Agreement”), subsequently ratified by the Superior Court in a May 20, 2003
11 Implementation Order.

12 95. Section III sets forth the integral components of this new project, known as the
13 “Monterey Plus Amendments,” including (1) the original Monterey Amendments and two-
14 part transfer; (2) additional amendments identified in Attachment A of the Settlement
15 Agreement; and (3) additional terms and conditions of the Settlement Agreement. All of
16 these elements are subject to DWR’s final review and decision,

17 96. Under the terms of the Settlement Agreement and Implementation Order, the
18 administration and operation of the SWP and the Kern Water Bank in accordance with the
19 Monterey Amendments was allowed to continue on an interim basis, and only with several
20 additional terms added in the Settlement Agreement, including additional contract
21 amendments, lasting only until the completion of a new decision-making process by DWR
22 and the certification of entirely new CEQA review for the project.

23 97. The Settlement Agreement and its related Interim Implementation Order signed
24 by the Superior Court made clear that the imposition of the Monterey Amendments would not
25 be a *fait accompli*. Accordingly, any long-term management of the SWP related to the
26 Monterey Amendments would require a new agreement ratified by DWR and the SWP
27 Contractors, a new decision made by DWR, and new environmental review conducted

1 pursuant to CEQA.

2 98. Following the signing of the Settlement Agreement and the Interim
3 Implementation Order signed by the Superior Court, DWR and the SWP Contractors executed
4 additional contract amendments referenced in attachment A of the Settlement Agreement, and
5 began its interim implementation of several additional terms of the agreement. DWR
6 commenced its review of the new agreement, referred to here as the Monterey Plus
7 Amendments.

8 99. The draft of the new EIR for the Monterey Plus Amendments was released by
9 DWR in October, 2007.

10 100. Extensive written comments on the Draft EIR were submitted in January, 2008,
11 including those by the *PCL v. DWR* petitioners (Planning and Conservation League, Citizens
12 Planning Association of Santa Barbara County, and Plumas County Flood Control and Water
13 Conservation District) and Petitioners C-WIN, CSPA, Central Delta Water Agency and South
14 Delta Water Agency. Comments from non-SWP Contractors were overwhelmingly critical of
15 the project, and alerted DWR to the legal inadequacies of the EIR. Other comments included
16 farming enterprise Sandridge Partners' critique of the unfair advantages given to Paramount
17 Farming and its affiliates through the Kern Water Bank transaction. Prior to DWR's approval
18 of the EIR, Petitioner CBD submitted its own comments.

19 101. DWR certified the final EIR for the Monterey Plus Amendments in February,
20 2010, and issued its Notice of Determination ("NOD") for the Project on May 5, 2010.

21 102. The NOD states that the "Monterey Plus proposed project is to continue
22 operation under the existing Monterey Amendment to the State Water Project and the existing
23 Settlement Agreement entered in *PCL v. DWR*, (2000) 83 Cal.App.4th 892, in accordance
24 with the terms of those documents as previously executed by the Department and other parties
25 to those documents."

26 103. The "Findings and Determinations," published along with the NOD, states that
27 the operation of the Monterey Amendments between 1996 and 2003 did not have any

1 environmental impacts.

2 104. The Monterey Plus Amendments contain revisions to the State Water Project
3 contracts, replacing the word “entitlement” with “Table A amount,” and requiring DWR to
4 prepare biennial reliability reports, as well as additional new terms and conditions specified in
5 the 2003 Settlement Agreement, such as a watershed program in Plumas County. Petitioners
6 do not oppose the elements of the Settlement Agreement that are beneficial to the
7 environment.

8 105. However, the Monterey Plus Amendments as finally adopted would also make
9 permanent key Monterey Amendments provisions that would dramatically alter and revise the
10 long-term contracts for delivery of State Water Project water, to the detriment of petitioners,
11 plaintiffs and the people of California. For the purposes of this Action, these key amendments
12 to the contracts include:

13 ***Article 18***

14 106. Article 18 addresses the distribution of SWP water when the full Table A
15 Amounts listed in the contract cannot be supplied to the SWP Contractor. . The original
16 Article 18 had two sub-parts. Article 18(a) originally provided that in times of shortages,
17 water deliveries to agricultural users would be reduced first, before deliveries to urban users.
18 This provision is the contractual embodiment of Water Code § 106, which states that it is “the
19 established policy of this State that the use of water for domestic purposes is the highest use
20 of water and that the next highest use is for irrigation.” (Wat. Code § 106) This concept is
21 informally known as the “urban preference” in the SWP contracts.
22

23 107. This provision also rests on the public utility regulatory principle of an
24 “obligation to serve” end-user municipal customers because they would have no other
25 alternative source for such a vital resource. Existing residential, commercial, and industrial
26 users require stability in their water deliveries. Agricultural users, in contrast, may fallow
27 fields or shift to planting more water-efficient crops in times of shortages.

1 108. The Monterey Plus Amendments change Article 18(a), eliminating the “urban
2 preference” and mandating that in times of temporary shortages deliveries to both agricultural
3 and urban users will be reduced proportionately (with minor exceptions).

4 109. The original Article 18(a) began:

5 In any year in which there may occur a shortage due to drought or other
6 temporary cause in the supply of project water available for delivery to the
7 contractors, with the result that such supply is less than the total of the annual
8 entitlements of all contractors for that year, the State, shall, before reducing
9 deliveries of project water to all contractors, reduce the delivery of project water
10 to each contractor using such water for agricultural purposes by a percentage, not
11 to exceed fifty percent (50%) in any one year or a total of one hundred percent
12 (100%) in any series of seven consecutive years of that portion of the contractor’s
annual entitlement for the respective year which is to be put to agricultural use as
determined by the State: *Provided*, That such percentage shall be the same for all
such contractors. The maximum total reduction in deliveries allowable under the
above provision shall be made before any reduction is made in project water
deliveries for other uses. [...] (emphasis in original).

13 110. The Monterey Plus Amendments amend Article 18(a) to state:

14 In any year in which there may occur a shortage due to drought or any other cause
15 whatsoever, in the supply of project water available for delivery to the
16 contractors, with the result that such supply is less than the total of the annual
17 entitlements of all contractors for that year, the State shall allocate the available
18 supply in proportion to each contractor’s annual entitlement as set forth in its
19 Table A for that year and shall reduce the allocation of project water to each
contractor using such water for agricultural purposes and to each contractor using
such water for other purposes by the same percentage of their respective annual
entitlements for that year: *Provided*, that the State may allocate on some other
basis if such is required to meet minimum demands of contractors for domestic
supply, fire protection, or sanitation during the year. [...] (emphasis in original)

20 111. Article 18(b) originally provided for a permanent reduction in Table A Amounts
21 to SWP Contractors in the event that the entire SWP is not fully built-out. By 1994, it was
22 clear that many of the SWP elements contemplated in the Burns-Porter Act were not built, let
23 alone built-out. Among the array of facilities contained in the Burns-Porter Act, none of the
24 reservoir and export facilities from North Coast rivers were undertaken or completed.
25 Likewise, a San Joaquin Valley drainage system and a peripheral canal around the Bay-Delta
26 were not completed. Yet Article 18(b) has yet to be implemented, and DWR has never
27 reduced the original Table A Amounts to reflect the fact that the SWP was never fully built-

1 out, leaving the SWP Contractors’ “paper water” in their Table A Amounts.

2 112. The original Article 18(b) began:

3 In the event that the State is unable to construct sufficient additional conservation
4 facilities to prevent a reduction in the minimum project yield, which,
5 notwithstanding preventative or remedial measures taken or to be taken by the
6 State, threatens a permanent shortage in the supply of project water to be made
7 available to the contractors: (1) The annual entitlements and the maximum annual
8 entitlements of all contractors, except to the extent such entitlements may reflect
9 established rights under the area of origin statutes, be reduced proportionately by
10 the State to the extent necessary so that the sum of the revised maximum annual
11 entitlements of all contractors will then equal such reduced minimum project
12 yield [...]

13 113. The Monterey Plus Amendments eliminate Article 18(b) from the SWP
14 contracts, thus perpetuating the problem of paper water.

15 114. The Monterey Plus Amendments also remove the “area of origin” requirements
16 in the original Article 18(c). This provision enabled DWR to decrease Table A amounts in
17 the event that the Project received insufficient supplies due to water rights given priority over
18 SWP water under Sections 11460 through 11463 of the Water Code. These Water Code
19 sections prohibit the State from depriving water rights-holders of adequate supplies in an area
20 where SWP Project water originates, and requires that all needs of a watershed are met before
21 exchanges of water between watersheds may commence under the Project.

22 115. The Monterey Plus Amendments remove Article 18(c) from the SWP contracts.

23 ***Article 21***

24 116. Article 21 concerns the sale and distribution by DWR of “surplus water”. In the
25 original Article 21, DWR could sell and distribute surplus water (water over and above
26 existing Table A Amounts) to SWP Contractors. In the original SWP Contracts, Article 21
27 surplus water, being of low year-to-year reliability, was intended for use by agriculture and
for groundwater replenishment, and its use for urban purposes was restricted. The Monterey
Plus Amendments change Article 21 and eliminate these preferences, turning “surplus water”
into “interruptible water” and making it equally available to all SWP Contractors.

117. The Original Contract’s Article 21 was entitled “Sale of Surplus Water,” and

1 began:

2 If during any year the supply of project water, after appropriate allowances for
3 holdover storage, exceeds the total of annual entitlements of all contractors for
4 that year, the State shall offer to sell and deliver such surplus water for periods
5 expiring not later than the end of such year, without right of renewal, and in a
6 manner and at prices which will return to the State the largest net revenues
7 practicable, and at the minimum, revenues equal to the variable operation,
8 maintenance and power costs incurred in such service of surplus water [...]

9 118. Article 21(g) was added to the SWP long-term contracts in August, 1974
10 through Amendment 12 to the Contracts, and states that for delivery of Article 21 water the
11 State “shall refuse to deliver such surplus water [...] to the extent that the State determines
12 that such delivery would tend to encourage the development of an economy [...] which would
13 be dependent upon the sustained delivery of surplus water.”

