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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

FILE BY FAX

COUNTY OF SAN JOAQUIN, COUNTY OF CONTRA COSTA, CONTRA COSTA COUNTY WATER AGENCY, COUNTY OF SOLANO, COUNTY OF YOLO, CENTRAL DELTA WATER AGENCY, and LOCAL AGENCIES OF THE NORTH DELTA, Plaintiffs, v. CALIFORNIA DEPARTMENT OF WATER RESOURCES and DOES 1-50, inclusive, Defendants; DOES 51-100, Real Parties in Interest.	CASE NO.: **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF** (Code Civ. Proc., §§ 526, 527, 1085, 1094.5; Pub. Resources Code, §§ 21168, 21168.5; Fish & G. Code, § 3511; Wat. Code, §§ 1126 0, 11460 et seq., 12200 et seq., 85000 et seq.; Public Trust Doctrine) **CEQA CASE**

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GLOSSARY OF TERMS

Term	Definition
1959 DPA	1959 Delta Protection Act (Wat. Code, §12200 et seq.)
1992 DPA	1992 Delta Protection Act (Pub. Resources Code, § 29700 et seq.)
2008 FWS BO	2008 National Oceanic and Atmospheric Administration Biological Opinion
2009 DRA	Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.)
2009 NOAA BO	2009 National Oceanic and Atmospheric Administration Biological Opinion
2015 WaterFix Petition	DWR' and Reclamation' Joint Water Rights Change Petition Submitted to SWRCB for the California WaterFix in 2015
2019 FWS/NOAA Fisheries BO	USFWS and NMFS Biological Opinions on Coordinated Long-Term Operations of the CVP and SWP
2017 Validation Action	Action filed by DWR in Sacramento Superior Court in July 2017 which was dismissed in July 2019
2020 Validation Action	Action filed by DWR in Sacramento Superior Court on August 6, 2020 which the court ordered dismissed on January 17, 2024
2023 Auditor Report	Auditor of State of California report, "California Department of Water Resources: Its Forecasts Do Not Adequately Account for Climate Change and Its Reasons for Some Reservoir Releases Are Unclear"
ALSP	Agricultural Lands Stewardship Plan
AMMP	Adaptive Management and Monitoring Program
AMMs	Avoidance and Minimization Measures
BDCP	Bay Delta Conservation Plan
BDCP/CWF EIR/S	Bay Delta Conservation Plan/California WaterFix Environmental Impact Report//Environmental Impact Statement
BMPs	Best Management Practices
BO	Biological Opinion
Burns-Porter Act	California Water Resources Development Bond Act (Wat. Code, § 12930 et seq.), enacted by the Legislature in 1959 and ratified by the voters in 1960 to provide funds to assist in the construction of the State Water Resources Development System (commonly known as the State Water Project)
CALFED	CALFED Bay-Delta Program
CAP	Climate Action Plan
CCC Water Agency	Contra Costa County Water Agency
CCF	Clifton Court Forebay
CDWA	Central Delta Water Agency
CEQA	California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.
CEQA Findings	Delta Conveyance Project CEQA Findings and Statement of Overriding Consideration

Term	Definition
CEQA Guidelines	23 Cal. Code Regs, § 15000 et seq.
CESA	California Endangered Species Act (Fish and Game Code, § 2050 et seq.)
Cfs	Cubic feet per second
CO2e	Carbon dioxide equivalent
Contra Costa Parties	Plaintiffs Contra Costa County and Contra Costa County Water Agency
CVP	United States' Bureau of Reclamation's Central Valley Project
CVPA	California Central Valley Project Act (Wat. Code, § 11100, et seq.) originally enacted by the Legislature in 1933 and amended numerous times, with additional features added in 1951 (Wat. Code, § 11260, as amended in 1956, 1957, and 1959
D-1641	Water Right Decision 1641
dBA	Decibels
Defendant	DWR
Delta	Sacramento-San Joaquin River Delta
DCA	Delta Conveyance Design and Construction Authority
Project	Delta Conveyance Project approved by DWR on December 21, 2023 (project at issue in this case)
DEIR	Delta Conveyance Project Final Environmental Impact Report released by DWR
DFW	California Department of Fish and Wildlife
DISB	Delta Independent Science Board
DPC	Delta Protection Commission
DSC	Delta Stewardship Council
DWR	California Department of Water Resources
EIR	Delta Conveyance Project Environmental Impact Report certified by DWR on December 21, 2023 (includes DEIR and FEIR)
ESA	Endangered Species Act (16 U.S.C., section 1531 et seq.)
FEIR	Delta Conveyance Project Final Environmental Impact Report released by DWR on December 18, 2023
Freshwater Pathway	Existing through-Delta conveyance that allows fresh water from the Sacramento River to freshen the Delta prior to water being exported from the South Delta
GHG	Greenhouse Gas
HABs	Harmful Algal Blooms such as toxic *Microcystis*
HCP	Habitat Conservation Plan
ITP	Incidental Take Permit
LAND	Local Agencies of the North Delta
Leq	Equivalent Continuous Sound Level
MMRP	Mitigation Monitoring and Reporting Plan
Muck	Reusable Tunnel Material

Term	Definition
NAS	National Academy of Sciences
NCCP	Natural Community Conservation Plan
NDDs	North Delta Diversions
NEPA	National Environmental Policy Act of 1969 (42 U.S.C. section 4321 et seq.)
NOAA Fisheries	National Oceanic and Atmospheric Administration Fisheries
NOP	Notice of Preparation
PM2.5	Particulate Matter 2.5 Emissions
PM10	Particulate Matter 10 Emissions
Project	The Project adopted by DWR, EIR Alternative 5
RD	Reclamation District
Reclamation	United States Bureau of Reclamation
Regional San	Sacramento Regional County Sanitation District
RPA	Reasonable and Prudent Alternatives
2018 Phase I SED	Substitute Environmental Document WQCP updates related to San Joaquin River Flows and Southern Delta Water Quality
2023 Phase II SED (Draft)	Substitute Environmental Document WQCP updates related to the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta
SGMA	Sustainable Groundwater Management Act (Wat. Code, § 10720 et seq.)
SMARA	Surface Mining and Reclamation Act (Pub. Resources Code, § 2710 et seq.)
SWP	State Water Project
SWRCB	California State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
Wildlife Refuge	Stone Lakes National Wildlife Refuge
WQCP	Bay Delta Water Quality Control Plan
Yolo Bypass project	Yolo Bypass Salmonid Habitat Restoration and Fish Passage project

Petitioners and Plaintiffs County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, Central Delta Water Agency, and Local Agencies of the North Delta (collectively, "Plaintiffs") allege as follows:

1. This civil action is brought pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.), the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.), a "fully protected species" provision of the Fish and Game Code (Fish & G. Code, § 3511), the 1959 Delta Protection Act (Wat. Code, § 12200 et seq.), the 1992 Delta Protection Act (Pub. Resources Code, § 29700 et seq.), the Watershed Protection Act (Wat. Code, § 11460 et seq.), the Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.), the Public Trust Doctrine and the Central Valley Project Act ("CVPA," Wat. Code, § 11100, et seq).

2. Plaintiffs—a coalition of four counties, water resource management and flood control agencies, and local districts in the Sacramento-San Joaquin Delta ("Delta")—challenge Defendant California Department of Water Resources' ("DWR" or "Defendant") environmental review and approval of the construction and operations of the Delta Conveyance Project, or Delta Tunnel project ("Project"). Similar to the last century when the State and powerful water districts drained Owens Lake and the San Joaquin River to support unsustainable growth in Southern California and agriculture in naturally arid portions of the southern San Joaquin Valley, DWR's Project would devastate the Sacramento River and the Delta while severely damaging the environment, communities, resources, and economies throughout the region.

3. The Project requires construction of a massive tunnel with an external diameter of 39 feet and capacity of at least 6,000 cubic feet per second ("cfs"), almost a third of the annual average Sacramento River flow and almost half its annual dry/critical year flow. It would add around 40 percent to export pumping capacity of the State Water Project ("SWP"). When available for lawful use, if at all, this tunnel would divert Sacramento River water from two new northern Delta diversions adjacent to the legacy towns of Hood and Courtland, include 11 tunnel shafts and run 45 miles at about 150 feet below ground to the Bethany Reservoir Pumping Plant and Surge Basin, south of the existing SWP's Clifton Court Forebay in Contra Costa County.

Construction would require, among other facilities, concrete batch plants, fueling stations and new roads. The total footprint of the Project would occupy 1,313.75 acres. (Tunnel Impacts Map, attached as Exhibit A.)

4. The Delta already faces interrelated problems of heavily overstressed water supplies, instream flow deficits, water quality impairments, and degraded aquatic habitats. The Delta watershed is "in crisis" (Wat. Code, § 85001), and State policy is to "reduce reliance on the Delta" for future water supply needs. (Wat. Code, § 85021.) Yet the Project would remove more freshwater from the water-deprived Delta. Whether reliable water would be available and lawful to divert through the Delta Tunnel after 14 years of construction remains fundamentally in doubt. That doubt is even greater in the context of climate change, which DWR inconsistently cites as a talking point in support of the Project without credibly analyzing it as a formidable threat to the success of the Project.

5. Despite DWR's failure to realistically confront the Project's future inability to meet most, if not all, its ostensible objectives, DWR estimates the Project could increase SWP exports out of the Delta by an average of 543,000 acre-feet per year on average (out of 2,429,000) and by 316,000 feet per year in dry and critically dry water years. The Project would incrementally worsen water quality throughout the Delta, particularly in the Central and South Delta, among many other unmitigated harms. In approving the Project, DWR failed to address the foreseeable pressure to relax enforcement of current water quality and other requirements protecting the Delta and the reality that if those standards were fully enforced in the future, DWR's multibillion dollar tunnel may well become an unusable or barely usable stranded asset.

6. CEQA compels a "meticulous process designed to ensure that the environment is protected," and the EIR is its "heart and soul." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911 [*Planning and Conservation League*].) However, the incomplete Project description, conclusory project objectives, unreasonably narrow study of alternatives, discredited and inconsistent climate and hydrology analysis, missing or inadequate impact analyses, piecemealing, predetermination, and ineffective and unenforceable mitigation measures (among other defects) render the EIR fatally defective.

Despite the clear need to study other options that would reduce reliance on the Delta consistent with State law, all nine of the EIR's "alternatives" require construction of a new isolated conveyance to divert more Sacramento River water. The Delta Tunnel is the latest permutation of DWR's multiple failed attempts to add an isolated conveyance facility to the voter approved SWP, from the Peripheral Canal voters rejected in 1982 through California WaterFix, whose approvals were rescinded amid numerous challenges in 2019. While some earlier tunnel proposals included a Habitat Conservation Plan ("HCP") and Natural Community Conservation Plan ("NCCP") that would attempt to improve conditions for protected species, DWR jettisoned that approach in 2015 and has not revived it in the Project.

7. The Project would fundamentally alter the hydrodynamics of the Delta and significantly worsen conditions throughout the region, proposing its most significant transformation since construction of the CVP and SWP utilizing pumping facilities in the South Delta, completed respectively in 1961 and 1969. The Plaintiff Counties and water agencies, and their partners and constituents, are among the Delta's most directly affected entities. And the Project would generate ripple effects far beyond the Delta, which DWR's EIR and approval left undisclosed, unanalyzed and unmitigated.

