ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
10/08/2026 at 10:52:31 AM
By: Tina Williams,
Deputy Clerk

Roger B. Moore (SBN 159992)
LAW OFFICE OF ROGER B. MOORE
337 17th Street, Suite 211
Oakland, California 94612
Telephone: (510) 548-1401
Email: rbm@landwater.com

Adam Keats (SBN 191157)
LAW OFFICE OF ADAM KEATS, PC
558 Capp Street
San Francisco, California 94110
Telephone: (415) 964-0070
Email: adam@keatslaw.org

Attorneys for Plaintiffs California Water Impact Network and Central Delta Water Agency

(additional counsel on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CALIFORNIA WATER IMPACT NETWORK and CENTRAL DELTA WATER AGENCY, Plaintiffs, vs. CALIFORNIA DEPARTMENT OF WATER RESOURCES and DOES 1 through 500, Defendants.	Case No.: 26CV214931 **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Cal. Const. Art. X, Sec. 2 Public Trust Doctrine JURY TRIAL REQUESTED

Thomas H. Keeling (SBN 114979)
FREEMAN FIRM
1818 Grand Canal Boulevard, Suite 4
Stockton, California 95207
Telephone: (209) 474-1818
Facsimile: (209) 474-1245
Email: tkeeling@freemanfirm.com

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

Attorneys for Plaintiffs California Water Impact Network and Central Delta Water Agency

INTRODUCTION

1. Defendant California Department of Water Resources ("DWR") diverts and uses water through its operation, control and management of the State Water Project ("SWP"), a system authorized and approved by the Legislature and voters more than 60 years ago. DWR regularly controls, limits, detains, and impedes the flow of water into the Sacramento-San Joaquin Bay Delta ("Delta") through its operation of various dams, pumping stations, and aqueducts (collectively "SWP Facilities") which constitute the SWP, thereby diverting and exporting massive amounts of water from the Delta, including diversions to storage and re-diversions of SWP and other water.

2. DWR's excessive and unsustainable diversion and use of water as SWP operator and manager has been, and continues to be, a significant cause of severe, catastrophic damage to the entire Delta ecosystem, including the destruction or near-extinction of several native species of fish in the Delta and significant harm to the communities in and around the Delta, including to farmers, boaters, fishers, birders, and others who use and enjoy the natural resources of the Delta for work and pleasure.

3. The costs of DWR's operation of the SWP to the Delta's detriment far outweigh any benefits. Maintaining Delta flows to protect trust resources would provide significant economic benefits to California of greater value to California's economy than any losses incurred by reduced Delta diversions required for compliance with the Public Trust Doctrine and Article X, section 2.

4. The commonly claimed benefits of DWR's rates of Delta exports are greatly overstated while the costs of those exports are greatly understated. Conversely, the benefits of protecting public trust resources and uses of the Delta have been historically ignored or minimized, resulting in the false narrative that the unsustainable diversion of Delta flows and the resulting destruction of the Delta ecosystem are necessary evils, supposedly required to sustain California's economy and the nation's food supply. This is not true, and DWR's actions in furtherance of this falsehood violates its duties under the Public Trust Doctrine and California's Constitution.

5. The ongoing and accelerating Delta ecological crisis has been explicitly acknowledged by various state natural resources agencies, the California Legislature, the California Supreme Court, California courts of appeal, federal government agencies, and by the scientific community.

6. DWR's excessive and unsustainable diversion and use of water constitute a wasteful and

unreasonable use of water, and/or an unreasonable method of use, and/or an unreasonable method of diversion of water, in violation of Article X, section 2 of the California Constitution.

7. DWR's operation and management of the SWP harms the public trust resources of the Delta ecosystem and its source watersheds.

8. DWR has failed to properly consider the impact of its SWP operation activities on public trust resources and has failed to avoid or mitigate those harms when feasible.

9. Plaintiffs California Water Impact Network and Central Delta Water Agency bring this action on their own behalf, on behalf of their members, on behalf of the general public, and in the public interest.

10. DWR, an agency of the State of California, holds the water rights permits pertaining to SWP operation and construction in addition to serving as its operator and manager. DWR's SWP responsibilities conferred by the Legislature and voters do not include the power to exceed its delegated authority or to renege on other legal duties. Those duties include constitutional reasonable use principles and public trust protection, which the Legislature has deemed "particularly important and applicable to the Delta." (Wat. Code § 85023.) DWR is a trustee of all public trust resources within its control and of which its actions impact, with the obligation to protect those public trust resources and uses. Under the Public Trust Doctrine, state governments do not merely possess the regulatory authority to manage natural resources; they owe an affirmative, fiduciary duty to protect the trust corpus (the environment) for the benefit of the public. DWR has failed to protect the public trust resources of the Delta, allowing the Delta to become significantly damaged and diminished by its own acts of operating the SWP. DWR has a duty, which it has failed to satisfy, to restore the trust resources of the Delta.

11. The State Lands Commission describes the public trust as: "The public's right to use California's waterways for navigation, fishing, boating, natural habitat protection and other water-oriented activities is protected by the Common Law doctrine of the Public Trust. Historically, the Public Trust has referred to the basic right of the public to use its waterways to engage in 'commerce, navigation, and fisheries.' More recently, the doctrine has been broadened by various landmark court decisions to include the right to swim, boat, and engage in other forms of water recreation, and even

to preserve lands in their natural state in order to protect scenic and wildlife values. The Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust for the benefit of the people of California. The Public Trust, as a common law doctrine, is not static but is continuously evolving to protect the public's use and needs in California's waterways."

12. The Delta is formed by the confluence of California's two longest rivers, the San Joaquin and the Sacramento. Fresh water from these rivers and their tributaries mixes with the salt water from the Pacific Ocean to form the San Francisco Bay Estuary. The Estuary is ecologically rich, supporting hundreds of plant and animal species, including seven fish species imperiled by DWR's operation of the SWP: spring-run Chinook Salmon, winter-run Chinook Salmon, Central Valley Steelhead, Delta Smelt, Longfin Smelt, White Sturgeon, and Green Sturgeon.

13. Fresh water flows from the tributaries into the Delta are necessary to maintain beneficial uses in the Delta and throughout the Delta Estuary and into the ocean. Seasonal flows and flushing flows are necessary to reduce salinity intrusion, reduce temperature, and dilute toxins resulting from mismanagement of the water projects including the SWP. Contrary to Delta protection requirements which have accompanied the SWP throughout its history but remained disregarded or underenforced, DWR's operation and management of the SWP have chronically favored excessive export of water to the detriment of the counties and areas of origin which are by promise and law entitled to priority.

14. DWR's unsustainable diversions supply water for urban development and permanent crops in arid and desert areas of California, areas which lack drought resilience and require a reliable supply in every year which DWR does not and cannot provide. The diversion and use of water by DWR is not limited to water which is surplus to the present and future needs, including fish and wildlife needs within the counties and areas of origin.

15. Much of the water supplied by the SWP through DWR's excessive diversions from the Delta is devoted to supporting unsustainable permanent crops and meeting demand assumptions for residential and commercial growth which cannot be provided by a reliable supply from the SWP. Benefits do not outweigh the costs of DWR's SWP operation of the SWP to the Delta's detriment, nor do the benefits outweigh the harm resulting from the lack of supply in dry and critically dry years.

DWR's continued supplying of water for those unsustainable uses, at the expense of the Delta ecosystem, its source watersheds, and the communities, people, and businesses dependent on and enjoying the Delta ecosystem, is unreasonable and wasteful, is an unreasonable method of use, is an unreasonable method of diversion, and exceeds what is reasonably required for the beneficial use to be served.

16. The past 50 years of operation of the SWP have demonstrated that the annual amounts of water contractors typically request, which DWR has deemed itself obligated to use "all reasonable efforts" to deliver, are in the aggregate unreasonable and unsustainable. Beyond any other factors resulting in annual fluctuations, this is because the original design and plan of the SWP—to deliver about 4.133 to 4.172 million acre-feet ("MAF") of water per year—was never fully built out. As a result, and as DWR data confirm, the SWP can only reliably deliver on average approximately 2.238 MAF. In a single "dry year" such as 1977, only .186 to .233 MAF could be delivered. In a series of dry years, such as 1929-1934 the average delivery capability is in the range of about .612 MAF to 1.163 MAF. For individual years the amount would be less than the average, and the likelihood of supplying more than 4 MAF in any given year is so minute that even in DWR's own recent reports on SWP delivery capability, it rounds to zero percent.

17. DWR's unsustainable diversions and delivery amounts have had catastrophic effects, placing unreasonable pressure on the SWP system to develop and deliver unsustainable amounts of water, including water that is not surplus to the present and future needs of the counties and areas of origin. Such actions have caused significant destruction of the Delta ecosystem and fueled the unsustainable growth of permanent crops and residential and commercial developments in arid parts of California reliant on water that cannot be reliably delivered. As courts have repeatedly recognized, the SWP originally assumed the development in the north coast of California of an annual additional delivery to the Delta of approximately 5 MAF by the year 2000. Such development never took place, and no substitute supply was identified, approved, or developed for the SWP.

18. DWR plans to further increase diversions from the Delta with its planned Delta tunnel, the subject of separate administrative and judicial proceedings, but the harm from its continued diversions will require relief even if that tunnel project does not proceed. DWR has and continues to

flout the Sacramento-San Joaquin Delta Reform Act of 2009, which established state policy for reduced reliance on the Delta (Wat. Code § 85201) and coequal goals (Wat. Code § 85954), the County of Origin Act (Wat. Code § 10505), the Watershed Protection Act (Wat. Code § 11460 et seq.), the Delta Protection Act (Wat. Code § 10200 et seq.), court decisions, other statutory protections, and water permit restrictions.

19. The SWP's delivery of water to areas up to 400 to 700 miles south of the Delta to agencies supplying water for unsustainable uses requires diversions from the Delta in amounts that constitute waste and unreasonable use of water due to its key role in causing and compounding the collapse of the Delta ecosystem, with numerous social, economic, and environmental harms that follow from that collapse.

20. Adherence to the State policy of reduced reliance on the Delta, as required under Water Code section 85021, could result in a less damaging and less costly mechanism for satisfying California's water needs while adhering to the "statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." Reducing actions that promote new permanent water demand which cannot be reliably supplied through DWR's diversions from the Delta is necessary to avoid the widening gap between supply and demand.

21. DWR fails to account for, reasonably control, and/or report the actual use of all water used at the actual places of use and fails to report the water actually diverted or rediverted (whether for permanent demand or temporary use) the related points of diversion, the actual place of such use, quantity used, quantity and time of diversion and re-diversion necessary to support that its diversion and use constitute reasonable diversion and beneficial use as required by the California Constitution. DWR also does not have an underground storage supplement in its SWP permits allowing the water to be stored underground. DWR assumes water is beneficially used once it enters the California Aqueduct, without tracking and documenting how, or whether, that water is beneficially used.

22. DWR fails to provide sufficient accounting of all uses of water diverted and delivered by SWP Facilities. Without such accounting and control, DWR's diversions and uses are unreasonable, even without considering the damaging and unlawful impacts to public trust resources and the areas of origin harmed by DWR's actions. DWR's continued delivery of unreliable SWP water to new users

with permanent demand constitutes waste and unreasonable use of water and must be prohibited.

23. In most years the SWP system experiences shortages of deliverable water due to unreasonable demand assumptions DWR continues to make in assessing SWP capability and scheduling water deliveries. That problem is projected to greatly worsen, especially since much of the current and projected shortage is for water to supply permanent demand for residential and agricultural use on desert and arid lands requiring a reliable supply in every year including dry and critical years in multiple year droughts.

24. This Court has jurisdiction over the claims herein. Plaintiffs seek to enforce the self-executing prohibition against waste and unreasonable use of water contained in Article X, section 2, of the California Constitution and the common-law duty imposed on DWR by California's Public Trust Doctrine.

PARTIES

25. Plaintiff California Water Impact Network ("CWIN") is a California non-profit public benefit organization with its principal place of business in Los Angeles, California. CWIN's purpose is to ensure that water rates charged to California residents are reasonable and equitable and that government agencies prioritize the protection and restoration of fish and wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural environmental resources and uses of the rivers and streams of California, including the Delta, its watershed and its underlying groundwater resources. CWIN has members who reside in, use, and enjoy the Delta and inhabit and use its watershed. They use the rivers of the Central Valley and the Delta for nature study, recreation, and aesthetic enjoyment.

26. Plaintiff Central Delta Water Agency ("CDWA") is a political subdivision of the State of California created under the Central Delta Water Agency Act, Chapter 1133 of the Statutes of 1973 as amended. Its powers include: "To do any and every lawful act necessary in order that a sufficient in-channel water of suitable quality may be available for any present or future beneficial use or uses of the lands within the agency." CDWA encompasses approximately 120,000 acres within San Joaquin County, all of which is within the Delta. The lands within CDWA jurisdiction are primarily agricultural but also contain recreational developments, marinas, lands abutting waterways used for

fishing, swimming, picnicking, boating, bird watching, and site seeing, significant wildlife habitat including that for sandhill cranes and numerous endangered species and some residential development. The lands and uses are dependent on the water supply and quality in the channels of the Delta ("in-channel water supply") for irrigation and other beneficial uses. The in-channel water supply is dependent on the flow and quality of both the Sacramento and San Joaquin River systems much of which is unreasonably diverted and used by DWR thereby damaging the public trust.

27. Defendant DWR is a Department of the State of California, established by Stats. 1956, c. 52, which reorganized the Executive Branch of the State Government with respect to administration of statutory and constitutional provisions relating to water or dams. Exercising powers which are authorized and limited by statutes and other laws, including the "foundational" principles of public trust and reasonable use (Wat. Code § 85023), DWR serves as operator and manager of the SWP and holds water right permits pertaining to SWP construction and operation. DWR's additional major responsibilities include overseeing and updating the California Water Plan (Bulletin 160 series), protecting and restoring the Delta, regulating flood protection, and assisting in emergency management. Through DWR's actions, the SWP exports millions of acre feet of water from the Delta to the south part of the State. Although DWR's operation of designated SWP Facilities is generally funded in great part with payments from its export contractors, DWR has also proposed some facilities without establishing eligibility for contractor revenue bond funding and authority to charge SWP contractors, as addressed in separate proceedings.

28. Plaintiffs do not know the true names of defendants DOES 1 to 500, inclusive, and therefore sues them with these fictitious names. Plaintiffs are informed and believe, and based on such information and belief, allege that each of these parties is in some manner legally responsible for the events and happenings alleged herein. Plaintiffs are further informed and believe, and based on such information and belief allege, that at all times mentioned DOES 1 to 500 were the partners, agents, coventurers, and/or employees of DWR, and in doing the things herein alleged were acting within the course and scope of such agency and employment. Alternatively, the DOES have acted in reliance on permission granted by DWR, and their future action must be equitably amended to avoid injury to the public trust. Alternatively, the DOES have acted without permission, and their future action must be

equitably amended to avoid injury to the public trust. Plaintiffs will seek leave to amend to insert the true names of the DOES when such parties have been identified.

