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File No. 10.675

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NORTH COAST RIVERS ALLIANCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

NORTH COAST RIVERS ALLIANCE,)	Civ. No.
)	
Petitioner and Plaintiff,)	VERIFIED PETITION FOR WRIT
)	OF MANDATE AND COMPLAINT
v.)	FOR DECLARATORY AND
)	INJUNCTIVE RELIEF
MARIN MUNICIPAL WATER DISTRICT, and)	
DOES I-XX,)	
)	(CEQA CASE)
Respondents and Defendants, and)	
)	
CONTRA COSTA WATER DISTRICT, EAST)	
BAY MUNICIPAL UTILITY DISTRICT, YUBA)	
COUNTY WATER AGENCY, and DOES XXI-L,)	
)	
Real Parties in Interest.)	

By this Verified Petition and Complaint, Petitioner alleges as follows:

SUMMARY OF PETITION AND RELIEF SOUGHT

1. Petitioner/plaintiff North Coast Rivers Alliance (“petitioner”) brings this action to secure required environmental review and protect the Sacramento and San Joaquin River Delta (“Delta”) and other potentially impacted watersheds including those of the Eel River and the Russian River from needless, unstudied and unlawful environmental harm resulting from an ill-informed decision by the Board of Directors (“Board”) of respondent Marin Municipal Water District (“respondent” or “Marin Water”) to precipitously approve construction of a permanent

1 transbay potable water pipeline across San Francisco Bay (the “Project”) without first
2 conducting detailed environmental review. The Project’s transbay pipeline would extend
3 roughly eight miles across the bay between the City of Richmond, Contra Costa County and the
4 City of San Rafael, Marin County, and be attached to the Richmond-San Rafael Bridge. It could
5 be used to transport water in either direction.

6 2. According to Marin Water, initially the transbay pipeline would transport potable
7 water to Marin County that has been diverted from the drought-stricken, highly impacted and
8 over-allocated Delta. The water would be diverted from the Delta by real party in interest
9 Contra Costa Water District (“CCWD”) via storage in its Los Vaqueros Reservoir, which is
10 located in Contra Costa County. Marin Water and CCWD propose to obtain the appropriate
11 right to divert this Delta water from the Yuba County Water Agency, a procedure that would
12 require approval by the State Water Resources Control Board under applicable provisions of the
13 Water Code.

14 3. The diversion of this water from the Delta would cause harm to the Delta
15 because unlike Marin Water, the Delta is suffering a severe water shortage. The Delta’s
16 tributary reservoirs, including Shasta, Oroville and Folsom reservoirs, are currently at record-
17 low levels that are far lower, as a percentage of storage, than are the seven reservoirs from
18 which Marin Water draws its water. As of October 27, 2021, the total active reservoir storage in
19 Marin Water’s reservoirs was 40,418 acre-feet, or about 76 percent of Marin Water’s average
20 storage for this date, and more than 50 percent of its total storage capacity of about 79,500 acre-
21 feet. According to the California Department of Water Resources, the storage in Shasta,
22 Oroville and Folsom reservoirs, by contrast, as of the date of this Verified Petition and
23 Complaint, is about 24, 30 and 36 percent, respectively of their capacities. According to Marin
24 Water’s public records, as of the date of this Verified Petition and Complaint, Marin Water’s
25 seven reservoirs – Alpine, Bon Tempe, Kent, Lagunitas, Nicasio, Phoenix and Soulaajule
26 reservoirs – contain about 57.55 percent of their storage capacity.

27 4. Several endangered and threatened species that inhabit the Delta, including the
28 winter- and spring-runs of Chinook salmon, the Central Valley steelhead, and a distinct

1 population segment of the North American green sturgeon, are on the brink of extinction due
2 primarily to excessive water diversions from the Delta and its tributaries similar to the
3 additional diversion the Project would create.

4 5. Over the long-term, the transbay pipeline could be used in reverse. It could be
5 used to transport water from the Russian and Eel rivers in Sonoma and Mendocino counties
6 north of Marin County – harming those over-allocated rivers – south and east across the bay for
7 use in Central and Southern California. Marin Water has signed an agreement, known as the
8 Bay Area Regional Reliability (or “BARR”) water supply program, which obligates the Bay
9 Area’s eight water agency members to share their water transport facilities. The 2017 BARR
10 Drought Contingency Plan (“DCP”) included the construction of a transbay intertie over the
11 Richmond-San Rafael Bridge, connecting Marin Water with the East Bay Municipal Utility
12 District (“EBMUD”) water distribution system and ultimately, with the State Water Project and
13 the federal Central Valley Project. While that agreement allows the transport of water from the
14 Sacramento-San Joaquin rivers and the Delta formed at their confluence, it also provides that
15 waters may be transported in the opposite direction across the Bay. Thus, the transbay pipeline
16 approved by Marin Water as part of the Project and challenged in this action could also be used
17 in the future to transport water from the Russian-River/Eel River complex – which currently
18 provides about 25 percent of Marin Water’s supply, south and east from those rivers to urban
19 and agricultural users in Cental and southern California.

20 6. The BARR’s DCP confirms that Marin Water was aware that compliance with
21 CEQA was required before the transbay pipeline could be approved. The DCP includes
22 numerous intertie, pipeline, and facility projects as “drought mitigation measures [that] reflect
23 strategies that would have alleviated individual agencies’ supply shortage issues and
24 strengthened regional resilience if the measures had been implemented before [a] drought.”
25 DCP at 6-3. Mitigation Measure 6 foretells the Project. It is an intertie connecting Marin Water
26 with the East Bay “either with a pipeline across the Richmond-San Rafael Bridge or across the
27 Bay’s bottom, providing potential water sharing and transfer opportunities.” DCP at 6-6.
28 Mitigation Measure 6 specifically states that “[c]onstructing the intertie pipeline in an urban

1 area *necessitates complying with the California Environmental Quality Act (CEQA)*.” DCP
2 Appendix C, Drought Mitigation Measure 6 (emphasis added); *see also* DSC 6-6 (“Pipeline
3 construction in an urban area would necessitate CEQA compliance”).