8. Due to the EIR's foundational defects and DWR's avoidance of major criticisms and significant new information in its final approvals, the public remains very much in the dark and the fundamental purposes of CEQA have been thwarted. Moreover, in approving the Project, DWR violated other state laws designed to protect fish and wildlife, the Delta watershed and water supplies, and the Public Trust. Because DWR failed to meet the requirements of CEQA and these other vital safeguards under California law, the Project may not proceed.

9. The SWP and federally managed CVP require coordinated operation, and the United States Army Corps of Engineers ("USACE") circulated a Draft Environmental Impact Statement ("DEIS") for the Project pursuant to the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. section 4321 et seq., in December 2022. This DEIS only analyzed impacts of *construction*, not *operation*, and it remains unknown how or whether the impacts of operating the Tunnel will be analyzed pursuant to NEPA. DWR and other state and federal

agencies have not completed the bulk of the review and permitting that would be required to construct and operate the controversial Tunnel megaproject. (See Delta Conveyance Project Permitting and Review Status Table, attached as Exhibit B.)

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to sections 1060, 1085, and 1094.5 of the California Code of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

11. Venue for this action properly lies in Sacramento County Superior Court because DWR is a state agency based in Sacramento County, and the Attorney General also has an office in Sacramento County. (Code Civ. Proc., § 401, subd. (1).)

12. This Petition is timely filed in accordance with Public Resources Code section 21167, subdivision (b) and title 23 of the California Code of Regulations section 15000 et seq. ("CEQA Guidelines") section 15112, as well as Code of Civil Procedure sections 1094.5 and 1085.

PARTIES

13. Plaintiff COUNTY OF SAN JOAQUIN ("San Joaquin County") is a political subdivision of the State of California. Two-thirds of the legal Delta lies within San Joaquin County, and the Delta comprises over one-third of the County's total area. Approximately 167,000 people live in the San Joaquin County portion of the Delta, and those cities and communities rely significantly on the Delta for their water supplies. The Delta supports a $5.2 billion annual agricultural industry, and approximately forty percent (40%) of those farms are located in San Joaquin County. Much of the Delta's $750 million recreational economy is centered in the County, encompassing, among other enterprises and activities, many privately-owned marinas, public and private boat launch facilities, recreational facilities for fishing, tent camping, RV camping, hiking and picnicking, and lodging establishments and restaurants that contribute to the Delta's recreational economy.

14. Plaintiff CONTRA COSTA COUNTY ("Contra Costa County") is a political subdivision of the State of California. Contra Costa County is vitally and beneficially interested

in decisions on the Project, which would adversely affect the Delta. The eastern portion of Contra Costa County is located within the Delta, and a portion of it borders Old River. Contra Costa County's entire northern boundary borders San Pablo and Suisun Bays, the Carquinez Strait, New York Slough, and the western San Joaquin River. Contra Costa County is home to over one million people. Persons who live and work within Contra Costa County rely on the Delta for drinking water, and as a place to live, work, and recreate. Contra Costa County's interests, as well as the interests of the residents, landowners, and local districts within its boundaries, would be directly and indirectly impacted by the Project's adverse environmental impacts.

15. Plaintiff CONTRA COSTA COUNTY WATER AGENCY ("CCC Water Agency")[1] is a body politic and corporate organized and existing under the Contra Costa County Water Agency Act (Stats. 1957, ch. 518, West's Wat. Code Appendix, Ch. 80). CCC Water Agency is vitally and beneficially interested in Defendant's Project decisions made that would adversely affect the San Joaquin Delta, and water quality and beneficial uses of water within CCC Water Agency's jurisdiction. CCC Water Agency is empowered to do all things necessary to ensure the availability of water for beneficial uses within the agency's jurisdiction, including but not limited to preventing waste, salinity intrusion, and interference with or diminution of the natural flow of rivers of streams within the agency's jurisdiction. (West's Wat. Code Appendix., § 80-11(2), (5).) CCC Water Agency is authorized to bring this lawsuit to protect "the ownership, use or supply of water, water rights or water service within or without the agency which may be used or useful for any purpose within the agency." (West's Wat. Code Appendix, § 80-11(5).) CCC Water Agency's special statutory interests would be directly and indirectly impacted by the Project's adverse environmental impacts. The Contra Costa County Board of Supervisors acts, ex officio, as CCC Water Agency's governing body. (West's Wat. Code Appendix, § 80-4.)

[1] Contra Costa County and CCC Water Agency are collectively referred to as the "Contra Costa Parties."

16. Plaintiff COUNTY OF SOLANO ("Solano County") is a political subdivision of the State of California. Solano County is vitally and beneficially interested in the decisions made by the Defendant that would affect the Delta. The eastern portion of Solano County, including the Cache Slough region, is located within the Delta. Solano County's southern boundary borders San Pablo and Suisun Bays, the Carquinez Strait, and the Sacramento River. Solano County is home to more than 400,000 people, as well as a thriving agricultural economy. Persons who live and work within Solano County rely on the Delta as a source of drinking and irrigation water, and as a place to live, work, and recreate. Solano County's interests, as well as the interests of the residents, landowners, farmers, and local districts within its boundaries, would be directly and indirectly impacted by the Project's adverse environmental impacts.

17. Plaintiff COUNTY OF YOLO ("Yolo County") is a political subdivision of the State of California. Yolo County is vitally and beneficially interested in Defendant's actions approving the Project because it would affect the environment, economy, and public welfare within the Delta. A substantial portion of Yolo County lies within the Delta, including part of the City of West Sacramento, the town of Clarksburg and its surrounding farms and vineyards, and the Yolo Bypass. Persons who live and work within Yolo County depend on Delta waters for agricultural and municipal uses, as well as for commerce and recreation. Delta levees protect local communities and farms and, together with other infrastructure such as roads and bridges, sustain the agricultural heritage and economic vitality of Yolo County. Yolo County's interests and the interests of its residents, landowners, and local agencies, such as reclamation districts ("RDs"), would be directly and indirectly adversely impacted by the Project.

18. Plaintiff CENTRAL DELTA WATER AGENCY ("CDWA") is a political subdivision of the State of California created by the California Legislature under the Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, 117-1.1, et seq.), by which CDWA came into existence in January of 1974. CDWA's boundaries are specified in Water Code Appendix section 117-9.1 and encompass approximately 120,000 acres, which are located entirely within both the western portion of San Joaquin County and the "Sacramento-San Joaquin Delta" as defined in California Water Code section 12220. While the

lands within the agency are primarily agricultural, they also support numerous other uses including recreational, wildlife habitat, open space, residential, commercial, and institutional uses. CDWA is empowered to "sue and be sued" and to take all reasonable and lawful actions, including pursuing legislative and legal action, that have for their general purpose: (1) to protect the water supply of the lands within the agency against intrusion of ocean salinity; and/or (2) to assure the lands within the agency a dependable supply of water of suitable quality sufficient to meet present and future needs. The agency may also undertake activities to assist landowners and local districts within the agency in reclamation and flood control matters. (See Wat. Code, Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and (b), respectively.) CDWA may assist landowners, districts, and water right holders within its boundaries in the protection of their vested water rights and may represent the interests of those parties in water right proceedings and related proceedings before courts of both the State of California and the United States to carry out the purposes of the agency. (See Wat. Code, Appendix, 117-4.2, subd. (b).) Those vested water rights include post-1914 water permits and licenses issued by the State Water Resources Control Board ("SWRCB") and its predecessor agencies, overlying rights, statutory rights, contract rights, riparian rights, prescriptive rights, salvage rights, rights to recycled and recaptured water, and rights to artesian flow.

19. Plaintiff LOCAL AGENCIES OF THE NORTH DELTA ("LAND"), an unincorporated association, is a coalition of reclamation, water and levee districts ("districts") in the northern Delta. These districts provide water delivery and/or drainage services and assist in maintaining the levees providing flood protection to Delta communities, homes and farms contributing to Delta agricultural productivity. LAND member interests, as well as the interests of local landowners within individual LAND districts, would be directly and indirectly adversely impacted by the Project through reduced freshwater flows, changes in water levels, and worsened quality of water in the channels within the boundaries of LAND member agencies. LAND member districts' flood control protection levels would be worsened by the massive changes to the levee system necessary to construct the Project. The Project's

destruction of aquatic and terrestrial habitat needed by Delta wildlife and interference with Delta recreational uses are also adverse to LAND member districts' interests.

20. Defendant CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR") is an agency of the State of California located in Sacramento, California, and the Project's CEQA lead agency. DWR was established in 1956 for the purpose of building and operating the SWP. In addition to operating the SWP, DWR's major responsibilities include overseeing the statewide process of developing and updating the California Water Plan (Bulletin 160 series); protecting and restoring the Sacramento-San Joaquin Delta; regulating dams, providing flood protection, and assisting in emergency management.

21. The true names and capacities, whether individual, corporate, associate, governmental, coconspirator, partner or alter-ego of those defendants sued herein under the fictitious names of DOES 1 through 50, inclusive, are not known to Plaintiffs, who therefore sue those defendants by such fictitious names. Plaintiffs will ask leave of court to amend this Complaint and insert the true names and capacities of these defendants and respondents when the same have been ascertained. Plaintiffs are informed and believe and, on that basis, allege, that defendants designated herein as DOE defendants and respondents are legally responsible in some manner for the events and happenings alleged in this Complaint, and that Plaintiffs' alleged injuries were proximately caused by said defendants' conduct.

22. The true names and capacities, whether individual, corporate, associate, governmental, coconspirator, partner or alter-ego of those Real Parties in Interest sued herein under the fictitious names of DOES 51 through 100, inclusive, are not known to Plaintiffs, who therefore sue those by such fictitious names. Plaintiffs will ask leave of Court to amend this Complaint and insert the true names and capacities of these Real Parties in Interest when the same have been ascertained. Plaintiffs are informed and believe and, on that basis, allege, that Real Parties in Interest designated herein as DOE real parties in interest are legally responsible in some manner for the events and happenings alleged in this Complaint, and that Plaintiffs' alleged injuries were proximately caused by said Real Parties in Interest's conduct.

FACTUAL AND PROCEDURAL BACKGROUND

Delta, SWP and CVP History

23. The Delta, the largest freshwater estuary on the west coast of the Americas, supports some of the most productive farmland in the world, wineries and other agriculture-related enterprises. Of the Delta's approximately 500,000 acres of farmland, approximately eighty percent (80%) is Prime Farmland, providing California's largest contiguous swath of Prime Farmland. 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. The Delta is a critical component of the San Francisco Bay Delta Estuary. In 1959, the Legislature enacted the Delta Protection Act of 1959 ("1959 DPA," Wat. Code, §§ 12200-12205), enacted to retain the Delta as the common pool and stating: "water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas." (Wat. Code, § 12200.) The 1959 DPA makes clear that "among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control through operation of the [CVP], 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.) In Water Code section 12205, the Legislature sought to ensure that the adequacy of the common pool for in Delta users by requiring 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." The proposed tunnels, which would isolate the water for export from the Delta pool, conflict with the objectives of providing salinity control and an adequate supply for the Delta.