29. DWR and DOE defendants will collectively be referred to as "DWR."

JURISDICTION, STANDING, AND VENUE

30. This Court has jurisdiction over this action pursuant to Code of Civil Procedure sections 526 (injunctive relief) and 1060 (declaratory relief); the courts' jurisdiction under the Public Trust Doctrine (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 451["*National Audubon Society*"]), and the courts' jurisdiction under Article X, section 2 of the California Constitution (*Gin S. Chow v. Santa Barbara*, 217 Cal. 673, 706 ["what is a useful and beneficial purpose and what is an unreasonable use is a judicial question depending upon the facts in each case."].)

31. Plaintiffs have standing to bring an action against DWR for its violations of its duties under the Public Trust Doctrine. (*In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448, 472, fn. 16 [citing *National Audubon Society, supra*, 33 Cal.3d at p. 431, fn. 11, *Marks v. Whitney* (1971) 6 Cal.3d 251].)

32. Plaintiffs have standing to sue to enjoin unreasonable uses of water. (*In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448, 472, fn. 16 [citing *Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist*. (1980) 26 Cal.3d 183 ("*Environmental Defense Fund"*)].)

33. Because the provisions of Article X, section 2 of the California Constitution are self-executing, courts are empowered to enforce them even in the absence of implementing legislation. (*Environmental Defense Fund, supra,*26 Cal.3d at 198, [citing *Joslin v. Marin Mun. Water Dist*. (1967) 67 Cal.2d 132, 141, and *Tulare Dist. v. Lindsay-Strathmore Dist*. (1935) 3 Cal.2d 489, 568].)

34. Venue is proper in this Court pursuant to Code of Civil Procedure section 393 (actions against public officers), 395 (generally), and 401(1) (actions against state agency in any county where Attorney General has office). The Attorney General maintains an office in the County of Alameda.

35. Pursuant to Code of Civil Procedure section 388, Plaintiffs are serving the California Attorney General with a copy of this Verified Complaint.

JURY TRIAL DEMANDED

36. Plaintiffs request a trial by jury as to all claims contained herein.

37. Plaintiffs seek to enforce duties that existed in 1850, when the California Constitution was adopted and the claims contained herein are the type of claims that entailed the right to a jury trial under the common law at that time. (Cal. Const. Art. 1, sec. 16; *Aerotek, Inc. v. Johnson Group Staffing Co., Inc*. (2020) 54 Cal.App.5th 670, 687.) The common law at the time included the Public Trust Doctrine.

38. Plaintiffs hereby demand a jury trial in the determination on the questions of reasonable use of water, reasonable diversion of water and reasonable method of diversion of water as required by Article X, section 2 of the California Constitution. "What constitutes a reasonable use or method of diversion is ordinarily a question of fact." (*United States v. State Water Resources Control Bd*. (1986) 182 Cal.App.3d 82, 130, fn 24, citing *People ex rel. State Water Resources Control Bd. v. Forni*, 54 Cal.App.3d 743, 750 ("*US v. SWRCB*").)

39. To the extent that Plaintiffs seek equitable remedies that may not have traditionally required trial by jury, Plaintiffs request that the questions of fact raised in those claims be tried by a jury, pursuant to the exercise of this Court's equitable powers. (*Weber v. Marshall* (1861) 19 Cal. 447, 457.)

STATUTORY AND LEGAL BACKGROUND

Legislative Acknowledgment of the Importance of the Delta Ecosystem

40. The Delta, the largest freshwater estuary on the west coast of the Americas, supports some of the most productive farmland in the world and multiple agriculture-related enterprises. The Delta also supports a substantial sports-fishing and recreation industry, many cities and communities, and hundreds of aquatic and terrestrial species, many unique to the Delta and at risk of extinction. Rich in history and culture, the Delta is essential to California's water system, from which water flows to rural and urban users throughout California. Over the course of California's water development history, the Legislature has repeatedly enacted measures to protect the Delta and recognized the particular importance of the Delta ecosystem.

41. "In 1959, when the SWP was authorized, the Legislature enacted the Delta Protection Act. (Wat. Code §§ 12200-12220.) The Legislature recognized the unique water problems in the Delta, particularly 'salinity intrusion,' which mandates the need for such special legislation 'for the

protection, conservation, development, control and use of the waters in the Delta for the public good.' (§ 12200.) The act prohibits project exports from the Delta of water necessary to provide water to which the Delta users are 'entitled' and water which is needed for salinity control and an adequate supply for Delta users. (§§ 12202, 12203, 12204.)" (*US v. SWRCB*, *supra*, 182 Cal.App.3d at p.139 (footnote omitted).)

42. In enacting the 1959 Delta Protection Act (1959 DPA), the Legislature found and declared that "the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta," and "to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State...." (Wat. Code § 12201; see also Wat. Code § 107 ["all . . . declarations of policy in this [Water] code shall be given their full force and effect"]. The Legislature also clarified that the "delivery" of water under section 12201 "shall be subject" to other laws protecting watersheds of origin. (Wat. Code § 12201, citing Wat. Code, §§ 10505 and 11460-11463.)

43. Providing the "common source of fresh water" in the Delta for both water users within and outside of the Delta is not optional for DWR under the 1959 DPA. Water Code section 12205 provides that "it is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part."

44. The 1959 DPA provides that among the duties of DWR, in its operation of the SWP and coordination with the activities of the United States on the federal Central Valley Project, "shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta." (Wat. Code § 12202.)

45. Under the 1959 DPA, neither DWR nor any other person or entity "should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled." (Wat. Code § 12203.) Moreover, "[i]n determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements" of Water Code sections 12202 and 12203.

46. DWR's December 1960 Bulletin 76 Report to the Legislature contemporaneously interpreted the 1959 DPA: "In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided." (*Id*. at p. 12; see also *Department of Water Resources v. The Metropolitan Water Dist. of Southern California* (2005) 117 Cal.App.5th 751, 768 ["*DWR v. MWD*"] [citing Bulletin No. 76].) Objectives of potential Delta facilities to be considered for the State Water Project were thus intended to include, among others, "adequate water supplies throughout the Delta" and transporting water "across the Delta without undue loss or deterioration in quality." (*Ibid*.)

47. In the 1992 Delta Protection Act ("1992 DPA"), the California Legislature declared the Delta to be "a natural resource of statewide, national, and international significance, containing irreplaceable resources," and confirmed "the policy of the state to recognize, preserve, and protect those resources of the delta for the use and enjoyment of current and future generations."

48. Under the 1992 DPA, the "basic goals of the state" for the Delta include, among others, to "protect, maintain, and, where possible, enhance and restore the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities." (Pub. Resources Code § 29702(b).)

49. The 1992 DPA describes the Delta as "an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value." (Pub. Resources Code § 29703(a).) The Delta's agricultural land, while "adding greatly to the economy of the state," also "provides a significant value as open space and habitat for waterfowl using the Pacific Flyway, as well as other wildlife, and the continued dedication and retention of that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values." (Pub. Resources Code § 29703(b).)

50. The 1992 DPA explicitly recognizes the "critical statewide significance" of the Delta's ecology and wildlife. "The Legislature further finds and declares that the delta's wildlife and wildlife habitats, including waterways, vegetated unleveed channel islands, wetlands, and riparian forests and vegetation corridors, are highly valuable, providing critical wintering habitat for waterfowl and other migratory birds using the Pacific Flyway, as well as certain plant species, various rare and endangered

wildlife species of birds, mammals, and fish, and numerous amphibians, reptiles, and invertebrates, that these wildlife species and their habitat are valuable, unique, and irreplaceable resources of critical statewide significance, and that it is the policy of the state to preserve and protect these resources and their diversity for the enjoyment of current and future generations." (Pub. Resources Code § 29705.) Critical to the food supply for wintering fowl are the agricultural lands and winter flooding practices which make crop residue, invertebrate and natural vegetation available to waterfowl.

51. In the 2009 Delta Reform Act, Water Code section 85000, et seq. ("2009 DRA"), the Legislature described "the Sacramento-San Joaquin Delta watershed" as "in crisis" and found that "existing Delta policies are not sustainable." (Wat. Code, § 85001(a).) The Delta, the "hub of the California water system," is "the most valuable estuary and wetland ecosystem on the west coast of North and South America." (Wat. Code § 85002.)

52. Water Code section 85021, a provision of the 2009 DRA, states that "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts."

53. Reasonable use and public trust are the "foundation" of state water management policy. (Wat. Code § 85023.) In addition to the above-described Delta protection laws, the Legislature has also enacted other laws in furtherance of Article X, section 2 which likewise underscore the need for protection and restoration of public trust resources. For example, in the Water Conservation Act of 2009, the Legislature included in its findings and declarations that "(a) Water is a public resource that the California Constitution protects against waste and unreasonable use" and that "(b) Growing population, climate change, and the need to protect and grow California's economy while protecting and restoring our fish and wildlife habitats make it essential that the state manage its water resources as efficiently as possible . . ." (Wat. Code § 10608 (a), (b).)

Judicial Acknowledgment of the Ecological Crisis in the Delta

54. "Formed by the confluence of the State's two largest rivers, the Delta is a critically important estuary and wetland ecosystem," which "provides habitat for a vast array of aquatic and terrestrial species, offers a variety of recreational activities, and is home to more than half a million people." (*DWR v. MWD*, *supra*, 117 Cal. App. 5th at p. 761 fn. 5 [citing *Department of Water Resources Environmental Impact Cases* (2022) 79 Cal.App.5th 556, 564–565 and *Delta Stewardship Council Cases* (2023) 48 Cal.App.5th 1014, 1032].)

55. California courts have recognized that water exports through the SWP (and the related Central Valley Project) must be reduced when needed to protect the Delta ecosystem, its natural resources, and the numerous social and economic uses and benefits of the ecosystem, and to restore the Delta's ecological health. Moreover, the Delta is a fully appropriated system.

56. "After many years of slow decline, the condition of the Delta ecosystem, as measured especially by the population of wild salmon and other native fish, has gone critical. The Delta is currently in an 'ecological tailspin.' The list of causes negatively affecting the Delta ecosystem begins, but does not end, with all the water withdrawals, which have been characterized as a 'kind of tax that leaves the [Delta] [eco]system in a condition of chronic drought. The specific, peculiar manner in which the last large gulps of water are withdrawn adds to the ecological cost.'" (*Delta Stewardship Council Cases*, *supra*, 48 Cal.App.5th 1014, 1034.)

57. The serious ecological crisis in the Delta has been recognized by the California Supreme Court. "Competition for the Bay-Delta's resources, pollution of Bay-Delta water, draining and filling of tidal marshes and other wetlands, and diversion of Bay-Delta water for urban and agricultural uses throughout the state have, however, resulted in a decline in Bay-Delta wildlife habitat, the threatened extinction of plant and animal species, an increasing risk of failure of Bay-Delta levees, and degradation of the Bay-Delta as a reliable source of high quality water." (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1151.)

58. "In 1994, the federal EPA concluded that during the preceding 20 years, largely as a result of water diversions by the CVP and SWP, the Bay-Delta's fish and wildlife resources had "deteriorated drastically." (60 Fed. Reg. 4665 (Jan. 24, 1995.) The California Department of Fish and

Game reached the same conclusion." (*In re Bay-Delta*, *supra*, 43 Cal.4th at p. 1156.) The same year, "against a backdrop of mounting concerns over water shortages, the ecological deterioration of the Bay-Delta estuary, the decline in water quality, and the risk of levee system failure," DWR, along with other state and federal agencies, signed a framework agreement for the later-superseded CALFED Bay-Delta Program ("CALFED"). (*Ibid*.)

59. In *In re Bay-Delta*, which upheld programmatic environmental review of CALFED conducted at a "relatively early stage of program design," the California Supreme Court recognized that both federal and state laws mandate ecosystem restoration, and that "water exports from the Bay-Delta ultimately must be subordinated to environmental considerations." (43 Cal.4th at p. 1168.) The Court also found that "[t]he CALFED Program is premised on the theory, as yet unproven, that it is possible to restore the Bay-Delta's ecological health while maintaining and perhaps increasing Bay-Delta water exports through the CVP and SWP. If practical experience demonstrates that the theory is unsound, Bay-Delta water exports may need to be capped or reduced." (*Ibid.)*

The Public Trust Doctrine

60. As the Legislature reconfirmed when it enacted the 2009 DRA, "[t]he longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." (Wat. Code § 85023.)

61. The State has an affirmative duty to protect public trust resources whenever feasible. It has a duty to consider the impacts on trust resources of its actions, and to avoid or minimize those impacts when feasible. (*National Audubon Society*, *supra*, 33 Cal.3d at p. 435; *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 631 ("*Cal. Trout I*"); *California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187, 289 ("*Cal. Trout II*").)

62. The State of California, as a sovereign entity, owns "all of its navigable waterways and the lands lying beneath them 'as trustee of a public trust for the benefit of the people'" (*Colberg, Inc. v. State of California ex rel. Dept. Pub. Wks. (*1967) 67 Cal.2d 408, 416.) The state acquired title as trustee to such lands and waterways upon its admission to the union. (*City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521.)

63. The Public Trust Doctrine and the Constitution's prohibition of the waste and unreasonable use or diversion of water co-exist, and one does not replace or eclipse the other. (*See*, *e.g.*, *Environmental Law Foundation v. State Water Resources Control Bd*. (2018) 26 Cal.App.5th 844, 862 (ruling that "*National Audubon* rebuts the County's unsupported and unsupportable assertion that the reasonable use standard obliterates the public trust doctrine").)

64. "The core of the Public Trust Doctrine is the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying those waters." (*National Audubon Society*, *supra*, 33 Cal.3d at p. 425.)

65. "[T]he state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs." (*National Audubon Society*, *supra*, 33 Cal.3d at pp. 446-447.)

66. "[T]he title which a State holds to land under navigable waters is different in character from that which it holds in land intended for sale and occupation, in the former case it being held in trust for the people of the State, in order that they may enjoy the navigation of the waters and carry on commerce over them, free from obstruction or interference by private parties; that this trust devolving upon the State in the public interest is one which cannot be relinquished by a transfer of the property; that a State can no more abdicate its trust over such property, in which the whole people are interested, so as to leave it under the control of private parties, than it can abdicate its police powers in the administration of government and the preservation of the peace; and that the trust under which such lands are held is governmental so that they cannot be alienated, except to be used for the improvement of the public use in them." (*Long Sault Development Co. v. Call* (1916) 242 U.S. 272, 278–79, citing *Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387; *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 856–57.)