4 7. BARR’s DCP also acknowledges “[c]onstruction of this major infrastructure
5 project will likely require mitigation of environmental impacts and community impacts (e.g.,
6 disruptive traffic conditions).” DCP Appendix C, Mitigation Measure 6; *see also* DCP 6-6.
7 The DCP further acknowledges that “[c]onstruction across the bridge could be challenging and
8 disruptive to traffic flow” and that the Project would require “coordination with many
9 jurisdictions, property owners, and permitting agencies.” DCP 6-6. The DCP expressly calls for
10 CEQA compliance for the Marin Water intertie in its Permitting and Environmental
11 Documentation Table. DCP 7-7. Yet Marin Water ignored these significant impacts and
12 express recognition of the need for an EIR, and erroneously issued a Notice of Exemption for
13 the Project.

14 8. According to Marin Water’s staff report recommending approval of the Project,
15 the Project would involve the purchase and delivery of an estimated 15,000 acre-feet annually
16 from CCWD. One acre foot is about 326,000 gallons. This quantity is sufficient to supply
17 water for a typical household for both indoor and outdoor use for one to two years. Thus, the
18 quantity of water to be diverted and delivered by the Project is sufficient to support between
19 15,000 and 30,000 new households on an annual basis.

20 9. Marin Water’s ostensible justification for exempting the Project from CEQA is
21 that it is experiencing an “emergency” drought. However, the current drought is not an
22 “emergency” as defined by CEQA. CEQA defines “emergency” in full as follows:

23 “‘Emergency’ means a *sudden, unexpected occurrence*, involving a clear and *imminent*
24 *danger*, demanding immediate action to prevent or mitigate loss of, or damage to life,
25 health, property or essential public services. Emergency includes such occurrences as
26 fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences
as riot, accident, or sabotage.”

27 Public Resources Code (“PRC”) § 15359.

28 10. The current long-term drought in Marin County is neither “sudden” nor

1 “unexpected.” *Id.* It poses no “immediate” danger to “life, health, property or essential public
2 services.” *Id.* It is not a sudden, life-threatening event comparable to a “fire, flood, earthquake,
3 or other soil or geologic movement,” nor is it an “unexpected” event comparable to a “riot,
4 accident, or sabotage.” *Id.* It is, to the contrary, both an eminently foreseeable, and a long-
5 foreseen event. It is a recurring, long-term, and potentially permanent consequence of global
6 warming that has been building for several decades. It has been preceded by other, similar long-
7 term droughts, such as the critically dry years of 1976 and 1977, that alerted Marin Water to the
8 need for greater water conservation and examination of alternate sources of water and water
9 storage.

10 11. The Project is a “project” within the meaning of CEQA. Public Resources Code
11 section 21065 defines “project” to include “an activity which may cause either a direct physical
12 change in the environment, or a reasonably foreseeable indirect physical change in the
13 environment, and which is any of the following: (a) An activity directly undertaken by any
14 public agency.” The Project is also a “discretionary project” within the meaning of CEQA under
15 the regulations adopted to implement this statute. Title 14, sections 15000 et seq. of the
16 California Code of Regulations, commonly known as the CEQA Guidelines, provide in section
17 15357 that “[d]iscretionary project’ means a project which requires the exercise of judgment or
18 deliberation when the public agency of body decides to approve or disapprove a particular
19 activity.” Marin Water’s approval of the Project was discretionary and the Project may cause a
20 direct physical change in the environment. Therefore, under PRC sections 21102, 21102.1, and
21 21151, among other provisions, the Project is a CEQA project for which an environmental
22 impact report, or EIR, must be prepared and certified before it may be approved.

23 12. No statute or regulation exempts the Project from CEQA’s requirement that Marin
24 Water first prepare and circulate an EIR to identify and analyze the Project’s potentially
25 significant impacts, and discuss and evaluate alternatives and mitigation measures that would
26 avoid or reduce those impacts to insignificance. As noted, the “emergency” exemption invoked
27 by Marin Water to avoid preparing an EIR is inapplicable.

28 13. The Project is also a “covered action” within the meaning of the Delta Reform

1 Act, Water Code section 85057.5, because it involves the diversion of water by a local public
2 agency that will occur, in whole or in part, within the boundaries of the Delta, that is covered by
3 one or more provisions of the Delta Plan, and that will have a significant impact on achievement
4 of one or both of the coequal goals of the Delta Reform Act.

5 14. The Project will have a significant impact on achievement of the Delta Reform
6 Act's coequal goal of "protecting, restoring and enhancing the Delta ecosystem." Water Code
7 section 85054. As noted, the Project will divert water that is needed to sustain and prevent
8 extirpation of the Delta's imperiled fisheries, and to protect, restore and enhance the Delta's
9 many public trust resources, including its habitat for fish and wildlife.

10 15. Because the Project is a "covered action" within the meaning of the Delta Reform
11 Act, its approval must be preceded by a determination, based on "detailed findings," as to
12 whether the Project is consistent with the Delta Stewardship Council's Delta Plan. Water Code §
13 85225.

14 16. The Project is not consistent with the Delta Plan and the Delta Reform Act
15 because it would harm rather than protect and restore the Delta's natural flows and the fish and
16 wildlife dependent on them, contrary to Delta Plan requirements for the protection and
17 restoration of those public trust resources, and because it would increase rather than reduce
18 reliance on the Delta for regional water supplies, contrary to Water Code sections 85021.