24. The 1959 DPA has been the subject of administrative and judicial interpretations allowing no export of water from the Delta unless the Delta users are first provided salinity

control and an adequate water supply. In *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3rd 82, 139, the court explained:

> In 1959, when the SWP was authorized, the Legislature enacted the Delta Protection Act. (Secs. 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 waters in the Delta for the public good." (Sec. 12200.) The act prohibits project exports from the Delta of water necessary to provide water to which Delta users are "entitled" and water which is needed for salinity control and an adequate supply for Delta users. (Secs. 12202, 12203, 12204.

Section 12201 "clarifies that an adequate water supply is a supply sufficient 1) to maintain and expand agriculture, industry, urban and recreational development in the Delta and 2) to provide a common source of fresh water for export to water-deficient areas, subject to the provisions of the watershed and county-of-origin statutes." (*Id*., fn. 37.)

25. 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*., p. 12.) Referencing alternative plans for Delta facilities, DWR explained: "Under any of the foregoing projects, water of very good quality would continue to be supplied to about 90 percent of the Delta lowlands through existing facilities. It is estimated that the mineral quality of the supplies would range between 15 to 80 parts of chlorides and between 100 and 350 parts of total dissolved solids per million parts water. The quality of water in the southern portion of the Delta would be improved." (*Id*., p. 44.) As the 1959 DPA and other authority direct, export of water from the Delta is expressly conditioned on first providing an adequate supply for in-Delta users as defined in Water Code section 12201.

26. In reliance on these promises, the SWP and the CVP were constructed to include major diversions in the South Delta. Subject to legal requirements and limitations, including powers reserved to the Legislature in the California Water Resources Development Bond Act (Wat. Code, § 12930 et seq.) (commonly known as the "Burns-Porter Act"), DWR operates the SWP, which includes pumping plants, hydroelectric power plants, water storage, as well as conveyance structures. SWP exports Delta water from the SWP system at Clifton Court

Forebay from the Harvey O. Banks pumping plant in Contra Costa County. The SWP operates under long-term contracts with 29 water contractors throughout California. These water contractors, in turn, deliver water to wholesalers or retailers or deliver it directly to agricultural, municipal, and industrial water users. Some SWP facilities were never built, such as planned dams on later-designated wild and scenic rivers, and there is a "huge gap" between the maximum allocations noted in Article 6, Table A of SWP contracts and the far lower amount that can be reliably delivered, a problem sometimes termed "paper water." (*Planning and Conservation League*, *supra*, 83 Cal.App.4th at 908, fn. 5.)

27. The CVP comprises reservoirs, power plants, and more than 500 miles of major canals and aqueducts. The U.S. Bureau of Reclamation ("Reclamation") operates and maintains the CVP and coordinates operations with the SWP. Reclamation has entered into approximately 250 long-term CVP contracts with water suppliers. In the early 1960s, an Interagency Delta Committee was convened to coordinate water resources planning for the SWP, CVP, and local agencies.

28. Although no isolated peripheral canal or tunnel was contemplated or included in DWR's 1960 Report to the Legislature or referenced in the Burns-Porter Bond Act (Wat, Code, § 12930) or the CVPA as originally enacted and amended, DWR has attempted, but never succeeded, in attempts to establish such a facility for most of the SWP's history. Following a 1963 report proposing a "peripheral canal" and nearly a decade of further study of this proposal, DWR proposed the "Peripheral Canal Project" in 1974, described as an isolated facility to convey freshwater from the Sacramento River. In 1972, the California Legislature passed the Wild and Scenic Rivers Act, protecting the north coast's remaining free-flowing rivers from development. In 1980, these state-designated wild and scenic rivers were placed under federal Wild and Scenic Rivers Act protection. Protection of these rivers effectively cut off the prospect of new water supplies from northern California being routed into the Delta and distributed to SWP and/or CVP users. In 1982, California voters, by a margin of 62.7 percent to 37.3 percent, definitively rejected the act that would have authorized construction of the Peripheral Canal facilities. In a letter to Assembly member Lois Wolk on November 7, 2007, Delta Vision Blue

Ribbon Task Force Chair Philip Isenberg noted that a June 21, 1984 Attorney General advice letter "appears to call in question [DWR's] position that it has the legal authority to build a Peripheral Canal" and suggests that "the Department lacks the legal authority to build an isolated water conveyance facility that does not rely on existing Delta channels."

29. The SWP and CVP water infrastructure are operated pursuant to a 1986 Coordinated Operations Agreement ("COA"). An Addendum to the 1986 COA was entered on December 12, 2018. Joint points of diversion allow the use of one project's diversion facility by the other under certain conditions. In part, both the SWP and CVP water delivery systems 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.

30. The flows of both the San Joaquin River System and the Sacramento River System vary greatly from year to year and from season to season within each year. In the late summer and early fall, the flow is usually low and it rises in the winter, spring, and early summer as a result of rains and run-off from the melting snow. Operation of the state and federal pumping systems in the Delta rely on a through-Delta conveyance approach that allows fresh water from the Sacramento River to freshen the Delta prior to water being exported from the South Delta. The pathway of the water is referred to as the "Freshwater Pathway."

31. The lands within Delta boundaries are riparian to Delta channels and the Sacramento and San Joaquin Rivers. Delta water users claim the right to the waters flowing into the Delta from the west, including water flowing with the tides, water flowing from the Sacramento and San Joaquin Rivers, and water from all other tributaries and other sources. These claims are based on riparian rights, prescriptive rights, pre-1914 rights, salvage rights, overlying rights, statutory rights, rights to recycled and recaptured water, rights to artesian flow and appropriative rights based on applications made and permits granted. These landowners also claim vested rights in the underground water supply where it is available and which is fed by the rivers, channels, canals and sloughs in the Delta. If the surface water quality is degraded, the groundwater is also gradually degraded.

32. Dams and diversions on the Sacramento and San Joaquin Rivers and their tributaries decrease flows entering the Delta, which adversely affects in-Delta quality by, among other things, reducing net flows in Delta channels. Changes in the flows in the rivers, channels, canals and sloughs in or tributary to the Delta have a material effect on the farming operations conducted on the lands irrigated from these sources. At times of low flows, the source of water used for irrigation, domestic and other beneficial uses may become degraded because of: (1) the poor-quality drainage water from lands lying upstream, particularly on the San Joaquin River; and (2) the incursion of salt water from San Francisco Bay. At such times, poor quality causes reduction in crop yields and values, and increases irrigation costs.

33. The operation of the CVP and SWP causes other adverse effects in the South Delta. The operation of the CVP and SWP export pumps, if not carefully controlled, substantially decreases the height of water levels in the South Delta, especially the low tide level, to the point where local siphons and pumps cannot operate properly. These pumps' operation also 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. 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 in concentrations which exceed downstream Water Quality Objectives. This drainage also includes high levels of other constituents such as selenium and boron.

34. The CALFED Bay-Delta Program ("CALFED") was an interagency effort involving 25 state and federal agencies with management or regulatory responsibilities for the Bay-Delta. Local agencies in the Delta were not permitted to participate in CALFED development. In August 2000, Reclamation, DWR and other state and federal agencies committed to implementing CALFED in a Record of Decision for the CALFED programmatic EIR. The California Supreme Court upheld that EIR but observed that if "practical experience"

demonstrated it was not possible to protect listed species and "restore" Bay-Delta ecological health "while maintaining and perhaps increasing Bay-Delta water exports through the CVP and SWP," those exports "may need to be capped or reduced." (*In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168.) A year later, the Legislature recognized "existing Delta policies are not sustainable" (Wat. Code, § 85001) and affirmed state policy to "reduce reliance on the Delta" for future water supply. (Wat. Code, § 85021.)

35. The California Bay-Delta Act of 2003 charged the California Bay-Delta Authority implementation and oversight of the CALFED Program. In January 2010, after little progress on CALFED goals, that Act repealed, and new legislation transferred all of the Authority's responsibilities to the newly created Delta Stewardship Council ("DSC"). Except for the science program now at the DSC, the actions included in CALFED are no longer active.

Prior Planning Processes in Furtherance of the Bay Delta Conservation Plan/Delta Tunnel

36. The planning process for the Bay Delta Conservation Plan ("BDCP") formally commenced in 2006 as a voluntary effort to obtain long-term, incidental take permits for: (1) the operations of the SWP through development of a comprehensive HCP under the federal Endangered Species Act ("ESA"), and a NCCP under the California Natural Community Conservation Planning Act; and (2) support for incidental take authorization for the operations of the CVP under section 7 of the ESA.

37. In 2006, certain federal and state regulatory agencies, fisheries agencies, water export contractors (termed "potentially regulated agencies"), and environmental non-governmental organizations entered into a Memorandum of Agreement on the Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat and Conservation and Conveyance Program in Connection with the Development of the BDCP. They began meeting at the Resources Agency on a regular basis regarding the development of the project that would eventually be called the California WaterFix.

38. Also in 2006, several parties entered into a Planning Agreement Regarding BDCP Steering Committee Participation, which was conditioned on agreement to new points of

diversion on the Sacramento River and an isolated conveyance facility, included very few local entities and none of the Plaintiffs herein.

39. A 2007 Conservation Strategy Options Report confirmed DWR would not analyze non-conveyance alternatives to improve export water supplies in compliance with state and federal species requirements.

40. As fish numbers in the Delta continued to decline, the United States Fish and Wildlife Service ("USFWS") issued a Biological Opinion ("2008 FWS BO") concluding that the effects of the proposed long-term operations of the SWP and CVP were likely to jeopardize the continued existence of Delta smelt. Among other measures, the National Oceanic and Atmospheric Administration Biological Opinion issued in 2008 ("2008 FWS BO") required the creation of 8,000 acres of tidal habitat restoration by the SWP contractors.

41. In 2009, the National Oceanic and Atmospheric Administration Fisheries ("NOAA Fisheries") issued a biological opinion ("BO") ("2009 NOAA BO") concluding that the effects of proposed long-term SWP and CVP operations were likely to jeopardize the continued existence of the Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and Southern Distinct Population Segment of North American green sturgeon. To avoid jeopardy and adverse modification of critical habitat, the 2009 NOAA BO additionally required the creation of 17,000+ acres of enhanced floodplain habitat by the SWP and the CVP contractors.

42. In 2009, the California Legislature passed the Sacramento-San Joaquin Delta Reform Act of 2009 ("2009 DRA") (Wat. Code, § 85000 et seq.) The 2009 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.)

43. DWR released the first draft of the BDCP to the public in 2010. After reviewing this draft, which already proposed an isolated conveyance, the National Academy of Sciences ("NAS") commented that the draft lacked a detailed effects analysis. NAS also cautioned that it

would be more logical to carry out an effects analysis, and *then* identify several alternative projects. Instead, DWR chose the project design *before* evaluating alternatives.

44. In 2013, the draft BDCP and Draft Environmental Impact Report ("BDCP DEIR/S") were released for public review and comment. The preferred project in the BDCP DEIR/S (Alternative 4), included three new intakes on the Sacramento River with a maximum diversion capacity of 9,000 cfs. Despite the requirement to improve the South Delta diversion facilities to reduce fish kills in CALFED, as well as the 2009 NOAA BO, and the continued reliance in most of the Project alternatives on continued pumping from the South Delta, none of the Project alternatives included measures to reduce fish kills at the South Delta pumps.