67. *Illinois Central*, the "seminal case on the Public Trust Doctrine[,] … instructs courts to 'look with considerable skepticism upon any governmental conduct which is calculated either to reallocate that resource to more restricted uses or to subject public uses to the self-interest of private parties.'" (*Environmental Law Foundation*, *supra*, 26 Cal.App.5th at p. 857, quoting *Zack's, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1176.)

68. The Public Trust Doctrine applies to all water rights, including riparian and pre–1914 appropriator rights. (*US v. SWRCB*, *supra*, 182 Cal.App.3d at 106 [in *National Audubon Society*, "the court determined that no one has a vested right to use water in a manner harmful to the state's waters"].)

69. "[L]ike the rule against unreasonable use, when the Public Trust Doctrine clashes with the rule of priority, the rule of priority must yield. Again, however, every effort must be made to preserve water right priorities to the extent those priorities do not lead to violation of the Public Trust Doctrine." (*El Dorado Irrigation District v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 966; *Light v. State Water Resources Control Bd.* (2014) 226 Cal.App.4th 1463, 1489 ("*Light*").)

70. "Although early cases expressed the scope of the public's right in tidelands as encompassing navigation, commerce and fishing, the permissible range of public uses is far broader, including the right to hunt, bathe or swim, and the right to preserve the tidelands in their natural state as ecological units for scientific study." (*City of Berkeley v. Superior Court of Alameda County* (1980) 26 Cal.3d 515, 521.)

71. "'There is a growing public recognition that one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area'." (*National Audubon Society*, *supra*, 33 Cal.3d at pp. 434–435, quoting *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.)

72. "Wild fish have always been recognized as a species of property the general right and ownership of which is in the people of the state," i.e. public trust resources. (*Cal. Trout I*, *supra*, 207 Cal.App.3d at p. 630.) "The title to and property in the fish within the waters of the state are vested in the state of California and held by it in trust for the people of the state." (*Ibid*., quoting *People v. Monterey Fish Products Co.* (1925) 195 Cal. 548, 563.)

73. "The Public Trust Doctrine serves the function in an integrated system of preserving the continuing sovereign power of the state to protect public trust uses, a power which precludes anyone

from acquiring a vested right to harm the public trust, and it imposes a continuing duty on the state to take such uses into account in allocating water resources." (*National Audubon Society, supra*, 33 Cal.3d at p. 452.)

74. The state as sovereign is primarily responsible for administration of the public trust. DWR, as a department of the state, is a trustee for the public trust in all its actions and decisions that include or implicate public trust interests. DWR "... shares responsibility for protecting our natural resources and may not approve of destructive activities without giving due regard to the preservation of those resources." (*See Center for Biological Diversity v. FPL Group*, 166 Cal.App.4th 1349, 1370, fn. 19 ("*Center for Biological Diversity*").)

75. The public may enforce a state agency's affirmative duty to comply with the Public Trust Doctrine in court. (*National Audubon Society*, *supra*, 33 Cal.3d at p. 431 n.11, citing *Marks v. Whitney*, 6 Cal.3d at pp. 261–62; *see also Center for Biological Diversity, supra,* 166 Cal.App.4th at p. 1366 ["the public retains the right to bring actions to enforce the trust when public agencies fail to discharge their duty"].)

California Constitution, Article X, Section 2

76. Article X, section 2 of the California Constitution states in part: "The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water." (Cal. Const., art. X, § 2.)

77. Article X, section 2 was enacted to make clear that all use of the state's water, including riparian and appropriative, is limited to that "reasonably required for the beneficial use to be served" and to make clear that no water right extends to the waste, unreasonable use, or unreasonable method of diversion of water. (*Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 138.) In light of Article X, section 2, "no one can acquire a vested right to the unreasonable use of water." (*Imperial Irrigation Dist. v. State Water Resources Control Bd.* (1990) 225 Cal. App.3d 548, 563 ("*Imperial Irrigation Dist.*").)

78. Article X, section 2 "dictates the basic principles defining water rights: that no one can

have a protectible interest in the unreasonable use of water, and that holders of water rights must use water reasonably and beneficially." (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1242.)

79. "'Beneficial use' and 'reasonable use' are two separate requirements, both of which must be met." (*Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1185.) Accordingly, a finding of beneficial use is "not sufficient" if the use is "not also reasonable within the meaning" of Article X, section 2. (*Joslin, supra*, 67 Cal.2d at p. 143.)

80. "What constitutes reasonable use is case-specific. 'California courts have never defined ... what constitutes an unreasonable use of water, perhaps because the reasonableness of any particular use depends largely on the circumstances.'" (*Santa Barbara Channelkeeper,* 19 Cal.App.5th at p. 1185, quoting *Light*, *supra*, 226 Cal.App.4th at p. 1479.) In addition to depending upon the "circumstances of each case," such an inquiry cannot be resolved *in vacuo* isolated from statewide considerations of transcendent importance. Paramount among these we see the ever increasing need for the conservation of water in this state." (*Joslin, supra*, 67 Cal.2d at p. 140; see also *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1242 [quoting *Joslin*].)

81. "The inquiry is fact-specific, and the answer may change over time. 'What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need.'" (*Santa Barbara Channelkeeper,* 19 Cal.App.5th at p. 1185, quoting *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 567.)

82. Despite the lack of a unitary definition of "unreasonable use" in California's jurisprudence isolated from its context, there are illustrative cases expressly ruling various specific water uses to be unreasonable. In *Joslin v. Marin Mun. Water District*, for example, the California Supreme Court ruled that plaintiff's use of stream water "as an agent to expose or to carry and deposit sand, gravel and rock, is as a matter of law unreasonable within the meaning of the constitutional amendment." (*Joslin,* 67 Cal.2d at p. 141, citing *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 369.)

83. In an earlier decision, the California Supreme Court found the use of winter irrigation to drown gophers and squirrels in fields unreasonable. "It seems quite clear to us that in such an area of

need as the Kaweah delta the use of an appreciable quantity of water for such a purpose cannot be held to be a reasonable beneficial use." (*Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist*. (1935) 3 Cal.2d 489, 568.)

84. Similarly, appellate courts have occasionally addressed whether particular water uses violate Article X, section 2's prohibition of unreasonable use of water, after considering the scarcity of water as a public interest factor favoring a higher standard for reasonable use and the need to allocate water resources wisely and efficiently. In 1976, the First District Court of Appeal held that the SWRCB's complaint against Napa vineyardists "states valid causes of action for either injunctive or declaratory relief or both, and that the question of reasonable use or reasonable method of use of water constitutes a factual issue which cannot be properly resolved by a motion for judgment on the pleadings." (*People ex rel. State Water Resources Control Bd. v. Forni* (1976) 54 Cal.App.3d 743, 754 Finding that direct diversion for frost protection created a winter shortage which could have been easily and economically averted by off-season storage, the court noted that "the overriding constitutional consideration is to put the water resources of the state to a reasonable use and make them available for the constantly increasing needs of all the people." (*Id.* at p. 751.)

85. In another case, the Third District Court of Appeal ruled that a method of water transmission that resulted in the loss of five-sixths of the diverted flow "fails to respond to the demands of constitutional policy" and was thus unreasonable. (*Erickson v. Queen Valley Ranch Co*. (1971) 22 Cal.App.3d 578, 585.)

86. The Legislature has declared that "because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." (Wat. Code § 100.) Moreover, "[t]he right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water**.**"

(*Ibid*.)

87. In light of the requirements of Article X, section 2, the Legislature has confirmed that "conformity of a use, method of use, or method of diversion of water with local custom shall not be solely determinative of its reasonableness." (Wat. Code § 100.5.) Local custom "shall be considered as one factor to be weighed in the determination of the reasonableness of the use, method of use, or method of diversion of water, within the meaning of Section 2 of Article X of the California Constitution." (*Ibid*.)

88. In light of the requirements of Article X, section 2, the Legislature has made clear that DWR "shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state." (Wat. Code § 275.)

FACTUAL BACKGROUND

Overview of the State Water Project

89. "The SWP is one of the largest water projects in the world, consisting of dams, reservoirs, storage tanks, pumping plants, aqueducts, pipelines, and canals designed to capture, store, and deliver water throughout the state. Each year, the SWP delivers water to about 25 million residents from Napa Valley to San Diego and irrigates about 750,000 acres of farmland." (*Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 182.)

90. "Following World War II, state authorities renewed their efforts to develop a comprehensive statewide water plan. In 1951 the Legislature authorized the Feather River and Sacramento-San Joaquin Delta Diversion Project. ([Water Code] § 11260.) This project -- referred to as the SWP -- began operations in 1967 under management of the DWR." (*US v. SWRCB, supra*, 182 Cal.App.3d at pp. 99-100.)

91. The SWP Facilities "include 30 dams (29 of which impound water), 21 reservoirs, 30 pumping and generating plants, and approximately 700 miles of aqueducts and pipelines." (*DWR Bulletin* 132-21, at pp. 3-4.)

92. The SWP Facilities "stretch from Lake Oroville in Butte County to Lake Perris in Riverside County. Project water flows from the Feather River to the Sacramento River and then into

the Sacramento-San Joaquin Delta. It is lifted by the Delta Pumping Plant into the California Aqueduct, and the aqueduct conveys it south." (*Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 903.)

93. The California Aqueduct is the primary method of transporting water from Northern California to Southern California. The concrete-lined canal winds its way through the Central Valley, moving water from the Clifton Court Forebay in the Sacramento-San Joaquin Delta down to Lake Perris, the SWP's southernmost reservoir. Water travels by a combination of gravity and pumping. After it is lifted by pumping plants, water continues its journey south by gravity until the next pumping plant.

94. Oroville Dam was built by DWR, completed in 1968, and is one of the key facilities in the SWP. Oroville Dam allocates the flow of the Feather River from the Sacramento-San Joaquin Delta into the SWP's California Aqueduct, which provides a major supply of water for irrigation in the San Joaquin Valley, as well as municipal and industrial water supplies to coastal Southern California. The dam blocks the Feather River, thus precluding migrating salmon and other species from passage to natural spawning areas which are higher in elevation and contain colder water which is critical to survival of fish in warmer years.

95. Lake Oroville, the reservoir formed by Oroville Dam impounding the Feather River, serves as the keystone water storage facility in the DWR-managed SWP. Lake Oroville is the SWP's largest reservoir, with a capacity of 3.5 million acre-feet, eight percent of the state's reservoir capacity. In addition to supplying water DWR delivers to SWP contractors, Lake Oroville and the Oroville Facilities play an important role in flood management, water quality, and management of conditions affecting the health of fisheries.

96. DWR's Oroville Facilities, while supplying water chiefly to areas south of the Delta, have also created substantial environmental, land management, local services, socioeconomic, and public safety impacts, particularly in the areas near those facilities.

97. DWR's environmentally and financially unsustainable diversions from watersheds in the northern Sacramento Valley and the Delta for SWP operations, made without meeting DWR's legal duties addressed in this complaint and without required protections for source watersheds and the

Delta, has also resulted in devastating and unnecessary risks for ecosystems, communities, ratepayers, and consumers throughout much of California.

Legislative History of the State Water Project

98. "The problems surrounding California's water supply are well documented in California jurisprudence. The story is one of 'uneven distribution of water resources' by region and season.' [Citation.] Precipitation varies widely from year to year, most of the precipitation occurs in the winter while demand is highest in the summer, and most of the rain and snow falls in the north while the highest demand for water arises in the south." (*DWR v. MWD,* supra*,*117 Cal.App.5th at p. 760 (quoting *Planning and Conservation League v. Department of Water Resources* (2024) 98 Cal.App.5th 726, 739–740).)

99. "To address this maldistribution problem, beginning in the early 1920's state officials began studying the concept of a statewide water development project. [Citations] These studies culminated in a 1931 report outlining a coordinated 'State Water Plan' for the conservation, development, and utilization of water resources. [Citations] Two years later, the Legislature passed the Central Valley Project Act of 1933 (Wat. Code § 11126) [Citations]. After its passage, the CVP Act was approved by the voters in a special referendum election." (*DWR v. MWD, supra,* 117 Cal.App.5th at p. 760.)

100. In 1943, California codified its water laws in a newly established Water Code. The provisions of the CVP Act were codified in division 6 of part 3 (§ 11100 et seq.) of the Water Code.

101. The CVP Act included special provisions for protection of water in the counties of origin, now codified in Water Code sections 10505 and 10505.5: "No priority under this part shall be released nor assignment made of any application that will, in the judgment of the board, deprive the county in which the water covered by the application originates of any such water necessary for the development of the county." (Wat. Code § 10505.) "Every application heretofore or hereafter made and filed pursuant to Section 10500, and held by the State Water Resources Control Board ["SWRCB"], shall be amended to provide, and any permit hereafter issued pursuant to such an application, and any license issued pursuant to such a permit, shall provide, that the application, permit, or license shall not authorize the use of any water outside of the county of origin which is

necessary for the development of the county." (Wat. Code § 10505.5.)

102. The CVP Act also included special protection for "areas of origin," now codified in Water Code section 11460: "In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein."

103. "As originally proposed, construction of the Central Valley Project was to be a state-funded project financed primarily with revenue bonds, to be repaid with revenues generated by the sale of water and hydroelectric power. … However, amid the Great Depression, the state was unable to market the bonds, so the federal government took control of the project and began construction." (*DWR v. MWD*, *supra*, 117 Cal.App.5th at p. 761.)

104. The SWP, which received specific legislative authorization in 1959 (Wat. Code § 12930, et seq.), and voter approval in 1960, arose out of the earlier-designated Feather River Project ("FRP"), whose anticipated diversions from "natural river channels flowing to the Delta" were to supply dams, reservoirs, and conveyance structures. (*US v. SWRCB*, *supra*, 182 Cal.App.3d at pp. 97-99.)

105. 1951, the Legislature initially authorized construction of the Feather River Project as a separate, state-operated "unit" covered under the Central Valley Project Act. (Wat. Code § 11000, *et seq.* ["CVP Act) Although the legislation did not include its own description of that project, it referenced the description of that project in a 1951 report prepared by the state water resources board and the Division of Water Resources. "Recognizing that the project described in the 1951 Report was not final, the Legislature authorized [the Division of Water Resources] to make 'modifications' to such facilities." (*DWR v. MWD, supra,* 117 Cal.App.5th at p. 764.)