19 17. According to Marin Water's internal records, its seven reservoirs are currently at
20 more than 50 percent of storage capacity. This is only slightly less than the typical storage in its
21 reservoirs at this time of year, which is about 56 percent of capacity. Marin Water projects that it
22 would end 2022 with about 20,000 acre-feet of storage, or about 25 percent of capacity, in case
23 of a dry 2021-2022 winter that produces only 25 percent of average runoff into its seven
24 reservoirs.

25 18. Marin Water therefore has ample time to follow the law and prepare the
26 environmental impact report that is required by CEQA, and to determine the Project's
27 consistency (or not) with the Delta Stewardship Council's Delta Plan based on detailed findings
28 as required by the Delta Reform Act.

1 19. Marin Water’s approval of the Project also violates the Public Trust Doctrine in
2 that its diversions of water from the Delta unreasonably and avoidably harm the Delta’s public
3 trust resources and uses, including its fish and wildlife and public recreational, aesthetic,
4 scientific and related uses of the Delta’s public waters. Marin Water failed to recognize and
5 perform its affirmative duty to consider the effects of the Project on public trust resources, and,
6 so far as feasible, to avoid or minimize any harm to those interests. It also failed to evince its
7 required consideration and affirmative performance of its public trust obligations by adopting
8 findings documenting its compliance with this doctrine.

9 20. Petitioner therefore requests a writ of mandate from this Court pursuant to
10 California Code of Civil Procedure (“CCP”) sections 1085 and 1094.5 setting aside the adoption,
11 issuance or certification by Marin Water of the following approvals for the Project:

12 (1) Resolution Approving the Emergency Intertie Project, and authorizing the General
13 Manager to Execute a Cooperative Agreement with Contra Costa Water District (“CCWD”) for
14 Water Transfers and to carry out the Pre-Purchasing of Materials for Project Construction
15 adopted on or about October 19, 2021;

16 (2) Notice of Exemption, dated on or about October 20, 2021, certifying the
17 exemption of the Project from CEQA and purporting to find that the Project is exempt under
18 PRC sections 21060.3 (definition of “emergency”) and 21080, subd. (b)(4) (specific actions
19 necessary to prevent or mitigate an emergency) and CEQA Guidelines section 15269(c) (listing
20 “emergency projects” exempt from the requirements of CEQA); and

21 (3) Other related approvals of various components of and requirements for the
22 Project, including but not limited to Marin Water’s approval on or about November 2, 2021 of an
23 expenditure of \$180,000 for a permit from the San Francisco Bay Conservation and
24 Development Commission for the Project.

25 21. The grounds for the requested writ relief are that Marin Water’s approval of the
26 project violates CEQA, the Delta Reform Act, the Public Trust Doctrine, and related procedural
27 requirements of the Code of Civil Procedure sections 1085 and 1094.5 as detailed below.

28 22. Petitioner also seeks declaratory relief declaring unlawful, and injunctive relief

1 enjoining the Board from permitting or taking any actions that implement, the Project without
2 full compliance with CEQA, the Delta Reform Act, the Public Trust Doctrine and CCP sections
3 1085 and 1094.5.

4 **PARTIES**

5 23. Petitioner NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit
6 unincorporated association whose members reside, work, or recreate in Northern California.
7 NCRA was formed for the purpose of protecting the rivers of California’s North Coast and their
8 watersheds from excessive diversion of water for consumptive uses, watershed pollution and
9 degradation. Its members use and enjoy the natural resources of California’s North Coast and
10 their watersheds for recreational, aesthetic, scientific study, and related non-consumptive uses.
11 NCRA has urged the Marin Municipal Water District Board of Directors to disapprove the
12 Project, and to affirmatively take action to continue water conservation efforts. The interests of
13 NCRA and its members have been, are being, and unless the relief requested herein is granted,
14 will be adversely affected and injured by respondent’s’ approval of the Project and by the
15 consequent ill-designed and excessive resource extraction, and impairment of the natural
16 environment that will result from the Project.

17 24. Petitioner has exhausted its administrative remedies by objecting to the Board’s
18 approval of the Project prior to the close of the Board’s public proceedings thereon. The
19 violations of CEQA, the Delta Reform Act, the Public Trust Doctrine and other violations
20 alleged herein were presented to the Board orally or in writing during the public comment
21 periods on the Project. Petitioner gave prior notice of this proceeding to the Board and to the
22 California Attorney General in accordance with applicable law, as documented herein and in
23 Petitioners’ Proof of Service of Petitioner’s Notice of Intent to File CEQA Action and Notice to
24 California Attorney General filed concurrently herewith.

25 25. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law
26 within the meaning of CCP section 1086, in that the Board’s approvals of the Project are not
27 otherwise reviewable in a manner that provides an adequate remedy.

28 26. The Board’s approvals of the Project challenged herein will result in irreparable

1 harm to petitioner because the Project and related activities that implement the Project will cause
2 significant adverse environmental impacts on aesthetics, air quality, global warming,
3 contamination and disruption of ocean waters, harm to aquatic animals and plants, geologic
4 impacts, public utilities, recreation and numerous cumulative impacts. The Project will also be
5 inconsistent with the Delta Plan. Such impacts will harm petitioner's use and enjoyment of the
6 environmental resources upon which they depend for recreation, relaxation and study. Such
7 environmental harm is unlawful and irreparable. Therefore petitioner is entitled to this Court's
8 injunctive relief.

9 27. Petitioner contends that the Board's approvals of the Project violate CEQA, the
10 Delta Reform Act, the Public Trust Doctrine, and other applicable laws in the respects alleged
11 herein. Petitioner is informed and believes that the Board disputes this contention. Therefore
12 petitioner is entitled to this Court's declaration resolving such dispute.