45. The U.S. Environmental Protection Agency ("USEPA") found, upon review of the BDCP DEIR/S, that "all project alternatives would result in adverse, significant, unmitigated effects to water quality and one or more beneficial uses within the affected water bodies." Upon review of the Project's Recirculated Draft EIR/S in 2015, the USEPA rated the BDCP RDEIR/S review as "Inadequate."

46. After six years of working on the BDCP, DWR and Reclamation gave up on seeking an HCP/NCCP with 50-year take authority and "no surprises" assurances in 2015. Unable to meet ESA standards requiring that the BDCP version of the Delta Tunnels plan contribute to the recovery of state and federally listed species, the BDCP proponents jettisoned the HCP/NCCP idea and announced the selection of Alternative 4A and the proposed Project under CEQA, called the "California WaterFix." The HCP/NCCP restoration elements that were stripped from the BDCP were then rebranded as "EcoRestore." Restoration of all but 2,000 of the 30,000 acres now called "Eco Restore" and presented as "new" habitat restoration was in fact already required by the 2008 and 2009 BOs.

47. In August 2015, DWR and Reclamation submitted a joint Water Rights Change Petition to SWRCB for the California WaterFix ("2015 WaterFix Petition"), with the intent to add three new 3,000 cfs intakes on the Sacramento River for the Project, and contending that increasing conveyance capacity and diverting water from potentially new sources was not actually a new diversion.

48. In January 2016, the Plaintiffs herein, among others, filed protests to 2015 WaterFix Petition , alleging, among other things, that WaterFix would result in significant environmental impacts in the Delta, and participated in more than two years and roughly 103 days of evidentiary hearings, documenting the appropriate flow criteria that would be necessary, and the vast impacts and detriment to the public interest from WaterFix, including injury to legal users of water and unreasonable impacts on fish and wildlife. The SWRCB never completed its hearings on whether or not to approve the 2015 WaterFix Petition.

49. In December 2016, DWR and Reclamation released the FEIR/FEIS for the BDCP/WaterFix. DWR certified the FEIR and approved WaterFix (BDCP Alternative 4A) on July 21, 2017, redefining the EIR to include an uncirculated new report. Reclamation never issued a ROD under NEPA based on the FEIS. The same day, DWR issued Project Order No. 40, purporting to deem the Delta features of the CVPA "modified" and applied to the SWP to include WaterFix, and approved three WaterFix revenue bond resolutions.

50. Plaintiffs herein, along with dozens of other challengers, filed suit in August 2017 challenging DWR's review and approval of WaterFix, seeking primarily to compel DWR to suspend WaterFix activities, rescind all project approvals, and decertify the EIR.

51. In 2017, DWR filed an action to validate its WaterFix bond resolutions ("2017 Validation Action"), which Plaintiffs herein and other interested parties answered. Opponents argued that essential details of the WaterFix project and its financing remained undefined and/or unapproved; that the outcome of pending administrative proceedings, federal decision-making, and stakeholder financing decisions would likely fundamentally transform the project; that validation would violate numerous provisions of state and federal law; and that DWR lacked the authority to issue revenue bonds as proposed to cover capital costs for the WaterFix project.

52. Also in July 2017, DWR submitted its Certification of Consistency with the Delta Plan for WaterFix with the DSC pursuant to Water Code section 85225. DWR's Certification of Consistency was challenged through an appeal process commenced by Plaintiffs herein, among others. In November 2018, the DSC issued a draft determination that DWR's consistency

finding was not supported by substantial evidence; one week later, DSC members encouraged DWR to withdraw its Certification of Consistency, which DWR did in December 2018.

53. In July 2018, DWR released a Draft Supplemental EIR evaluating a phased construction of the California WaterFix project in which only a single tunnel would be constructed initially but did not later finalize that document or approve this phased approach.

54. Having suffered numerous legal and other setbacks, and with the feasibility of WaterFix in serious question, DWR decertified the BDCP/WaterFix FEIR and rescinded all of its WaterFix project approvals in May 2019. DWR also withdrew its 2015 WaterFix Petition and its Application for Section 401 Certification from the SWRCB. The same month, DWR adopted a resolution rescinding the Bond Resolutions that were the basis of its 2017 Validation Action and confirmed that these rescissions also made Project Order No. 40 inoperative. In July 2019, Public Agencies and other Plaintiffs requested dismissal of their WaterFix actions.

Other Related Processes

55. In the years following the 2008-2009 BOs' that initially required creation of 28,000 acres of habitat, very few acres of habitat were actually created. By the time of the 2016 Fish Restoration Program Annual Report, not one acre of habitat pursuant to the 2008 FWS BO has actually been completed in the Delta. By 2021, less than 7,000 acres of habitat had been created, according to DWR's EcoRestore website. Meanwhile, special status species continue to decline, with Delta smelt and several salmon runs teetering on the brink of extinction. For the sixth year in a row, no Delta Smelt were collected in the California Department of Fish and Wildlife's ("DFW") Fall Midwater Trawl Survey in the Sacramento-San Joaquin River Delta from September through December 2023.

56. The California Legislature enacted the Sustainable Groundwater Management Act ("SGMA") in 2014. (Wat. Code, § 10720 et seq.) SGMA was designed to close the gap in California's groundwater management by directing the creation of local groundwater sustainability agencies to monitor and manage groundwater basins to ensure that the basins are managed to prevent and correct overdraft conditions.

57. Concurrently with the Project's (and prior iterations of the Project) review, the SWRCB has proceeded to update the Bay Delta Water Quality Control Plan ("WQCP"). On December 12, 2018, the SWRCB adopted amendments to the WQCP for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary related to San Joaquin River Flows and Southern Delta Water Quality ("2018 WQCP Amendments"). In the 2018 WQCP Amendments, the SWRCB weakened the South Delta Salinity Objective, which would allow higher salinity in the surface waters and would impair South Delta agriculture with inadequate scientific justification for the increase in salinity. While the 2018 WQCP Amendments are subject to legal challenges, they are in the process of being implemented by SWRCB.

58. On December 13, 2018, DWR approved a project of long-term SWP contract amendments, in part to extend contract terms from 2035-2042 through 2085. While DWR deemed these the "contract extension" amendments, they also make substantive changes, including a redefinition of "facilities" that seeks to remove a key obstacle to bond financing for a Delta conveyance, DWR isolated its review of these amendments from its WaterFix and Delta Conveyance Project review, as well as DWR's long-promised but still-uncompleted further set of Delta conveyance-specific contract amendments referenced in 2019 and 2020 Agreements in Principle. Project critics, including Plaintiffs, noted the financial and environmental risks associated with fragmented consideration of DWR's conveyance project and DWR's conveyance-related proposed amendments. During 2018 legislative proceedings, DWR's director testified that the contract extension amendments would be used to help finance DWR's then-current proposed conveyance, a representative of the nonpartisan Legislative Analyst's Office ("LAO") stated that these amendments were essential for a Delta conveyance project to go forward.[2]

59. In 2019, the USFWS and NMFS BOs on Coordinated Long-Term Operations of the CVP and SWP ("2019 FWS/NOAA Fisheries BO") and DFW issued the 2020 Incidental

[2] In an Opinion filed on January 5, 2024, upholding the contract extension amendments, the Third District Court of Appeal confirmed that the Plaintiffs herein correctly described the DWR Director's and LAO representative's testimony as summarized here. The Opinion also confirms DWR is entitled to no "free pass" to base its decision-making on unsustainable SWP deliveries or "to flout the statewide policy to reduce reliance on the Delta."

Take Permit ("ITP") for Long-Term Operations of the SWP. These permits modified and/or superseded the 2008/2009 BOs and prior DFW-issued ITPs for operation of the SWP/CVP and allowed for increases in water exports.

60. In April 2019, Governor Newsom signed Executive Order N-10-19 directing the California Natural Resources Agency, California Environmental Protection Agency, and California Department of Food and Agriculture to develop a comprehensive strategy to build a climate-resilient water system and ensure healthy waterways through the twenty-first century. Executive Order N-10-19 directed DWR to "inventory and assess" planning for a downsized Delta conveyance and to conduct extensive outreach to stakeholders in planning processes.

61. After receiving public input that provided numerous other actions and combinations of actions that could meet the goals of the Water Resilience Portfolio, the California Water Resilience Portfolio was released in July 2020. The report identified a suite of actions for water supplies, flood protection, and waterways for the state's communities, economy, and environment. Without any analysis of the necessity for new Delta diversions, the Portfolio also included new diversion and conveyance facilities "such as a tunnel" in the Delta. (Proposal 19.1.)

62. On September 19, 2019, the Delta Conveyance Design and Construction Authority ("DCA") Board voted to form and accept applications for membership on a "Delta Stakeholder Engagement Committee" ("Stakeholder Committee"). DCA staff stated that the narrow purpose of the Stakeholder Committee was to: ". . . provide a forum for various Delta stakeholders to provide input and feedback on technical, engineering issues related to the DCA's current activities. These discussions would hopefully identify engineering and design considerations that avoid, reduce or mitigate significant impacts to environmental and cultural resources in the Delta and affected communities." As confirmed in the Resolution creating this Committee, the DCA's "current activities" refer to the design and construction of a single tunnel water conveyance facility "that would convey water from the Sacramento River north of the Delta directly to pumping plants located in the south Delta." Due to the DCA's restrictive and conveyance-specific focus, the Delta Counties Coalition (DCC), consisting of elected officials

from each of the five delta counties, (Sacramento, San Joaquin, Contra Costa, Solano, and Yolo) elected not to submit applications for a seat on the Stakeholder Committee, but undertook to be active participants in the CEQA process for the Project.

63. In May 2023, the Auditor of the State of California produced a report titled, "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 Report also 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. (2023 Auditor Report, p. iii.) 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.)

64. On September 28, 2023, the SWRCB issued its Draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the WQCP related to the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta ("2023 Phase II SED"). Although the SWRCB approved its "Final Report on Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem" in August 2010, the last major update to the flow objectives for the protection of fish and wildlife beneficial uses in the Sacramento River watershed and Delta occurred in 1995.

65. The 2023 Phase II SED recognizes that the Bay-Delta ecosystem is experiencing an ecological crisis. The report explains the rapidly declining population abundance of anadromous salmonids, smelt and winter-run chinook salmon, among other species., along with the need for substantial increases in Delta outflows to protect the environment, including prevention of extinctions of endangered and threatened fish species. In addition to water quality impairment from low dissolved oxygen, mercury, nutrients, salinity, and/or temperature, the

2023 Draft Phase II SED recognizes the relationship between low flows through the Delta and increased formation of HABs. In stark contrast to the identified need to increase outflows in the 2023 Draft Phase II SED, the Project would result in substantial decreases in Delta outflows. In certifying the EIR and approving the Project, DWR disregarded this critical need for increased outflows, and even flouted requests not to proceed to a final decision without reviewing 2023 Draft Phase II SED comments due on January 19, 2024.