106. In 1955, the Division of Water Resources submitted an updated report which made modifications to the Feather River Project, including adding the San Luis Reservoir on the west side of the San Joaquin Valley. The Legislature subsequently incorporated these changes into section 11260. (*DWR v. MWD*, *supra*, Cal.App.5th at p. 764.)

107. In 1956, the Legislature created the Department of Water Resources. The Department of Water Resources was placed under the control of a director appointed by the Governor. The new DWR succeeded to and was vested with all powers and duties of the prior Division of Water Resources, as well as related departments and positions. (Stats. 1956, c. 52.)

108. Bulletin No. 3, issued by DWR in 1957, included the California Water Plan, which among other things provided:

> Summarized, the foregoing concepts define The California Water Plan as a comprehensive pattern, with broad flexibility and susceptible of orderly and progressive development as needed, under which the forecast ultimate requirements for water by individuals and agencies for all purposes in all parts of the State can be met. **Water is not to be taken away from people who will need it; rather, it is proposed to supply the needs in areas of deficiency by transfer only of excess or surplus water from areas of abundance.**

(The California Water Plan DWR Bulletin No. 3 May 1957, pages 7 (emphasis added).)

109. In 1959, DWR submitted a third update to its Feather River Project "which further considered the routes by which surplus Delta water would be delivered to Southern California. In 1959, the Legislature also incorporated this report into section 11260." Water Code section 11260 describes the Feather River Project facilities by reference to the 1951, 1955, and 1959 reports. "The features described as the Feather River Project in the 1951, 1955, and 1959 Reports comprise the initial unit of the statewide water storage and delivery system known as the State Water Project." (*DWR v. MWD, supra*, 117 Cal.App.5th at pp. 764-65.) In addition to water conservation and distribution, the Feather River Project was designed with the further objective of "preserving and increasing water flows through the Delta to control salinity, protect fish and wildlife, and 'firm' the supply of surplus water available for export." (*Id*. at p. 782.)

110. "In 1959, the Legislature enacted the California Water Resources Development Bond Act (the Burns-Porter Act) ([Water Code] § 12930 et seq.), which—after voter ratification--authorized the issuance of $1.75 billion in general obligation bonds ([Water Code] §§ 12935–12936) to provide funding for the State Water Project." (*DWR v. MWD, supra,* 117 Cal.App.5th at p. 765.) During the same 1959 legislative session in which it enacted the Burns-Porter Act (Stats. 1959, ch. 1762), the

Legislature also approved two other closely related laws: the 1959 Delta Protection Act (Wat. Code § 12200, et seq.; Stats. 1959, ch. 1766, § 1), and an amendment to Water Code 11260 adding the California Aqueduct to the facilities in the Feather River Project, one of the covered units in the Central Valley Project Act. (Stats. 1959, ch. 2043, § 1.) (See also *US v. SWRCB, supra*, 182 Cal.App.3d at p. 128 [discussing contemporaneous enactment of the 1959 DPA and Burns-Porter Act].)

111. Public release of the California Governor's contracting principles addressing a range of subjects (e.g., types of facilities, cost allocation among project purposes, and contractor taxing authority) provided a basic framework for the original SWP contracts. (*Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 905-908 (*Goodman*).) That framework assisted in informing California voters, which narrowly approved the SWP and accompanying Burns-Porter Act on November 8, 1960 by a margin of 173,944 votes out of approximately 5.8 million votes cast. (California Research Bureau*, Financing the State Water Project* (April 1994) 898-901.)

112. As DWR has acknowledged, the 1959 DPA offered reassurance to Delta water users, and "ensured their water uses and promised them good water quality for all purposes." (DWR, *History of Water Development and the State Water Project* (undated), https://water.ca.gov/Programs/State-Water-Project/SWP-Facilities/History [accessed October 3, 2026].)

113. The Burns-Porter Act authorized the construction and operation of the "State Water Resources Development System" (i.e., the SWP), which consists of enumerated "State Water Facilities" and also includes certain facilities authorized as part of the CVP Act. (*Warne v. Harkness* (1963) 60 Cal.2d 579, 583; Wat. Code §§ 12931, 12934.)

114. Except for facilities approved and funded to meet "local needs," such as to provide flood control and "to augment the supplies of water in the Sacramento-San Joaquin Delta," the Burns-Porter Act requires legislative authorization for additional facilities, whether they are added as part of the Central Valley Project or the California Water Plan. (Wat. Code § 12934.)

115. The SWP, as approved by the Legislature and voters, included the objectives of developing sufficient surplus water at contractor expense to meet the present and future needs of the counties and areas of origin and to provide salinity control in the Delta.

116. Since 1986, the water infrastructure of the SWP and the Central Valley Project has been the subject of a Coordinated Operations Agreement ("COA"). An Addendum to the 1986 COA was entered on December 12, 2018. The SWP and CVP water delivery systems, which include certain shared facilities, rely on runoff and reservoir releases in areas upstream of the Delta to deliver contracted water via the Sacramento and San Joaquin Rivers to Delta export pumps in the South Delta. Neither the COA nor any other agreement obviates the need for DWR to ensure that its operation and management of pumps, aqueducts, and other facilities fully comply with state law, including its paramount duties to protect the public trust and avoid unreasonable uses and diversions.

117. DWR's powers as owner, operator and manager of the State Water Project, even when liberally construed, confer no ability to exceed the scope of its lawfully delegated authority. For example, "DWR lacks the authority to approve a new State Water Project 'unit' under the guise of a 'further modification' of the Feather River Project." (*DWR v. MWD, supra*, 117 Cal.App.5th at p. 764.) Even when courts have upheld particular DWR decisions, such as approving long-term SWP contract extensions through 2085, they have rejected the premise that DWR possesses unbounded authority. (See, e.g., *Planning & Conservation League v. Department of Water Resources* (2024) 98 Cal.App.5th 726, 775 [denying that DWR has a "free pass" "to base decision-making on an assumption of continuing or expanding 'paper water' deliveries from the State Water Project [citation omitted], or to flout the statewide policy to reduce reliance on water deliveries from the Delta"] ("*PCL v. DWR II"*).)

118. Delta diversions originally contemplated for the SWP and FRP "consisted of Delta channel improvements and appurtenant facilities, not isolated conveyance facilities." (*DWR v. MWD*, *supra*, 117 Cal.App.5th at p. 784, fn. 15; see also Wat. Code § 12934, subd. (d)(3); *DWR v. MWD*, *supra*, 117 Cal.App.5th at p. 781 ["stabilize and preserve the Delta estuary by boosting 'through-Delta flows"], 768-769 ["adequate water supplies throughout the Delta," avoidance of "undue loss or deterioration" in quality].) Since 1963, and despite California voters' rejection of the Peripheral Canal in a 1982 referendum (Proposition 9), DWR has made multiple attempts to add a new conveyance facility to the SWP isolated from Delta flows. (*Id*. at pp. 769-772.)

119. Whether or not any proposed Delta conveyance ultimately proceeds, this action remains

necessary to ensure that DWR operates and manages the SWP consistently with its own legal duties to protect the Delta and comply with the foundational requirements of Article X, section 2 and the Public Trust Doctrine.

The State Water Project Long-Term Contracts

120. The SWP delivers water to 29 public water agencies based on long-term water supply contracts, which are required to be substantially uniform. ("SWP Contracts").

121. The SWP contracts do not, nor do they purport to, confer upon DWR any ability to circumvent duties it otherwise is legally required to perform in its operation of the SWP under the California Constitution, California statutes, and other requirements of law. Each contract with DWR is required to include a similar reservation with respect to state laws (Article 37).

122. Among DWR's obligations in its continued operation of the SWP, and "particularly important and applicable to the Delta" are those required under Article X section 2 and the Public Trust Doctrine, the "foundation" of state water management policy. (Wat. Code § 85023.)

123. All but three of the SWP contractors (Plumas County Flood Control and Water Conservation District, Butte County, and Yuba City) receive water deliveries by diversions from the Delta. These water diversions are pumped by either the Harvey O. Banks or Barker Slough pumping plants.

124. Under the SWP Contracts, the maximum total yearly amount of water that can be requested by the contractors totals approximately 4.173 million acre-feet of water, a figure virtually identical to that used at the inception of SWP construction. The maximum amount each contractor may request each year is listed in "Table A" of the SWP Contracts and are known as "Table A amounts."

125. The original plans for the SWP included significant water diversions from North Coast rivers such as the Klamath, Eel, Mad, and Smith Rivers. This part of the SWP was never developed, however, following opposition from local communities, and the eventual designation of some of these rivers as wild and scenic. (Pub. Resources Code § 5093.50, *et seq*.; 16 U.S.C. § 1271, *et seq*.) As the California Supreme Court has recognized, "[d]ue to environmental concerns, however, construction of the entire SWP project has never been completed, resulting in the annual delivery of only about half of

the 4.2 million acre-feet [maf] of water projected." *(In Re Bay-Delta*, *supra*, 43 Cal.4th at p. 1155.)

126. Courts of appeal have repeatedly confirmed the same understanding of SWP history. "Many of the facilities originally designated to make up the SWP were not completed. When completed, the SWP was expected to deliver about 4.2 million acre-feet of water per year. Failure to complete the facilities resulted in the SWP being unable to deliver all the water to which SWP contractors were entitled under the long-term supply contracts." (*Central Delta Water Agency v. Department of Water Resources*, *supra*, 69 Cal.App.5th at p. 184, citing *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 912–913 ("*PCL v. DWR I"*).) There is "no question that the SWP cannot deliver all the water to which contractors are entitled under the original contracts. It does not appear that SWP has ever had that ability." (*Id*. at p. 913.)

127. Although SWP contractors typically request their full amounts of Table A water each year, actual water deliveries by DWR are almost always some fraction of the full Table A amount, due to factors including, among others, changing environmental conditions, hydrologic fluctuations between different types of water years, and compliance with various court decisions and legal obligations. Beyond any reasons for annual fluctuations, however, an inherent structural imbalance preventing DWR from reliably delivering half or more of the SWP's originally identified Table A amounts has persisted because many of the SWP's originally planned facilities were never built.

128. Each year, starting in December, DWR announces to the SWP contractors approximately how much water the project is likely to be capable of delivering in the coming year. DWR publishes its allocation forecasts for the SWP; these are distributed to SWP contractors. The allocations can increase or decrease during the year based on changing conditions. DWR's final allocation determination for water exports is typically announced in May or June of each year.

129. While setting these delivery estimates each year, DWR remains obligated under section 16(b) of the SWP Contracts "to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract."

130. "Once the total amount of water to be delivered is determined for the year, all available

water is allocated in proportion to each contractor's annual maximum SWP Table A amount. Table A water is given priority for delivery over other types of SWP water. Contractors have several options for what to do with the water that is allocated to them: use it, store it for later use, or transfer it to another contractor." (DWR, *The State Water Project Capability Report 2023* (July 2024) ("2023 Capability Report"), p. 5.39.) Among other water types, there is also Article 21, previously termed "surplus" and now known as "interruptible" water, available at lower cost if DWR deems it to be available.

131. Table A amounts represent "nothing more than hopes, expectations, water futures or, as the parties refer to them, 'paper water.' Actual, reliable water supply from the SWP is more in the vicinity of 2 to 2.5 MAF of water annually. Consequently, there is a huge gap between what is promised and what can be delivered." (*PCL v. DWR I, supra*, 83 Cal.App.4th at p. 908, fn. 5.) "Paper water always was an illusion. 'Entitlements' is a misnomer, for contractors surely cannot be entitled to water nature refuses to provide or the body politic refuses to harvest, store, and deliver. Paper water represents the unfulfilled dreams of those who, steeped in the water culture of the 1960's, created the expectation that 4.23 MAF of water could be delivered by a SWP built to capacity." (*Id*. at p. 914, fn. 7.)

132. Moreover, "fiscal and environmental pressures militate against completion of the project." (*PCL v. DWR I*, 83 Cal.App.4th at p. 915, fn. 7.) DWR thus agreed to a financial provision which "implies that DWR and the contractors have forsaken their expectation that the SWP facilities will be built as planned," since it "allows contractors a rebate for the costs previously assessed for facilities that have never been built." (*Ibid*.)

133. "DWR never reduced the original Table A amounts [the maximum amounts of SWP water the SWP contractors may request each year] to reflect the deficiency" between the incomplete build-out of the SWP and the original Table A amounts. (*Central Delta Water Agency v. Department of Water Resources*, *supra*, 69 Cal.App.5th at p. 184.)

134. No SWP contract provisions can, or do, excuse DWR from complying with other requirements of state law, including laws protecting the Delta, the Public Trust Doctrine, and the constitutional rule against waste and unreasonable use and diversion of water in Article X, section 2.

Accordingly, DWR cannot lawfully operate the SWP in an unsustainable manner intended to maximize exports from the Delta while causing increasing harm to the ecosystem and communities of the Delta.

135. DWR's prolonged failure to ensure that its operation of the SWP realistically confronts the structural imbalance between putative Table A amounts and the SWP's far more limited actual annual yields, despite the lack of development of the SWP's planned North Coast water sources, has had a dramatic impact on the amount of water exports available from the SWP and has resulted in unrealistic and unsustainable diversions from the Delta and its source watersheds and deliveries to water exporters, which form the basis of DWR's efforts each year to supply water to the SWP contractors.

136. DWR's continued operation of the project to maximize deliveries to its Table A contractors has directly resulted in increased pressure on existing water sources. Without the SWP's originally planned North Coast water, the SWP relies more heavily on existing sources like the Feather and Sacramento Rivers and diversions from the Sacramento-San Joaquin Delta. This places an even greater strain on these heavily oversubscribed sources, particularly during droughts.

137. Since the 1980s, as DWR's own reports have consistently confirmed, the SWP has chronically failed to deliver full Table A amounts. This shortfall is in large part a result of the unrealized potential of North Coast diversions that were factored into the original supply estimates. DWR's own data confirm that in dry years, Table A allocations are often significantly reduced, requiring water users to rely on alternative sources or face cutbacks. In critically dry years, such as 2014, 2021, and 2022, Table A allocations have been limited to 5%. (State Water Project Historical Table A Allocations, Water Years 1996-2025).

138. Despite the lack of North Coast water stemming from the historical fact that the SWP was not built out as originally designed, DWR has not decreased water exports from the Delta to a commensurate and sustainable degree in its capacity as operator and manager of the SWP. As detailed further below, this has significantly contributed to ecological harms in the Delta, including severe damage to native fish populations. As such, DWR operates the SWP with a water supply dramatically lower than that expected for the SWP as originally approved, leading to increased, unsustainable, and

unreasonable burdens on the Delta ecosystem.

