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SOMACH SIMMONS & DUNN
A Professional Corporation
KELLEY M. TABER (SBN 184348)
LOUINDA V. LACEY (SBN 275888)
ELLEN M. MOSKAL (SBN 329144)
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: (916) 446-7979
Facsimile: (916) 446-8199
ktaber@somachlaw.com
llacey@somachlaw.com
emoskal@somachlaw.com

Attorneys for Petitioners and Plaintiffs
COUNTY OF SACRAMENTO, SACRAMENTO COUNTY WATER AGENCY, CITY OF STOCKTON, and SACRAMENTO AREA SEWER DISTRICT

**[Additional Counsel Listed on Following Pages]**

**EXEMPT FROM FILING FEES PURSUANT TO GOV. CODE, § 6103**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

COUNTY OF SACRAMENTO, a California county, SACRAMENTO COUNTY WATER AGENCY, a California water district, CITY OF STOCKTON, a charter city, SACRAMENTO AREA SEWER DISTRICT, a California public agency, CENTRAL DELTA WATER AGENCY, a California public agency, and COUNTY OF SAN JOAQUIN, a California county,

Petitioners and Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, a California state agency,

Respondent and Defendant,

DOES 1 through 50,

Real Parties in Interest.

Case No. 25VVM000030

[Deemed Verified Pursuant to Code Civ. Proc., § 446]

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

(Code Civ. Proc., §§ 525 et seq., 1060, 1085, 1094.5; Wat. Code, § 85000 et seq.; Cal. Const., Art. 1, § 7)

*Exhibits in Support Volumes 1 and 2 Filed Concurrently Herewith*

LISA A. TRAVIS (SBN 184793)
County Counsel
WILLIAM C. BURKE (SBN 213279)
Deputy County Counsel
COUNTY OF SACRAMENTO
700 H Street, Suite 2650
Sacramento, CA 95814
Telephone: (916) 874-5544
Facsimile: (916)874-8207
burkew@saccounty.gov
*Attorneys for Petitioners and Plaintiffs County of Sacramento and Sacramento County Water Agency*

LORI ASUNCION (SBN 238240)
City Attorney
CITY OF STOCKTON
425 N. El Dorado Street
Stockton, CA 95202-1951
Telephone: (209) 937-8333
Facsimile: (209) 937-8898
lori.asuncion@stocktonca.gov
*Attorneys for Petitioner and Plaintiff City of Stockton*

LISA A. TRAVIS (SBN 184793)
County Counsel
DIANE E. MCELHERN (SBN 167460)
Deputy County Counsel
COUNTY OF SACRAMENTO
700 H Street, Suite 2650
Sacramento, CA 95814
Telephone: (916) 874-5544
Facsimile: (916)874-8207
mcelhernd@saccounty.gov
*Attorneys for Petitioner and Plaintiff Sacramento Area Sewer District*

NOMELLINI, GRILLI & McDANIEL
LAW OFFICE
Dante John Nomellini, Jr. (SBN 186072)
235 East Weber Avenue
Stockton, CA 95202
Telephone: (209) 465-5883
Facsimile: (209) 465-3956
dantejr@pacbell.net
*Attorney for Petitioner and Plaintiff Central Delta Water Agency*

FREEMAN FIRM
A Professional Law Corporation
Thomas H. Keeling (SBN 114979)
1818 Grand Canal Blvd., Suite 4
Stockton, CA 95207
Telephone: (209) 474-1818
Facsimile: (209) 474-1245
tkeeling@freemanfirm.com

SOLURI MESERVE
A LAW CORPORATION
Osha R. Meserve (SBN 204240)
510 8th Street
Sacramento, CA 95814
Telephone: (916) 455-7300
Facsimile: (916) 244-7300
osha@semlawyers.com

*Attorneys for Petitioners and Plaintiffs County of San Joaquin and Central Delta Water Agency*

EDWARD JAMES KIERNAN (SBN 189243)
County Counsel
KIRNPREET KAUR VIRK (SBN 221369)
Deputy County Counsel
Office of the County Counsel
COUNTY OF SAN JOAQUIN
44 N San Joaquin Street, Suite 679
Stockton, CA 95202
Telephone: (209) 468-2980
Facsimile: (209) 468-0315
ekiernan@sjgov.org
kvirk@sjgov.org
*Attorneys for Petitioner and Plaintiff*
*County of San Joaquin*

Petitioners and Plaintiffs County of Sacramento, Sacramento County Water Agency, City of Stockton, Sacramento Area Sewer District, Central Delta Water Agency, and County of San Joaquin (collectively, "Petitioners") allege:

## INTRODUCTION AND LEGAL BACKGROUND

1. The Sacramento-San Joaquin Delta (Delta)[1] is the largest estuary on the west coast of the Americas. The Delta supports some of the most productive farmland in the world, wineries and other agriculture-related enterprises, a sports fishing and recreation industry, many cities and communities, and hundreds of aquatic and terrestrial species (some of which are unique to the Delta and at risk of extinction). Rich in history and culture, the Delta is also a core component of California's water system from which water flows to rural and urban users throughout California. The Delta is a critical component of the San Francisco Bay-Delta Estuary.

2. Finding that "the Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable" (Wat. Code, § 85001), the California Legislature passed the Sacramento-San Joaquin Delta Reform Act of 2009 (Act [Wat. Code, § 85000 et. seq.]). The Act aptly describes the Delta as "a critically important natural resource for California and the nation" which "serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America." (Wat. Code, § 85002.)