The Delta Conveyance Project

66. In January 2020, DWR proposed to design and construct two diversion facilities, each at 3,000 cfs capacity, on the Sacramento River; a single tunnel for conveyance; tunnel shafts; and a pumping plant and appurtenant facilities. DWR's Notice of Preparation ("NOP") for the Project EIR identified the Project as either the central or eastern alignment with pumping facilities in the south Delta near Clifton Court Forebay. After identifying and screening alternatives for those later evaluated in the Draft EIR ("DEIR"), DWR selected the Bethany Reservoir Alignment with a 6,000 cfs capacity (Alternative 5) as the proposed Project. Alternative 5 proposes to discharge water directly to the Bethany Reservoir along the California Aqueduct.

67. The Project proposes a drastic change to the existing SWP's through-Delta conveyance approach, which currently relies on the existing Freshwater Pathway to the south Delta pumps. Construction and operation of the Project would occur within the legal Sacramento-San Joaquin Delta and Suisun Marsh. (See Exhibit A.)

68. The Project would divert water through new two intakes on the east bank of the Sacramento River near Hood and Courtland, respectively, just west of the Stone Lakes National Wildlife Refuge ("Wildlife Refuge"), referred to as the North Delta Diversions ("NDDs"). The new intakes would each extend nearly a third of a mile along the river, thus encompassing nearly a mile of river frontage over a three-mile length of river, and take up 232 acres of farmland. Water would travel from the two intakes, each with a 3,000 cfs capacity, and later travel underground 45 miles to the Bethany Reservoir Pumping Plant and Surge Basin, south of the existing SWP's Clifton Court Forebay in the South Delta.

69. The Delta Tunnel is not a facility within the existing SWP and CVP. Unlike DWR's prior Project Order No. 40, which purported to add WaterFix as a covered facility, DWR issued no similar project order or took other administrative action to include the Delta Tunnel before or at the time it approved the Project. Nonetheless, DWR assumes that the SWP would operate through the Project facilities as well as existing SWP facilities and that its costs would be included in Delta charges to SWP contractors.

70. Although DWR claims the Project is intended to meet climate resilience goals, the EIR employs faulty and already discredited climate and hydrology analysis and selective and inconsistent assumptions. Since hydrologic modeling forms a connecting thread through the EIR for this water-dependent Project, these foundational errors undermine virtually every category of impact, mitigation, baseline, and alternatives assessment. The EIR is also not forthcoming about the Project's own direct, indirect and cumulative impacts related to climate change. The Delta Tunnel would include a huge pumping plant at the at Bethany Reservoir to suck water from the new diversions in the North Delta, and many miles of new transmission lines to provide power to the Project during construction and operation. Projected greenhouse gas ("GHG") emissions from the Project's 14 years of construction would produce half a million metric tons of carbon dioxide equivalent ("CO2e"), Assuming the Project is operational for 50 years, it would produce an additional 12.5 million tons of C02e--the rough equivalent of placing over 2.5 million new passenger cars on the road. Yet, instead of considering the totality of the Project's GHG emissions, including both construction and operation, the EIR separates them, disingenuously avoiding a significance determination.

71. Completing a Project of such mammoth proportions would take many years. DWR's CEQA Findings indicate that the soonest the Tunnel could be operational would be 15 to 20 years from now, in 2039 or later.

72. Rural Delta communities would bear the brunt of the direct construction impacts for more than a decade. Project construction would cause traffic and circulation impacts of an unprecedented magnitude in largely rural, agricultural areas. Here and throughout the Project

construction area, the increase in traffic would make crop harvests difficult or, in some cases, impossible.

73. Reclamation districts ("RDs"), local agencies responsible for protecting Delta communities, agriculture, and industry from flood damage and ensuring that these entities have a reliable water supply, would also pay a price for DWR's Project. These districts, and their landowners, have invested substantial resources in levees, drainage ditches, pumps, and other infrastructure to prevent flooding in their service areas. Over a dozen of these districts are located within the Project footprint. The Project's intakes, tunnel shafts, tunnel alignments, and would be constructed on the Delta channels, i.e., constructed on or under RD levees, potentially damaging them in the process.

74. Project construction would also interfere with Delta channels, water delivery and runoff facilities, placing increased stress on water supply and flood infrastructure. The Project also proposes large, likely permanent, muck (referred to as "reusable tunnel material") storage areas within RD 1002 at Twin Cities Road and at Roberts Island, near the Port of Stockton. (See Exhibit A.)

75. In addition to harming Delta residents, Project construction also threatens to destroy unique elements of California history. There are also nine towns in the path of Project construction that the 2009 DRA designated as "legacy communities." (Wat. Code, § 32300, subd. (f).) Each of these towns represents a piece of Delta history: some were established in the 1850's in the wake of the California Gold Rush, and several were culturally unique as Chinese immigrant communities, like Locke, built entirely by Chinese immigrants and added to the National Register of Historic Places in 1971. The historic Rosebud Mansion is also in the vicinity of major construction of the massive intake just north of the Town of Hood on Highway 160.

76. The counties within the Delta and their constituents have expressed their strong desire to protect agriculture's place in the Delta economy and culture. Solano County, for example, has designated essentially all Delta land, including the uniquely valuable Cache

Slough, as agricultural. Solano County voters have approved, by overwhelming majority, measures to preserve agricultural areas outside of incorporated cities.

77. The Project seriously threatens Delta agriculture in all five Delta counties, whose farmlands provide the region with a locally sourced food supply, helping make "Farm to Fork" a reality in Sacramento and other cities surrounding the Delta. The Delta region also produces now world-renowned Lodi and Clarksburg Appellation wines, among other wines. A broad range of crops is grown in the Delta counties and provides important economic and environmental benefits. A peer-reviewed 2012 Delta Protection Commission ("DPC") report, which received several chapter updates in 2019 and 2020, estimated that beyond any conveyance-related annual crop losses, increased salinity in Delta water could result in agricultural losses between $20 million and $80 million per year.

78. DPC's report referenced modeling results showing significant effects of cropping patterns on salinity at the 99 percent confidence level, even during periods in which DWR claimed compliance with Bay-Delta Plan objectives in SWRCB Decision D-1641. DPC recommended seismic levee upgrades as a less damaging and more effective alternative than isolated conveyance. In the FEIR, DWR compounds and extends that historical mistake, using inconsistent assumptions and flouting contemporaneous evidence on salinity and climate resiliency to evade full assessment of Project impacts and to support summary rejection of this less damaging, common sense Project alternative, as well all other non-conveyance options that would (unlike the Project itself) meet non-tautological project objectives and significantly lessen Project impacts.

Project Review and Approvals

79. On August 6, 2020—less than eight months after issued its NOP initiating the Project's CEQA review—DWR adopted three bond resolutions purporting to authorize CVPA revenue bonds intended to finance its Delta conveyance. The same day, DWR filed a direct validation action in Sacramento County Superior Court (Code Civ. Proc., § 860, et seq.), seeking to validate revenue bonds to finance all Project phases and pledges secured only by SWP contractors' revenue, if any, from Delta conveyance operation ("2020 Validation Action").

The conveyance-driven Delta "program" described in DWR's bond resolutions excluded non-conveyance options.

80. In its 2020 Validation Action, DWR failed to establish the specific amount of revenue bonds needed for the Project, and to accurately disclose uncertainties in Project costs and financing and risks from default and cost overruns. While alleging that the Delta Conveyance is merely in the planning stage, and no decisions have been made by DWR in favor of isolated conveyance, DWR sought validation of unbounded bond resolutions for all aspects of its Delta Program including the capital costs of a Delta Conveyance Project with a preliminary informal cost estimate of $15.9 billion in 2020, though a preliminary cost estimate for the current Delta Tunnel project required under Water Code section 11701 was not (and still has not been) prepared. The bond resolutions at issue in DWR's 2020 Validation Action neither quantified those costs nor placed a cap on them.

81. Plaintiffs herein and other interested parties, including environmental and taxpayer groups as well as public agencies, answered DWR's complaint, opposing validation and DWR's attempt through this action to gain irreversible momentum for the Project. Although some SWP contractors supported DWR, other SWP contractors and member agencies answered in opposition, and raised concerns about DWR's use of this action to "cram down" tunnel costs outside DWR's lawful authority.

82. Among other grounds, Plaintiffs and other opponents alleged that DWR: (1) exceeded its delegated authority; (2) failed to meet Water Code requirements needed to validate its bond resolutions and secure pledges of revenues; (3) left material uncertainties preventing a determination of validity; (4) lacked required administrative approvals; and (5) violated other constitutional and statutory requirements.

83. On August 25, 2023, the trial court's tentative ruling denied DWR's request for validation of the bonds necessary to construction of the Delta Tunnel on the ground that DWR exceeded its delegated authority. The ruling and judgment against DWR in its 2020 Validation Action were later confirmed in the final decision and judgment issued on January 17, 2024.

84. The DEIR for the Project was released for public review and comment on July 27, 2022. DWR reported receiving 675 unique letters and communications and approximately 7356 discrete comments. These included detailed comments from each of the Plaintiffs herein.

85. On December 18, 2023, DWR released a Final EIR ("FEIR"), including responses to comments on the DEIR. The FEIR included 17 "common responses" providing "broad technical or policy discussions," but addressed thousands of other specific comments by invoking these broad discussions instead of responding to the full comment in context.

86. The FEIR did not include or address all comments received on the DEIR. It provided neither verbatim comments nor summaries of comments made in detailed comment letters submitted after the comment period ended, but before the FEIR's release. These include many comments identifying significant new information, developments in closely related proceedings, and other grounds for recirculation or postponement of EIR certification and a final decision on the Project.

87. As with DWR's 2016 BDCP/WaterFix FEIR, DWR's December 18, 2023 release of the FEIR, within a week of Christmas day, minimized the potential for public scrutiny and participation, contrary to CEQA's intent. The public's ability to evaluate the FEIR was further hampered due to the extraordinary length and faulty organization of the FEIR. The comment response tables alone comprised almost 5,000 pages of the 27,300-page FEIR. The comment response tables were poorly labeled and formatted and did not include commenter names, requiring reference to separate commenter tables for identification. The location of changes made to the FEIR in response to comments were also difficult to locate as specific page or section numbers were not provided and the FEIR did not include tracked changes identifying public changes made to a DEIR in response to comments and other developments subsequent to release of the DEIR.

88. DWR certified the FEIR on December 21, 2023, adopted Findings and Statement of Overriding Considerations ("CEQA Findings") and a Mitigation Monitoring and Reporting Plan ("MMRP"), and executed and filed a Notice of Determination the same day. DWR made a "track changes" version of the FEIR available to public commenters, but did not provide,

summarize, or respond to multiple comments criticizing the FEIR and/or identifying Project matters not ready for final determination.

89. The USACE has yet to respond to public comments on the DEIS, complete a FEIS, or issue a Record of Decision pursuant to NEPA recording its final project decision. In addition, no clear plan (including identification of a lead agency) for analyzing operations of the Project under NEPA has been articulated by DWR.

LEGAL FRAMEWORK

California Environmental Quality Act

90. CEQA has two purposes: environmental protection and informed self-government. CEQA must "be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 134.) CEQA requires agencies to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." (Pub. Resources Code, § 21001, subd. (a).)