14 119. The Monterey Amendments to the long-term SWP contracts removed the
15 previous version of Article 21 and replaced it with a new Article 21, entitled “Interruptible
16 Water Service,” which begins: (a) Allocation of Interruptible Water. Each year from water
17 sources available to the project, the State shall make available and allocate interruptible water
18 to contractors in accordance with the procedure in Article 18(a). [...]

19 120. The Monterey Plus Amendments remove Article 21(g) from the SWP contracts
20 – thus eliminating the safeguard against establishing economies based on undependable
21 supplies of water

22 *Article 51*

23 121. The Monterey Plus Amendments add Article 51, titled “Financial Adjustments.”
24 to the long-term SWP contracts. Article 51 decreases the overall repayment obligations
25 required of all SWP contractors by millions of dollars (subsection (d)), while allowing re-
26 payment funds to be directed towards feasibility studies, the San Joaquin Valley Drainage
27 Program, and the CALFED Bay-Delta program. Article 51(g) also allows KCWA and
DRWD to reduce their costs associated with “retirement” of the 45,000 acre-feet in the
Amendments.

Article 52

1 122. The Monterey Plus Amendments add Article 52 to the long-term SWP
2 contracts. Article 52 authorizes the transfer of the Kern Fan Element (one of eight elements
3 comprising the Kern Water Bank) from DWR to Kern County Water Agency (“KCWA”).
4 The Kern Fan Element is an approximately 20,000 acre property on an alluvial fan, and the
5 site of the Kern Water Bank, the world’s largest groundwater storage facility.

6 123. Article 52, titled “Kern Water Bank,” states: “The State shall convey to
7 [KCWA] in accordance with the terms set forth in the agreement between [DWR] and
8 [KCWA] entitled ‘Agreement for the Exchange of the Kern Fan Element of the Kern Water
9 Bank’ ..., the real and personal property described therein.”

10 ***Article 53***

11 124. The Monterey Plus Amendments add Article 53 to the Contracts. Article 53
12 permits the transfer of 130,000 acre-feet of annual Table A water from “Agricultural
13 Contractors” to “Urban Contractors” or non-contractors.

14 125. Under Article 53, the “Agricultural Contractors” include the State of California
15 as well as Kings County, DRWD, Empire West Side Irrigation District, KCWA, Oak Flat
16 Water District and Tulare Lake Basin Water Storage District.

17 126. Article 53(h) states that “individual contractors may transfer entitlements
18 among themselves in amounts in addition to those otherwise provided for in this article.”

19 127. Article 53(i) provides for temporary decreases totaling 45,000 acre-feet of Table
20 A amounts for two agricultural contractors, KCWA (40,670 AF) and DRWD (“DRWD”)
21 (4,330 AF), to last until the end of the Project repayment period. Under Article 53, “the
22 45,000 acre-feet to be relinquished by KCWA and DRWD thereafter shall be deemed to be
23 costs of project conservation facilities and included in the Delta Water Charge for all
24 contractors in accordance with the provisions of Article 22.”

25 ***Article 56***

26 128. Article 56 of the Monterey Plus Amendments allows contractors to store SWP
27 project water outside of its service area for later use within its service area, and for contractors

1 to provide stored water outside of their service area. The amount allowed to be stored outside
2 the service area is at least 100,000 acre-feet per year and increases proportionate to the total
3 water allocation percentage for a given year.

4 129. Article 56(d) of the Monterey Plus Amendments adds a “Turnback Pool,”
5 provision which permits any SWP water delivered but not needed to be placed into a common
6 “pool” for use by any other contractor who wants it. This provision allows contractors to
7 receive their maximum monthly Table A allotment, even if there is no way to use or store the
8 water, because another contractor can obtain the water through the Turnback Pool.

9 **Kern Water Bank**

10 *History*

11 130. The Kern Fan Element Water Bank was originally conceived of as a state-wide
12 water storage facility to be used as an integral asset to the State Water Resources
13 Development System. DWR began planning of the facility in the early 1980s.

14 131. DWR chose for its groundwater storage site the Kern Fan Element of the Kern
15 Water Bank, a depleted alluvial groundwater reservoir in southern Kern County.

16 132. In 1986, prior to purchase of the surface land above the Kern Fan Element,
17 DWR prepared an EIR for the development of a water bank facility.

18 133. The 1986 EIR raised serious environmental concerns with development of the
19 storage facility, including potential harm to endangered species and impacts to groundwater.

20 *1987 MOU*

21 134. On March 25, 1987, DWR entered into a Memorandum of Understanding
22 (“MOU”) with KCWA for developing and operating the Kern Water Bank.

23 135. Article 1 of the MOU defines all opportunities by DWR to store imported
24 surface water in the Kern Groundwater Basin as the “Kern Water Bank.”

25 136. Under MOU Article 1, the “primary purpose of the Kern Water Bank is to
26 augment the dependable water supply of the State Water Project. Local benefits are provided
27 “incidental to its primary purpose.”

1 137. MOU Article 4(e), “Operational Criteria,” notes that Kern Water Bank is
2 operated as “an additional SWP conservation facility” and integrated with overall SWP
3 operations. MOU Article 4(e) also notes that “water may be extracted from the Kern Water
4 Bank only to the extent that it was stored previously.”

5 138. MOU Article 5(a) specifies the right of KCWA to acquire the Kern Fan
6 Element land, but if it is not purchased within 90 days, the land is to be purchased by DWR as
7 part of the State Water Resources Development System.

8 139. Under MOU Article 5(a), KCWA retained the right to purchase the Kern Fan
9 Element for ten years after execution of the 1987 agreement, “provided that the Department’s
10 right to use the area for project purposes will be preserved.”

11 140. MOU Article 5(a) declares that “Consistent with Article 11464 of the Water
12 Code the Department shall not sell facilities constructed or acquired for the Kern Water
13 Bank.”

14 141. DWR contracted for the purchase of the Kern Fan Element from Tenneco West,
15 Inc. in 1988.

16 142. In 1990, DWR issued a Supplemental EIR on a proposed state-run Kern Fan
17 Element. The EIR defined the Kern Water Bank as “all opportunities to store and extract
18 State Water Project water in the Kern County groundwater basin, and declares “operational
19 flexibility” and “augment water supplies for the SWP” as the purposes of the project. The
20 EIR identified as impacts caused by the Kern Fan Element the harm to endangered species
21 near the site of the Kern Fan Element, local water quality, decreased groundwater and the
22 potential for “mounding” of groundwater, and harm to endangered winter-run salmon in the
23 Delta caused by increased pumping (which would be made possible by increased storage in
24 Kern Water Bank).

25 143. Instead of finalizing a contract with DWR for state development of the Kern
26 Water Bank, KCWA wished to avoid potential mitigation costs associated with a state-run
27 Kern Water Bank and so sought to have DWR end its activities to develop the bank.

1 144. In 1994 and 1995, DWR staff met with representatives of KCWA and several of
2 its member entities including DRWD, Paramount Farming Company, and Westside Mutual
3 Water Co. to discuss the transfer of the bank to Kern County-based entities. These
4 representatives negotiated a statement of principles that anticipated DWR’s transfer of the
5 Kern Water Bank and relied upon the still-unexecuted Monterey Amendments.

6 ***Exchange Agreement***

7 145. On December 13, 1995, DWR and KCWA signed the “Agreement for the
8 Exchange of the Kern Fan Element of the Kern Water Bank.” (“Exchange Agreement”),
9 which is the first part of the two-part hybrid transfer that gave KWBA ownership and
10 operational control of the Kern Water Bank.

11 146. The Exchange Agreement states that DWR shall convey the Kern Fan Element
12 to “agricultural contractors,” which includes KCWA, as “provided by” Article 52 of the
13 Monterey Plus Amendments.

14 147. The Exchange Agreement states that KCWA will “procure and deliver” 45,000
15 acre-feet of annual agricultural “entitlements” to the State, and that “the exchange of those
16 water entitlements and other provisions of the Monterey Amendments shall be the
17 consideration for the transfer of the Property.”

18 148. Article 52 of the Monterey Plus Amendments repeats this arrangement of the
19 retirement of 45,000 acre-feet of Table A water, of which 40,070 acre-feet is retired by Kern
20 County Water Agency and 4,330 acre-feet is retired by Dudley Ridge, as consideration for the
21 transfer of the Kern Fan Element. Article 52 also declares the costs of 45,000 acre-feet are
22 deemed to be costs of project conservation facilities and included in the Delta Water Charge
23 for all contractors.

24 149. The 45,000 acre-feet of Table A water that was transferred in exchange for the
25 Kern Fan Element was “paper water”; neither KCWA nor DRWD gave up any Table A water
26 that had been delivered in the past or would likely be delivered in the future. Relinquishing
27

1 this paper water entitlement also relieved KCWA and DRWD of financial obligations they
2 would otherwise have had to pay annually to the state.

3 150. Article 2.2 of the Exchange Agreement states that the Agency shall procure and
4 deliver to the state “retired water entitlements” “as partial consideration for the transfer of the
5 Property and the implementation of the Monterey Principles.” Article 2.2 of the Exchange
6 Agreement also references three million dollars to be paid by the State to KCWA to “limit the
7 State’s environmental liability.”

8 151. Article 3.1 of the Exchange Agreement provides that on closing day, “Agency
9 shall receive from the Title Company a CLTA Owner’s Policy of Title Insurance with liability
10 in the amount of \$33,628,000, insuring fee simple title to the Real Property and Improvements
11 [...].”

12 152. Article 3.3 of the Exchange Agreement provides that KCWA may immediately
13 transfer the Kern Fan Element to “Direct Transferees,” including a joint powers agency.

14 153. Upon executing the Exchange Agreement, ownership and control of Kern Fan
15 Element was transferred from DWR to KCWA. The very next day, KCWA, in turn
16 transferred the Kern Water Bank to the newly-formed KWBA, a Joint Powers Authority
17 controlled by private interests, including corporate agri-businesses and real estate
18 development interests.