3. The Act resulted in formation of the California Delta Stewardship Council ("Council" or "Respondent"). (Wat. Code, § 85200 et seq.) The Council is an independent agency of the state. (*Id.*, subd. (a).) Chief among the Council's tasks is preparation of a comprehensive long-term management plan for the Delta – the Delta Plan.[2] The Delta Plan is a legally enforceable, comprehensive, long-term management plan for the Delta that furthers coequal goals to: (a) secure a reliable water supply for California; and (b) protect, restore, and enhance the Delta ecosystem and the fish, wildlife, and recreation it supports. (*Delta Stewardship*

[1] The term "Delta" in the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.) is defined to include the definition in Water Code section 12220 "and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code." (Wat. Code, § 85058.)

[2] The Delta Plan contains 14 regulatory policies, as well as 73 non-binding recommendations.



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*Council Cases* (2020) 48 Cal.App.5th 1014, 1028 (*DSCC*).) The policies of the Delta Plan are regulatory in nature and are "enforced by the Council's appellate authority and oversight over covered actions." (*Id.* at p. 1042.)

4. The Act defines a "covered action" as "a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code" under the California Environmental Quality Act (CEQA [Pub. Resources Code, § 21000 et seq.]) that also meets the following four conditions:

> (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh[;]
>
> (2) Will be carried out, approved, or funded by the state or a local public agency[;]
>
> (3) Is covered by one or more provisions of the Delta Plan[; and]
>
> (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(Wat. Code, § 85057.5, subd. (a)(1)–(4); Cal. Code Regs., tit. 23, § 5001, subd. (k)(1).)

5. A CEQA project is defined expansively as any activity "carried out directly or indirectly by a public agency" and "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment…." (*Make UC a Good Neighbor v. Regents of University of California* (2024) 16 Cal.5th 43, 57; Pub. Resources Code, § 21065.) For over five decades, a project under CEQA has been required to address the "whole of an action." (See, e.g., *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 803.) "[T]he broad scope of the term 'project' prevents 'the fallacy of division,' which is the 'overlooking [of a project's] cumulative impact by separately focusing on isolated parts of the whole.' [Citation.] Environmental considerations may not be submerged by chopping a single CEQA project into smaller parts for piecemeal assessment." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271.)

6. The Act identifies various actions that do not qualify as a "covered action," including, among other things, a regulatory action of a state agency, routine maintenance and operation of the Central Valley Project and State Water Project (SWP), and routine maintenance



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and operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency. (Wat. Code, § 85057.5, subd. (b).) Like in the definition of "covered action," the Legislature included cross-references to CEQA in several exemptions from the definition of "covered action." (*Id*., subds. (b)(6)(B), (b)(7)(A), (b)(8)(C).)

7. When the definition of covered action is met, the Act requires any state or local public agency that proposes to undertake the covered action to prepare a written certification of consistency "prior to initiating the implementation of that covered action," with detailed findings as to whether the covered action is consistent with the Delta Plan, and to submit that certification to the Council. (Wat. Code, § 85225.)

8. The Council developed a "Covered Actions Checklist" (Checklist) that is available to state and local agencies to assist the agencies in determining whether to file a certification of consistency. (See https://coveredactions.deltacouncil.ca.gov/Files/Covered-Actions-Checklist.pdf, last accessed Feb. 24, 2025.) The Checklist states that if a plan, project, or program is exempt from the definition of "covered action" – and accordingly exempt from the Council's regulatory authority – no further steps are required, and no certification of consistency needs to be filed.

9. The Council's regulations further provide that the requirement to provide detailed findings to establish consistency with the Delta Plan "only applies after a 'proposed action' has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies...." (Cal. Code Regs., tit. 23, § 5002, subd. (a).)

10. Once a certification of consistency is filed, "[a]ny person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals … may file an appeal" with the Council. (Wat. Code, § 85225.10, subd. (a).)

11. If an appeal is filed in response to the submission of a certification of consistency, the Council must hear the appeal within 60 days of the date of the filing of the appeal, unless the Council "determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue." (Wat. Code, § 85225.20.) In other words, the Council need not



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hold a hearing when it determines that it lacks jurisdiction to determine the issues raised in an appeal.

12. "In contrast to how many other governmental plans are implemented, the Council does *not* exercise direct review and approval authority over covered actions to determine their consistency with the regulatory policies in the Delta Plan. Instead, State or local agencies self-certify Delta Plan consistency, and the Council serves as an appellate body for those determinations," if a person appeals the consistency determination. (*DSCC*, *supra*, 48 Cal.App.5th at p. 1042, internal quotes omitted; see also *id.* at p. 1044.) As to an agency's self-certification, the Council's regulations provide:

> A State or local public agency that proposes to carry out, approve, or fund a plan, program, or project that may be subject to this Chapter must determine whether that proposed plan, program, or project is a covered action. That determination, which is subject to judicial review, must be reasonable, made in good faith, and consistent with the Delta Reform Act....

(Cal. Code Regs., tit. 23, § 5001, subd. (k)(3).)

13. Under the Council's regulations, the Council is required to "conduct a hearing on an appeal in a manner deemed most suitable to ensure fundamental fairness to all parties concerned and with a view toward securing all relevant information and material necessary to render a decision without unreasonable delay." (Cal. Code Regs., tit. 23, § 5027, subd. (b).)

14. The Council is required to make its decision on the appeal within 60 days of the hearing. (Wat. Code, § 85225.20.) The Council need only "make specific written findings" if it denies an appeal or remands the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. (*Id.*, § 85225.25.) The Council thus need not make specific written findings when it dismisses an appeal for lack of jurisdiction.