13 28. Respondent MARIN MUNICIPAL WATER DISTRICT is a Municipal Water
14 District organized and existing under the Municipal Water District Law of 1911 (codified in
15 Division 20 of the Water Code) and formed pursuant to Water Code section 71000 *et seq.* and
16 72750 *et seq.* It is governed by a Board of Directors ("Board") comprising five elected members.
17 The Board is responsible for establishing policy and representing the general public in deciding
18 issues related to water supply with the district. The Board has the authority to adopt resolutions,
19 enter into contracts, and take other actions as necessary to carry out the lawful functions of the
20 district. The Board is charged by law with responsibility for administering and assuring
21 compliance with the requirements of CEQA, the Delta Reform Act, the Public Trust Doctrine,
22 and CCP sections 1085 and 1094.5 with respect to approval of the Project. On or about October
23 19, 2021, Marin Water through action of its Board purported to approve the Project by adopting a
24 resolution based on the erroneous premise that the Project was exempt from compliance with
25 CEQA, and without regard to the requirements of the Delta Reform Act, the Public Trust
26 Doctrine, and related laws and implementing regulations. On or about October 20, 2021, Marin
27 Water staff completed, signed and submitted for filing with the State Office of Planning and
28 Research a Notice of Exemption purporting to certify the Project's claimed, but non-existent,

1 CEQA exemption. On or about November 2, 2021, Marin Water approved the expenditure of
2 \$180,000 to pay for a permit for the Project from the Bay Conservation and Development
3 Commission. In purporting to approve and implement the Project by these and other actions,
4 Marin Water failed to comply with these laws.

5 29. Petitioner is unaware of the true names and capacities of respondents Does I-XX,
6 and therefore sues such respondents herein by fictitious names. Petitioner is informed and
7 believes, and based on such information and belief alleges, that the fictitiously named
8 respondents are also responsible for approval of the Project and its threatened injury to
9 petitioners. When the true identities and capacities of these respondents have been determined,
10 petitioner will, with leave of the Court if necessary, amend this Verified Petition to insert such
11 identities and capacities.

12 30. Real parties in interest CONTRA COSTA WATER DISTRICT (“CCWD”),
13 EAST BAY MUNICIPAL UTILITY DISTRICT (“EBMUD”), and YUBA COUNTY WATER
14 AGENCY (“Yuba Water”) are public agencies with a contractual, financial, or other tangible
15 interest in Marin Water’s approval and implementation of the Project, and are therefore named as
16 real parties in interest in this proceeding. CCWD is a County Water District organized and
17 existing under the County Water District Law (codified in Division 12 of the Water Code) that
18 approved entry into a Cooperative Agreement for Water Transfer Project with Marin Water on or
19 about November 3, 2021 that provides for the delivery of 15,000 acre feet annually of water
20 diverted from the Delta, stored in CCWD’s Los Vaqueros Reservoir and transported via existing
21 and future EBMUD pipelines and related facilities to Richmond, California and thence across the
22 Richmond-San Rafael Bridge via the Project’s transbay pipeline to Marin Water. EBMUD is a
23 Municipal Utility District organized and existing under the Municipal Utility District Law of
24 1951 (codified in Division 6 and commencing with section 11501 of the Public Utilities Code)
25 that is considering entry into a Wheeling Agreement with Marin Water to transport water from
26 CCWD to Marin Water via existing and future EBMUD pipelines and related facilities in
27 Richmond, California and thence across the Richmond-San Rafael Bridge via the Project’s
28 transbay pipeline to Marin Water. Yuba Water is a Water Agency organized and existing under

1 the Yuba County Water Agency Act of 1959 (codified in Chapter 84 of the Water Code
2 Appendix) that is the Project’s proposed source of appropriative water rights allowing the
3 diversion of water from the Delta to CCWD for storage in Los Vaqueros Reservoir and ultimate
4 delivery to Marin Water via the Project.

5 31. Petitioner is unaware of the true names and capacities of real parties in interest
6 Does XXI-L, and therefore sues such real parties in interest herein by fictitious names. Petitioner
7 is informed and believes, and based on such information and belief alleges, that the fictitiously
8 named real parties in interest have a contractual, financial, or other tangible interest in Marin
9 Water’s approval and implementation of the Project. When the true identities and capacities of
10 these real parties in interest have been determined, petitioner will, with leave of the Court if
11 necessary, amend this Verified Petition to insert such identities and capacities.

12 **EXHAUSTION OF REMEDIES**

13 32. Petitioner has exhausted its administrative remedies by objecting to Marin
14 Water’s approval of the Project prior to the close of respondent’s public proceedings thereon.
15 The violations of CEQA, the Delta Reform Act and the Public Trust Doctrine and other laws
16 alleged herein were presented to the Board orally or in writing prior to Marin Water’s approvals
17 of the Project challenged herein

18 **JURISDICTION AND VENUE**

19 33. This Court has jurisdiction of this proceeding pursuant to CCP sections 1085 and
20 1094.5, PRC sections 21168 and 21168.5, and article VI, section 10 of the California
21 Constitution.

22 34. Venue is proper in this Court pursuant to CCP sections 393, 394 and 395.

23 35. This petition is timely filed within 35 days of Marin Water’s filing and posting of
24 its Notice of Exemption for the Project with the Governor’s Office of Planning and Research on
25 or after October 20, 2021, in accordance with PRC section 21167, subdivision (d).

26 **FACTUAL BACKGROUND**

27 36. “[T]he Sacramento-San Joaquin [River] Delta is a natural resource of statewide,
28 national, and international significance, containing irreplaceable resources.” PRC § 29701. The

1 Delta is the largest and most productive estuarine system on the West Coast of North and South
2 America, but its future is in peril. It is the State of California’s avowed policy “to recognize,
3 preserve, and protect those resources of the delta for the use and enjoyment of current and future
4 generations.” PRC § 29701.