19 154. KWBA is comprised of Dudley Ridge Water Storage District, Kern County
20 Water Agency-Improvement District 4, Semitropic Water Storage District, Tejon-Castac
21 Water District, Westside Mutual Water Company, and Wheeler Ridge-Maricopa Water
22 Storage Districts. While the exact ownership structure of all member entities is not known by
23 Petitioners, the member entities are mostly, if not all, privately controlled. Plaintiffs aver that
24 Westside Mutual Water Company is a subsidiary of Paramount Farming Company LLC, that
25 Tejon-Castac Water District and Wheeler Ridge – Maricopa Water Storage District are
26 controlled by Tejon Ranch Company..

27 155. Article 4.3 of the Exchange Agreement describes how the exchange of the Kern

1 Water Bank is subject to several conditions, including completion of environmental review of
2 the Monterey Amendments under CEQA and CESA and the expiration of the CEQA statute
3 of limitations (with no challenge being filed or a final judgment being entered on such a
4 challenge).

5 156. Article 6 of the Exchange Agreement provides for the indemnification of the
6 state against future claims of environmental damage in exchange for \$3 million in
7 consideration to be paid by the State to KCWA. The indemnification is “excluding any
8 liability to the extent that it arises from Undisclosed Environmental Conditions.” Under
9 Article 6 of the Exchange Agreement, KCWA becomes liable for environmental damage
10 caused by Kern Water Bank.

11 157. Article 13.7 of the Exchange Agreement states that “this Agreement and
12 Monterey Amendments constitute the entire agreement between the parties with respect to the
13 exchange of the Property and supersede all prior and contemporaneous agreements and
14 understandings between the parties hereto relating to the subject matter hereof.”

15 158. The second part of the two-step transfer is performed through another exchange
16 agreement between Kern County Water Agency and Kern Water Bank Authority. The
17 purpose and operational structure of KWBA is set forth in the Joint Powers Agreement, most
18 recently revised in 2005. Among other things, this Joint Powers Agreement permits the
19 Authority to acquire, own, sell or transfer water in its own right, to own and hold water in
20 trust for any person or entity, and to operate in the manner and according to the methods
21 under the laws applicable to DRWD.

22 **Impacts of the Interim Implementation of the Monterey Amendments**

23 159. Since the interim implementation of the Monterey Amendments pursuant to the
24 order issued pursuant to the settlement agreement in *PCL v. DWR*, (83 Cal.App.4th 892
25 (2000)), actual impacts of the Amendments include:

26 160. Since the interim implementation of the Monterey Amendments, at least one
27 major housing project—Tejon Mountain Village in Kern County—has been approved that

1 relies on water stockpiled in the Kern Water Bank for a major part of its water supply. Tejon
2 Mountain Village proposes to obtain its water from the Tejon-Castac Water District. Tejon-
3 Castac Water District, wholly controlled by Tejon Ranch Co., is a joint partner and has an
4 ownership share of KWBA. Tejon-Castac Water District expects to draw 4,002 acre-feet a
5 year of water from the Kern Water Bank to supply Tejon Mountain Village and other real
6 estate development on Tejon Ranch.

7 161. Since the interim implementation of the Monterey Amendments, water
8 agencies, districts and corporations have stored hundreds of thousands acre-feet in SWP
9 allotments in Kern Water Bank.

10 162. DWR initiated and managed an Environmental Water Account pursuant to its
11 obligations under CalFED (a cooperative water management program between California and
12 the federal government). The Environmental Water Account was a water storage program
13 managed by DWR that purchased water to mitigate the harm caused by the pumping of water
14 from the Bay-Delta. Water was purchased from a number of sources, including from State
15 Water Contractors and including water stored in the Kern Water Bank.

16 163. Since the interim implementation of the Monterey Amendments, at least \$8.6
17 million has been spent, credited or refunded to water districts and corporations by the State
18 towards purchases for the Environmental Water Account. Main recipients of the EWA funds
19 include Kern County Water Agency, Tejon-Castac Water District, Buena Vista Water Storage
20 District, Paramount Farms, and Blackwell Land LLC. Paramount and Blackwell have each
21 received over \$3 million in checks, refunds and credits from the sale of EWA water.

22 164. Article 21 water deliveries can supply nearly 50% of total SWP deliveries in a
23 given year. In 2006, for example, 731,000 acre-feet of Article 21 water was delivered, of
24 which over 453,000 went to Kern County Water Agency and over 168,000 went to
25 Metropolitan Water District.

26 165. Under the Water Code, the State Water Resources Control Board is charged
27 with regulating water quality and administering the water rights of persons obtaining water

1 rights after 1914. The Board regulates water rights through its authority to issue orders and
2 decisions, and is charged with ensuring that water quality and water rights regulation is
3 coordinated and effective. Under its March 2000 Water Right Decision 1641, State Water
4 Project pumping rates in the Delta increased to their highest levels historically and facilitated
5 implementation of the Monterey Amendments.

6 166. Since the interim implementation of the Monterey Amendments, the San
7 Francisco –San Joaquin Bay Delta Estuary has entered a state of precipitous decline.
8 Endangered Delta smelt and salmon are threatened with extinction, and the salinity barrier
9 separating salt from freshwater has continued to move eastward. The smelt were granted
10 protection in *NRDC v. Kempthorne*, (E.D. Cal. 2007) 506 F. Supp. 2d. 322, which imposed
11 pumping restrictions on SWP and Central Valley Project facilities. Although the levels of
12 additional pumping restrictions needed to address these problems remain unknown, they are
13 likely to constrain SWP deliveries far more than anticipated when the Monterey Amendments
14 were originally approved.

15 16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 167. Petitioners have exhausted all administrative remedies by submitting written
18 comments on the Project to Respondent to request compliance with CEQA, including the
19 completion of full and adequate environmental review. All issues raised in this petition were
20 raised before Respondent by Petitioners, other members of the public, or public agencies prior
21 to approval of the Project.

22 168. Petitioners have complied with Public Resources Code section 21167.5 by prior
23 service of a notice upon Respondents indicating their intent to file this Petition. Proof of
24 Service of this notification, with the notification, is attached as Exhibit A.

25 169. Petitioners have elected to prepare the record of proceedings in the above-
26 captioned proceeding pursuant to Public Resources Code Section 21167.6(b)(2).

27 170. This petition is timely filed in accordance with Public Resources Code § 21167

1 and CEQA Guidelines § 15112.

2
3 **FIRST CAUSE OF ACTION**

4 **Violation of the California Environmental Quality Act**

5 **(Public Resources Code § 21000 *et seq.*)**

6 171. Petitioners hereby incorporate by reference each and every allegation set forth
7 in Paragraphs 1 through 358, inclusive.

8 172. The purpose of an EIR is to provide public agencies and the public in general
9 with detailed information about the effect which a proposed project is likely to have on the
10 environment. (Pub. Resources Code § 21061.) Under CEQA, the lead agency is required to
11 prepare a complete and legally adequate EIR prior to approving any discretionary project that
12 may have a significant adverse environmental effect. (Pub. Resources Code §§ 21100(a) and
13 21150). An EIR must fully disclose and analyze all of the project's potentially significant
14 environmental effects. (Pub. Resources Code § 21100(b)(1)). The EIR should be prepared
15 with a sufficient degree of analysis to provide decision-makers with information which
16 enables them to make a decision which intelligently takes account of environmental
17 consequences. (Guidelines § 15151.) DWR is also required pursuant to CEQA to consider
18 mitigation measures and alternatives to the Project, to adopt all feasible mitigation measures
19 and/or alternatives, to determine that proposed mitigation measures will or will not be
20 effective in avoiding or substantially lessening the Project's significant environmental
21 impacts, and to make an adequate statement of overriding considerations for those significant
22 environmental impacts deemed unavoidable. (Pub. Resources Code §§ 21002.1(b),
23 21100(b)(3); Guidelines §§ 15092 and 15093).

24 173. CEQA contemplates an interactive process of assessment and responsive
25 modification that must be genuine. The lead agency must be able to substantially change or
26 disapprove the project through the CEQA review process; using CEQA as a *post hoc*
27 justification for a project is not permitted.

1 **Failure to Provide an Adequate Description of the Project and the Affected Environment**

2 174. CEQA requires an accurate, stable and finite project description of the proposed
3 project; the Project description must “embrace the whole of the action” and include a
4 description of the entire scope of the project. (Guidelines § 15124.)

5 175. The EIR for the Monterey Plus Amendments fails to provide an accurate, stable
6 and finite definition of the project and the affected environment, including but not limited to
7 the following areas:

8 ***Project Objectives***

9 176. CEQA requires a statement of objectives sought by the proposed project.
10 (Guidelines § 15124(b) and (d).) A clearly written statement of objectives in turn assists the
11 lead agency in creating a range of alternatives to evaluate in the EIR. (Guidelines §
12 15124(b).) The statement of objectives should include the underlying purpose of the project.
13 (*Id.*) If a public agency must make one or more decision on a project, all its decisions subject
14 to CEQA should be listed. (Guidelines § 15124(d)(2).)

15 177. The EIR fails to provide complete or accurate project objectives and does not
16 accurately describe the purpose of the EIR. The EIR fails to acknowledge the need to make
17 new decisions on multiple issues, including whether or not to approve the Monterey Plus
18 Amendments, whether to adopt an alternative to the proposed Project and/or to increase
19 mitigation for the Project, or whether to adopt no project at all. The EIR errs in stating that
20 the task of the lead and responsible agencies is “to decide whether to continue operating under
21 the proposed project and whether to decide whether to implement one of the alternatives to the
22 proposed project.” The EIR thus fails to recognize that its responsibility is to describe and
23 analyze the whole of the Project as an action whose outcome depends upon DWR’s final
24 project decision—not merely the continuation of the Monterey Amendments, which have
25 proceeded only under an interim order and lack lawful final authorization. This failure
26 amounts to DWR prejudging the outcome of its environmental review of the Monterey Plus
27 Amendments, and undermines CEQA’s fundamental purpose to fully disclose the proposed

1 actions and inform the lead agency's and the public's decision-making process, enabling that
2 process to influence the scope and direction of the proposed project.

3 ***Water Rights***

4
5 178. The California Water Resources Development Act (Burns-Porter), the
6 legislation responsible for the creation of the State Water Project, "shall not be construed as
7 creating any right to water." Cal. Water Code § 12931.