## FACTUAL AND PROCEDURAL BACKGROUND

15. On December 21, 2023, the California Department of Water Resources (DWR) approved the Delta Conveyance Project ("DCP" or "Project") and certified its final environmental impact report (FEIR). The DCP is intended to be one of the State's largest public works projects



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and includes the construction of new water conveyance facilities with two new diversion structures on the Sacramento River in the north Delta, each a quarter mile long, construction of a 39-foot diameter, 45-mile-long conveyance tunnel running underneath the Delta and ancillary facilities, and new project operations for the SWP.

16. DWR's notice of determination for the DCP (attached hereto as Exhibit A [Council Administrative Record (AR) DCP.A.1.00001]) states the Project will include the following five "key components and actions":

> [1] Two intake facilities along the Sacramento River in the north Delta near the community of Hood with on-bank intake structures that would include fish screens.
>
> [2] A concrete-lined tunnel and associated vertical tunnel shafts to convey water from the intakes … to the Bethany Reservoir Pumping Plant and Surge Basin at a location south of the existing SWP Clifton Court Forebay.
>
> [3] A Bethany Reservoir Pumping Plant to lift the water from inside the tunnel below ground into the Bethany Reservoir Aqueduct for conveyance to the Bethany Reservoir Discharge Structure and into the existing Bethany Reservoir.
>
> [4] Other ancillary facilities to support construction and operation of the conveyance facilities….
>
> [5] Efforts to identify geotechnical, hydrogeologic, agronomic and other field conditions that will guide appropriate construction methods and monitoring programs for final engineering design and construction.

(Exh. A, Attach. 2.)

17. Chapter 3 of the FEIR (attached hereto as Exhibit B [AR DCP.D1.1.00010]) also discusses geotechnical activities that form part of the Project. In the introduction section of FEIR Chapter 3, DWR explained: "Section 3.15, *Field Investigations*, describes past and future efforts to identify geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate construction methods and monitoring programs for final engineering design and construction." (Exh. B at 3-2:22-26.) Section 3.15 identifies and sets forth the specifics as to past and future geotechnical activities to be undertaken as part of the Project. (*Id*., pp. 3-134 – 3-141.) Section 3.15 states the work "related to geotechnical, agronomic testing, and construction test projects (geotechnical investigations) would occur during the preconstruction and construction

periods following adoption of the Final EIR, identification of an approved project footprint, and acquisition of all required permits." (*Id.* at 3-134:18-21.)

18. Petitioners filed litigation in the Sacramento County Superior Court to challenge DWR's approval of the DCP and certification of the DCP FEIR. (See County of Sacramento and Sacramento County Water Agency, Case No. 24WM000014; City of Stockton, Case No. 24WM000009; Sacramento Area Sewer District, Case No. 24WM000012; County of San Joaquin and Central Delta Water Agency, Case No. 24WM000010.) Petitioners' petitions and complaints were consolidated with other related petitions and complaints under lead case *Tulare Lake Basin Water Storage District v. California Department of Water Resources*, Case No. 24WM000006.

19. After learning that DWR intended to undertake geotechnical activities described in the DCP FEIR without first filing a certification of consistency for the DCP with the Council, Petitioners – and other petitioners in the related cases – filed motions for a preliminary injunction in Sacramento County Superior Court. Petitioners argued the geotechnical activities were an inextricable part of the Project, as discussed in the FEIR, and requested that the Court enjoin DWR from initiating implementation of the Project until DWR files a certification of consistency with the Council in accordance with Water Code section 85225.

20. DWR opposed the motions for preliminary injunction. In support of its opposition, DWR filed the Declaration of Jeff Henderson, which is attached hereto as Exhibit C (AR DCP.X2.1.00038, pp. 15-17). In his declaration, Mr. Henderson declared he is the Deputy Executive Officer for the Planning and Performance Division of the Council. (Exh. C, p. 2.)

21. On June 20, 2024, the Court issued a preliminary injunction enjoining DWR from undertaking further geotechnical investigations implementing the DCP until DWR files a certification of consistency with the Council as required under the Act. The Court's preliminary injunction ruling is attached hereto as Exhibit D (AR DCP.X2.1.00003). The Court explained that DWR defined the DCP (i.e., the project) in the FEIR to include the geotechnical work and further described the geotechnical work "as a 'key component' of the project." (Exh. D, p. 4.) The Court accordingly held: "Because the geotechnical work is part of the 'project' within the

meaning of CEQA, it is necessarily part of a 'covered action' within the meaning of Water Code section 85225." (*Ibid.*) DWR appealed the preliminary injunction ruling, which is currently pending before the Third District Court of Appeal (Case No. C101878). DWR filed a petition for writ of supersedeas in the Third District Court of Appeal to stay enforcement of the preliminary injunction ruling during the pendency of the appeal, which the appellate court denied.

22. On July 24, 2024, DWR filed an ex parte application in the Court to modify or stay the preliminary injunction ruling. DWR's memorandum of points and authorities in support of its ex parte application is attached hereto as Exhibit E. DWR stated that if the preliminary injunction were modified or stayed it would "voluntarily limit itself to performing substantially less work than what is outlined in Chapter 3 of the EIR," which DWR referred to as the "2024-2026 Proposed Geotechnical Activities" (Activities). (Exh. E at 8:25-28.) The Court denied the ex parte application. The Court's ruling is attached hereto as Exhibit F. The Court wrote, "the fact that the proposed geotechnical investigations will be scaled down does not alter the principal reasons the Court granted the injunction." (Exh. F, p. 3.) The Court explained:

> The geotechnical investigations are part of the DCP as defined in Chapter 3 of the FEIR, which means they are part of the "covered action" for purposes of [Water Code] section 85225. [Citation.] And [Water Code] section 85225 requires certification "prior to initiating the implementation of that covered action." The scaled-down geotechnical work is still part of "covered action" under [Water Code] section 85225, which means [DWR] must still complete the certification process prior to initiating it.