139. The San Joaquin and Sacramento River basins see overprescription by five times their actual flows. Senior users and water districts can take more than 70% of the water during dryer periods, harming fish runs, bird species habitat, and Indigenous and recreational use. Over-allocated water from the Sacramento River reaches up to 151% of the real-time amount, and dry riverbeds and lost wetlands are the result.

140. DWR's continued overreliance on Table A amounts in SWP operation creates a false sense of water security for contractors and the public, leading to flawed planning decisions that continue to rely on a nonexistent paper supply, rather than on realistic and sustainable sources. It also leads to conflicts and poor planning when real water shortages occur, and undermines environmental protections, complicating efforts to protect the Delta's ecosystem that depend on sufficient river flows.

141. DWR's continued overreliance on Table A amounts in SWP operation also fails to account for climate change and the gradual and ongoing "aridification" of the Western United States, including California. The initial Table A allocations were based not only on dams that were never built, but also on historical climate patterns and conditions that have significantly changed due to climate change, which has made conditions hotter and drier, further reducing the reliable water supply. This makes the higher allocation amounts referenced in Table A even more misleading.

142. In May 2023, the Auditor of the State of California produced a report entitled *California Department of Water Resources: Its Forecasts Do Not Adequately Account for Climate Change and Its Reasons for Some Reservoir Releases Are Unclear*. ("2023 Auditor Report"). The 2023 Auditor Report discusses DWR's failure to develop a long-term plan for the SWP that adequately mitigates and responds to more frequent and severe droughts. (Auditor Report, p. iii.) The Auditor Report describes DWR's failure to accurately reflect the effects of climate change in its water supply forecasts, which has negatively impacted the operations of the SWP. (*Ibid*.) That Report also addresses DWR's mismanagement of releases from Lake Oroville, in part due to its deficient assessment of climate and hydrology. The Auditor determined that "DWR has made only limited progress in accounting for the effects of climate change in its forecasts of the water supply and in its planning for the operation of the [SWP] and must correct these problems before it can effectively manage the State's

water resources in the face of more extreme climate and hydrologic conditions." (Auditor Report cover letter, May 25, 2023.)

143. DWR's continued overreliance on Table A amounts devalues conservation and compounds harms and risks by placing political and social pressure on DWR to provide the full Table A amounts, and to keep building more facilities, including the Delta Conveyance, in a futile attempt to meet annual Table A amounts which no longer reflect reliably deliverable supplies.

144. Despite its clear awareness of the "huge gap" between Table A amounts and supplies which the SWP can reliably deliver for more than a quarter-century (*PCL v. DWR I*, 83 Cal.App.4th at p. 914), DWR routinely issues press releases stating how much water is expected to be available and bases the percentage on the Table A amount rather than on the sustainable yield. The public is thus chronically misled about the amount of water that should be expected to be delivered in each year, which puts pressure on the state to deliver unsustainable and unreasonable amounts.

145. Rather than eliminating the need for the relief sought in this action, data in DWR's biennial reports on the capability of the SWP corroborate that DWR has made little, if any, progress in adjusting operations to reasonable and sustainable yield since *PCL v. DWR I* highlighted the SWP's "paper water" problem a generation ago. For example, in its final 2023 Capability Report, DWR reported that under existing conditions, the estimated average annual delivery of Table A water is 2.202 MAF, with estimated minimum deliveries of only 184,000 MAF. (*Id*. at p. 1.14.) Similar figures appear in DWR's December 2025 Draft Capability Report, pp. 27-28 (respectively, 2.234 MAF and 184,000 MAF). The likelihood of Table A deliveries exceeding 4 million-acre-feet, rounded to 1 percent in DWR's previous report, is so small that DWR's 2023 report and draft 2025 report round it to zero percent. (2023 Capability Report, p. 6.51 [Table 2]; 2025 Draft Capability Report , pp. 26, 42.)

146. The actual reliability of the SWP may be even lower than these figures. DWR's climate-adjusted estimates over 20 years are 13 to 22 percent lower than under existing conditions in its most recent final report. (2023 Capability Report, p. 1.14; see also 2025 Draft Capability Report, p. 40 [11 to 21 percent lower].) Although DWR recognizes that the Delta's "fragile ecosystem" may place further constraints on SWP reliability, DWR admits that the modeling in its Capability Report assumes status quo regulatory requirements (2023 Capability Report, p. 2.21; Draft 2025 Capability Report, pp.

5, 10; cf. Wat. Code § 85001(a) ("existing Delta policies are unsustainable").)

DWR's SWP Water Rights

147. In addition to operating and managing the SWP, DWR is the holder of the appropriative water rights permits for the SWP, issued and administered by the SWRCB, including Permits: 16478, 16479, 16481, and 16482 ("Permits"). Pursuant to these Permits, DWR was authorized to "divert and redivert" up to 10,350 cubic feet per second ("cfs") at the Harvey O. Banks Pumping Plant located near Tracy, California, for beneficial use and storage each year. The Permits, which include diversion, re-diversion and storage for salinity control at numerous facilities including San Luis Dam and Forebay, are summarized as follows:

- Permit 16478 issued to DWR September 26, 1972, Application 5630 originally filed by the California Department of Finance on July 30, 1927, and later transferred to DWR. Under the original permit, DWR was authorized to divert and use water from the Feather River for the purposes of irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and incidental power.
- Permit 16479 issued to DWR September 26, 1972, Application 1443 originally filed by the California Department of Finance on August 24, 1951, and later transferred to DWR. Pursuant to the permit, DWR was authorized to divert and use water from the Feather River and the Sacramento-San Joaquin Delta for the purposes of irrigation, domestic, municipal, industrial, salinity control, recreational, fish and wildlife enhancement purposes, and incidental power.
- Permit 1648 issued to DWR September 26, 1972, Application 17512 originally filed by the California Department of Finance on August 25, 1951, and later transferred to DWR. DWR was authorized to divert and use water from Italian Slough, a tributary to the Old River, and from the Sacramento-San Joaquin Delta Channels. The water could be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and incidental power purposes.
- Permit 16482 issued to DWR September 26, 1972, Application 17512 was originally filed on March 15, 1957. DWR was authorized to divert and use water from Italian Slough, the

Sacramento-San Joaquin Delta Channels, and the San Luis Creek for purposes of irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and incidental power.

148. DWR's Permits originally required the completion of construction of specific diversion projects by December 1, 1980, and the application of water allotted under the permits to full beneficial use by December 1, 1990. DWR subsequently petitioned the SWRCB for and received limited extensions of time on both these deadlines. Under the last time extension approved by the SWRCB, the time for DWR to complete SWP construction expired on December 31, 2000 [Term 6], and the time for DWR to put SWP water to full beneficial use expired on December 31, 2009 [Term 7].

149. DWR's Permits have been the subject of extensive administrative proceedings, decisions, and orders pertaining to both water rights and water quality. For example:

- The SWRCB adopted its last complete update to its Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) in May 1995, with the latest updates scheduled for consideration and possible approval in October 2026.
- In Water Rights Decision 1641, issued in December 1999 and revised in March 2000 (WR Order 2002-02), the SWCRB required DWR and others to meet the Bay-Delta Plan's water quality objectives, including requirements protecting beneficial uses in the southern Delta, and conditioned DWR's pumping and export activities on meeting these standards.
- Following DWR's recurrent failure to meet D-1641 water quality standards, including those protecting the internal southern Delta, the SWRCB adopted WR Order 2000-0006. Due to the threatened violation of permitting and licensing conditions, the SWRCB issued a Cease and Desist Order ("CDO") setting a firm deadline of July 1, 2009, to remove this threat.
- Despite DWR's failure to meet the CDO deadline and over objections that included those of the Plaintiffs, the SWRCB later extended the CDO compliance period at DWR's request on January 5, 2010, in WR Order 2010-002. The Order indicated it was meant to accommodate the SWRCB's pending review of the Bay-Delta Plan, while also seeking to avoid "undue delay" in reaching and implementing a revised compliance plan.

- DWR has not established in any administrative or judicial proceeding that it has fully complied even with the decades-old water quality standards delineated in D-1641.

150. Neither other court actions nor administrative proceedings obviate the need for this action against DWR, which focuses on DWR's own legal duties as SWP operator and manager rather than such matters before the SWRCB as DWR's petition to extend the deadlines for construction and perfection of uses in its appropriative water rights permits, water rights change petitions, and the SWRCB's completion of its long-pending update to Delta water quality requirements.

151. Regardless of the precise manner in which those proceedings are resolved, DWR's duties addressed here as SWP operator and manager will continue to apply, and DWR's need to address the damaging consequences of its failure to operate the SWP as legally required, addressed further below, will remain.

152. DWR's water rights permits for the SWP have not been perfected into water rights licenses (Wat. Code § 1380), which would require both DWR and the SWRCB to complete multiple tasks not completed for the SWP's water rights. (See, e.g., Wat. Code §§ 1600 [reporting requirements], 1605 [SWRCB inspection], 1610 [determination regarding satisfaction of permit conditions].) Should that eventually occur for the SWP, licensed amounts may be limited to a quantity less than the original permitted quantity, if the applicant has not diverted and applied the full amount in the original permit. (Wat. Code § 1605, 1610.) Even if eventually perfected, however, SWP water rights would still confer no vested right for DWR to circumvent public trust duties (*National Audubon Society*, *supra*, 33 Cal.3d at p. 452), the constitutional rule against waste and unreasonable uses and diversions (*Imperial Irrigation Dist.*, *supra*, 225 Cal. App.3d at p. 563), and other state laws, including those protecting the Delta.

The Bay-Delta Plan

153. Pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code § 13000, et seq.) and the federal Clean Water Act, the SWRCB develops the "San Francisco Bay / Sacramento-San Joaquin Delta Estuary Water Quality Control Plan," commonly known as the "Bay-Delta Plan." The Bay-Delta Plan was first drafted in 1978 and subsequently updated in 1991, received its last complete update in 1995. Portions of that Plan were updated in 2006 and 2018, and the current Final Draft Plan

was released in August 2026, with an adoption hearing scheduled for October 2026.

154. The August 2026 Final Draft Plan relates to water quality and flows for the Sacramento River watershed and the Delta and makes modifications to the 2018 Bay-Delta Plan amendments.

155. Pursuant to the Porter-Cologne Act, the Bay-Delta Plan establishes water quality objectives to ensure the reasonable protection of beneficial uses and prevention of nuisance in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) in consideration of various factors including past, present, and probable future beneficial uses of water. (Wat. Code § 13241.) The Bay-Delta Plan also includes a program of implementation to achieve those objectives.

156. The SWRCB, in its Final Staff Report for the Bay-Delta Plan Update, stated that "the determination of reasonable protection of fish and wildlife uses shares the same goals and is a similar exercise to public trust balancing. As acknowledged in prior orders issued by the SWRCB, the Porter-Cologne Act is a codification of the SWRCB's public trust duty regarding water quality." (Final Staff Report: Sacramento/Delta Update to the Bay Delta Plan, Aug. 2026.)

157. Plaintiffs do not challenge in this action the adoption or implementation of the Bay-Delta Plan. This action is exclusively focused on DWR's operation of the SWP Facilities, not the SWRCB's administrative and regulatory activities.

158. Despite the SWRCB staff's claim regarding supposed shared goals between the Bay-Delta Plan and a "public trust balancing," the SWRCB's adoption of the Bay-Delta Plan does not act to immunize DWR of its duty to comply with the Public Trust Doctrine in its operation of the SWP Facilities.

159. First, the Bay-Delta Plan is limited to consideration of competing *beneficial* uses and the prevention of *nuisance*, in consideration of various factors including past, present, and probable future *beneficial* uses of water. While the Final Staff Report claims that consideration of some of those beneficial uses overlaps with its duty to consider impacts to public trust resources (what the SWRCB terms "public trust balancing"), the Public Trust Doctrine is concerned with, and protects, much more than just beneficial uses or the prevention of nuisance. The Bay-Delta Plan does not, nor does it purport to, consider all impacts to trust resources caused by DWR's operation of the SWP Facilities.

160. Second, the Bay-Delta Plan does not, nor does it purport to, establish or require

monitoring or record-keeping relating to DWR's diversions of water from the Delta and subsequent uses of water, including accurately accounting for the date/time, quantity of, and ultimate use of, DWR or DWR-related diversions (including the use of DWR facilities to divert and facilitate the use and storage of water for others). Such monitoring, measurement, and record-keeping is a core duty of a trustee of the public trust, and DWR's failure to satisfy this duty is not obviated by the SWRCB's adoption of and other activities concerning the Bay-Delta Plan.

161. DWR has a separate and independent duty under the Public Trust Doctrine as the operator of the SWP and the fiduciary directly impacting the trust resources of the Sacramento and San Joaquin rivers and Bay-Delta ecosystems.

162. Nothing in the Bay-Delta Plan, its related updates, or any other decision or order obviates the need for relief sought from DWR in response to its harmful operation of the SWP in violation of its duties under the Public Trust Doctrine and Article X, section 2 of the California Constitution.

The 2009 Delta Reform Act and Delta Plan

163. The California Legislature enacted the 2009 Delta Reform Act (DRA) "to provide for the sustainable management of the [Delta] ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." (Wat. Code § 85001(c).)

164. The DRA 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.)

165. The DRA declares that the policy of the State of California is to achieve a number of objectives that "are inherent in the coequal goals for management of the Delta, including restoring the Delta ecosystem; protecting "the unique cultural, recreational, and agricultural values" of the Delta; promoting statewide water conservation, efficiency, and sustainability; improving water quality; improving the water conveyance system; and expanding statewide water storage. (Wat. Code §

85020.)

166. The DRA defines "coequal goals" as "the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code § 85054.)

167. The DRA requires adherence to a statewide policy to "reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." (Wat. Code § 85021.)

168. The DRA affirms that "The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." (Wat. Code § 85023.) The DRA also makes clear that the statute "does not affect … [t]he application of the public trust doctrine." (Wat. Code § 85031(h).)

169. In addition to requiring DWR and other public agencies to adhere to its statewide requirements, including the foundational principles of public trust and reasonable use, the DRA created and assigns certain duties to the Delta Stewardship Council ("Council"). (Wat. Code § 85200.) The Council must "develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals," and that plan "shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta." (Wat. Code § 85300(a).)

170. The Delta Plan, which the Delta Stewardship Council adopted in 2013, "provides a detailed history, description, and analysis of the various problems and challenges facing the Delta," and identifies multiple regulatory policies as well as performance measure targets and other nonregulatory recommendations. (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1041, 1059-1062.)

171. Proceedings before the Council on the consistency of new "covered actions" with the Delta Plan cannot obviate the need for this action focusing on DWR's duty to adhere to public trust and reasonable use principles in its operation of the SWP. Operation of the SWP is not among those actions subject to the Council's authority to review for consistency, nor is routine maintenance (Wat. Code § 85057.5(b)(2).)