5 37. Yet, the Delta’s ecologic collapse is a well-recognized and indisputable ongoing
6 crisis with two principal causes. First, an unsustainable portion of the Delta’s freshwater flows
7 has been diverted for decades by the SWP and CVP. Second, for too long, agricultural diverters
8 have discharged subsurface drainage and surface run-off contaminated with salt, selenium, and
9 other toxic substances into groundwater and the rivers that are tributary to the Delta. This one-
10 two punch of diminished freshwater flows and increased temperature, salinity, herbicides,
11 pesticides, and heavy metals has pushed the Delta to the brink.

12 38. Many species of fish endemic to the Delta have been extirpated, including the
13 Sacramento perch, formerly one of the most abundant fishes of the Delta, which disappeared in
14 the 1970s. Those indigenous species that remain are in grave danger. Since the SWP and CVP
15 began operation, the Sacramento River winter and spring run Chinook salmon, Central Valley
16 steelhead, North American green sturgeon and Delta smelt have been driven perilously close to
17 extirpation.

18 39. Winter run Chinook salmon were declared threatened under the federal
19 Endangered Species Act (“ESA”) in 1990 (55 Fed.Reg. 46515), and then due to continuing
20 population declines, declared endangered in 2005 (70 Fed.Reg. 37160). Their critical habitat in
21 the Sacramento River and its tributaries was designated in 1993. 58 Fed.Reg. 33212. Spring run
22 Chinook salmon were declared threatened, and their critical habitat designated under the ESA, in
23 2005. 70 Fed.Reg. 37160, 52488. Central Valley steelhead were declared threatened in 2000 (65
24 Fed.Reg. 52084) and their critical habitat was designated in 2005 (70 Fed.Reg. 52488). The
25 Southern distinct population segment (“DPS”) of North American green sturgeon was declared
26 threatened in 2006 (71 Fed.Reg. 17757) and its critical habitat was designated in 2009 (74
27 Fed.Reg. 52299). Delta smelt were declared endangered in 1993 (58 Fed.Reg. 12854) and their
28 critical habitat was designated in 1994 (59 Fed.Reg. 65256).

1 40. In 1976 and 1977, Marin County, along with the rest of California, experienced a
2 drought. Ultimately, it caused Marin Water’s reservoir storage levels to drop below 25 percent
3 of capacity. This dry period alerted Marin Water to the need to study improvements in its water
4 conservation, storage and supplies. During the subsequent four decades, Marin Water has
5 experienced other dry periods which likewise alerted it to the need to study improvements in its
6 water conservation, storage and supplies. The current drought is neither sudden nor unexpected.

7 41. In 1990 Marin Water began performing studies to develop possible plans for
8 sources of potable water to meet future, increased water demand. Two options were analyzed in
9 an EIR certified by Marin Water in 1991. The first option was a desalination plant with the
10 capacity to create 10,000 acre feet per year (“AFY”) of potable water. The second option
11 proposed installing an eight mile pipeline to convey water from the Russian River purchased
12 from the Sonoma County Water Agency. The Board chose the pipeline option, and put an \$80
13 million bond measure on the ballot (Measure W) in November 1991. That ballot measure failed.
14 The following year, a \$37.5 million bond (Measure V) to fund conservation efforts, was placed
15 on the ballot, and was successful. Marin Water’s customers have thus shown a preference for
16 conservation to reduce water demand and thereby increase the resiliency of Marin Water’s
17 reservoirs to long-term droughts.

18 42. Notwithstanding Marin Water’s decades of familiarity with the ongoing and
19 recurring tension between its conservation programs, reservoir storage and development of
20 increased or alternative water supplies, and its understanding that droughts are part and parcel of
21 the “new normal” in water supplies due to global warming, on April 20, 2021, its Board declared
22 a “water shortage emergency” and on October 19, 2021 its Board approved the Project based on a
23 a purported Notice of Exemption from CEQA likewise asserting that the Project was an
24 “Emergency Project” under PRC section 21080, subdivision (b)(4) and CEQA Guidelines section
25 15269(b),(c).

26 43. At all material times Marin Water has had the ability to prepare, circulate for
27 public review, and consider an environmental impact report addressing the potential
28

1 environmental impacts of the Project, and alternatives and mitigation measures that would avoid
2 or reduce those impacts to insignificance.

3 44. The proposed Project consists of a water diversion, storage and transport facilities
4 in at least two counties, Contra Costa County and Marin County, and possibly other counties as
5 yet unidentified. It will, upon completion, have the capacity to divert, store, transport and deliver
6 approximately 15,000 acre-feet of water annually. Its facilities will include existing and future
7 permanent improvements that will continue to pose potential environmental impacts on the
8 Delta, Contra Costa County, and Marin County, and potentially on Sonoma and Mendocino
9 counties should Marin Water commence exporting water from the Russian and Eel rivers via the
10 Project's transbay pipeline to Central and Southern California.

11 45. The Project will directly and adversely impact residents of the City of Richmond,
12 whose neighborhoods will be used to develop additional pumping and pipeline facilities to
13 enable the transport of water across the transbay pipeline.

14 46. The Project will also directly impact motorists, pedestrians and bicyclists whose
15 use of the Richmond-San Rafael Bridge will be curtailed and degraded due to construction and
16 maintenance of the Project's transbay pipeline.

17 47. The Project will degrade the Delta by diverting substantial quantities of water
18 from it and thereby impairing public trust resources including fish and wildlife habitat and public
19 trust uses of the Delta including boating, fishing, wildlife viewing and study, and related public
20 recreation.

21 48. The Project will be a significant consumer of electricity in Contra Costa County
22 and potentially other counties.

23 49. Despite the Project's known and foreseeable direct and indirect significant
24 impacts on the environment, and Marin Water's continuing ability at all material times to prepare
25 an environmental impact report addressing the Project's impacts and alternatives and mitigation
26 measures to avoid or reduce them, to prepare a written determination of the Project's consistency
27 with the Delta Plan based on detailed findings, and to affirmatively consider the Project's
28

1 impacts on public trust resources and to avoid or reduce those impacts where feasible, and to
2 documents each of these environmental reviews as required by CEQA, the Delta Reform Act,
3 and the Public Trust Doctrine, Marin Water failed to perform any of these actions required by
4 law before approving the Project.