(*Id.*, pp. 3-4.)

23. On October 8, 2024, DWR filed a certification of consistency for the Activities described in the DCP FEIR (Certification). The Certification is attached hereto as Exhibit G (AR DCP.X2.1.00020). DWR completed the Checklist in considering whether to file the Certification (Activities Checklist). (Exh. G, pdf pp. 323-331.) In the Activities Checklist, DWR selected "Yes" in response to the question of whether the plan, project, or program is exempt from the definition of covered action. (*Id.*, pdf p. 324.) In its conclusion, DWR stated the Activities are "consistent with the *Delta Plan*" because they "are not covered by one or more of the regulatory Delta Plan policies contained in Article 3 provisions of the Delta Stewardship Council's regulations." (*Id.*, pdf p. 320 [Certification p. 5-1].)

24. In its written support of its Certification submitted to the Council (attached hereto as Exhibit H), DWR asserted that it had "participated in separate early consultation with [Council] staff relating to both the 2024-2026 Proposed Geotechnical Activities and the Delta Conveyance Project to address, among other topics, the 'appropriate timing for filing the Certification of Consistency' for each proposed action." (Exh. H, p. 2-4.) Neither Petitioners nor the public were included in the early consultation meetings, and neither DWR nor the Council provided any information regarding the early consultation discussions during the Certification appeal proceeding.

25. On November 7, 2024, four appellant groups filed appeals to challenge the Certification. Each of the Petitioners was an appellant in the Certification proceeding. Attached hereto as Exhibits I (C20242-A3) and J (C20243-A4) are the appeals filed by Petitioners. Petitioners, as one ground for their appeals, specifically argued that the Activities do not constitute a "covered action" within the meaning of the Act.

26. The Council required the appellants to file their written submissions by November 27, 2024. The Council further required DWR's responsive written submission, up to 60 pages in length, to be filed by Friday, December 13, 2024, and that all PowerPoint slides in preparation for the public hearing be filed by the following Monday, December 16, 2024, at 5:00 p.m. Some appellants requested an extension of time to submit PowerPoint slides, noting the very limited time for review of DWR's written submission. The Council denied the extension request.

27. The Council held a public hearing on the appeals on December 19, 2024. During the public hearing, Council staff favorably described the DCP and the Activities using wording provided in DWR's submissions, and failed to fairly summarize the allegations of the appellants. Appellants (including Petitioners herein) attended and orally argued at the hearing, stating, among other things, that the Certification was a legal nullity because DWR self-certified that the Activities were not a covered action under the Act and certifications of consistency are only filed for covered actions. Following the hearing, Council staff released a draft determination on the appeals for the Council's consideration.

28. The Council adopted the draft determination by Resolution 2025-01 on January 23, 2025 (January Hearing), after hearing and considering public comments. Council Decision No. D20242 (Decision), adopted at the January Hearing, is attached hereto as Exhibit K. Appellants appeared and orally argued at the January Hearing, at which appellants were provided no additional time for comment beyond the three minutes provided to members of the public.

29. The Council dismissed the appeals of the Certification for lack of jurisdiction. (Exh. K, p. 32.) In the Decision, the Council explained that it lacked jurisdiction over the appeals because the Activities do not constitute a covered action within the meaning of the Act. (*Id.*, pp. 21-22, 32.) The Council found the Activities are not a "covered action" because, as DWR had expressly acknowledged and stated, no Delta Plan regulatory policy applies to the proposed geotechnical activities. (*Id.*, p. 32.) The Council directed DWR to "file a certification of consistency for the Delta Conveyance Project" in the future. (*Ibid.*)

30. Even though the Council found it had no jurisdiction over the appeals, the Council nonetheless presented its opinion and conclusion in the Decision that, notwithstanding the Court's statutory interpretation to the contrary, the Legislature did not intend in Water Code section 85057.5 to incorporate CEQA's "whole of an action" anti-piecemealing requirement when the Legislature defined a "covered action" under the Act as a "'project' as defined pursuant to Section 21065 of the Public Resources Code" under CEQA. (Exh. K, p. 19. ) The Council wrote that DWR "did not necessarily violate the Delta Reform Act by submitting a certification of consistency for the [Activities] separate from other activities described in the Final EIR for the Delta Conveyance Project." (Exh. K, p. 3.) Under the Council's interpretation of the Act, a state or local agency may piecemeal its Act certifications of consistency if such agency, reasonably and in good faith (Cal. Code Regs., tit. 23, § 5001, subd. (k)(3)) – which is presumed – determines a certification pertains to an "activity" that would cause a "'direct physical change' or 'reasonably foreseeable indirect physical change' in the environment" and meets the four other criteria set forth in Water Code section 85057.5, subdivision (a). (Exh. K, pp. 15-18.) At the January Hearing, at least one Council member expressed the belief that the Decision constitutes legal precedent applicable to future certifications of consistency.