172. The DRA and Delta Plan provide guidance to DWR and other state and local agencies regarding the steps needed to ensure Delta ecosystem protection and restoration and the interrelationships between water reliability, water quality, and reasonable use.

173. The DRA requires that the "implementation of the Delta Plan shall further the restoration of the Delta ecosystem and a reliable water supply" (Wat. Code § 85302(a)), and identifies various measures that must be included in the Delta Plan to promote both "characteristics of a healthy Delta ecosystem" and "a more reliable water supply." (Wat. Code § 85302(c-d).)

174. The "characteristics of a healthy Delta ecosystem" specified in the DRA that must be included in the Delta Plan are:

> (1) Viable populations of native resident and migratory species.
> (2) Functional corridors for migratory species.
> (3) Diverse and biologically appropriate habitats and ecosystem processes.
> (4) Reduced threats and stresses on the Delta ecosystem.
> (5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

(Wat. Code § 85302(c).)

175. The DRA identifies several "subgoals and strategies for restoring a healthy ecosystem" that shall be included in the Delta Plan:

> (1) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.
> (2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
> (3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
> (4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.
> (5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
> (6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.

(Wat. Code § 85302(e).)

176. The "measures to promote a more reliable water supply" are required to be included in the Delta Plan to "address all of the following:"

(1) Meeting the needs for reasonable and beneficial uses of water.
(2) Sustaining the economic vitality of the state.
(3) Improving water quality to protect human health and the environment.

(Wat. Code § 85302(d).)

Environmental Review of the Long-Term Operation of the State Water Project

177. DWR certified a Final Environmental Impact Report for and approved the Long-Term Operation of the California State Water Project in October 2024 and received a related Incidental Take Permit (ITP) from the Department of Fish and Wildlife during the following month.

178. The SWP Long-Term Operations Project purports to "continue DWR's ongoing, long-term SWP operations consistent with applicable laws, contractual obligations, and agreements. DWR proposes long-term operations of the SWP that will allow DWR to continue to store, divert, and convey water, in accordance with its existing water rights, to deliver water pursuant to water contracts and agreements up to full contract quantities. DWR is seeking to optimize water supply and improve operational flexibility while protecting fish and wildlife." (Long-Term Operations of the State Water Project Final EIR, p. ES-05, October 2024.) DWR's EIR confirms that it excluded numerous categories from its ITP request, including, among others, "Oroville Dam and Feather River operations," "flood control," and "[a]ny previously identified or potential future habitat restoration actions." (*Id*. at p. 2-19.) As to these excluded categories, DWR asserted that "these facilities and operations activities are or will be covered under separate permits or addressed by other legal authorities." (*Ibid*.)

179. The EIR and related approvals for the SWP Long-Term Operations Project did not, nor did they purport to, satisfy DWR's own duties under the Public Trust Doctrine to consider the impacts of its operation of the SWP on trust resources, and mitigate and/or avoid those impacts if feasible.

180. The EIR for the SWP Long-Term Operations project and state agency project approvals are currently the subject of active consolidated actions in Sacramento Superior Court. (*California Sportfishing Protection Alliance et al. v. California Department of Water Resources, et al*., Sacramento Superior Court Case No. 24WM000181, c/w 24WM000183, 24WM000185, 24WM000186.)

181. Plaintiffs do not in this action bring any claims regarding the EIR and related project

approvals for the SWP Long-Term Operations Project. The claims raised herein are distinct from those raised in the litigation over review and approval of that that project, and regardless of the precise manner in which those proceedings are resolved, the need for the relief sought herein will remain.

DWR's Operation of the SWP Has Caused Severe and Ongoing Harms to Delta Fish

182. DWR's unsustainable diversions of water via the SWP are harming public trust resources in the Delta. Moreover, these harms are well known to the State of California and its agencies with water-related duties, including DWR.

183. "The Bay-Delta was once a vast tidal marsh teeming with fish and wildlife, including several iconic species, such as Chinook salmon. Reclamation of farmland in the Delta and diversion of water through and from the Bay-Delta led to vibrant farming and urban development throughout California, which co-existed with native fish and wildlife for decades. *In more recent years, increasing water diversions and land reclamation for urban and agricultural development have played significant roles in the precipitous decline of fish and wildlife species*. Many of these species are now threatened or endangered. Some species are still able to marginally support important commercial fisheries. However, with the continued decline of these species, the future of these commercial fisheries is jeopardized." (SWRCB, *Summary of Proposed Amendments to the Bay-Delta Water Quality Control Plan* (July 6, 2018) ("2018 Plan Summary"), at p. 1 (emphasis added).)

184. "For more than a decade, continuing decline of the Bay-Delta ecosystem has reinforced the need for action. Several native fish species have been listed as protected under the State or federal Endangered Species Act. Water diversion from the San Joaquin River system has surpassed the watershed's ability to support healthy fish populations." (2018 Plan Summary, at p. 2.)

185. "There is sufficient scientific information to support the need for increased flows to protect public trust resources [in the Delta]; while there is uncertainty regarding specific numeric criteria, scientific certainty is not the standard for agency decision making." (SWRCB. (2010) *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem*, at p. 4.)

186. "Recent flow regimes in the Delta have contributed to the decline of native species and encouraged non-native species." (SWRCB. (2018 Plan Summary, at p. 40.) ". . . [T]he scientific information received during this proceeding supports the conclusion that flow, though not sufficient in

and of itself, is necessary to protect public trust resources and that the current flow regime has harmed native species and benefited non-native species." (*Id*. at p. 108)

187. "The best available science suggests that current flows are insufficient to protect public trust resources." (SWRCB, 2018 Plan Summary, at p. 2.)

188. "For 30 years scientists and regulatory agencies have documented the significant impacts the water export operations have on Delta fish – and yet little action has been taken to correct the situation. When the POD [Pelagic Organism Decline] signaled the Delta ecosystem is in real trouble a few years ago, the response was to shift the blame from the known impacts of the water exports to potential other 'stressors.'" (Larry Walker Associates. (2010). *A Review of Delta Fish Population Losses from Pumping Operations in the Sacramento-San Joaquin River Delta*, at p. 3.)

189. "Losses of fish to mortality associated with export pumping have been blamed in part for declines of numerous species including striped bass (Stevens et al. 1985), Chinook salmon (Kjelson and Brandes 1989), and delta smelt (Bennett 2005)." (Larry Walker Associates. (2010). *A Review of Delta Fish Population Losses from Pumping Operations in the Sacramento-San Joaquin River Delta*, at p. 11.)

190. A National Marine Fisheries Service ("NMFS") biological opinion reports that "the long-term operations of the CVP and SWP are likely to jeopardize the continued existence of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, Southern DPS of North American green sturgeon, and Southern Resident killer whales. The long-term operations of the CVP and SWP are likely to destroy or adversely modify critical habitat for Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead." (NMFS, Southwest Region, Long Beach, CA. 2009. *Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project. ESA Section 7 Consultation*, at p. 575.)

191. "There is a large body of evidence that indicates that high percentages of covered fish species are lost due to SWP and CVP pumping operations in the south Delta. As captured in the above discussion, information indicates that the direct loss of various species of fish in and around the south Delta pumping facilities is significant, historic, and ongoing. Studies showing high mortality date back

to the 1970s. Mitigation efforts to reduce losses have been suggested repeatedly over the past two decades but have either not been implemented or have been shown to not be successful." (Larry Walker Associates. (2010). *A Review of Delta Fish Population Losses from Pumping Operations in the Sacramento-San Joaquin River Delta* at p. 22.)

192. "Too much is at stake to allow further delay in addressing the ongoing fish mortality associated with the water project operations, especially when the evidence paints such a clear picture." (*Id*. at p. 23.)

193. SWRCB reports corroborate that it is necessary to decrease water diversions to increase Delta outflows. In October 2017, the SWRCB found that: "it is widely recognized that the Bay-Delta ecosystem is in a state of crisis." (*Final Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows*, at p. 1-4.) The water management infrastructure including the SWP and the federal CVP "have been accompanied by significant declines in nearly all species of native fish, as well as other native and non-native species dependent on the aquatic ecosystem. Fish species have continued to experience precipitous declines since last major update and implementation of the Bay-Delta Plan in 1995 that was intended to halt and reverse the aquatic species declines occurring at that time. In the early 2000s, scientists noted a steep and lasting decline in population abundance of several native estuarine fish species that has continued and worsened during the recent drought. Simultaneously, natural production of all runs of Central Valley salmon and steelhead remains near all-time low levels." (*Id.*) According to the SWRCB, the best available science indicates that existing "requirements are insufficient to protect fish and wildlife." (*Id.* at p. 1-5.)

194. The SWRCB's September 28, 2023 *Draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta* ("Draft Staff Report/SED") contained extensive information about the crisis facing native fish species and concluded that it was necessary to increase river flows into and through the Delta—meaning far more water would need to bypass DWR's diversions and less water

would be exported by the SWP. DWR commented on the SWRCB's Draft Staff Report/SED by a letter on January 22, 2024, expressing concerns that the proposed requirements to protect endangered and threatened fish species could lead to reductions in freshwater diversions for SWP exports.

195. In July 2025, biologist Jonathan Rosenfield, Ph.D. testified before the SWRCB's Administrative Hearings Office regarding the current and ongoing harms to the Delta's ecosystem:

i. "Aquatic ecosystems of the San Francisco Bay estuary and its watershed are in crisis. Many fish species are formally classified as threatened or endangered. Despite their legal status, these populations continue to decline. The tribal, subsistence, recreational, and commercial fisheries that the estuary and its watershed once supported have been closed or are severely constrained. Water quality and estuarine habitat are deteriorating." (Testimony of Jonathan A. Rosenfield, Ph.D, ("Rosenfield Testimony") *In the Matter of Petition for Change of Water Rights Permits 16478, 16479, 16481, and 16482 for the Delta Conveyance Project* ("CPOD Hearing")), SWRCB Administrative Hearing Office, July 11, 2025, Exhibit BK-100R, at p. 6.)

ii. "Each of these outcomes is related, often in large part, to unsustainable diversion of water upstream of the estuary and from the Delta. Freshwater flow is the 'master variable' that controls or strongly influences most ecological processes and habitat conditions in riverine and estuarine environments. Despite abundant evidence that current river flows into and through the Delta are inadequate to support fish and wildlife beneficial uses or the public trust, only a small portion of those flows are protected from diversion." (Rosenfield Testimony at p. 6.)

iii. "Several fisheries that rely on the San Francisco Bay estuary and its watershed are at risk of permanent collapse. Fisheries for the CESA/ESA listed species are closed and as described below, other fisheries are closed or constrained with increasing frequency. If the pattern of closed, constrained, unpredictable fishing seasons, and declining abundance of fish continues, economic and cultural impacts to fishing communities in the Central Valley, San Francisco Bay, and

along the California and Oregon coast are likely to become irreversible." (Rosenfield Testimony at p. 13.)

iv. "[T[he evidence is overwhelming that the public trust and fish and wildlife-related beneficial uses are not reasonably protected from impacts of status quo water diversion and export practices." (Rosenfield Testimony at p. 9.)

196. DWR's operation of the SWP has, and continues to, adversely affect both the temperature and salinity of Delta water, both of which are crucial factors for the health of various fish populations in the Delta.

197. DWR's operation of the SWP causes elevated water temperatures which in turn cause significant harms to the Delta ecosystem, including to salmonids and particularly salmonid eggs and juveniles. Elevated water temperatures are often caused by DWR's impounding of water, untimely harmful releases of warmer water, increased diversions, and overall reductions of flows.

198. DWR's operation of the SWP causes elevated salinity in the Delta by reducing flows into and out of the Delta, resulting in further intrusion of higher salinity waters from the Pacific Ocean reaching further into the Delta. Increased salinity in the Delta causes significant harm to the Delta food web, including harm to common zooplankton, phytoplankton, and native fish species.

199. Increased salinity of the Delta caused by DWR's operation of the SWP also harms Delta water users, including residential, commercial, and agricultural water users with senior riparian and appropriative rights dependent on Delta water, rendering water unsuitable for drinking and unsuitable for crop irrigation.

200. DWR has failed to meaningfully consider feasible alternatives to its unsustainable water exports, or indeed any meaningful alternatives, despite having known for years that decreasing these exports is necessary to protect fish in the Delta and thereby abide by its duties under the Public Trust Doctrine and under the California Constitution's requirement of reasonable use and diversion of water.

DWR's Operation of the SWP Has Harmed Commercial and Recreational Fishing in the Delta

201. DWR's excessive and unsustainable water exports via the SWP have, and continue to, adversely affect both commercial and recreational fishing in the Delta and along the coast. Spring-run

Chinook salmon and winter-run Chinook salmon once supported commercial, recreational, subsistence, and tribal subsistence fishing. These populations no longer support fisheries due to their extremely reduced numbers and imperiled status. Similarly, the Delta's white sturgeon population is significantly declining and soon likely to no longer sustain a recreational fishery.

202. DWR's excessive and unsustainable water exports via the SWP have, and continue to, harm commercial fishing in numerous ways, including the following: (1) diverting cold water needed to sustain commercial fisheries from the severely over-appropriated Sacramento River and reducing Delta flows, thereby increasing temperature-dependent mortality; (2) reducing access to the riverine edge habitat needed for spawning and rearing; (3) amplifying salinity intrusion in geographic area and duration; (4) damaging the ecosystem balance in the delicate Bay-Delta estuary; and (5) serving as a major cause of job losses and reduced revenue in the fishing industry.

203. "Once the foundation of California's commercial and recreational salmon fisheries, Central Valley fall-run Chinook have experienced severe declines, leading to three consecutive commercial fishing season closures. Preliminary 2024 return estimates indicate one of the lowest returns on record, with 99,274 spawning adults returning to the Sacramento River system—far below historical averages that once exceeded 750,000. Reduced reservoir releases during key migration windows and high water temperatures have significantly increased pre-spawn mortality, threatening future generations of this critical run." (Golden State Salmon Association, *The State of Salmon: 2025 Fishery Report*, at p. 7.)

DWR's Operation of the SWP Has Caused Harmful Algal Blooms in the Delta

204. DWR's unsustainable operation of SWP export pumps, if not carefully controlled, alters the flow in the channels, creating reverse flows and stagnant zones. This results in insufficient flushing of Delta waters and the concentration of all constituents, including municipal effluent and salts from upstream return flows.

205. That stagnation also exacerbates proliferation of invasive water weeds and harmful algal blooms ("HABs") such as toxic *Microcystis*. Delivery of Delta water to the CVP's San Joaquin Valley service area results in the importation thereto of upwards of 1,000,000 tons of salt into the San Joaquin Valley. After this exported water is used, much of the salt is delivered to the San Joaquin River

concentrations which exceed downstream Water Quality Objectives. This drainage also includes high levels of other damaging constituents, including selenium and boron.