8 179. The EIR fails to accurately describe the appropriative water rights that the SWP
9 contracts utilize as their basis for appropriation of the Delta, and how those water rights are
10 superior to the senior water rights impacted by withdrawals from the Delta.

11 180. The EIR fails to accurately describe the impact on Delta appropriative water
12 rights caused by changes to Article 21, and fails to include any reference to water rights as the
13 basis for Article 21 deliveries.

14 181. The EIR inaccurately describes the contractual conditions under which Article
15 21 water is delivered.

16 ***Legislative Nature of the Project***

17 182. The EIR fails to accurately describe the relationship of the Project to prior
18 legislative decisions or to accurately describe the authority by which the DWR can alter
19 legislated policy through adoption of contract amendments.

20 ***Public Trust Obligations***

21 183. The EIR fails to adequately describe DWR's obligations under California's
22 public trust doctrine and whether the Project will fully satisfy those obligations. The EIR fails
23 to adequately describe how those obligations may limit the supply of water under the
24 Monterey Plus Amendments.

25 ***Expanded Transfers and Removal of Restrictions***

26 184. The EIR fails to adequately describe the "urban preference" contained in the
27 original Article 18(a), and fails to adequately describe how the Monterey Plus Amendments to

1 Article 18(a) changed this preference, allowing less reliable water formerly designated for
2 agricultural use to be used for municipal purposes.

3 185. The EIR fails to adequately describe how the removal of Article 21(j)'s
4 prohibition on creating economies that are dependent on surplus water, in conjunction with
5 the changes to Articles 18 and 53, enables and encourages additional land development
6 dependent on surplus, seasonal, and interruptible water.

7 186. The EIR fails to adequately describe how the Monterey Plus Amendments' new
8 Article 53 permits water to be transferred to urban districts without the former restrictions that
9 were contained in Article 18(a) and Article 21.

10 187. The EIR fails to adequately describe how Article 53(h) enables the permanent
11 transfer of Table A Amounts above and beyond the 130,000 acre-feet transfer described in
12 Article 53, thus enabling the potential unlimited transfer of water from agricultural contractors
13 (previously restricted to agricultural use) to urban contractors.

14 188. The EIR fails to adequately describe the manner by which (1) the elimination of
15 the urban preference in Article 18; (2) and the potential unlimited transfers (including the
16 enumerated 130,000 acre-feet) of Table A amounts in Article 53; and (3) the changes in SWP
17 management in Article 56, combine to provide water previously restricted for agricultural
18 uses for urban uses and new development.

19 ***Removal of Reduced Yield Provision***

20 189. The EIR fails to adequately describe how the original Article 18(b) served as a
21 "safety valve" preventing reliance on "paper water" allocations, requiring DWR to
22 proportionally decrease SWP contracts' Table A amounts to reflect lower SWP yields, and
23 fails to adequately describe how Table A amounts will or will not be affected by the removal
24 of Article 18(b).

25 ***Environmental Baseline***

26 190. Under CEQA, an EIR must describe environmental conditions of the project at
27 the time the notice of preparation was published, or if no notice of preparation is published,

1 then at the time the environmental analysis is commenced. This baseline setting will
2 normally constitute the baseline physical conditions by which a lead agency determines
3 whether an impact is significant. (Guidelines § 15125(a).)

4 191. The EIR uses a flawed baseline to determine environmental impacts of the
5 Project. The EIR utilizes the environmental conditions caused by the interim implementation
6 of the Monterey Amendments within its environmental baseline, and fails to properly
7 distinguish the baseline from the No Project alternative.

8 192. The EIR uses inconsistent time periods to compare project impacts.

9 193. The EIR recognizes that the SWP contracts will not expire until 2035, but
10 erroneously limits the time frame for analysis to 2020.

11 194. The EIR erroneously adjusts the baseline to reflect anticipated events, such as
12 anticipated population growth, urban development, increased water demand, and water
13 transfers.

14 ***Legal and Regulatory Framework***

15 195. CEQA requires a statement of the current legal and regulatory framework in
16 which the proposed project will be developed.

17 196. The EIR inaccurately describes the current regulatory framework within which
18 the Monterey Plus Amendments must be considered. These include, but are not limited to, the
19 EIR's failure to adequately describe the Delta Smelt and Delta Salmon Biological Opinions
20 ("BiOps"), available prior to DWR's project decision; or the long-term impacts of species
21 protection and climate change on SWP operations, despite their demonstrated significance in
22 reducing SWP deliveries.

23 ***CALSIM II***

24 197. The EIR misuses the CALSIM II computer model for much of its scientific
25 justification for its project. Normal modeling under CALSIM II results in environmental
26 damage being considered a constraint on water delivery. Yet DWR improperly utilizes
27 CALSIM II in the EIR as a means to assess environmental impact of the Amendments on the

1 environment and for estimating impacts in exports and deliveries. This misuse of CALSIM II
2 in the EIR impermissibly alters the project description and distorts the impacts of the Project.

3 198. The EIR fails to describe how conclusions drawn from CALSIM II are based on
4 flawed data inputs, including but not limited to flawed data relating to future water flow
5 patterns and volume that do not accurately account for changes in long-term environmental
6 conditions, such as global warming.

7 199. The EIR improperly assumes that in CALSIM II modeling, the future Delta
8 water exports will be nearly twice the historic average, while ignoring the BiOps and DWR's
9 inability to meet water quality criteria even under the current pumping regime.

10 200. The EIR inaccurately uses CALSIM II modeling results to favor the Project
11 alternative, without acknowledging that the data can be used to support a range of alternatives,
12 including environmentally superior alternatives, and without describing the possible sources
13 of error with the modeling.

14 201. The EIR fails to address the faulty application of CALSIM II and exaggeration
15 of available supplies in DWR's biennial Reliability Reports prepared pursuant to the Project.

16 202. The EIR fails to address the assumption of CALSIM II modeling that
17 groundwater is a virtually limitless resource.

18 ***Kern Water Bank***

19 203. The EIR fails to adequately describe the transfer of Kern Fan Element of the
20 Kern Water Bank ("KWB") from DWR to KCWA and ultimately to KWBA. The EIR fails to
21 adequately describe the Monterey Plus Amendments' change of the fundamental purpose of
22 the KWB from augmenting the dependable water supply of the SWP to a project operated and
23 maintained for local benefit and the benefit of the member entities.

24 204. The EIR fails to adequately describe the ownership structure of the KWB
25 Authority and fails to adequately describe the circumstances that will lead to the transfer of
26 the KWB, including the role SWP Contractors and other local agencies and entities may have
27 played in preventing DWR from developing the KWB itself.

1 205. The EIR fails to adequately describe how the fee-simple KWB transfer to Kern
2 Water Bank Authority complies with § 11464 of the Water Code and fails to adequately
3 describe how the transfer is lawful under Article 16, § 6 of the California Constitution.

4 206. The EIR fails to adequately describe what continuing authority DWR may have
5 to use the KWB as needed for SWP purposes and fails to adequately describe how Article 52
6 of the Monterey Plus Amendments may affect that authority.

7 207. The EIR fails to adequately describe DWR's original experiences and purposes
8 for the KWB, including but not limited to DWR's intention to use the Kern Water Bank as the
9 state's primary groundwater storage facility and to develop a SWP groundwater recharge
10 program.

11 208. The EIR fails to adequately describe the environmental impacts disclosed in the
12 1986 EIR and 1990 Supplemental EIR prepared by DWR for KWB, including recognition that
13 operation of KWB might have a negative impact on the Bay-Delta.

14 209. The EIR fails to adequately describe DWR's accounting that led to valuing the
15 KWB at \$33 million dollars. The EIR is unavailing as to why DWR's accounting did not
16 assume that the KWB would be used as a water bank, and why the accounting does not
17 include or disclose the full amount invested by DWR in development of KWB.

18 210. The EIR fails to disclose major details of KWB operation, including whether
19 the KWB and KWBA actually acquire and sell water under its own title, or merely provide a
20 facility that allows its member agencies to store and recover water.

21 211. The EIR fails to disclose the amounts of water KWB acquires and sells on a
22 yearly basis.

23 212. The EIR fails to describe or disclose the amounts that member districts have
24 bought and sold from KWB, or to whom KWB water has been sold.

25 213. The EIR fails to describe at what price KWB water has been sold, whether the
26 price for KWB water reflects a mark-up beyond costs.

27 214. The EIR fails to describe the price charged by KWB for storage.

1 215. The EIR fails to describe whether DWR has purchased KWB water, and if so,
2 for what place of use and purpose.

3 216. The EIR fails to describe which sources of water contribute to KWB stored
4 water.

5 217. The EIR fails to describe what quantity of water stored in KWB is supplied
6 variously through SWP Table A allocations, SWP Article 21 water, Central Valley Project
7 water, surface run-off, groundwater, water from the Kern River, and any other possible
8 sources.

9 218. The EIR does not describe whether DWR delivered water to KWB that it
10 intended to re-purchase.

11 219. The EIR does not describe whether KWB pays taxes on the land it owns.

12 220. The EIR does not describe whether Westside Mutual Water District profits from
13 KWB sales and pays taxes on those profits.

14 221. The EIR does not describe whether KWB has received SWRCB approval for
15 changing the place and purpose for use of water.

16 222. The EIR provides an inadequate explanation of the purposes for which KWBA
17 member agencies use their profits from the sale of KWB water.

18 ***“Retirement” of 45,000 AFY***

19 223. The EIR fails to adequately describe the method for valuation of the 45,000
20 acre-feet per year (“AFY”) “retired” by Article 53, and fails to adequately describe the near-
21 certainty that KCWA and DRWD would never actually take delivery of the 45,000 AFY they
22 “retired.”

23 224. The EIR fails to acknowledge that the 45,000 acre-feet is only retired until the
24 end of the bond repayment period, nor does it adjust the value of this temporary “retirement”
25 accordingly.

26 225. The EIR fails to adequately describe how KCWA and DRWD are required to
27 pay for all Table A amounts, whether delivered or not.