91. Under CEQA, a "project" is an activity which may cause either direct physical change in the environment, or reasonably foreseeable indirect physical change in the environment (Pub. Resources Code, § 21065, subd. (a)); and a "discretionary" project is one that is subject to judgmental controls, where the agency can use its judgment to decide whether and how to carry out a project. (Cal. Code Regs., tit. 14, ch. 3 ("CEQA Guidelines"), § 15002, subd. (i).) Prior to approving a discretionary project, an agency must fully disclose and analyze all of the project's potentially significant direct, indirect, and cumulative environmental effects. (See, e.g., CEQA Guidelines, § 15002, subd. (f).) Public agencies must avoid or minimize such environmental damage where feasible. (CEQA Guidelines, § 15021, subd. (a).) Pursuant to this duty, no public agency may approve or carry out a project where one or more significant effects on the environment may occur if the project is approved, unless certain narrow findings are made. (CEQA Guidelines, §§ 15091, 15093.)

California Endangered Species Act/Fully Protected Species Provisions

92. The Legislature enacted CESA, Fish and Game Code section 2050 et seq., in 1984 based on three basic findings:

> (a) Certain species of fish, wildlife, and plants have been rendered extinct as a consequence of man's activities, untempered by adequate concern and conservation.
>
> (b) Other species of fish, wildlife, and plants are in danger of, or threatened with, extinction because their habitats are threatened with destruction, adverse modification, or severe curtailment, or because of overexploitation, disease, predation, or other factors.
>
> (c) These species of fish, wildlife, and plants are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern.

(Fish & G. Code, § 2051.)

93. In light of these findings, the Legislature stated succinctly the policy of the State of California with respect to endangered and threatened species:

> The Legislature further finds and declares that it is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat and that it is the intent of the Legislature, consistent with conserving the species, to acquire lands for habitat for these species.

(Fish & G. Code, § 2052.)

94. Among other measures taken to implement state policy with respect to endangered and threatened species, CESA provides, in pertinent part: "No person shall . . . take . . . any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter . . . ." (Fish & G. Code, § 2080.)

95. As used in Fish and Game Code section 2080, "take" is a defined term which, under Fish and Game Code section 86, means: "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

96. In addition to CESA, the California Fish and Game Code includes provisions expressly designed to provide a heightened level of protection for specific species referred to as

"fully protected species." Under Fish and Game Code section 3511, and subject to exceptions not applicable in this case: "a fully protected bird may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird, and no permit or license previously issued shall have any force or effect for that purpose." "Fully protected" birds subject to the prohibition of section 3511 include the greater sandhill crane (*Grus canadensis tabida*) and the white-tailed kite (*Elanus leucurus*). (Fish & G. Code, § 3511; see Photos of Fully Protected Birds, attached as Exhibit C.)

Legislative Protections for the Delta

97. Over the course of California's water development history, the Legislature has enacted measures to protect the Delta and other areas in which water serving other parts of the states originates.

98. The 1959 DPA: (1) requires the SWP and CVP to provide salinity control and an adequate water supply for the Delta (Wat. Code, §§ 12201, 12202); (2) prohibits the export of water from the Delta to which in-Delta users are entitled through water rights and water, which is necessary for salinity control and an adequate supply "to maintain and expand agriculture, industry, urban and recreational development in the Delta" (Wat. Code, § 12204); (3) requires maintenance of a "common source of fresh water" in the Delta to serve both in-Delta water needs and export water needs when water surplus to the in-Delta needs is available (Wat. Code, § 12201); and (4) requires all releases of water from storage reservoirs into the Delta for export from the Delta to be integrated to the "maximum extent possible" in order to fulfill the objectives of the Act (Wat. Code, § 12205).

99. The 1992 Delta Protection Act ("1992 DPA"), Public Resources Code section 29700 et seq., and the Watershed Protection Act, Water Code section 11460 et seq., were enacted to further protect the Delta and ensure that protected areas are not deprived of adequate supplies of water.

100. The Delta Reform Act, adopted by the Legislature in 2009, includes substantive protections for the Delta. The Legislature declared state policy in pertinent part in the Act as:

"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 . . . ." (Wat. Code, § 85021.)

101. The 2009 DRA expressly preserves area of origin and related water rights protections:

> This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(Wat. Code, § 85031, subd. (a).)

102. The 2009 DRA provides that "[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.)

Public Trust Doctrine

103. 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 rei. Dept. Pub. Wks. (*1967) 67 Cal.2d 408 [*Colberg*].) The Public Trust Doctrine, as recognized and developed in California decisions, encompasses all navigable lakes and streams, and protects navigable waters from harm caused by diversion of non-navigable tributaries. DWR has a duty to take the Public Trust into account in the planning and allocation of water resources, and to protect Public Trust whenever feasible. As a lead agency under CEQA, DWR has an independent duty to perform a Public Trust consistency analysis, based on substantial evidence in the record, as part of an adequate CEQA review.

Central Valley Project Act and Burns-Porter Act

104. The CVPA was first enacted in 1933 (Stats. 1933, ch. 1042, pp. 2643, 2664) and has been revised and amended multiple times. The CVPA originally defined no specific Delta facilities. In 1951, the State of California enacted Water Code Section 11260 (amended 1956, 1957, and 1959), which added certain features to the previously enacted CVP authorizations.

Section 11260 named the Feather River and Sacramento-San Joaquin Delta Diversion projects as units of the CVP.

105. The 1959 amendment to the CVPA mentioned facilities for the Feather River and Sacramento-San Joaquin Delta Diversion Projects. (Wat. Code, § 11260.) The amendment refers to two reports produced in 1951 and 1955. The 1951 "*Report on Feasibility of Feather River Project and Sacramento-San Joaquin Delta Diversion Projects Proposed as Features of the California Water Plan*" describes only aqueduct diversions. In the 1951 report, no facilities in, peripheral to, or under the Delta are described for Delta conveyance. A 1955 report, "*Financing and Constructing the Feather River Project," referenced a "Delta Cross Channel*" alignment that was never constructed and described only through-Delta flow of waters derived from the Feather River Project.

106. Section 12934. subdivision (d) of the Burns-Porter Act specified which facilities were authorized to be funded/built and included in subsection (d)(3) "… and appurtenant facilities in the Sacramento-San Joaquin Delta for … transfer across the Delta … and related functions." The Burns-Porter Act contains no reference to either a peripheral canal or a tunnel facility with intakes in the north Delta. No other California statute authorizes either a peripheral canal or the tunnel conveyance system identified by DWR as the Delta Conveyance Project.

STANDING

107. Plaintiffs—constituents of Plaintiff counties, landowners, water rights holders and beneficial users of water, including counties and other public entities—are located in the Delta and rely on surface water and groundwater for their homes, businesses, recreation, and irrigation requirements. Plaintiffs rely on Delta water and Delta waterways in their participation in the economy of the region. Constituents of Plaintiff counties, landowners, water rights holders and beneficial water users use the waters, including groundwater, affected by DWR's proposed Project, for agriculture, recreation, wildlife habitat, open space as well as residential, commercial, municipal and institutional uses. The Project impairs these beneficial uses of water by negatively impacting water quantities, levels, quality, and circulation, among other impacts.

The Project's impacts on biological resources, including impacts to protected species, also impair these Plaintiffs' use and enjoyment of the Delta region for recreational and other uses.

108. Thus, Plaintiffs' interests have been, are being, and will continue to be adversely affected by Defendant's failure to comply with applicable law, and by the proposed Project's likely dramatic negative impacts to resources, including but not limited to, groundwater, surface waters, and associated species, ecosystems, and human uses. Consequently, Plaintiffs would be directly, adversely, and irreparably harmed by the Project and its components, as described herein, until and unless this Court provides the relief prayed for in this complaint.

109. Plaintiffs have no other adequate remedy at law, and they bring this action on behalf of their adversely affected constituents and members.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

110. The Plaintiffs in this litigation have participated extensively in the administrative process, including attending public meetings and submitting detailed comments throughout DWR's administrative process culminating in DWR's EIR certification and Project Approval.[3] For example, with respect to the Project's CEQA review process, Plaintiffs' comments included:

Scoping comments: Plaintiffs, including County of San Joaquin, CDWA, and LAND, submitted scoping comments on the NOP for the Project on April 17, 2020, with LAND also submitting scoping comments on December 5, 2023. The DCC, which includes the four County Plaintiffs, submitted scoping comments on April 17, 2023.

DEIR comments: Addressing the DEIR for the Project, all Plaintiffs herein (San Joaquin County, Contra Costa County and CCC Water Agency, Solano County, Yolo County, and Central Delta Water Agency) submitted comments on December 16, 2022, as did DCC. LAND also submitted comments on the DEIR on June 22, 2023, September 8, 2023, and December 5, 2023.

FEIR comments: As to the FEIR for the Project, San Joaquin County and Solano County submitted comments on December 15, 2023, LAND submitted comments on December 17,

[3] The list of comments here is not exclusive, and the Administrative Record for this case must include all comments from Plaintiffs and other members of the public.

2023, as well as additional supplemental comments prior to DWR's EIR certification and decision on the project recorded in the NOD.

111. Plaintiffs have performed all conditions precedent to this filing and actively participated in the administrative process by submitting comments, along with other public agencies, organizations, and members of the public, outlining the claims contained herein. As such, Plaintiffs have fully exhausted their administrative remedies, to the extent such remedies exist and to the extent that exhaustion of administrative remedies is legally necessary.

112. Plaintiffs possess no other remedy to challenge Defendant's abuses of discretion and failures to comply with applicable laws and regulations.

NOTICE OF CEQA SUIT

113. Plaintiffs have complied with California Public Resources Code section 21167.5 by providing written notice of commencement of this action to Defendant prior to filing this Complaint. A true and correct copy of the notice provided pursuant thereto, with proof of service thereof, is attached hereto as Exhibit D.

ELECTION TO PREPARE RECORD

114. Plaintiffs elect to prepare the administrative record in this proceeding pursuant to Public Resources Code section 21167.6, subdivision (b)(2) and any other applicable laws.

PRIVATE ATTORNEY GENERAL DOCTRINE

115. Plaintiffs bring this action as private attorneys general pursuant to California Code of Civil Procedure section 1021.5, California common law, and any other applicable legal theory, to enforce important rights affecting the public interest.

116. Issuance of the relief requested in this Petition and Complaint will confer significant benefits on the general public by enforcing the environmentally protective mandates of CEQA, CESA, the 2009 DRA and other laws enacted to protect the Delta, and the Public Trust Doctrine.

117. Issuance of the relief requested in this Petition will result in the enforcement of important rights affecting the public interest.

118. The necessity and financial burden of enforcement are such as to make an award of attorneys' fees appropriate in this proceeding. Absent enforcement by Plaintiffs, the Project might otherwise be deemed valid despite violating the environmentally protective statutes and doctrine listed in the above paragraphs.

119. Plaintiffs' attorneys served a copy of their original Petition and Complaint and this amended Petition and Complaint on the Attorney General's office to give notice of Plaintiffs' intent to bring this proceeding as private attorneys general under Code of Civil Procedure section 1021.5. The notice is attached hereto as Exhibit E (excluding notice attachments).

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violations of CEQA

120. Plaintiffs incorporate by reference each and every allegation by reference the preceding paragraphs of this Petition as though fully set forth herein.