206. EPA's January 19, 2024, comment letter on the Draft Staff Report/SED said: "The Bay-Delta and its watersheds have also experienced increased frequency of harmful algal blooms (HABs) affecting aquatic life and human health. Restoration of higher flow volumes may address key drivers of HABs, including increased stream temperature and water residence time (Kudela et al. 2023; Berg & Sutula 2015, Lehman et al. 2013). EPA reiterates that swift action is needed to address the imperiled state of the Delta and the species, communities, and economies that depend on this ecosystem for survival." (EPA Comment Letter, Enclosure 1, comments, pp. 1-2.)

207. DWR's actions reducing freshwater flows in the Delta to serve unsustainable SWP water exports is worsening HABs over time and is now reaching the level of a public health and environmental emergency.

208. As one example, on July 9, 2024, the SWRCB posted a "danger" advisory after testing of water samples collected from multiple locations of Discovery Bay in Contra Costa County. Along with the Central Valley Regional Water Quality Control Board, SWRCB confirmed the presence of harmful algal blooms and urged the public to "avoid water activities." (SWRCB, *Harmful algal bloom confirmed at Discovery Bay, public urged to avoid water activities* (July 9, 2024), available at https://www.waterboards.ca.gov/press_room/press_releases/2024/pr20240709-hab-discovery-bay.html [checked on October 3, 2026].)

209. HABs can pose a severe threat to people and pets as well as adversely affecting public health, recreation, and protection of aquatic species and wildlife. For example, the SWRCB's July 9, 2024, News Advisory "urges people to avoid swimming, boating and other activities to keep pets out of the water until further notice."

DWR's Operation of the SWP Has Exacerbated a Damaging Shift from Annual Crops to Permanent Crops Lacking Drought Resilience

210. DWR's excessive diversions in its operation of the SWP have exacerbated a harmful shift from annual crops to permanent ones which lack drought resilience. Permanent crops, such as nut trees, citrus and other fruit trees, and grapevines, need water every year and can take years to go from

seed to harvestable fruit. Permanent crops thus put different pressure on water managers to deliver water than annual crops, which can be fallowed in any given year.

211. Permanent crops are more water-intensive than the annual field crops they often replace. Unlike annuals, which can be fallowed during dry years, perennial orchards and vineyards require continuous water to survive, removing the flexibility to reduce water use during droughts.

212. DWR's unsustainable operation, which has persisted even during prolonged droughts and periods of precipitous decline in the Delta ecosystem, has enabled the SWP to supply water to an unsustainable amount of permanent crops in the arid San Joaquin Valley. For example, over 200,000 acres of nuts, over 22,000 acres of citrus, and over 50,000 acres of fruit were planted in Kern County between 1996 and 2014.

213. Permanent crops in the San Joaquin Valley have negatively affected the Delta ecosystem through intensive water use, land subsidence, and changes in water quality from agricultural runoff. The radical increase in acreage devoted to permanent crops, made possible through DWR's unsustainable diversions and deliveries, has compounded these issues by entrenching a rigid and unsustainable agricultural system in the San Joaquin Valley and other arid parts of California that requires a stable water supply, even during droughts.

214. DWR's unsustainable diversions and deliveries have facilitated the harmful expansion of the total acreage of water-intensive permanent crops in some agricultural areas DWR has supplied with SWP water despite its unsustainability, particularly during prolonged droughts. This includes areas sorely lacking in groundwater resources due to their location primarily on the west side of Kern and Kings counties.

215. Although deliveries of Table A water were reduced (at times dramatically) during droughts in 2001-2005, 2007-2010, and 2012-2014, the cumulative acreage of almonds in Kern County rose precipitously.

216. The widespread conversion to permanent crops facilitated by DWR's unsustainable SWP operation has placed increased pressure on water supplies (primarily SWP water) year after year, and annual cropland losses to permanent cropland and development drive net increases in water demand.

217. DWR has played a significant role in creating and compounding this unsustainable and unreasonable hardening of demand for SWP water caused by the massive conversion of annual crops to permanent crops.

218. DWR's harmful diversions from the Delta and operation of the SWP have enabled and exacerbated the growth of an unsustainable and environmentally harmful permanent crop economy in a water-deficient part of the state, at the cost of the health of the Delta ecosystem, which demonstrably and desperately needs this water.

DWR's Operation of the SWP Has Led to Land Subsidence in the San Joaquin Valley

219. The continuous need for irrigation water for permanent crops, particularly during drought years when surface water is limited, has led to a severe increase in groundwater pumping in the arid parts of the state. This over-extraction causes the land to sink, a process known as subsidence.

220. Subsidence damages the already aging SWP Facilities, resulting in the need for costly repairs and interruptions of water exports. As DWR has acknowledged, "[t]he land underlying the California Aqueduct has sustained an alarming and unprecedented increase in subsidence rates in recent years, affecting conveyance capacity of the Aqueduct. For example, in the three years of the drought from 2013 through 2016, areas of the aqueduct sunk [sic.] nearly three feet. In addition to reducing flow capacity of the system, subsidence also leads to operational difficulties." (2025 Draft Capability Report, at p. 15.) Moreover, "the cumulative effects of subsidence reduce the delivery capability of the SWP." (DWR, May 2025 Addendum to 2023 State Water Project Capability Report: Impacts of Subsidence, at p. 3.17.)

221. DWR's actions as SWP operator, described above, substantially contribute to the unsustainable and unreasonable hardening of demand for SWP water caused by the massive conversion of annual crops to permanent crops. This has been, and is, a proximate cause of land subsidence in many areas of the state that receive SWP water diverted from Northern California and the Delta.

222. One recent study found "dramatic and continued land subsidence in the San Joaquin Valley post-2006." (Lees, M., Knight, R. *Quantification of record-breaking subsidence in California's San Joaquin Valley*. Commun Earth Environ 5, 677 (2024).)

223. "The impacts of subsidence are severe. It has necessitated multi-million dollar repairs of the gravity-driven canals and aqueducts that deliver water to the Valley and the major urban areas of southern California and has been associated with widespread damage to well casings, drains and irrigation ditches. A large portion of the subsidence is irreversible– caused by permanent compaction of pore space in the aquifer system– and evidence suggests that the majority of subsidence in the post-2006 period cannot be recovered. The loss of pore space has been shown to significantly alter groundwater dynamics, increasing unpredictability in aquifer system behavior, and the irreversible subsidence is causing permanent changes to surface topography that threaten the viability of a planned high-speed rail route through the Valley. These changes can also exacerbate flood hazards, as evidenced in the city of Corcoran, located in a subsiding area of the Valley, in the spring of 2023. There is a pressing need to mitigate the subsidence." (M. Lees, et al., *supra*, at PDF p. 1) (footnotes omitted)

224. The compaction of the aquifer system may permanently decrease the aquifer's capacity to store water and may have major consequences on the surface and subsurface infrastructure as:

- the loss of conveyance capacity in canals. Sections of the Californian aqueduct have sunk so much that the canals have a carrying capacity 20 percent less than its design capacity (California Department of Water Resources, 2017);
- the exhumation and/or damage of pipeline infrastructure;
- damage to roads, bridges, and railroads.

(Vasco, D. *Role of Agricultural Activity on Land Subsidence in the San Joaquin Valley, California*. (2018). Journal of Hydrology, at p. 462.)

FIRST CAUSE OF ACTION

Violation of Article X, section 2 of the California Constitution

DWR's Wasteful and Unreasonable Diversion and Use of Water

225. Plaintiffs incorporate and restate each and every paragraph contained herein as though fully set forth herein.

226. A real and present controversy exists between Plaintiffs and DWR concerning the obligations of DWR to comply with its duties under Article X, section 2 of the California Constitution.

227. DWR is required to comply with the mandatory duties set out in the California State Constitution, including those duties imposed under Article X, section 2.

228. DWR has a clear and mandatory duty to not waste or unreasonably use water, including the waters of the Delta, and to not utilize an unreasonable method of use or method of diversion of water.

229. "The long-standing constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." (Wat. Code § 85023.)

230. DWR has violated, and continues to violate, Article X, section 2 of the California Constitution through its operations in a manner that has caused, and continues to cause, significant harm to the Delta ecosystem, including the fish and wildlife dependent on Delta waters; the health and safety of those who consume the fish, game, produce, and water from the Delta; the health and safety of the visitors, recreational users, residents, businesses, pets and other animals of the Delta; Delta farms; vested appropriators and riparian water users; commercial and sport fishing communities; and taxpayers and water ratepayers throughout California.

231. DWR's operations constitute the waste and unreasonable use, and/or unreasonable method of use, and/or an unreasonable method of diversion of the waters of the Delta. DWR's operations unnecessarily and unreasonably deprive vested water users of water to which they are entitled and cause unreasonable degradation of water quality and other harm to the general welfare of the state and public trust resources in the Delta watershed that may be feasibly avoided and/or mitigated. DWR diverts and causes the use of water diverted from the Delta that is not truly surplus to the reasonable needs within the counties and areas from which the water originates.

232. DWR operates the SWP and other facilities in a manner that forces the Delta watershed ecosystem and Delta communities (including senior appropriative and riparian rights holders) to bear the burden of water shortages (caused by DWR's overpromising and overdelivering water to SWP contractors) during multi-year droughts, rather than being borne by DWR's customers – the SWP contractors and others served with their facilities. DWR's actions directly and indirectly deprive vested water users in the counties and areas of origin of their beneficial use of water and encroach

upon the rights of vested riparian and appropriative water users.

233. DWR's operation of the SWP Facilities violates Article X, section 2's prohibition against the waste and unreasonable use of water (and/or unreasonable method of use, and/or unreasonable method of diversion) because its operations conflict with the water policies established by the Delta Reform Act. These policies include "reduc[ing] reliance on the Delta in meeting California's future water supply needs," and the co-equal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." (Wat. Code §§ 85021, 85054.) DWR's direct and indirect actions deprive vested water users of their beneficial use of water and/or encroach upon the rights of vested riparian and appropriative water users. (Wat. Code §§ 11460, 12200.)

234. DWR's operation of the SWP Facilities violates Article X, section 2's prohibition against the waste and unreasonable use of water (and/or unreasonable method of use, and/or unreasonable method of diversion) because it conflicts with the policy of the State of California to "[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history." (Pub. Resources Code § 21001(c).)

235. DWR's operation of the SWP Facilities violates Article X, section 2's prohibition against the waste and unreasonable use of water (and/or unreasonable method of use, and/or unreasonable method of diversion) because it conflicts with the policy of the State of California to "conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat…" and that "all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the" California Endangered Species Act. (Fish and Game Code §§ 2052, 2055.)

236. DWR's operation of the SWP Facilities has caused or contributed to the listing of fish species as endangered or threatened, and in the case of Delta Smelt, has driven the species into virtual extinction. As explained above, native fish species have declined precipitously since the SWP began diverting freshwater flows from the Delta for export.

237. In prior cases involving ecological consequences far less catastrophic than those described in this complaint (*see*, *e.g.*, *supra, Joslin*, *Tulare*, *Forni*, and *Erickson*), California courts have prohibited particular water uses as unreasonable.

238. In this case, however, DWR's ongoing unsustainable and unreasonable water exports via the SWP are causing widespread and potentially irreversible harms to the entire Delta ecosystem and its wildlife. The actions of DWR in this regard are an extreme example of precisely what is prohibited by Article X, section 2 of California's Constitution.

239. The unreasonableness of DWR's actions in this regard is highlighted by the legislature's repeated determinations that the protection of the Delta's wildlife and the Delta ecosystem *per se* are important goals of the State of California. (*See*, *e.g.*, Pub. Resources Code § 29705, Water Code §§ 85021, 85023, 85054.)

240. DWR's operation of the SWP Facilities has induced and continues to induce over-pumping of connected groundwater resources in counties of origin, the Sacramento and San Joaquin valleys, and the Delta, causing harmful effects, including subsidence.

241. DWR diverts more water from the Delta than is reasonably required for the beneficial uses served by DWR's or any other party's use in light of the severe harms to the Delta environment caused by DWR's water diversions. More water is diverted and more harm is caused than is necessary.

242. Plaintiffs seek an injunction prohibiting DWR from operating the SWP Facilities in a manner that (a) fails to provide for regular and consistent flows to the Delta, and (b) unreasonably harms trust resources. Plaintiffs seek an injunction requiring DWR to provide for sufficient water for fish habitat downstream of the SWP Facilities.

243. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of law because DWR is currently violating, and will continue to violate Article X, section 2 of the California Constitution unless compelled to do otherwise by this Court.

SECOND CAUSE OF ACTION

Violation of Article X, section 2 of the California Constitution

DWR's Waste and Unreasonable Use of Water in Delivering Water to Encourage or Serve Permanent Demand Which Cannot be Reliably Supplied in Drought Years

244. Plaintiffs incorporate and restate each and every paragraph contained herein as though fully set forth herein.

245. DWR's action of supplying water to satisfy and sustain permanent demand without a full accounting of the quantity of such diversions, the date/time of such diversions, the location of the points of diversion of such diverted water, DWR fails to account for potential or estimated losses between points of diversion, storage, re-diversion and delivery to the place of use of such diverted water, and the specific use of such diversions, DWR's use and method of diversion are also unreasonable due to unnecessary electrical consumption which may be feasibly mitigated, including whether the diverted water is used to supply or satisfy permanent demand, is a waste and unreasonable use, method of use, and/or method of diversion of water in violation of Article X, section 2 of the California Constitution.

246. DWR's actions of supplying water to satisfy and sustain permanent demand, particularly during drought years, in a manner which causes severe harms to, and/or the destruction of, public trust resources in the Delta is a waste and unreasonable use, method of use, and/or method of diversion of water in violation of Article X, section 2 of the California Constitution.

THIRD CAUSE OF ACTION

Violation of California's Public Trust Doctrine

Due to DWR's Operation of the SWP Facilities

247. Plaintiffs incorporate and restate each and every paragraph contained herein as though fully set forth herein.

248. A real and present controversy exists between Plaintiffs and DWR concerning DWR's obligations to comply with the Public Trust Doctrine.

249. "The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." (Wat. Code § 85023.)

250. DWR has a duty to assess the impacts on public trust resources that may be caused by its operation of the SWP Facilities before taking actions which could harm these resources. DWR as a trustee of the public trust has failed in its fiduciary duty to assess the negative impacts of its diversion

and use of water on the counties and areas from which the water originates.