1 226. The EIR fails to adequately describe how KCWA and DRWD financially
2 benefit by “retiring” the 45,000 acre-feet of paper water Table A amounts, since by “retiring”
3 water deliveries that they do not receive they “retire” annual payment obligations and yet
4 suffer no loss of delivery of Table A amounts.

5 ***Environmental Water Account***

6 227. The EIR fails to adequately describe the impact of the Monterey Plus
7 Amendments in facilitating misuse of the Environmental Water Account (“EWA”). The EIR
8 fails to evaluate how increased prices paid for EWA water due to implementation of the
9 Monterey Plus Amendments increases environmental impact, in part through limiting the
10 state’s ability to afford increased water purchases for the EWA .

11 **Failure to Adequately Describe the Project’s Impacts**

12 228. CEQA requires that an EIR disclose and analyze all possible significant
13 environmental impacts of a proposed project. (Pub. Resources Code § 21100(b)(1) and
14 Guidelines § 15126.) The significant impacts should be discussed with emphasis in
15 proportion to the severity and probability of occurrence. (Guidelines § 15143.)

16 229. The EIR failed to address or inadequately addressed entire categories of
17 environmental impacts, including but not limited to the deficiencies described in the section
18 immediately above and those enumerated below. As a result, Respondent failed to proceed in
19 the manner required by law and abused its discretion by failing to fully disclose and analyze
20 the Project’s environmental impacts, including but not limited to the following:

21 ***Biological Impacts***

22 230. The EIR impermissibly underestimates the impacts of the Monterey Plus
23 Amendments on the Delta and its fish populations and state fishery resources, including but
24 not limited to: providing inaccurate estimates of actual “take;” improper analysis of “salvage
25 events;” inadequate evaluation of indirect impacts; and inadequate discussion of impacts to
26 salmonids passing through the Delta.

27 231. The EIR incorrectly concludes that environmental programs in place between

1 1996 and 2003 reduced environmental impacts of the Monterey Plus Amendments to less-
2 than-significant.

3 232. The EIR improperly bases its impact assessment on analyses from Biological
4 Opinions required under the federal Endangered Species Act which were rejected by a federal
5 district court in *NRDC v. Kempthorne* (E.D. Cal. 2007) 506 F.Supp. 2d. 322.

6 233. The EIR improperly relies on the Delta Smelt Risk Assessment Matrix, which
7 was held to be unlawful as designed in *NRDC v. Kempthorne. (Id.)*

8 234. The EIR provides an inadequate analysis of the effects of the Monterey Plus
9 Amendments on moving the salinity barrier in the Delta.

10 235. The EIR fails to identify impacts on water quality resulting from the Monterey
11 Plus Amendments, including but not limited to degraded water quality from SWP source
12 waters, in reservoirs and river conveyances, and the Bay-Delta.

13 ***Kern Water Bank***

14 236. The EIR fails to adequately analyze the environmental impacts of the Project's
15 fee simple transfer of the Kern Water Bank, including but not limited to increased pumping
16 from the Delta and increased deliveries to Monterey Contractors due to the transfer of
17 ownership and operation of the KWB pursuant to the Monterey Plus Amendments.

18 237. The EIR fails to adequately analyze and assess the environmental impacts
19 caused by expanded agriculture, enabled as a result of private control of the KWB and
20 subsequent increased water deliveries resulted from implementation of the Monterey Plus
21 Amendments.

22 238. The EIR fails to analyze the impacts on the environment of transferring control
23 of the KWB from a state agency to a privately-controlled joint powers authority, including but
24 not limited to the difference between the state's original purpose of using the KWB as a
25 drought mitigation bank and an integral component of its management of the SWP, and the
26 current use of KWB to maximize deliveries of SWP water to benefit KWBA and its member
27 entities. The EIR inadequately assesses the impact caused by the State's inability to use KWB

1 for drought emergency preparedness, environmental protection, river restoration, and water
2 quality.

3 239. The EIR inadequately describes the Monterey Plus Amendments’
4 environmental impacts stemming from transfer of control and change of purpose of Kern Fan
5 Element, so that KWB may be used for development of communities dependent on SWP and
6 KWB deliveries. The EIR provides an inadequate analysis of the use of KWB as a
7 “switchyard” between agribusiness and real estate interests to re-purpose agricultural water
8 for new urban development.

9 240. The EIR does not acknowledge the additional environmental pressures and
10 impacts created by operation of the Kern Water Bank as a profit-making enterprise
11 subsequent to implementation of the Monterey Amendments. The EIR inadequately explains
12 that operation of the Kern Water Bank has negatively impacted groundwater quality in Kern
13 County.

14 241. The EIR fails to assess environmental impacts of member agencies’ profits
15 from Kern Water Bank.

16 242. The EIR provides inadequate disclosure and analysis of the sources and
17 amounts of groundwater extracted for storage in and operation of the Kern Fan Element and
18 the KWB.

19 243. The EIR fails to assess the environmental impacts of increased private storage
20 resulting from the transfer of Kern Fan Element from state to private control under the
21 Monterey Plus Amendments, and how those impacts are compounded by allowing SWP
22 contractors to store water outside of their own service areas.

23 ***Environmental Water Account***

24 244. The EIR fails to adequately address impacts caused by the depletion of the
25 Environmental Water Account, and environmentally damaging use of the Environmental
26 Water Account, as precipitated by enactment of the Monterey Plus Amendments. If the
27 Monterey Plus Amendments are not made permanent, DWR would pump its own surplus

1 water, transferring less money out of the state system, costing less per acre-foot, and allowing
2 the EWA to purchase more water, which would, in turn, reduce impacts.

3 ***Expanded Transfers and Removal of Restrictions***

4 245. The EIR fails to adequately analyze the environmental impacts of removal of
5 the “urban preference” in the original Article 18(a).

6 246. The EIR fails to adequately analyze the environmental impacts of changing
7 Article 21 of the contract provisions of the SWP long-term contracts from “surplus water” to
8 “interruptible water”, including the enabling of the building of permanent local economies
9 dependent on that interruptible water.

10 247. The EIR fails to adequately analyze the environmental impacts of transfers
11 facilitated under Article 53, including but not limited to Article 53(h)’s provision enabling the
12 unlimited transfer of water above and beyond the 130,000 acre-feet described in Article 53.

13 248. The EIR fails to adequately analyze the environmental impacts of the changes to
14 Articles 18, 21, 53, and 56, that taken together combine to provide water previously restricted
15 for agricultural uses for urban uses and new development.

16 **Removal of Reduced Yield Provision**

17 249. The EIR fails to adequately analyze the environmental impacts of removing
18 Article 18(b)’s safety valve that prevented reliance on paper water allocations.

19 ***Turnback Pool***

20 250. The EIR fails to adequately assess the environmental impacts of SWP
21 Contractors’ enhanced ability to receive Table A amounts through implementation of the
22 Turnback Pool provisions of the Monterey Plus Amendments.

23 ***CALSIM II***

24 251. The EIR fails to adequately assess impacts due to misuse of CALSIM II as a
25 model for determining environmental impacts caused by SWP deliveries. Environmental
26 impacts are a constraint in the CALSIM II model, and not a modeling result. The EIR fails to
27 make this distinction, or to assess the model’s limitations accordingly.

1 ***Climate Change***

2 252. CEQA requires consideration of increases or decreases of greenhouse gases and
3 inducement of man-made changes to the earth’s atmosphere (“climate change”) due to
4 implementation of a proposed project. (Guidelines § 15064.4)

5 253. The EIR improperly assesses project-related climate impacts, and erroneously
6 asserts that the Monterey Plus Amendments would not increase growth-related greenhouse
7 gas emissions within the SWP service area. The EIR improperly concludes that location of
8 development is inconsequential to increases in greenhouse gas emissions, and fails to
9 recognize that the Monterey Plus Amendments encourage rural and suburban sprawl which in
10 turn increases transportation-related greenhouse gas emissions.

11 254. The EIR fails to adequately address whether the Monterey Plus Amendments’
12 elimination of the permanent shortage provision in Article 18(b) and the proscription on using
13 “surplus” water to build permanent economies in Article 21(g)(i) would impact climate
14 change by eliminating DWR’s ability to reconcile SWP supplies and deliveries.

15 ***Growth-Inducing Impacts***

16 255. CEQA requires that an EIR provide full analysis of ways in which a proposed
17 project could foster economic or population growth, or the construction of additional housing,
18 either directly or indirectly, in the surrounding environment. (Pub. Resources Code §
19 21100(b)(5) and Guidelines §§ 15126 and 15126.2.) Physical changes to the environment
20 caused by economic and social impacts should also be considered as a significant effect on the
21 environment. (Guidelines 15164(e).)

22 256. The EIR fails to adequately assess the growth-inducing impacts caused by
23 enactment of the Monterey Plus Amendments. As one example, the Amendments’ changes to
24 Articles 18 and 21, when combined with the addition of Articles 52 and 53, together provide
25 strong incentives for creating new residential and commercial developments based on
26 imported SWP water. The EIR mischaracterizes and underestimates the Monterey Plus
27 Amendments’ growth-inducing impacts through providing a flawed analysis of these changes

1 and additions to the SWP contracts on increased development.

2 257. The EIR impermissibly defers full assessment of the Project’s growth
3 consequences to future assessments of local decision-makers.

4 258. The EIR fails to assess the growth-related impacts of known Monterey Plus
5 Amendments-based water transfers.

6 ***Paper Water***

7 259. The EIR fails to disclose and fully analyze Project-related impacts on the
8 problem of “paper water.”

9 260. The EIR erroneously relies upon inflated estimates of future SWP deliveries in
10 its assessment of “paper water.”

11 261. The EIR erroneously avoids paper water assessment by relying upon Reliability
12 Reports mandated by the Project, but excluding those reports, and criticisms of them, from the
13 EIR analysis.

14 262. The EIR impermissibly defers the Project’s combined effects on “paper water”
15 to future local assessment.