31. Petitioners seek a writ of mandate to set aside the Council's Decision. Petitioners bring this action under the Act and on other grounds as specified herein to challenge the Council's interpretation of the Act in the Decision. The Council prejudicially abused its discretion, failed to proceed in the manner required by law, and violated the Act when, despite its lack of jurisdiction, it interpreted Water Code Section 85057.5's "covered action" definition to not require submission of consistency certifications for the "whole of an action" and to allow piecemealing of a covered action. The Decision is contrary to law and the product of a result-driven, unfair, and biased process orchestrated by the Council and DWR to provide the Council with an opportunity to set forth its interpretation of the definition of "covered action" in Water Code section 85057.5 in contrast to the Court's preliminary injunction ruling.

32. Petitioners seek declaratory relief on the legal interpretation of Water Code section 85057.5 and the Council's failure to provide a fair and unbiased hearing in its consistency appeal process. Petitioners seek a stay of the Decision and may seek a preliminary injunction to preclude application of the Decision during the pendency of this litigation.

## PARTIES

33. Petitioner County of Sacramento is a political subdivision of the State of California and has the authority to sue and be sued. The County of Sacramento is governed by a five-member Board of Supervisors. A large portion of the Activities at issue and other components of the DCP would be physically located within the County of Sacramento's boundaries. The construction, operation, and maintenance of the DCP, of which the Activities are an integral part, would result in irreparable adverse impacts to the County's resources and its residents. The County of Sacramento is and will be directly and indirectly adversely impacted by the Council's Decision.

34. Petitioner Sacramento County Water Agency (SCWA) is a California water agency formed in 1952 by the Sacramento County Water Agency Act (Agency Act), which is a special legislative act of the State of California. (See Uncod. Water Deer. Act 1020 (1952 ch. 10) §§ 1-55.) SCWA is governed by a five-member Board of Directors, and the five members of the County's Board of Supervisors are the ex officio members of the SCWA Board of Directors.

SCWA, under the Agency Act, is charged in part with making water available for the beneficial use of lands and inhabitants, and producing, storing, transmitting, and distributing water. SCWA is the water supplier for the Town of Hood, which relies entirely upon local groundwater supply. The two intakes for the DCP are proposed to be located near the Town of Hood. SCWA, as the primary water supplier for the growth areas of the County, plays an important role in the environmental and economic health of the County. Water supply is closely tied to development, and SCWA continues to place a high priority on identifying and developing water supplies to support the region's economic growth. SCWA is and will be directly and indirectly adversely impacted by the Council's Decision.

35. Petitioner City of Stockton (Stockton) is a political subdivision of the State of California and has the authority to sue and be sued. Founded in 1849 and incorporated in 1850, Stockton is one of the oldest incorporated cities in California. Stockton is governed by a seven-member City Council, including six Councilmembers and the Mayor. Stockton's Municipal Utilities Department provides potable drinking water to more than 48,000 residential, commercial, and industrial customers, with a service population of 182,000. This accounts for approximately 55 percent of the Municipal and Industrial potable water demand of the Stockton Metropolitan Area. In addition to providing potable drinking water, Stockton owns, operates, and maintains wastewater collection and treatment for the entire Stockton Metropolitan Area under a National Pollution Discharge Elimination System permit issued by the Central Valley Regional Water Quality Control Board. The construction, operation, and maintenance of the DCP, of which the Activities are an integral part, would result in irreparable adverse impacts to Stockton's resources and its residents. Stockton is and will be directly and indirectly adversely impacted by the Council's Decision.

36. Petitioner Sacramento Area Sewer District (SacSewer) is a public agency formed and existing under division 5, part 3, section 4700 et seq. of the Health and Safety Code. SacSewer is governed by a Board of Directors composed of the five members of the Sacramento County Board of Supervisors, a member of the Yolo County Board of Supervisors, five members from the City Council of the City of Sacramento, two members from the City Council of the City

of Elk Grove, and one Councilmember from each of the Cities of Citrus Heights, Folsom, Rancho Cordova, and West Sacramento. Since 1978, SacSewer has owned and operated a wastewater treatment plant located in Elk Grove, California, that was known as the Sacramento Regional Wastewater Treatment Plant. As of May 19, 2023, the treatment plant is known as the Echo Water Resource Recovery Facility or "Echo Water Facility," reflecting SacSewer's $1.7 billion investment in promoting responsible reuse of wastewater consistent with the State's policy to promote water recycling. SacSewer serves approximately 1.6 million customers within its service area. The construction, operation, and maintenance of the DCP, of which the Activities are an integral part, would result in irreparable adverse impacts to water quality and SacSewer's operation of its wastewater treatment facilities which discharge treated effluent to the Sacramento River. The DCP would also adversely affect SacSewer's Harvest Water Project, a highly regarded recycled water program. SacSewer is and will be directly and indirectly adversely impacted by the Council's Decision.