251. DWR has ignored and continues to aggressively ignore its fiduciary obligation to independently consider impacts to public trust resources and, where feasible, incorporate avoidance or mitigation of the same. DWR has failed to develop the planned surplus water from areas of adequate supply, professing to recognize the resulting required reduction in ability to supply the SWP contractors while degrading the water quality and needs in the counties and areas of origin which are by law entitled and promised priority protection.

252. DWR's failure to accurately and timely monitor, measure, and report details of its diversions of Delta water, including the ultimate uses and users of that water, precludes its ability to avoid or mitigate the adverse impacts to public trust resources and therefore constitutes a violation of its duties under the Public Trust Doctrine.

253. DWR has an affirmative duty to consider and adopt feasible measures that could mitigate and/or avoid harms to public trust resources caused by its operation of the SWP Facilities.

254. DWR, as a trustee of trust resources, has a duty to preserve and not waste public trust resources, protecting them whenever feasible.

255. DWR cannot merely rely on actions or plans adopted by other agencies for satisfaction of its fiduciary duties under the Public Trust Doctrine. These duties are specific to DWR and not superseded or rendered unnecessary by any other determinations, including but not limited to decisions of the SWRCB, Delta Stewardship Council, Resources Agency, Governor, or any other public officials.

256. The "determinative fact" in ascertaining whether DWR must exercise its own public trust duties is whether its challenged actions have an impact on "water that is imbued with the public trust." (*PCL v. DWR II*, *supra*, 98 Cal.App.5th at p. 769 [quoting *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 859, 861.)

257. DWR must clearly exercise its own public trust duties here because its challenged actions as SWP operator have an impact on water imbued with the public trust. This action contrasts sharply with *PCL v. DWR II*, in which DWR was allowed to rely on the SWRCB's water rights approvals for SWP contracts because the court narrowly construed the SWP contract extension as

having "limited scope" lacking impacts tied to project operations. (*PCL v. DWR II*, *supra*, 98 Cal.App.5th at pp. 767-768.) In this action challenging DWR's harmful SWP operations, DWR must, but did not, weigh public trust interests and consider additional protections. (*Ibid.*) Moreover, the SWP's mismatch between paper and deliverable water emerged decades after its water rights permits were issued, which assumed the face value of water from facilities subsequently never built. DWR thus also has a "continuing duty" of public trust supervision and control. (*Ibid*.; see also *National Audubon Society*, *supra*, 33 Cal.3d at p. 425.)

258. It is also apparent from the current resulting degradation of the public resources that no other agency plans and actions can fulfill DWR's duty to fully assess the impacts of SWP operations on trust resources and adopt feasible mitigation or avoidance measures.

259. DWR's operation of the SWP Facilities, including its alteration of the natural flow of ground and surface water entering the Delta and its diversions of water from the Delta, harms California's trust resources as described in detail above.

260. DWR's operation of the SWP Facilities has induced and continues to induce over-pumping of hydrologically connected groundwater resources in counties of origin, the Sacramento and San Joaquin valleys, and the Delta.

261. DWR's operation of the SWP Facilities imposes a continuing injury to public trust resources and a continuing violation of its duties under the Public Trust Doctrine.

262. DWR has violated and continues to violate its duties under the Public Trust Doctrine by preventing water from entering, and diverting water from, the Delta through its operations without adequately considering the impacts of its actions on trust resources.

263. DWR has violated and continues to violate its duties under the Public Trust Doctrine by preventing water from entering, and diverting water from, the Delta through its operation of the SWP Facilities, without adequately considering and adopting feasible mitigation and/or avoidance measures.

264. DWR has violated and continues to violate its duties under the Public Trust Doctrine by preventing water from entering, and diverting water from, the Delta through its operations when feasible alternatives or mitigation measures are available.

265. DWR has a duty as a trustee of the public trust to administer the public trust solely in the

interest of the beneficiaries of the public trust: the people of the State of California.

266. DWR has a duty as a trustee of the public trust to take reasonable steps under the circumstances to preserve and not waste the trust res.

267. An injunction commanding DWR to desist or refrain from preventing water from entering, and diverting water from, the Delta in amounts that would result in injuries to trust resources pending the completion of a full and proper accounting, assessment, and consideration of the related diversions, uses, conveyance and delivery losses, energy consumption and the associated impacts and impositions on trust resources is appropriate and necessary to avoid irreparable harm to Plaintiffs and the public.

268. An injunction commanding DWR to adopt feasible mitigation and/or avoidance measures is appropriate and necessary to avoid irreparable harm to Plaintiffs and the public.

269. No other plain, speedy, or adequate remedy exists. The injury to the public trust cannot be remedied or mitigated by an award of damages. There is no regulatory process for relief.

FOURTH CAUSE OF ACTION

Violation of California's Public Trust Doctrine

DWR's Failure to Provide a Full Accounting of Its SWP Deliveries

270. Plaintiffs incorporate and restate each and every paragraph contained herein as though fully set forth herein.

271. The Public Trust Doctrine imposes on DWR in its role as public trust trustee the duty of care, duty of full disclosure, and the duty to keep clear and accurate records and accounts. DWR has failed and continues to fail to satisfy these duties in its operation of the SWP Facilities.

272. DWR improperly assumes water is beneficially used once it enters the California Aqueduct, without tracking and documenting how, or whether, that water is beneficially used.

273. DWR has violated and continues to violate its duties under the Public Trust Doctrine by not adequately monitoring or keeping clear and accurate records and accounts of its diversions of water from the Delta and the subsequent uses of that diverted water, including accurately accounting for the date/time, quantity of, storage, and ultimate use of, DWR or DWR-related diversions (including the use of DWR facilities to divert and facilitate the use of water for others). Such

accounting must include potential or estimated losses between points of diversion, re-diversion and related use or reuse by others, increased and unnecessary electrical consumption due to method of diversion inefficiency, the location of the points of diversion and re-diversion or delivery, the ultimate benefited place of use of all diversions and deliveries, and the specific quantity of beneficial use of all diversions and deliveries, including whether the diverted water is used to supply or satisfy all or portion of permanent demand. If only a portion of the water used for permanent demand is supplied by DWR the accounting should identify the quantity and source of water supply comprising the balance needed and reliability thereof.

274. DWR has violated and continues to violate its duties under the Public Trust Doctrine by failing to fully account for, monitor and disclose its actions that impact trust resources, including publicly disclosing the date/time of SWP facility diversions and deliveries, the location of the points of diversion, re-diversion, storage and delivery, the beneficial place and use of all diversions, and the specific use of all diversions, including whether the diverted water is used to supply or satisfy permanent demand or portion thereof and quantities thereof.

275. DWR has not given due consideration or properly accounted for DWR's adverse impacts on the public trust. Without the proper accounting sought herein, DWR also cannot fulfill its affirmative duties to take the public interest into account in planning and allocating SWP resources, and to protect the public trust whenever feasible.

276. An injunction commanding DWR to satisfy its duties under the Public Trust Doctrine, including the duty of care, duty of full disclosure, and the duty to keep clear and accurate records, by preparing a full accounting of all diversions from the Delta, is necessary to cease the irreparable harm being caused to Plaintiffs and public trust resources by DWR.

277. No other plain, speedy, or adequate remedy exists. The injury to the public trust cannot be remedied or mitigated by an award of damages. There is no regulatory process for relief.

FIFTH CAUSE OF ACTION

Violation of California's Public Trust Doctrine

DWR's Duty to Restore Delta Public Trust Resources

278. Plaintiffs incorporate and restate each and every paragraph contained herein as though

fully set forth herein.

279. DWR as trustee of the public trust has the affirmative fiduciary duty to restore the public trust resources of the Delta watershed.

280. DWR's ongoing and continuing failure to perform its duty has and will cause Plaintiffs and the general public to suffer substantial, clear, and certain irreparable injury. Unless and until DWR follows the requirements imposed on it under the Public Trust Doctrine this injury will continue. A declaration from this Court that DWR has and is continuing to violate this affirmative duty to restore the public trust resources of the Delta watershed is necessary for Plaintiffs to be made whole.

281. No other plain, speedy, or adequate remedy exists. The injury to the public trust cannot be remedied or mitigated by an award of damages. There is no regulatory process for relief.

WHEREFORE Plaintiffs pray for relief as hereinafter set forth:

PRAYER FOR RELIEF

1. A preliminary mandatory injunction compelling DWR to provide and publicly disclose an accounting for the current Water Year, and of each Water Year going forward as ordered by this Court, of all diversions and re-diversions (temporary or permanent) from the Delta by DWR through any facility, ordered or requested by any party; such accounting to include the quantity of such diversions, the date/time of such diversions, the location of the point of diversion of such diverted and rediverted water, the place of use of such water, the specific use of such water, and any losses between diversion, re-diversion and use;
2. A preliminary injunction compelling DWR to determine the extent that the availability of such water would tend to encourage the development of an economy within the area served which would be dependent upon the sustained delivery of water which cannot be reliably provided in every dry year based on a reoccurrence of hydrology similar to the 2013-2016 drought or other more limiting drought occurrence;
3. That the Court retain jurisdiction and upon review and hearing with the reports to be provided determine the specific uses and diversions which cannot be reliably supplied in each dry year.

For each such use DWR shall be ordered to notify each party responsible for such use and the related land use agency in writing of the lack of reliable supply and the need for each such party to obtain a third-party source for such reliable supply and notify DWR, Plaintiffs and the Court of the name and contact information for such third-party source;

4. That the Court retain jurisdiction to determine which, if any, specific diversions and uses relating to DWR actions are unreasonable under Article X Section 2 and or constitute a violation of the Public Trust;

5. A Declaration that:

   a. DWR's operation of the SWP Facilities, including its current diversions and re-diversions and the use of such diverted water (whether SWP water or any other water diverted by DWR) violates DWR's duties under the Public Trust Doctrine;

   b. DWR has failed, and continues to fail, to satisfy its duties under the Public Trust Doctrine by not fully monitoring, accounting for or disclosing the date/time of DWR's SWP diversions and re-diversions, the location of the points of diversion, the place of use of all diversions, and the specific use of all diversions, including whether the diverted water is used to supply or satisfy permanent demand;

   c. DWR's operation of the SWP Facilities, including its current diversions and re-diversions and the use of such diverted water (whether SWP water or any other water diverted by or for DWR, including that resulting from changes to permits or licenses, temporary transfers, or vested water rights) results in the waste and unreasonable use of water, and/or an unreasonable method of use, and/or an unreasonable method of diversion of water, in violation of Article X, section 2 of the California Constitution;

   d. DWR's action of supplying unknown quantities and qualities of water to satisfy and sustain permanent demand without a full accounting of the quantity of such diversions and re-diversions, the date/time of such diversions or re-diversions, the location of the point of diversion or re-diversion of such diverted water, the place of use of such diverted water, and the specific use of such diversions or re-diversions, including whether the diverted water is used to supply or satisfy permanent demand, is a waste and

unreasonable use, method of use, and/or method of diversion of water in violation of Article X, section 2 of the California Constitution;

e. DWR as trustee of the public trust has an affirmative fiduciary duty to restore the public trust resources of the Delta watershed;

6. A preliminary and/or permanent prohibitory injunction enjoining DWR from operation of the SWP Facilities in violation of (a) DWR's duties under the Public Trust Doctrine and/or (b) DWR's duties under Article X, section 2 of the California Constitution to not waste and/or unreasonably use, or employ an unreasonable method of use, or unreasonable method of diversion, of water from the Sacramento River and/or the Delta; such prohibitory injunction to include an "Interim Functional Flow Order" that prohibits DWR from operating any SWP Facility in a manner that results in the diversion of water from the Sacramento River and the Delta in an amount that exceeds a specific percentage of natural flow (such percentage to be determined by the Court, based on the best available science available at the time) pending the development of the Long-Term SWP Export Plan described below;

7. A permanent mandatory injunction:

a. Compelling DWR to develop and adopt a Long-Term SWP Export Plan, with the participation of and/or consultation by relevant regulatory agencies, that ensures the satisfaction of DWR's duties under the Public Trust Doctrine, including its duty to consider the impact on trust resources of its actions and to adopt feasible measures to mitigate and/or avoid harm to trust resources, and that ensures satisfaction of DWR's duties under Article X, section 2 of the California Constitution to not waste and/or unreasonably use, or employ an unreasonable method of use, or unreasonable method of diversion, of water from the Sacramento River and/or the Delta;

b. Compelling DWR to provide an accounting for the current Water Year, and of each Water Year going forward, of all diversions (temporary or permanent) from the Delta by or through any SWP Facility, ordered or requested by any party; such accounting to include the quantity of such diversions, the date/time of such diversions or re-diversions, the location of the point of diversion or re-diversion of such diverted water, the storage of

such diverted water, the place of use of such diverted water, and the specific use of such diversions, and reconciles and accounts for any losses between diversion, re-diversion and delivery;

c. That the Court retain jurisdiction through the completion and adoption of the Long-Term SWP Export Plan to ensure ongoing compliance with the Interim Functional Flow Order and compliance with this Court's orders;

8. For costs of suit;

9. For attorneys' fees pursuant to law, including Code of Civil Procedure, section 1021.5 or as otherwise provided;

and

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

DATED: October 8, 2026

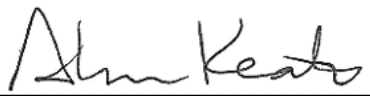
LAW OFFICE OF ROGER B. MOORE



Roger B. Moore

DATED: October 8, 2026

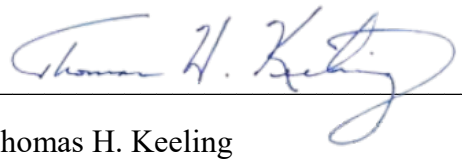
LAW OFFICE OF ADAM KEATS, PC



Adam Keats

DATED: October 8, 2026

FREEMAN FIRM



Thomas H. Keeling

DATED: October 8, 2026

SOLURI MESERVE, A LAW CORPORATION



Osha R. Meserve

Attorneys for Plaintiffs California Water Impact Network and Central Delta Water Agency

VERIFICATION

I, Adam Keats, declare that:

1. I am an attorney duly admitted and licensed to practice before all courts of this State. I am one of the attorneys of record for the Plaintiffs in this action.

2. Plaintiffs have their places of business in the counties of Los Angeles and San Joaquin and are therefore absent from the County of San Francisco, in which I have my office. I therefore make this verification on behalf of Plaintiffs absent from the county and/or because facts contained in the Petition and Complaint are within the knowledge of counsel.

3. I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and know the contents thereof; the factual allegations therein are stated upon my information or belief, and as to those matters I believe them to be true.

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

Executed this 8th day of October, 2026, in San Francisco, California.

LAW OFFICE OF ADAM KEATS, PC

By: 

Adam Keats