16 ***Cumulative Impacts***

17 263. CEQA requires that an EIR for a proposed project consider reasonably
18 foreseeable cumulative impacts from a project. (Pub. Resources Code §§ 21100 and
19 Guidelines § 15130.) The EIR fails to provide an adequate cumulative impacts assessment for
20 the Monterey Plus Amendments. The EIR does not assess the cumulative impacts on the
21 Delta of the pumping from the SWP under the Monterey Plus Amendments and the additional
22 pumping from the Central Valley Project, and its potential combined impact on endangered
23 species and other public trust resources.

24 264. The EIR does not assess the cumulative impacts of decreased supplies to the
25 Environmental Water Account as a result of the Monterey Plus Amendments, combined with
26 increased pumping, also as a consequence of enactment of the Monterey Amendments.

27 ***Environmental Consequences of Financial Restructuring***

1 265. The EIR erroneously fails to analyze the environmental consequences
2 associated with the restructuring of SWP financing in the Project, including but not limited to
3 changes included in articles 22, 51, and 53 of the Monterey Plus Amendments.

4 266. The EIR erroneously dismisses as speculative the environmental consequences
5 of the Project’s redirection to local contractors of vast financial resources that would
6 otherwise have been owed to the State.

7 267. The EIR erroneously fails to analyze whether enforcement pre-Monterey
8 Article 18(b) could have avoided the high financial and environmental costs of the Project’s
9 financial restructuring.

10 **Alternatives and Mitigation Measures**

11 ***“No Project Alternative”***

12 268. CEQA requires the preparation of a no-project alternative that addresses
13 existing conditions, as well as what would be reasonably expected to occur in the foreseeable
14 future if the project were not approved. (Guidelines § 15126(e).)

15 269. The EIR fails to proceed in manner required by law by not evaluating an
16 adequate “no project” alternative.

17 270. The EIR’s “no project” alternative impermissibly assumes that DWR would not
18 enforce the original SWP contracts as written.

19 271. The EIR impermissibly assumes that the pre-Monterey Article 21 deliveries
20 would offset the reduced deliveries triggered under pre-Monterey Article 18(b), if Article
21 18(b) were ever to be enforced by DWR.

22 272. The EIR impermissibly assumes that demand for water would be identical under
23 pre- and post-Monterey Plus Amendments.

24 273. The EIR’s “no project” alternative inadequately accounts for the prohibition on
25 creating dependent economies in pre-Monterey SWP contracts; and fails to acknowledge that
26 Article 21 water is inherently unreliable and undependable as a water source.

1 274. One iteration of the “no project” alternative in the EIR improperly includes
2 some Table A transfers executed under the Monterey Plus Agreement, the conveyance of non-
3 project water, and the storage of contractors’ water outside of contractors’ service area.

4 ***Feasible Alternatives***

5 275. CEQA requires an EIR to examine a range of reasonable alternatives that would
6 feasibly obtain most of the project objectives, but avoid or substantially lessen any significant
7 adverse effects of the project. (Guidelines § 15126.6.)

8 276. DWR erroneously rejects feasible alternatives as infeasible, including but not
9 limited to the “Improved Reliability through Environmental Enhancement” (IEEE)
10 alternative. In addition, the EIR provides no substantial evidence to support its exclusion of
11 feasible alternatives.

12 ***Reasonable Range of Alternatives***

13 277. CEQA requires that an EIR include a reasonable range of alternatives for a
14 proposed project that will foster informed decision-making and public participation.
15 (Guidelines § 15126.6.)

16 278. The EIR provides a limited and incomplete range of feasible alternatives to the
17 proposed project, including an alternative that inappropriately includes significant portions of
18 the proposed project.

19 279. The EIR improperly concludes that the alternatives described in the EIR have
20 similar impacts and outcomes as the proposed project, and does not provide alternatives that
21 are clearly distinguishable from the “no project” alternative and the proposed project.

22 280. The EIR fails to provide and analyze alternatives to the proposed project that
23 would restore operation and title of Kern Water Bank to the State of California.

24 281. The EIR fails to analyze the “Kern transfer with trust conditions” alternative.

25 282. The EIR fails to provide an alternative to the project that ensures consistency
26 with the California Constitution and statewide public trust accountability over management
27 and operation of the Kern Water Bank.

1 283. The EIR fails to analyze an alternative that is climate change-neutral.

2 284. The EIR fails to analyze an alternative that avoids impacts to the Bay-Delta
3 ecosystem.

4 ***Mitigation***

5 285. CEQA requires DWR to adopt feasible mitigation measures in order to
6 substantially lessen or avoid the otherwise significant adverse environmental impacts of
7 proposed projects. (Pub. Resources Code § 21002.) DWR is required pursuant to CEQA to
8 consider mitigation measures and alternatives to the Project, to adopt all feasible mitigation
9 measures and/or alternatives, to determine that proposed mitigation measures will or will not
10 be effective in avoiding or substantially lessening the Project’s significant environmental
11 impacts, and to make an adequate statement of overriding considerations for those significant
12 environmental impacts deemed unavoidable. (Pub. Resources Code §§ 21002(b) and 21081.)

13 286. The EIR fails to properly consider reasonable mitigation measures for the
14 proposed project, including but not limited to mitigation measures that would reduce growth-
15 inducing impacts.

16 287. The EIR fails to properly consider mitigation measures to reduce the impact of
17 the elimination of Article 18(b), which would allow DWR to reduce the total Table A
18 amounts in the long-term SWP contracts.

19 288. The EIR fails to properly consider mitigation measures to offset the increased
20 pumping of Article 21 water, including measures to prohibit distribution of Article 21 water
21 when doing so would harm public trust resources.

22 289. The EIR fails to properly consider mitigation measures that would prioritize
23 water to be stored in the KWB for the protection of public trust resources.

24 290. The EIR incorrectly concludes that DWR’s efforts to comply with the
25 Endangered Species Act, such as compliance with pumping plans to protect endangered smelt
26 and salmon, are sufficient to meet the lead agency’s mandate under CEQA to mitigate
27 significant environmental effects whenever feasible to protect public trust resources.

1 **Inadequate Response to Comments**

2 291. Respondents failed to respond adequately to comments submitted by
3 Petitioners, other members of the public, and other agencies. Instead, the responses given to
4 numerous comments are conclusory, evasive, confusing, or otherwise non-responsive,
5 contrary to the requirements of CEQA. In addition, Respondents failed to provide an
6 adequate rationale for rejecting alternatives to the Project proposed by Petitioners and other
7 commenting agencies and persons. By failing to provide adequate responses to public
8 comments and proposed alternatives, Respondents failed to proceed in the manner required by
9 law.

10 **Failure to Recirculate EIR**

11 292. CEQA requires that an EIR must be recirculated for additional public and
12 agency comment when new information is added after the EIR's initial circulation but prior to
13 certification.

14 293. Respondents failed to recirculate the EIR despite the availability of significant
15 new information prior to certification regarding the Project's environmental consequences.

16 **CEQA Findings Not Supported By Substantial Evidence**

17 294. No substantial evidence supports Respondents' findings adopted pursuant to
18 CEQA, including the findings that the Project's water supply, water quality, climate change,
19 air quality, biological resources, cultural resources, traffic, and public safety impacts have
20 been mitigated to less than significant levels.

21 **Statement of Overriding Considerations Not Supported By Substantial Evidence**

22 295. Where no feasible mitigation measures or alternatives are available to avoid or
23 reduce a project's significant environmental effects, CEQA allows an agency approving a
24 project to adopt a Statement of Overriding Considerations that describes how specific
25 overriding economic, legal, social, technological, or other benefits outweigh the significant
26 environmental effects.

27 296. In approving the Project and certifying the EIR, Respondents concluded that the

1 Project would result in significant unavoidable impacts. Accordingly, Respondents adopted a
2 Statement of Overriding Considerations, including findings that specific considerations make
3 infeasible the mitigation measures or alternatives identified in the EIR for the Project's
4 unavoidable significant impacts and that economic, social, and other factors justify approval
5 of the Project despite these unavoidable significant impacts.

6 297. Respondents' adoption of a Statement of Overriding Considerations that
7 purportedly justifies the Project's significant adverse impacts on the environment is not
8 supported by substantial evidence and represents a failure to proceed in the manner required
9 by law. Similarly, the finding that no feasible alternatives of mitigation measures exist to
10 eliminate or reduce the remaining significant effects is not supported by substantial evidence.

11 **Failure to Provide Notice of Publication of Notice of Decision**

12 298. Despite repeated requests by Petitioners to be notified of the publication of the
13 NOD for the Project and confirmation by Respondents that such notice would be promptly
14 provided promptly, Respondents failed to provide any notice of publication to Petitioners. In
15 failing to provide this notice, Respondents failed to proceed in the manner required by law.

16
17 **SECOND CAUSE OF ACTION**

18 **Reverse Validation Action**

19 **(Govt. Code §§ 53510, 53511, 17700(c) and Code Civ. Proc. § 860)**

20 **(Cal. Const. Art. 16, Water Code §§ 11464 and 12930 *et seq.*, Civ. Code §§ 1550 *et seq.*)**

21 299. Petitioners hereby incorporate by reference each and every allegation set forth
22 in Paragraphs 1 through 358, inclusive.

23 300. An agency of the state may bring an action pursuant to Gov. Code § 17700(a)
24 and Code Civ. Proc. § 860 to determine the validity of any matter which under any other law
25 is authorized to be determined pursuant thereto. Government Code § 17770 permits the state
26 or any state board, department, agency, or authority to bring an action to determine the
27

1 validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to
2 Code Civ. Proc. § 860.

3 301. Pursuant to Gov. Code §§ 53510 and 53511, the validating procedure of Code
4 Civ. Proc. § 860 is extended to any county, city, city and county, public district or any public
5 or municipal corporation, public agency and public authority, any of whom may bring an
6 action to determine the validity of bonds, warrants, contracts, obligations, or evidences of
7 indebtedness.

8 302. If no proceedings have been brought by the relevant agency, any interested
9 person may bring an action within the time and in the court specified by Code Civ. Proc. §
10 860 to determine the validity of the contract. (Code Civ. Proc. § 863). These actions brought
11 by interested persons are called Reverse Validation Actions.