5 LEGAL BACKGROUND

6 CEQA

7 50. CEQA is California’s primary statutory mandate for environmental protection. It
8 applies to all state and local agencies, and requires them to “first identify the [significant]
9 environmental effects of projects, and then to mitigate those adverse effects through the
10 imposition of feasible mitigation measures or through the selection of feasible alternatives.”
11 *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233. Its most important
12 substantive imperative requires “public agencies to deny approval of a project with significant
13 adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen
14 such effects.” *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.

15 51. CEQA’s mandate for detailed environmental review “ensures that members of
16 the [governmental decision-making body] will fully consider the information necessary to render
17 decisions that intelligently take into account the environmental consequences” of their proposed
18 action. *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133;
19 PRC §§ 21080.5(d)(2)(D), 21091(d)(2); Guidelines § 15088. The CEQA process thus “protects
20 not only the environment but also informed self-government.” *Citizens of Goleta Valley v.*
21 *Board of Supervisors* (1990) 52 Cal.3d 553, 564.

22 52. All California “public agencies” must comply with CEQA when they approve
23 discretionary projects. PRC § 21080(a). Marin Water is a “public agency” as defined in CEQA.
24 PRC § 21063. Therefore, its discretionary approvals of the Project are subject to CEQA.

25 53. A proposed governmental action requires environmental review under CEQA if
26 (1) the agency is contemplating an “approval” of an action as defined by Guidelines section
27 15352, (2) the subject matter of the contemplated approval constitutes a “project” under PRC
28

1 section 21065 and Guidelines section 15378(a), and (3) the project to be approved does not fall
2 within a statutory exemption created by the Legislature under PRC section 21080(b) and
3 recognized under Guidelines sections 15260-15285, or a categorical exemption in the Guidelines
4 as promulgated by the California Resources Agency pursuant to PRC section 21084(a) and
5 Guidelines sections 15061(b)(2), 15300-15333 and 15354.

6 54. The lead agency must prepare an environmental impact report (“EIR”) if it
7 determines that a project may have significant adverse environmental impacts. The EIR must
8 analyze those effects and suggest feasible means, if any, of mitigating or avoiding them including
9 alternatives that would achieve most of the basic objectives of the project without causing
10 significant environmental effects. PRC §§ 21002, 21002.1, 21061; Guidelines §§ 15080-15096,
11 15120-15132, 15160-15170.

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

18 The Delta Reform Act

19 56. To address the indisputably perilous state of the Delta, in 2009 the California
20 Legislature enacted the Delta Reform Act, declaring that “[t]he Sacramento-San Joaquin Delta
21 watershed and California’s water infrastructure are in crisis and *existing Delta policies are not*
22 *sustainable.*” Water Code § 85001(a), emphasis added. The Legislature found that ““the Delta’
23 . . . is a critically important natural resource for California and the nation. It serves Californians
24 concurrently as both the hub of the California water system and the most valuable estuary and
25 wetland ecosystem on the west coast of North and South America.” Water Code § 85002.
26 “Resolving the crisis requires *fundamental reorganization* of the state’s management of Delta
27 watershed resources.” Water Code § 85001(a), emphasis added. Therefore, the Legislature
28

1 resolved “to provide for the sustainable management of the [Delta] ecosystem, to provide for a
2 more reliable water supply for the state, to protect and enhance the quality of water supply from
3 the Delta, and to establish a governance structure that will direct efforts *across state agencies* to
4 develop a *legally enforceable* Delta Plan.” Water Code § 85001(c), emphasis added.

5 57. The Delta Reform Act was meant to advance the “coequal goals” of restoring the
6 Delta ecosystem and ensuring water supply reliability. Water Code § 85054. The Legislature
7 found that eight “objectives” were inherent in those coequal goals:

- 8 (a) *Manage the Delta’s water and environmental resources and the water resources of*
9 *the state over the long term.*
- 10 (b) *Protect and enhance the unique cultural, recreational, and agricultural values of*
11 *the California Delta as an evolving place.*
- 12 (c) *Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a*
13 *healthy estuary and wetland ecosystem.*
- 14 (d) Promote statewide water conservation, water use efficiency, and *sustainable water*
15 *use.*
- 16 (e) Improve water quality to protect human health and the environment consistent
17 with *achieving water quality objectives in the Delta.*
- 18 (f) Improve the water conveyance system and expand statewide water storage.
- 19 (g) Reduce risks to people, property, and state interests in the Delta by effective
20 emergency preparedness, appropriate land uses, and investments in flood
21 protection.
- 22 (h) Establish a new governance structure with the authority, responsibility,
23 accountability, scientific support, and adequate and secure funding to achieve
24 these objectives.

25 Water Code § 85020, emphasis added.

26 58. The Legislature also declared that:

27 The policy of the State of California is to *reduce reliance on the Delta in meeting*
28 *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.

Water Code § 85021, emphasis added.

The Public Trust Doctrine

1
2 59. Water Code section 85023 states, “the longstanding constitutional principle of
3 reasonable use and the Public Trust Doctrine shall be the foundation of state water management
4 policy and are particularly important and applicable to the Delta.”

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

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

15 *Id.*, citations omitted.

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

25 62. Although compliance with CEQA “may assist an agency in complying with its
26 duties under the public trust doctrine [,] CEQA review of a project does not necessarily or
27 automatically satisfy the agency’s affirmative duties to take the trust into account and protect
28 public trust uses whenever feasible.” *San Francisco Baykeeper, Inc. v. State Lands Com.* (2018)

1 29 Cal.App.5th 562, 571. “[A] public trust use is not any use that may confer a public benefit,
2 but rather a use that facilitates public access, public enjoyment, or public use of trust land.” *Id.* at
3 570.