The EIR Content and the Process Leading to Certification Violated CEQA

121. DWR prejudicially abused its discretion in certifying the EIR. DWR did not proceed in the manner required by law, and its decisions in approving the Project and certifying the EIR are not supported by substantial evidence. (Pub. Resources Code, § 21168.5.) These legal deficiencies include, without limitation, those identified below.

122. A court evaluating an agency's procedural compliance "determine[s] de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045.) "[T]he existence of substantial evidence supporting the agency's ultimate decision . . . is not relevant when one is assessing a violation of [CEQA's] information disclosure provisions." (*Communities for a Better Environment City of Richmond* (2010) 184 Cal.App.4th 70, 82 [*CBE*].)

123. Thus, an allegation that the EIR does not contain required information is an allegation of procedural error and is reviewed *de novo*. Examples include failure to describe the entire project (*Citizens Association for Sensible Development of Bishop Area v. County of Inyo*

(1985) 172 Cal.App.3d 151, 165-166), failure to describe the environmental setting and baseline (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-723); and deferral of the development of mitigation measures (*CBE, supra*, 184 Cal.App.4th at 90).

124. DWR committed a number of procedural and information disclosure errors in performing its environmental review of the Project, as further described herein below.

The Project Purpose and Objectives are Impermissibly Narrow

125. CEQA requires that the project description contain a clear statement of the project objectives, including the underlying purpose of the project. (CEQA Guidelines, § 15124, subd. (b).) The project objective must illuminate all elements of the project's underlying purpose. (*Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1300.) However, project objectives must not be so narrowly defined that they preclude consideration of reasonable alternatives for achieving the project's underlying purpose. (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 668.)

126. An "artificially narrow" approach to project purposes and objectives lies outside the agency's discretion, because utilizing it would transform the assessment CEQA requires into an "empty formality." (*We Advocate Thorough Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 68, 693.)

127. An EIR "may not define a purpose for a project and then remove from consideration those matters necessary to the assessment whether the purpose can be achieved." (*County of Inyo v City of Los Angeles (V)* (1981) 124 Cal.App.3d 1.)

128. In its EIR and project approval, DWR impermissibly narrowed the Project purpose and objectives. DWR's "fundamental purpose" amounts to a conveyance in search of a justification. DWR proposes "to develop new diversion and conveyance facilities in the Delta . . . to restore and protect the reliability of SWP water deliveries and, potentially, Central Valley Project (CVP) water deliveries south of the Delta, consistent with the State's Water Resilience Portfolio in a cost effective manner." (CEQA Findings, p. 5-2.) By contrast, BDCP's

"fundamental purpose included improvements to restore and protect ecosystem health" in the Delta and to improve "water quality" as well as supply.

129. DWR's artificially narrow and truncated "fundamental purpose" enabled DWR to distort its "project objectives" into "disingenuous talking points for a project designed to take *additional* water out of a Delta in crisis chiefly because it is short of freshwater." One "might as well ask which method of restoring and protecting fossil fuel deliveries can best reduce greenhouse gas emissions, or which type of highly leveraged loan can best reduce financial risks." (FEIR, Vol. II, p. 716 [San Joaquin County Comments].)

130. Although DWR's Project purpose requires consideration of whether Delta conveyance and diversion facilities can be developed in a "cost effective manner," the EIR disingenuously avoids analysis of whether the Delta Tunnel would be cost effective. DWR also failed to disclose much of what it already knew about public criticism of the Project and its precursors for lack of cost effectiveness, legal proceedings bearing on the Project's excessive and uncapped costs, and problematic reliance on revenue bond financing with no assurance of revenue.

131. DWR failed to include a specific project objective on cost-effectiveness tied to its project purpose and failed to consistently apply that criterion in its screening out of feasible and more cost-effective non-conveyance alternatives. DWR avoided that analysis even after commenters provided detailed reports documenting grounds for concern about cost overruns and criticizing DWR's refusal to include analysis of costs and benefits in its project review.

132. Although DWR's Project purposes include a determination of consistency with the State's Water Resilience Portfolio, DWR failed to demonstrate that consistency, and adopted a Project inconsistent with that portfolio.

133. DWR failed to demonstrate that the Project can feasibly accomplish most, or indeed any, of its project objectives. The EIR and project approval documents provide no logical or evidentiary support that "new diversion and conveyance facilities in the Delta" would be necessary to achieve them. For example:

- Rather than showing the Project would address "reasonably foreseeable consequences of climate change and extreme weather events," DWR flouted extensive documentation

showing that DWR employed faulty and discredited climate and hydrology assumptions and provided inconsistent and misleading assessment of sea level rise, Project greenhouse gas emissions, and other climate factors. Climate change is more likely to exacerbate water and species-related Project impacts and raise the risk that the Project will be unable to lawfully deliver reliable water if constructed.

- Rather than showing the Project minimize public health and safety impacts from reduced water quality and quality due to earthquakes, DWR understated Project impacts in the EIR and improperly excluded study of non-conveyance alternative, including levee and safety improvements to the Freshwater Pathway without a new tunnel.

- Rather than showing the Project protects the SWP or CVP's ability to deliver water consistently with state law and federal law, DWR's Project requires construction of a new conveyance facility to divert more freshwater from the Delta, which would instead compound inconsistencies with other laws and planning requirements. DWR improperly excluded study of alternatives focused on better ensuring SWP or CVP deliveries' consistency with state and federal law. Related laws and planning requirements include, but are not limited to, Area of Origin laws and the Public Trust, reasonable use, water quality, and species protection requirements. Because the Project is meant to increase, not decrease, water diversions from the Delta, it risks inconsistency with numerous laws, including those protecting the Delta from harmful exports (Wat. Code, § 12201) and calling for reduced reliance on Delta water supply (Wat. Code, § 85021) and "restoring and enhancing the Delta ecosystem." (Wat. Code, § 85054.)

- Rather than showing the Project confers operational flexibility to protect "aquatic ecosystems" or better manage risks of "further regulatory constraints on project operation," DWR showed neither. The Project would remove *more freshwater* from the Delta that is needed by aquatic ecosystems. The EIR avoided a complete and accurate assessment of project operations.

134. The reference in the Project purpose to "restore and protect" SWP reliability is ambiguous. and is likely to increase the already-existing pressure for allocations the SWP cannot reliably deliver. (See *Planning and Conservation League*, *supra*, 83 Cal.App.4th at 915.) DWR also excluded from Project analysis a realistic assessment of how other factors (such as attempts to secure temporary relaxation of regulatory standards, climate change, water transfers, and flow restrictions) figure in the analysis of the Project and the evaluation and screening of alternatives.

135. DWR misused Project objectives to foreclose the possibility of analyzing Project alternatives that satisfy the Project's basic purpose, but not the agency's predetermined preference for new conveyance structures. DWR's intent to foreclose all alternatives without new structures for isolated conveyance, was evident in BDCP planning since at least 2007 and is

also entrenched in the current Project. In DWR's general bond resolution at issue in the Delta Program 2020 Validation Action, DWR sought to make "facilities for the conveyance of water in, about and through the Sacramento-San Joaquin Delta" eligible for revenue bond funding.

136. The viability of DWR's project depends on SWP contract amendments, including but not limited to, Delta conveyance contract amendments that have been discussed for more than a decade but not enacted. Some SWP contractors and members have expressed preferences to opt out of paying for Delta conveyance costs and concerns that DWR will attempt to "cram down" these costs without securing their consent or that of their ratepayers. Nonetheless, in section 807 of DWR's 2020 general bond resolution, DWR prohibited itself in advance from adopting "any amendment to the Water Supply Contracts" that would "materially adversely affect the security" of DWR's revenue bonds for a Delta conveyance.

137. The inclusion of a Project objective requiring "new" conveyance thus impermissibly narrows the Project's objectives and the EIR's analysis of a reasonable range of alternatives. As the Delta Independent Science Board ("DISB") commented, the EIR "is not well structured or written to achieve the purpose of providing clear guidance for selecting a project alternative, despite a large volume of relevant information and analyses. In particular, the summary tables used to compare alternatives do not systematically compare benefits relative to costs and impacts, across alternatives."

The Project Description Is Shifting, Incomplete and Inadequate

138. The EIR's Project description describes Project elements in such indefinite terms, or omits descriptions entirely, that the EIR lacks a Project description that permits analysis of Project impacts at a "project" level. The massive scale of the Project does not excuse DWR's failure to completely describe it as required by CEQA so that Project impacts may be fully disclosed and adequately mitigated.

139. CEQA requires that an EIR include an accurate project description and fully disclose and fairly evaluate the nature and objective of a project. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 646, 655.) An EIR must contain a "sufficient degree of analysis to provide decision-makers with information which enables them

to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines, § 15151.) A "curtailed, enigmatic or unstable definition of the project" is an error of law which "draws a red herring across the path of public input." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199 [*Inyo III*].)

140. The EIR's description of the Project omits significant components of a legally sufficient project description. DWR's indefinite descriptions, omissions, and inconsistencies are so extensive that its EIR cannot lawfully support informed decision-making.

141. These errors include, but are not limited to, examples described below.

142. **Missing Project Operation and Planning Information**: The EIR fails to provide a Project operations plan constituting a stable project, instead providing indeterminate and potentially shifting operation criteria. The EIR also states that it is not expected that operations would shift from the south Delta intakes to the north Delta intakes "unless there is an operational advantage to do so at DWR's discretion[.]" (DEIR, p. 3-145.) Thus, DWR has the ability to change the Project at any time based on its own "discretion." This language allows DWR to utilize the north Delta intakes as it sees fit to provide an "operational advantage." This language creates an unstable project description because DWR has given itself the unilateral ability to drastically change the operations described and analyzed in the EIR.

143. The EIR's analysis of Project operations, based on operating criteria provided in the project description, relies on an implausibly low utilization rate for the Project's new north Delta intakes. DWR's water supply modeling described in the EIR estimates that only 13.5 percent of total Delta exports would utilize the new north Delta intakes, and that they would remain unused most of the year, with substantial idle periods even in winter and spring when flows are higher. (DEIR, p. 3-145.) "It strains belief to think that the most ambitious and expensive water supply infrastructure project in California history will sit largely unused after it is built. The economic and political pressure to utilize the tunnel will be overwhelming." (San Joaquin County DEIR Comments, Ex. 1, p. 7.)

144. The EIR fails to analyze the potentially significant impacts associated with the full range of operational scenarios. Operational changes throughout the environmental review

process include substantially reduced Delta outflows in late summer and fall months, which would cause potentially significant impacts to water quality. These impacts include but are not limited to the increased proliferation of HABs, such as toxic *Microcystis*. The EIR fails to disclose these ongoing changes.

145. The EIR discusses the importance of monitoring with respect to evaluating operational impacts, but it provides no information on the objectives, types, geographic distributions, data management, assessment and reporting for the monitoring program.