37. Petitioner Central Delta Water Agency (CDWA) is a political subdivision of the State of California created by the California Legislature under the Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (CDWA Act [Uncod. Water Deer. Act 140, § 1.1 et seq.]), by the provisions of which CDWA came into existence in January 1974. CDWA's boundaries are specified in CDWA Act section 9.1, and encompass approximately 120,000 acres located entirely within the western portion of San Joaquin County and the "Sacramento-San Joaquin Delta" as defined in Water Code section 12220. While the lands within CDWA are primarily devoted to agriculture, those lands are also devoted to numerous other uses, including recreational, wildlife habitat, open space, residential, commercial, and institutional uses. CDWA is empowered to "sue and be sued" and take all reasonable and lawful actions, including the pursuit of legislative and legal action, for their general purposes to either (a) protect the water supply of the lands within CDWA against intrusion of ocean salinity, or (b) assure that lands within CDWA have a dependable supply of suitable quality water sufficient to meet present and future needs. CDWA may also undertake activities to assist landowners and local districts within the agency in reclamation and flood control matters. (See CDWA Act, §§ 4.3, subd. (b) & 4.1,

subd. (a)(1)-(2), respectively.) CDWA may assist landowners, districts, and water right holders within its boundaries in the protection of vested water rights, and may represent the interests of those parties in water right and related proceedings before the State Water Resources Control Board and the courts of this state and the United States to carry out agency purposes. (See *id.*, § 4.2, subd. (b).) CDWA's special statutory interests, as well as the interests of landowners and local districts within its boundaries, are and will be directly and indirectly adversely impacted by the Council's Decision.

38. Petitioner County of San Joaquin (San Joaquin County) is a political subdivision of the State of California. Two-thirds of the legal Delta lies within San Joaquin County, and the Delta comprises over one-third of San Joaquin County's total area. Approximately 167,000 people live in the San Joaquin County portion of the Delta, and those cities and communities rely significantly on the Delta for their water supplies. The Delta supports a $5.2 billion annual agricultural industry, and approximately 40 percent of those farms are located in San Joaquin County. Much of the Delta's $750 million recreational economy is centered in San Joaquin County, encompassing, among other enterprises and activities, many privately-owned marinas; public and private boat launch facilities; recreational facilities for fishing, tent camping, RV camping, hiking and picnicking; and lodging establishments and restaurants that contribute to the Delta's recreational economy. Large portions of the Activities at issue and other components of the DCP would be physically located within San Joaquin County's boundaries. The construction, operation, and maintenance of the DCP, of which the proposed Geotech Activities are an integral part, would result in irreparable adverse impacts to the water quality and water supply vital to San Joaquin County agriculture and other Delta-dependent businesses (including boating and related recreational businesses and agritourism), reclamation and flood control facilities located in San Joaquin County, and San Joaquin County's environmental justice communities. San Joaquin County is and will be directly and indirectly adversely impacted by the Council's Decision.

39. Respondent California Delta Stewardship Council is and at all times mentioned herein was a public agency of the State of California, formed and existing under the California Water Code (Wat. Code, § 85200 et seq.), with its principal place of business in the County of

Sacramento. The Council is, and at all times relevant herein was, charged with the faithful performance of all applicable laws, including the Act.

40. Does 1 to 50, inclusive, are persons or entities who may have, or may claim to have, interest in the Project or the Decision and have a legal interest in the outcome of these proceedings, the exact nature of which is presently unknown to Petitioners. The true names or capacities, whether individual, corporate, associate, or otherwise, of Does 1 to 50, inclusive, are unknown to Petitioners, who therefore sue these parties by fictitious names. If necessary, Petitioners will request leave to amend this Petition to show their true names and capacities when ascertained.

## JURISDICTION AND VENUE

41. This Court has jurisdiction over this action pursuant to Code of Civil Procedure sections 525 et seq., 1060, 1085, and 1094.5, and Water Code section 85000 et seq. This Court has the authority to issue a writ of mandate under Code of Civil Procedure section 1085 and/or 1094.5 directing the Council to set aside its Decision and enter a new decision dismissing the appeals for lack of jurisdiction because the Activities do not constitute a covered action. This Court also has authority under Code of Civil Procedure section 1060 to issue a declaration regarding the meaning of Water Code section 85057.5 and the legality of the Council's proceedings, and has authority under Code of Civil Procedure section 525 et seq. to issue the injunctions requested herein.

42. Venue properly lies in the Sacramento County Superior Court pursuant to Code of Civil Procedure sections 393, 395, and 401 because the Council is a state agency, its principal offices are located Sacramento, and the Attorney General – who will be representing the Council in this action – has an office in Sacramento. Further, Sacramento County is where many of the Project's environmental impacts would occur and where the Project is proposed to be constructed.

## STANDING

43. As described herein, Petitioners have standing to assert the claims raised in this Petition because they have a direct and beneficial interest in the correct legal interpretation of, and the Council's compliance with, the Act. Petitioners are directly and adversely affected by the

Council's Decision because the Council's interpretation of the Act is contrary to law and would allow piecemealing of consistency determinations as to the DCP, including as to the Activities at issue as well as other covered actions. Petitioners are also directly and adversely affected by the Council's abuse of discretion and failure to proceed in the manner required by law because the Council failed to conduct a fair and unbiased hearing.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

44. As explained herein, Petitioners actively participated throughout the administrative process that led to the Council's Decision regarding DWR's Certification for the Activities. Petitioners appealed the Certification and participated in the Council's public hearings on the appeals on December 19, 2024, and during the January Hearing.

45. Petitioners have fully exhausted all administrative remedies in that the Decision is final and no further administrative appeal procedures are provided by state law or in the Council's regulations.

**STATUTE OF LIMITATIONS**

46. Petitioners are unaware of the specific applicable statute of limitations pertaining to judicial review of an appellate determination issued by the Council. There is no specific limitations period set forth in the Act. In an abundance of caution, Petitioners have filed this petition and complaint within 30 days of the Council's Decision to the extent the statute of limitations under Government Code section 11523 applies. Petitioners are also well within the 90-day limitations period under Code of Civil Procedure section 1094.6. Further, to the extent the "catch-all" provision under Code of Civil Procedure section 343 applies, Petitioners have complied with the four-year catch-all limitations period. Accordingly, Petitioners' claims are timely.