4 **FIRST CAUSE OF ACTION**

5 **(Writ of Mandate to Set Aside Project Approval as Contrary to California Environmental
6 Quality Act and Declaratory and Injunctive Relief to Declare Unlawful and Restrain
Project Approval and Implementation)**

7 **(Alleged by All Petitioner Against All Respondents and Real Parties in Interest)**

8 63. The paragraphs set forth above are realleged and incorporated herein by reference.

9 64. In approving the Project and certifying its Notice of Exemption, and taking other
10 actions to approve and implement the Project, Marin Water failed to proceed in the manner
11 required by law and thereby abused its discretion in violation of CEQA. Contrary to CEQA,
12 Marin Water erroneously invoked and relied upon an inapplicable exemption from CEQA, and
13 consequently failed to prepare an initial study and based thereon, an environmental impact report
14 addressing the Project’s direct and indirect impacts on the environment, and alternatives and
15 mitigation measures including enhanced conservation measures and enhanced storage, that would
16 potentially avoid or reduce those impacts to insignificance.

17 65. For the foregoing reasons, among others, Marin Water’s approval of the Project
18 violates the requirements of CEQA and the CEQA Guidelines, constitutes a prejudicial abuse of
19 discretion, and is contrary to the procedure required by law. Accordingly, Marin Water’s
20 approval of the Project is invalid and must be set aside.

21 **SECOND CAUSE OF ACTION**

22 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside Project Approval as
23 Contrary to the Delta Reform Act)**

24 **(Alleged by Petitioner Against All Respondents and Real Parties in Interest)**

25 66. The paragraphs set forth above are realleged and incorporated herein by reference.

26 67. In adopting the Delta Reform Act, the Legislature found that “‘the Delta’ . . . is a
27 critically important natural resource for California and the nation. It serves Californians
28 concurrently as both the hub of the California water system and the most valuable estuary and

1 wetland ecosystem on the west coast of North and South America.” Water Code § 85002. The
2 Act declares that “[t]he Sacramento-San Joaquin Delta watershed and California’s water
3 infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis
4 requires fundamental reorganization of the state’s management of Delta watershed resources.”
5 Water Code § 85001, subd. (a).

6 68. The Legislature declared that “*existing Delta policies are not sustainable.*” Water
7 Code § 85001(a), emphasis added. To reform the Delta’s mismanagement, the Act declared the
8 Legislature’s “coequal goals” of restoring the Delta ecosystem and ensuring water supply
9 reliability. Water Code § 85054. The Legislature found that eight “objectives” were inherent in
10 those coequal goals, including several that require public agencies whose actions impact the
11 Delta to “[r]estore the Delta ecosystem, including its fisheries and wildlife, as the heart of a
12 healthy estuary and wetland ecosystem,” “[p]romote statewide water conservation, water use
13 efficiency, and sustainable water use,” and “[i]mprove water quality to protect human health and
14 the environment consistent with achieving water quality objectives in the Delta.” Water Code §
15 85020, subds. (c), (d) and (e).

16 69. The Legislature also declared that:

17 The policy of the State of California is to *reduce reliance on the Delta in meeting*
18 *California’s future water supply needs* through a statewide strategy of investing in
19 improved regional supplies, conservation, and water use efficiency. Each region
20 that depends on water from the Delta watershed shall improve its regional self-
21 reliance for water through investment in water use efficiency, water recycling,
22 advanced water technologies, local and regional water supply projects, and
23 improved regional coordination of local and regional water supply efforts.

24 Water Code § 85021 (emphasis added).

25 70. The Delta Reform Act requires any state agency “that proposes to undertake a
26 covered action” to “prepare a written certification of consistency with detailed findings as to
27 whether the covered action is consistent with the Delta Plan” and submit that written finding to
28 the Delta Stewardship Council. Water Code § 85225.

71. The Act defines “[c]overed action” as “a plan, program or project” as defined by
Public Resources Code section 21065 [of CEQA] that:

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

5
6 Water Code § 85057.5, subd. (a).

7 72. The Project is a “covered action” because it diverts water from the Delta and those
8 diversions will have a significant impact on achievement of the Act’s co-equal goal of
9 “protecting, restoring, and enhancing the Delta ecosystem.” Water Code § 85054.

10 73. Although the Project is a “covered action” as defined in Water Code section
11 85057.5 and does not qualify for an exemption therefrom, Marin Water failed to “prepare a
12 written certification of consistency with detailed findings as to whether the covered action is
13 consistent with the Delta Plan” and submit that written finding to the Delta Stewardship Council”
14 as required by Water Code section 85225.

15 74. Should Marin Water belatedly make and submit this finding to the Delta
16 Stewardship Council as required by Water Code sections 85225.10 et seq., petitioner would
17 appeal such a finding, but are prevented from doing so by Marin Water’s unlawful failure to
18 make this required finding in the first place. The Delta Reform Act forbids Marin Water from
19 approving the Project without *first* making a determination of consistency with the Delta Plan.
20 Water Code § 85225.

21 75. Marin Water’s failure to prepare and submit this certification before Project
22 approval, as required by the Delta Reform Act, is directly contrary to the Act’s mandates. Water
23 Code §85225. Therefore its Project approval must be set aside.

24 76. Marin Water’s action in approving the Project in violation of the Delta Reform
25 Act constitutes a failure to proceed in the manner required by law and therefore constitutes a
26 prejudicial abuse of discretion. Accordingly, Marin Water’s approval of the Project is contrary to
27 law and invalid and must be set aside.