12 303. Plaintiffs bring this Reverse Validation Action pursuant to California law in
13 order to challenge the validity of the fee-simple transfer between DWR and KCWA that
14 conveys, in a two-step transaction, the Kern Water Bank from the State to Kern Water Bank
15 Authority, a privately-controlled Joint Powers Authority with public and private members that
16 is effectively controlled by private entities.

17 304. Pursuant to Article 52 of the Monterey Plus Agreement, the Kern Water Bank
18 Exchange Agreement, and the KWBA Joint Powers Agreement (that establishes KWBA),
19 DWR transferred the Kern Water Bank first to KCWA, which immediately re-transferred it to
20 KWBA.

21 305. All Defendants knew or should have known, at the time of the execution of the
22 two-step transfer, that the two-step transfer would result in KWBA obtaining ownership,
23 operation, and control over the Kern Water Bank.

24 306. This Reverse Validation Action is timely pursuant to Code of Civ. Proc. §§ 860,
25 863, and 864 and Article 13.7 of the Exchange Agreement because the operative
26 “authorization” for the Kern Water Bank two-part transfer was not complete and final until
27

1 publication of the NOD for the Monterey Plus Amendments on May 5, 2010, which followed
2 DWR's review of the transfer, development and operation of the Kern Water Bank.

3 307. DWR's two-part transfer of the Kern Water Bank violates multiple provisions
4 of California law and was arbitrary, capricious, and/or entirely lacking in evidentiary support.

5 308. Should this cause of action be determined, for any reason, to be improperly
6 brought or invalid in any way, Petitioners plead in the alternative for a writ of mandamus
7 pursuant to Cal. Civ. Code § 1985.

8 309. Petitioners bring this Reverse Validation Action on the following grounds:

9 **Prohibition on DWR's Transfer of State Water Facilities**

10 310. Water Code § 11464 states that "no water right, reservoir, conduit, or facility for
11 the generation, production, transmission, or distribution of electric power, acquired by the
12 DWR shall ever be sold, granted, or conveyed by DWR so that DWR is thereby divested of
13 the title to and ownership of it." (Water Code § 11464.)

14 311. Through enactment of the Monterey Plus Amendments and concurrent
15 execution of the two-part transaction, DWR transferred title and management of the Kern
16 Water Bank to KCWA and then to KWBA so that DWR was divested of title and ownership,
17 in violation of Water Code § 11464.

18 312. Due to the violation of Water Code § 11464, DWR's two-part transfer and
19 divestment of title and ownership of the Kern Water Bank is contrary to an express provision
20 of the law and therefore is void from inception and non-enforceable. (Cal. Civ. Code §
21 1667(1).)

22 **Invalid Consent to the Contract**

23 313. Mutual consent is a requirement for the valid formation of a contract. Cal.
24 (Civ. Code § 1550(b).) Consent to a contract is not real or free when obtained through fraud.
25 (Cal. Civ. Code § 1567.) Fraud may be actual or constructive, that is, with or without
26 fraudulent intent. (Cal. Civ. Code § 1571.)

1 314. DWR’s two-part transfer of the Kern Water Bank was based on illusory
2 consideration, and the contracting parties lacked statutory authority to enter into the contract.
3 Both are acts of real or constructive fraud with respect to the parties’ consent to enter into the
4 contract.

5 315. Due to lack of real consent to enter into the contract, the two-part transfer of
6 the Kern Water Bank is not a validly formed contract because it violates Cal. Civ. Code §
7 1550.

8 **Illusory Consideration**

9 316. Under California Law, a sufficient cause or consideration is an essential element
10 to formation of a valid contract. (Cal. Civ. Code §§ 1550 and 1605.) Consideration may not
11 be so one-sided as to be unconscionable. California courts are also required to consider the
12 relative value of consideration in a transaction alleged to be voidable under fraudulent transfer
13 laws.

14 317. The two-part transfer of Kern Water Bank constitutes a financial transaction,
15 and the Monterey Plus Amendments and the Exchange Agreement financial instruments or
16 contracts, for which consideration of 45,000 acre-feet in retired water was purported to be
17 paid in exchange for the real property known as Kern Fan Element and \$3 million in
18 environmental indemnification paid by the State.

19 318. The “paper water” pledged by KCWA is illusory consideration and is therefore
20 unconscionable. There is no practical value to the 45,000 acre-feet “retired” because KCWA
21 and DRWD had no realistic expectation of receiving that water. Further, the 45,000 acre-feet
22 is no longer “retired” once the bond re-payment period has ended.

23 319. The 45,000 acre-feet “retired” by KCWA acre-feet is illusory consideration
24 because the “retirement” of the 45,000 acre-feet accrues financial benefit to KCWA in its
25 bond-repayment obligations to the detriment of the State. By “retiring” 45,000 acre-feet of
26 “paper water,” KCWA is not obligated to repay the State for that portion of the bond-
27 repayment, even though repayment is required by Burns-Porter and the SWP Contracting

1 Principles. Under the Contracting Principles, repayment of the cost of the SWP is required
2 regardless of the actual amount of water delivered. Therefore the “retirement” of the 45,000
3 acre feet of Table A amounts deprives the State of mandatory bond-repayment requirements
4 demanded of all SWP contractors, including KCWA. “Retiring” 45,000 acre-feet is therefore
5 a second inducement for KCWA, and not a valid consideration for the exchange of Kern
6 Water Bank.

7 320. Due to its illusory consideration, the two-part transfer of the Kern Water Bank
8 violates Cal. Civ. Code §§ 1550 and 1605.

9 **Unconstitutional Gift of Public Funds**

10 321. An agency of the State of California may not make any gift or authorize the
11 making of any gift of any public money or thing of value to any individual, municipal or other
12 corporation. (Cal. Const. Art. 16 § 6).

13 322. As DWR failed to receive sufficient consideration for the transfer of the Kern
14 Water Bank to KWBA, via KCWA, the transfer constitutes a gift of a thing of value and
15 therefore violates Article 16, § 6 of the California Constitution.

16 323. A contract or agreement which executes an unconstitutional act is void and
17 unenforceable. (Cal. Civ. Code §§ 1550(c) and 1667.)

18 324. Due to its violation of Art § 16, Sec 6, the two-part transfer of the Kern Water
19 Bank is void and unenforceable.

20 **Unconstitutional Abrogation of Statutory and Contractual Duties**

21 325. Article 16, § 1 of the California Constitution and subsequent caselaw state that
22 contracts made by the State and ratified by the voters of the State cannot later be materially
23 modified, even by the Legislature.

24 326. The Burns-Porter Act, enacted by the California Legislature and ratified by the
25 voters of the State, authorized the issuance of bonds to fund the construction and operation of
26 the SWP.

1 327. The authorization, issuance and purchase of the SWP bonds formed a
2 contractual relationship between the bondholders, the taxpayers of the State, and the voters of
3 the State that the Legislature—and therefore DWR—cannot abrogate or materially modify.

4 328. The SWP bonds were authorized, issued, and purchased in reliance on the
5 Contracting Principles and the Burns-Porter Act.

6 329. The model contract for all Long-Term Contracts (that of the Metropolitan Water
7 District of Southern California), validated by the Cal. Supreme Court in *Metropolitan Water*
8 *District v. Marquardt*, (1963) 59 Cal. 2d 159 and based on both the Contracting Principles and
9 the Burns-Porter Act, mandated specific repayment terms and obligations applicable to all
10 SWP Contractors.

11 330. The Monterey Plus Amendments materially change the repayment obligations
12 of the SWP Contractors in a number of ways, including but not limited to the changes to
13 Articles 18, 22, 51, 52, 53, 54, and 55 described in-part above.

14 331. The Monterey Plus Amendments violate article 45 of the prototype contract
15 validated by the California Supreme Court in *Marquardt*, which provides that all SWP water
16 contracts "shall be substantially uniform with respect to basic terms and conditions."

17 332. The material changes of the long-term contracts effected by the Monterey Plus
18 Amendments amount to an unconstitutional abrogation of DWR's statutory and contractual
19 duties. (Cal. Const. Art. 16, § 1)

20 **No Authority to Make Contracts**

21 333. California Law requires that parties entering into a contract be capable of
22 contracting. (Cal. Civ Code § 1550(a).)

23 334. An agency which is statutorily proscribed from entering into a specific
24 contractual exchange does not possess the authority to enter into a contract for that proscribed
25 purpose.

26 335. DWR is proscribed from transfer of title and management of a SWP facility
27 pursuant to Water Code § 11464. Therefore, DWR lacks authority to enter into the

1 agreements to transfer the Kern Water Bank, so that the contract formation is incomplete
2 pursuant to Cal. Civil Code § 1550.

3 336. As an administrative agency of the State, DWR cannot assert legislative
4 authority to change re-payment provisions that even the Legislature is forbidden from
5 changing. For this reason, DWR lacks the authority to approve re-structuring of the financial
6 arrangements of the SWP contracts, including the two-part gift of Kern Water Bank, making
7 the Amendments void and unenforceable pursuant to Cal. Civ. Code § 1550.

8 337. The State’s loss of re-payment revenue caused by the retirement of 45,000 acre-
9 feet of water constitutes an alteration of the essential re-payment provisions of the bonds and
10 the lien placed on SWP projects, caused by execution of the Monterey Plus Amendments and
11 the two-part transfer..

12 338. DWR lacks the statutory authority to alter the terms of re-payment of the bonds
13 issued pursuant to the Burns-Porter Act. Therefore, DWR lacks the authority to enter into the
14 two-part transfer of the Kern Water Bank, making the contract formation incomplete, and the
15 contract void and unenforceable, pursuant to Cal. Civil Code § 1550(a).

16 **Impairment of Bond Agreements**

17 339. The sale of bonds pursuant to the Burns-Porter Act, as approved by the voters of
18 California, created a contractual relationship between the bondholders and the State of
19 California.

20 340. The terms of the Burns-Porter Act are considered incorporated into each bond
21 contract, even if those terms are not expressly stated in the bond contracts.

22 341. In order to protect bondholder security in the SWP, the Burns-Porter Act
23 contains a “non-impairment” requirement for all bond contracts, specifying that the contracts
24 “shall not be impaired by subsequent acts of the legislature during the time when any of the
25 bonds authorized herein are outstanding.” (Wat. Code § 12937(b).)