**ATTORNEY FEES**

47. Petitioners are entitled to receive attorney fees from the Council pursuant to Code of Civil Procedure section 1021.5 because this action involves the enforcement of important rights affecting the public interest. This action will, among other things, confer a significant

benefit on the general public and a large class of persons, and the necessity and burden of enforcement against a public entity makes an award of fees appropriate.

**INADEQUATE REMEDY AT LAW – STAY OR INJUNCTION**

48. Pursuant to Code of Civil Procedure sections 1085 and 1094.5, the Court may stay or enjoin the operation of any administrative decision or order involved in the Council's proceedings.

49. In light of the Council's misinterpretation of the Act and the Council's apparent belief that the Decision constitutes legal precedent, the Decision will result in irreparable harm. Specifically, the Decision would allow DWR to piecemeal the certifications of consistency for the DCP, and allow other agencies to piecemeal certifications of consistency for other projects that are covered actions, thereby precluding Council consideration of the entire covered action in one proceeding. This erroneous statutory interpretation would be to the detriment of residents of the Delta within the jurisdiction of Petitioners, as well as businesses, water users, and members of the public generally.

50. The Council's Decision constitutes a harm to the public's right to information. In *Tulare Lake*, the court explained that an agency's failure to comply with CEQA is harmful to the public generally because the public has an interest in informed decisionmaking about projects with potentially significant environmental effects. (*Tulare Lake Canal Co. v. Stratford Public Utility Dist.* (2023) 92 Cal.App.5th 380, 390.) The same is true regarding violations of the Act. The public has an interest in an Council's informed decisionmaking about covered actions that may cause harm in and to the Delta. The requirement that an agency file a certification of consistency for a covered action establishes a public process. It further allows the public the opportunity to review the information relied upon by the agency in determining whether the covered action is consistent with the Delta Plan and its coequal goals, and then allows the public to appeal that determination to the Council.

51. Petitioners lack an adequate remedy at law for the irreparable harm that the Council's Decision will cause if it were to constitute a valid decision with precedential value because the interpretation of the meaning of "covered action" under the Act is contrary to the

plain meaning of the statute and the Legislature's intent. The Council's Decision further creates ambiguity and uncertainty as to what activities constitute "the DCP" for purposes of a future filing of a certification of consistency if the DCP is not the same as the "project" DWR defined under CEQA, as specified in Water Code section 85057.5. Therefore, a stay or injunction should be issued to restrain any impact of the Council's Decision until this Court has had an opportunity to rule on the legal issues presented herein.

52. A stay or an injunction of the Council's Decision would not be against the public interest because the Council's interpretation of the Act is in direct conflict with the statute's plain language and legislative intent, as the Court already explained in its preliminary injunction ruling discussed herein. The Council will not be harmed by a stay or an injunction.

**FIRST CAUSE OF ACTION**

***Writ of Mandate: Unlawful Interpretation of the Act***

***Code of Civil Procedure §§ 1085 & 1094.5***

53. Petitioners reallege and incorporate by reference each and every paragraph and allegation set forth above.

54. The Council's Decision constitutes a prejudicial abuse of discretion because the Council failed to proceed in the manner required by law and its actions are not supported by substantial evidence when it interpreted the term "covered action" in Water Code section 85057.5. The Council unlawfully interpreted Water Code section 85057.5, subdivision (a), when it determined CEQA's "whole of an action" requirement, which does not permit piecemealing, was not incorporated into the phrase "project as defined pursuant to Section 21065 of the Public Resources Code" as part of the "covered action" definition. The Council's interpretation was arbitrary, capricious, and contrary to law.

55. The Council's Decision is further inadequate, arbitrary, and capricious because the Council has created ambiguity as to what constitutes "the DCP" for a future certification of consistency (and what constitutes a "covered action" for other projects). The Council's decision is arbitrary and capricious in that the Council directed agencies to "consider the 'whole' of a project when making a covered action determination," but indicated an agency may nonetheless

sever "discrete activities" of the whole of the project occurring outside the legal boundaries of the Delta for purposes of filing a certification of consistency. (Exh. K, pp. 16-17.)

56. The Council violated the Act by issuing a Decision inconsistent with the Act's plain language, substituting its own erroneous definition of "covered action" the definition provided in the statute, and failing to provide clear, stable, and consistent guidance as to what activities constitute part of a covered action, such as the DCP. Petitioners and the public have no certainty as to how the DCP will be described and defined for the certification of consistency under the Act, or how many activities described in the DCP description under CEQA may impermissibly be separated from the whole DCP to further implement the DCP without the filing of certifications of consistency. Without the filing of a certification of consistency for the entire DCP, Petitioners and the public may have no notice of which DCP portions are being implemented by DWR in order to raise concerns and/or claims pertaining to potential violations of the Act.

57. For the foregoing reasons, the Council failed to act in the manner required by law and prejudicially abused its discretion when it issued the Decision. Petitioners thus pray for a writ of mandate to issue as specified more fully below.

**SECOND CAUSE OF ACTION**

***Declaratory Relief: Unlawful Interpretation of the Act***

***Code of Civil Procedure § 1060***

58. Petitioners reallege and incorporate by reference each and every paragraph and allegation set forth above.

59. A controversy exists between the Council and Petitioners regarding the meaning of the definition "covered action" in Water Code section 85057.5. The Council has adopted the Decision that states the definition of "covered action" does not incorporate CEQA's "whole of an action" requirement, which does not permit piecemealing of covered actions, whereas Petitioners assert that it does. Petitioners assert the Council's interpretation of the "covered action" definition in the Decision is unlawful and creates ambiguity as to what constitutes "the DCP" for a future certification of consistency (and what constitutes a "covered action" for other projects).