1 **THIRD CAUSE OF ACTION**

2 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**
3 **Project Approvals as Public Trust Doctrine)**

4 **(Alleged by All Petitioner Against All Respondents)**

5 77. The paragraphs set forth above are realleged and incorporated herein by reference.

6 78. Marin Water failed to proceed in the manner required by law and abused its
7 discretion in purporting to approve the Project because such approvals violate the Public Trust
8 Doctrine in the following respects, among others.

9 79. The Public Trust Doctrine protects the Delta’s imperiled fish and wildlife and
10 other public trust resources and uses from avoidable harm whenever it is feasible to do so.
11 *National Audubon, supra*, 33 Cal.3d at 426. In adopting the Delta Reform Act, the Legislature
12 directed that “the public trust doctrine shall be the foundation of state water management policy
13 and [is] particularly important and applicable to the Delta.” Water Code § 85023.

14 80. Contrary to this mandate, Marin Water has taken no steps to reduce or avoid the
15 Project’s foreseeable harms to the Delta’s imperiled public trust resources before approving the
16 Project. Instead, the Project would exacerbate the existing unsustainable levels of Delta exports
17 that will needlessly harm public trust resources.

18 81. Marin Water’s approval of the Project evinces no consideration of feasible
19 alternatives and mitigation measures that would protect and restore the Delta’s ecological
20 functions. Because the Project harms rather than protects the Delta’s fish and wildlife, without
21 taking feasible measures to avoid or reduce those harms to insignificance, it violates the Public
22 Trust Doctrine.

23 82. In summary, Marin Water’s approval of the Project violates the Public Trust
24 Doctrine because Marin Water failed to perform its affirmative duty to consider the Project’s
25 impact “upon interests protected by the public trust, and attempt, so far as feasible, to avoid or
26 minimize any harm to those interests.” *National Audubon,, supra*, 33 Cal.3d at 426.

27 83. For each of these reasons, Marin Water failed to proceed in the manner required
28 by law and its approval of the Project is therefore an abuse of discretion. Accordingly, it must be

1 declared invalid and set aside.

2 **FOURTH CAUSE OF ACTION**
3 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**
4 **Project Approvals as CCP Sections 1085 and 1094.5)**

5 **(Alleged by All Petitioner Against All Respondents and Real Parties in Interest)**

6 84. The paragraphs set forth above are realleged and incorporated herein by
7 reference.

8 85. Marin Water failed to proceed in the manner required by law and abused its
9 discretion in purporting to approve the Project, its Notice of Exemption from CEQA, and its
10 related approvals and actions implementing the Project because such approvals violate CCP
11 sections 1085 and 1094.5 in the following respects, among others:

- 12 a. such approvals were not granted in accordance with the procedures
13 required by law;
- 14 b. such approvals were not based on the findings required by law; and
- 15 c. such approvals were not based on, or were contrary to, the
16 evidence in the record before Marin Water's Board of Directors.

17 86. Marin Water failed to proceed in the manner required by law in the following
18 respects, among others:

- 19 a. Marin Water violated CEQA as alleged above;
- 20 b. Marin Water violated the Delta Reform Act as alleged above,;
- 21 c. Marin Water violated the Public Trust Doctrine as alleged above;

22 87. Marin Water's actions in approving the Project without complying with the
23 procedures required by CCP sections 1085 and 1094.5 constitute a prejudicial abuse of
24 discretion, and therefore are invalid and must be set aside.

25 **RELIEF REQUESTED**

26 WHEREFORE, petitioner prays for judgment and further relief as follows:

27 1. For a peremptory writ of mandate directing Marin Water to vacate and set aside its
28 approvals for the Project as alleged above because such approvals violate the California

1 Environmental Quality Act, the Delta Reform Act, the Public Trust Doctrine and Code of Civil
2 Procedure sections 1085 and 1094.5 in the respects alleged hereinabove;

3 2. For declaratory relief declaring unlawful, and for interlocutory and permanent
4 injunctive relief restraining Marin Water from approving and implementing any actions to carry
5 out the Project pending, and following, the hearing of this matter;

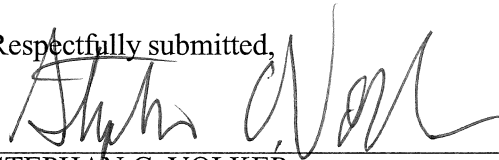
6 3. For a peremptory writ of mandate directing Marin Water to suspend all activity
7 under its approvals for the Project that could result in any change or alteration in the physical
8 environment until Marin Water has taken all actions necessary to bring its approvals of the
9 Project into compliance with the laws whose violation is alleged herein;

10 4. For an award to petitioner of its attorneys' fees and costs of suit (including all
11 necessary and reasonable litigation costs) as authorized by CCP sections 1021.5, 1032 and
12 1033.5; and

13 5. For such other equitable or legal relief as the Court deems just and appropriate.

14
15 Dated: November 24, 2021

Respectfully submitted,



STEPHAN C. VOLKER

Attorneys for Petitioner and Plaintiff NORTH COAST
RIVERS ALLIANCE

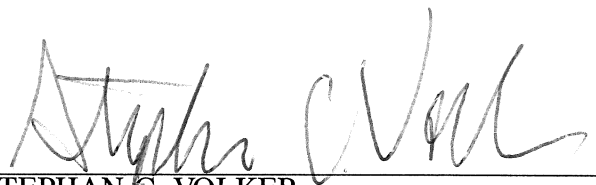
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VERIFICATION

I, Stephan C. Volker, am the attorney for petitioner/plaintiff in this action. I make this verification on behalf of the petitioner/plaintiff North Coast Rivers Alliance because that party and its representatives are absent from the county in which my office is located. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The facts therein are true and correct to the best of my knowledge and belief, and are based on documents within Marin Water's record underlying the approvals for the Project herein challenged.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed in Berkeley, California on November 24, 2021.


STEPHAN C. VOLKER