26 342. By “retiring” the 45,000 acres of Table A water held by KCWA and DRWD—
27 water that has never been delivered due to the incompleteness of the SWP but that KCWA and

1 DRWD are nonetheless obligated to pay DWR for—the two-part transfer of the Kern Water
2 Bank reduces the amount KCWA and DRWD pay DWR.

3 343. Because revenues obtained by DWR from water contractors inure to the direct
4 benefit of the bondholders, reducing these revenues alters the financial framework that
5 bondholders have and continue to rely on when purchasing the bonds, defeating the
6 expectations of the parties under their contracts.

7 344. Reducing the amount that KCWA and DRWD pay for their participation in the
8 SWP is a prohibited legislative act that materially alters the responsibilities of KCWA and
9 DRWD in violation of the Burns-Porter Act. (Wat. Code § 12930 *et seq.*)

10 11 **THIRD CAUSE OF ACTION**

12 **Violation of the California Constitution by DWR**

13 **(Code Civ Proc. § 1085; Cal. Const. Art. 16, §§ 1 and 6)**

14 345. Petitioners hereby incorporate by reference each and every allegation set forth
15 in Paragraphs 1 through 358, inclusive.

16 346. This Cause of Action is for an alternative writ of mandamus to issue pursuant to
17 Cal. Code Civ. Proc § 1085.

18 **Unconstitutional Gift of Public Funds**

19 347. An agency of the State of California may not make any gift or authorize the
20 making of any gift of any public money or thing of value to any individual, municipal or other
21 corporation. (Cal. Const. Art. 16 § 6).

22 348. As DWR failed to receive sufficient consideration for the transfer of the Kern
23 Water Bank to KWBA, via KCWA, the transfer constitutes a gift of a thing of value and
24 therefore violates Article 16, § 6 of the California Constitution.

25 349. A contract or agreement which executes an unconstitutional act is void and
26 unenforceable. (Cal. Civ. Code §§ 1550(c) and 1667.)

1 350. Due to its violation of Art § 16, Sec 6, the two-part transfer of the Kern Water
2 Bank is void and unenforceable.

3 **Unconstitutional Abrogation of Statutory and Contractual Duties**

4 351. Article 16, § 1 of the California Constitution and subsequent caselaw state that
5 contracts made by the State and ratified by the voters of the State cannot later be materially
6 modified, even by the Legislature.

7 352. The Burns-Porter Act, enacted by the California Legislature and ratified by the
8 voters of the State, authorized the issuance of bonds to fund the construction and operation of
9 the SWP.

10 353. The authorization, issuance and purchase of the SWP bonds formed a
11 contractual relationship between the bondholders, the taxpayers of the State, and the voters of
12 the State that the Legislature—and therefore DWR—cannot abrogate or materially modify.

13 354. The SWP bonds were authorized, issued, and purchased in reliance on the
14 Contracting Principles and the Burns-Porter Act.

15 355. The model contract for all Long-Term Contracts (that of the Metropolitan Water
16 District of Southern California), validated by the Cal. Supreme Court in *Metropolitan Water*
17 *District v. Marquardt*, (1963) 59 Cal. 2d 159 and based on both the Contracting Principles and
18 the Burns-Porter Act, mandated specific repayment terms and obligations applicable to all
19 SWP Contractors.

20 356. The Monterey Plus Amendments materially change the repayment obligations
21 of the SWP Contractors in a number of ways, including but not limited to the changes to
22 Articles 18, 22, 51, 52, 53, 54, and 55 described in-part above.

23 357. The Monterey Plus Amendments violate Article 45 of the prototype contract
24 validated by the California Supreme Court in *Marquardt*, which provides that all SWP water
25 contracts "shall be substantially uniform with respect to basic terms and conditions."
26
27

1 358. The material changes of the long-term contracts effected by the Monterey Plus
2 Amendments amount to an unconstitutional abrogation of DWR’s statutory and contractual
3 duties. (Cal. Const. Art. 16, § 1)

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, the Petitioners pray for relief as follows:

7 1. For alternative and peremptory writs of mandate, commanding Respondents:

8 (A) to vacate and set aside approval of the Project;

9 (B) to vacate and set aside certification of the Final EIR for the Project;

10 (C) to prepare and certify a legally adequate EIR for the Project;

11 (D) to suspend any and all activity pursuant to Respondents’ approval of the Project
12 that could result in an adverse change or alteration to the physical environment (including the
13 continued operation of the SWP pursuant to the Monterey Plus Amendments and including
14 the transfer and continued operation of the Kern Water Bank by any other entity than the
15 DWR) until Respondents have complied with all requirements of CEQA and all other
16 applicable state and local laws, policies, ordinances, and regulations as are directed by this
17 Court pursuant to Public Resources Code section 21168.9;

18 2. For a stay, temporary restraining order, preliminary injunction, and permanent
19 injunction prohibiting any actions by Respondents, Defendants, and Real Parties in Interest
20 pursuant to Respondents’ approval of the Project and certification of the EIR for the Project
21 until Respondents have fully complied with all requirements of CEQA and all other applicable
22 state and local laws, policies, ordinances, and regulations;

23 3. That the Court examine and inquire into the adoption and the validity of the
24 Monterey Plus Amendments and the Kern Water Bank Exchange Agreement;

25 4. That the Court find that the Monterey Plus Amendments and the Kern Water
26 Bank Exchange Agreement are invalid, illegal, void *ab initio*, voidable, and not binding and
27 are not and will not be in conformity with applicable provisions of law;

1 359. That the court issue an alternative writ of mandamus declaring the two-part
2 transfer contrary to the California Constitution;

3 5. For the imposition of direct or constructive trust conditions in order to remedy
4 the adverse consequences of KCWA's and KWBA's use of the Kern Water Bank and restore
5 lost revenues and accountability to the public and the State of California;

6 6. For costs of the suit;

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

8 8. For such other and further relief as the Court deems just and proper.
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DATED: June ³~~A~~, 2010

By: 

Adam Keats
John Buse
Adam Lazar
CENTER FOR BIOLOGICAL DIVERSITY
Attorneys for Petitioners California Water Impact
Network, California Sportfishing Protection Alliance,
Center for Biological Diversity, Carolee Krieger, and
James Crenshaw

DATED: June ³~~A~~, 2010

By: 

Dante J. Nomellini
NOMELLINI GRILLI & McDANIEL
Attorney for Petitioner Central Delta Water Agency

DATED: June ³~~A~~, 2010

By: _____

John Herrick (SBN 139125)
LAW OFFICE OF JOHN HERRICK
Attorney for Petitioner South Delta Water Agency

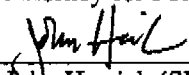
1 DATED: June ³ 2010

By: _____
Adam Keats
John Buse
Adam Lazar
CENTER FOR BIOLOGICAL DIVERSITY
Attorneys for Petitioners California Water Impact
Network, California Sportfishing Protection Alliance,
Center for Biological Diversity, Carolee Krieger, and
James Crenshaw

6 DATED: June ³ 2010

By: _____
Dante J. Nomellini
NOMELLINI GRILLI & McDANIEL
Attorney for Petitioner Central Delta Water Agency

9 DATED: June ³ 2010

By:  _____
John Herrick (SBN 139125)
LAW OFFICE OF JOHN HERRICK
Attorney for Petitioner South Delta Water Agency

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VERIFICATION

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am the Executive Director of California Water Information Network, which is a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on June 2, 2010, at Santa Barbara, California.

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

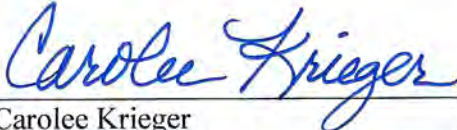

Carolee Krieger
California Water Information Network

EXHIBIT A

PROOF OF SERVICE BY FIRST CLASS MAIL AND ELECTRONIC MAIL

I, Adam F. Keats, declare as follows:

I am employed in the County of San Francisco, State of California. I am over the age of eighteen and my business address is 351 California St., Suite 600, San Francisco, CA 94104.

On June 2, 2010, I served the following document(s) entitled:

NOTICE OF COMMENCEMENT OF ACTION

by delivering by electronic mail to the email addresses below and by placing a copy thereof enclosed in a sealed envelope addressed as follows:

Lester Snow, Director
California Department of Water Resources
PO Box 942836
Sacramento, CA 94836
lester.snow@water.ca.gov

I am readily familiar with my office's practice for collection and processing of correspondence and other materials for mailing with the United States Post Office. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address stated above, following our office's ordinary business practices. On this date, I also transmitted via electronic mail copies of the above document(s).

I also delivered the same document via facsimile on June 3, 2010, to the following facsimile number:
916-653-5028

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Proof of Service was executed on June 3, 2010 at San Francisco County, CA.


Adam F. Keats



June 2, 2010

via First Class Mail and electronic mail

Lester Snow, Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236
lsnow@water.ca.gov

RE: Notice of Commencement of Action

Dear Director Snow,

Pursuant to Cal. Public Resources Code § 21167.5, please take notice that the California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Central Delta Water Agency, South Delta Water Agency, Carolee Krieger and James Crenshaw intend to commence an action in Sacramento Superior Court under the California Environmental Quality Act ("CEQA") against the California Department of Water Resources, concerning the Department's Notice of Determination for the Monterey Plus Amendments on May 5, 2010.

This action will allege that the Department failed to properly follow the procedures and requirements of CEQA in ways including, but not limited to: failure to adequately describe the project's environmental setting, project objectives, relevant provisions (the Amendments), water rights, water transfers, yields, alternatives, and use of analytical models; failure to adequately identify and analyze impacts to biological resources, hydrology, water quality, and growth; and failure to adequately discuss and analyze alternatives and mitigation measures. The action will also contain a "reverse validation action" seeking to invalidate the Monterey Plus Amendments.

Among other things, the Petition will seek to set aside findings that the project satisfies the requirements of CEQA and to enjoin any further implementation of the project until adequate CEQA review is conducted and lawful approvals are obtained.

If you need more information or have any questions please do not hesitate to contact me.

Sincerely,

Adam Keats