60. Petitioners desire and are entitled to a judicial declaration regarding the meaning of "covered action" under Water Code section 85057.5 and that the Decision is unlawful because it adopts a contrary interpretation. Petitioners thus pray for declarations as specified more fully below.

**THIRD CAUSE OF ACTION**

***Writ of Mandate: Deprivation of a Fair and Unbiased Appellate Process and Hearing***

***Cal. Const., Art. 1, § 7; Code of Civil Procedure §§ 1085 & 1094.5***

61. Petitioners reallege and incorporate by reference each and every paragraph and allegation set forth above.

62. Under California law, project opponents must be given a fair hearing. This requires an opportunity to be heard "at a meaningful time and in a meaningful manner." Further, one court has opined that due process "contemplates a meaningful opportunity to present evidence contrary [to an application] and a meaningful consideration of that evidence." (*Natural Resources Defense Council v. Fish & Game Com*. (1994) 28 Cal.App.4th 1104, 1126.)

63. The Council failed to ensure that Petitioners received a fair appellate process/hearing, and instead engaged in a results-oriented process to adopt a decision that would allow DWR to piecemeal the certifications of consistency for the DCP when the Council had no jurisdiction to decide the appeals in the first instance. The Council's acts of unfairness and bias include, but were not limited to, the following:

a. DWR and the Council engaged in early consultation over the course of several years regarding the Activities and the DCP but excluded the public from those discussions and provided no information in that regard to the public or Petitioners during the appeal proceeding regarding the Decision;

b. A Council staff member who participated in the appeal of the Certification previously filed a declaration in support of DWR's opposition to the preliminary injunction in this Court;

c. Had DWR and the Council engaged in good faith early consultations regarding the Activities, the Certification would not have been filed because the Council

agreed with DWR that the Activities do not constitute a "covered action" as it is not covered by one or more regulatory Delta Plan policies and certifications of consistency are only filed for covered actions;

d. Given that the Council lacked jurisdiction over the appeals and that it was aware of the Court's preliminary injunction ruling, the Council's decision to hold a hearing and issue the lengthy Decision purporting to provide guidance on the meaning of the Act indicates the Council's intent to achieve a predetermined outcome that unfairly favors DWR, i.e., to disagree with the Court's interpretation of Water Code section 85057.5, because neither a hearing nor specific written findings are required when the Council determines it lacks jurisdiction over an appeal; and

e. The Council staff's presentations at the hearings were skewed substantially in favor of DWR's position.

f. For the foregoing reasons, the Council did not engage in or provide Petitioners with a fair and unbiased appellate process or hearing.

**FOURTH CAUSE OF ACTION**

***Declaratory Relief: Deprivation of a Fair and Unbiased Appellate Process and Hearing***

***Code of Civil Procedure § 1060***

64. Petitioners reallege and incorporate by reference each and every paragraph and allegation set forth above.

65. A controversy exists between the Council and Petitioners regarding whether the Council engaged in and provided Petitioners with a fair and unbiased appellate process and hearing. Petitioners are informed and believe, and on that basis allege, the Council believes the appellate process/hearing was fair and unbiased, whereas Petitioners assert it was not.

66. Petitioners desire and are entitled to a judicial declaration regarding the legality of the appeals process and hearing, and request that the Decision be set aside because it arose from an unfair and biased hearing. Petitioners thus pray for declarations as specified more fully below.

## PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for the following relief:

1. For an order staying the effect of the Council's Decision;

2. For issuance of a temporary restraining order, preliminary injunction, and permanent injunction precluding any legal effect of the Council's Decision;

3. For a peremptory writ of mandate directing the Council to:

   a. Vacate and set aside the Council's Decision; and

   b. Prepare and circulate a new lawful decision or order stating the appeals are dismissed for lack of jurisdiction;

4. For declarations under Code of Civil Procedure section 1060 that under the Act:

   a. The phrase "project as defined pursuant to Section 21065 of the Public Resources Code" in the definition of "covered action" in Water Code section 85057.5, subdivision (a), incorporates the requirement to review and address the "whole of an action" in consistency certifications;

   b. Agencies may not piecemeal submission of covered actions in consistency certifications; and

   c. The Council failed to provide a fair and unbiased appellate process and hearing in reaching the Decision;

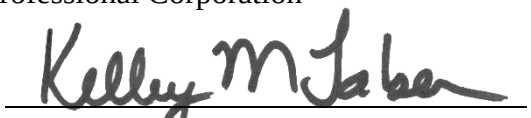
5. For costs of suit;

6. For reasonable attorney fees pursuant to Code of Civil Procedure section 1021.5; and

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

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: February 24, 2025

By: 
Kelley M. Taber
Attorneys for Petitioners and Plaintiffs County of Sacramento, Sacramento County Water Agency, City of Stockton, and Sacramento Area Sewer District

FREEMAN FIRM
A Professional Law Corporation

**//s// (*By Authorization*)**

DATED: February 24, 2025 By: _____
Thomas H. Keeling
Attorneys for Petitioners and Plaintiffs County of San Joaquin and Central Delta Water Agency

SOLURI MESERVE,
A Law Corporation

**//s// (*By Authorization*)**

DATED: February 24, 2025 By: _____
Osha R. Meserve
Attorneys for Petitioners and Plaintiffs County of San Joaquin and Central Delta Water Agency