146. **Project Costs and Payment**: The EIR fails to provide accurate information regarding Project costs. DWR, both in the EIR and in public statements made during the review process, has repeatedly stated that all costs for the Project would be paid by Project beneficiaries. However, DWR's 2020 Validation Action reveals that the Project would require billions of dollars in subsidies. CEQA requires "government agencies at all levels to consider . . . economic and technical factors." (Pub. Res. Code, § 21001, subd. (g).) DWR failed to do so by not disclosing the Project's need for public subsidy. DWR's EIR and approval documents also failed to disclose the Sacramento County Superior Court's tentative ruling against DWR in its action to validate bond resolutions and pledges of revenue for its assumed source of Project funding, "Delta Program" revenue bonds to be paid by SWP contractors. The ruling, which is now final, confirmed that these revenue bond resolutions exceeded DWR's lawful authority.

147. **Omission of Critical Technical Details**: The EIR fails to provide sufficient technical information about the Project to allow informed decision-making. Among other subjects, the EIR lacks necessary information about alignment, alignment features, and geotechnical characteristics, and treats Project facility locations, dimensions, and elevations as being approximate, not specific. The EIR fails to provide sufficient locations, maps, figures, and boundaries showing precisely where Project elements would be constructed and which parcels are considered to be within the Project's footprint. and omitted mockups needed to evaluate aesthetic impacts. The EIR fails to adequately disclose the specific location and design of transmission facilities to provide power for construction and operation of the new conveyance facilities. The EIR fails to disclose information about the exact sizes and locations of the

construction areas that would surround the intake sites during multi-year construction, and the locations of the batch plant and fuel stations that would be located at each site.

148. **Incomplete Geotechnical Investigation Information**: The DEIR contemplates extensive geotechnical field investigations in furtherance of the design and construction of the Project. The EIR's analysis of these investigations is insufficiently specific to constitute a project-level analysis. The EIR fails to provide sufficient locations, maps, figures, boundaries, and other site-specific information for geotechnical and environmental surveys (including borings, test-pits, cone penetrometer tests and other activities), and discloses insufficient information to fully address related impacts, including cumulative impacts. Before carrying out any of these investigations, supplemental CEQA analysis will be necessary at a project-level scale that includes, among other things, site-specific analysis of each of investigation site.

149. **Shifting Adaptive Management Plan**: Adaptive management plan may properly be part of a complete project description and/or provide mitigation under CEQA if the lead agency adopts enforceable performance standards. (See CEQA Guidelines, § 15126.6, subd. (a)(2).) The EIR lacks critical information about the Project's Adaptive Management operations, leaving the project description incomplete and subject to shifting. DWR impermissibly deferred key features of the adaptive management plan to post-approval determination. DWR omitted meaningful discussion of the potential impediments or constraints on implementing adaptive management, even though those details have been identified in other Delta projects.

150. **Exclusion of Delta Levees**: The EIR fails to include Delta levees and channels and their required maintenance as a Project component, despite the fact that the Project includes continued reliance on through-Delta conveyance/continued use of the Freshwater Pathway for operation of the South Delta pumps. Failure to include these structures and to identify their required maintenance in the Project description precludes a legally sufficient impacts analysis in the EIR.

151. **Missing Muck Information**: The EIR fails to disclose critical information about proposed tunnel muck disposal sites, including precise location, size, shape, water infiltration

rates, and peak rainfall events and other site-specific plans. This information is necessary to disclose and analyze the Project's impacts, including impacts to local water supply and drainage facilities, agricultural and biological resources, as well as water quality impacts due to runoff or sedimentation from these sites.

152. **Missing Borrow Pit Information**: Project construction would require extensive removal of soil via borrow pitting, resulting in significant and still-unanalyzed impacts, including impacts of potential use of local borrow fill with toxic constituents. The EIR fails to disclose relevant information about proposed borrow pitting activities associated with Project construction. The EIR does not identify the origin of the borrow fill or the locations of borrow pits necessary to construct the Project. This information is necessary to disclose and analyze water quality, hazardous materials, traffic, air quality and other impacts due to extraction and transportation of and runoff from these materials. The EIR fails to meaningfully address the processes, including state and local plans, necessary for reclamation of borrow pitting, which constitutes a surface mining activity under the Surface Mining and Reclamation Act (Pub. Resources Code, § 2710 et seq. ["SMARA"].) The EIR fails to disclose all of the reclamation plans required pursuant to local and/or state authority.

153. **Inconsistent Treatment of Seismic Risks**: The EIR characterizes seismic hazards in the Delta differently throughout the EIR as well as in the CEQA Findings and Statement of Overriding Considerations, precluding informed decisionmaking and public review.

The EIR Impermissibly Piecemeals Environmental Review of the Project

154. A lead agency must perform a comprehensive review of the full environmental consequences of a project, referred to as the "whole of the action," prior to taking a necessary first step toward that project. A lead agency under CEQA may not avoid including analysis of smaller or related projects that actually comprise part of the larger project. This rule prohibiting "piecemealing" is intended to assure "that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.) The EIR violated

CEQA by failing to analyze the whole of the action. Some examples of this deficiency are described below.

155. Multiple remaining approvals would likely change the Project in ways that require comprehensive review under CEQA. Approvals not yet completed at the time of the Project's EIR certification include, but are not limited to: approval of a water rights change petition to permit diversion of water from the Sacramento River in the north Delta and a Clean Water Act Section 401 certification by the SWRCB; an ITP and Lake and Streambed Alteration Agreement by DFW; Clean Water Act section 404 fill permit and Clean Water Act section 408 fill permit from the USACE; completion of NEPA review of Project construction impacts by USACE; completion of NEPA review of Project operation impacts by an as-yet unidentified federal agency; review of any appeal from a consistency determination by the DSC; issuance of BOs by the USFWS and NOAA Fisheries, and other federal, state, regional and local approvals. (See Exhibit B.) These remaining approvals will likely lead to new and different terms and conditions, mitigation measures or project changes that have not yet been disclosed or analyzed pursuant to CEQA.

156. Delaying analysis and mitigation of an impact until the permitting phase of a project conflicts with CEQA's policy of integrated review (Pub. Resources Code, § 21003, subd. (a)), and such deferral is therefore impermissible. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 939-41 (*Banning Ranch*).)

157. The EIR segments and piecemeals environmental review of the Project by omitting a description of the long-term operations of the CVP and SWP, actions required by the 2008 and 2009 BOs, and other requirements of state and federal law that will be imposed on Project construction and operation.

158. On December 13, 2018, DWR approved a project of long-term SWP contract amendments, in part to extend contract terms from 2035-2042 through 2085. While DWR deemed these the "contract extension" amendments, they also make substantive changes, including a redefinition of "facilities" that seeks to remove a key obstacle to bond financing for a Delta conveyance, DWR isolated its review of these amendments from its WaterFix and Delta

Conveyance Project review, as well as DWR's long-promised but still-uncompleted further set of Delta conveyance-specific contract amendments referenced in 2019 and 2020 Agreements in Principle. Project critics, including Plaintiffs, noted the financial and environmental risks associated with fragmented consideration of DWR's conveyance project and all its conveyance-related proposed amendments.

159. During 2018 legislative proceedings, DWR's director testified that the contract extension amendments would be used to help finance DWR's then-current proposed conveyance, a representative of the nonpartisan Legislative Analyst's Office (LAO) stated that these amendments were essential for a Delta conveyance project to go forward, impermissibly deferred analysis of Project impacts to flooding and flood control measures, indicating that analysis will occur following certification of the EIR, without any commitment that independent CEQA review will be performed on these impacts at that later date. DWR could have performed this analysis as part of CEQA review of the Project, and this constitutes an impermissible piecemealing of review of Project impacts.

160. The EIR also segments and piecemeals environmental review of the Project by isolating its review decision-making herein from other closely related SWP contract amendments, management actions, and financing measures needing comprehensive review. These closely connected actions, all involving DWR's review, include: (1) DWR's approval of Delta conveyance bond resolutions; (2) DWR's still-incomplete and unexecuted proposed Delta conveyance-specific contract amendments; and (3) DWR's adoption of contract-related water management tools.

161. The first of these further related actions involves conveyance-specific amendments discussed for more than a decade and noted in 2019 and 2020 Agreements in Principle. These have still not received environmental review or been adopted or executed, despite DWR's statement in the Project NOP that such proposed contact amendments, if utilized for DWR's Delta conveyance, would be studied in the Project EIR.

The EIR Fails to Adequately Define the Project's Baseline

162. In order to determine whether a project's impacts will be significant, CEQA requires lead agencies to compare the impact of a proposed project to the "physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published." These conditions serve as the project's "baseline." (CEQA Guidelines, § 15125.) The description of the project's baseline ensures that the public has "an understanding of the significant effects of the proposed project and its alternatives." (CEQA Guidelines § 15125, subd. (a).) Accurately determining the baseline environmental conditions is crucial to accurately evaluating a project's impact. (E.g., *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-723.) The EIR failed to evaluate the comparative merits of the alternatives in a manner that was reasonably calculated to inform the public.

163. The EIR's description of baseline conditions is alternatively incomplete and inaccurate, infecting and invalidating the entirety of the EIR's environmental analysis. The EIR' deficiencies include, but are not limited to, the following examples.

164. The EIR fails to comply with the requirement that the baseline must be "realistic" and give the "most accurate picture possible" of the project's likely impacts. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 507.) Here the baseline fails to meet the required standard of realism and accuracy.

165. The EIR fails to include an up-to-date description of the environmental baseline. The EIR uses an environmental setting baseline that is tied to the January 2020 NOP of the EIR. The EIR also fails to discuss over-allocated water entitlements that create unrealistic demands for Delta water, or "paper water." The SWP only supplies approximately half of its entitlements to contract water per year. (*Planning & Conservation League, supra,* 83 Cal.App.4th 892, 899.) Courts have criticized planning based on paper water, recognizing the "huge gap between what is promised and what can be delivered." (*Id.* at 908, fn. 5.) The EIR baseline should have been adjusted to include conditions existing close to the time of its release. Failure to use accurate

and current data, including updated modeling and other information, constitutes a failure to proceed in the manner required by law.

166. The baseline conditions fail to analyze how much water is needed to meet existing obligations and priorities in the watershed. The EIR formulation of baseline environmental conditions fails to provide accurate information regarding existing surface water and groundwater supply and demand; it falsely cites ongoing unsustainable and illegal Delta water exports to establish a baseline for future exports and fails to describe existing over-allocated water entitlements. Further, it fails to describe how many water rights and diversions exist in the Project area, and their locations.

167. The EIR deficiently disclose baseline conditions for existing groundwater supplies, uses and infrastructure in the vicinity of the proposed tunnels.

168. The EIR description of baseline environmental conditions fails to disclose that DWR and Reclamation consistently violate existing water quality standards in the South Delta.

169. The EIR concedes that most of the Project footprint has not been surveyed for cultural resources, including architectural artifacts, so it is unknown what the baseline conditions for those resources are; this renders the EIR deficient as an informational document.

170. The EIR fails to disclose the environmental baseline of soils and seismic conditions for most of the Project footprint because DWR failed to access the private land within the proposed Project footprint to perform drilling, boring, and petrologic analysis.

171. The EIR fails to include consistent baseline information regarding the seismic hazards in the Delta, often referring to seismic hazards in the greater Bay Area, which is misleading and implies a higher seismic hazard in the Delta than is the actual case.

172. Although the EIR recognizes that existing SWP and CVP water infrastructure are operated in a coordinated manner, it fails to include a description and analysis of existing and future reservoir operation and does not account for how operators of the reservoirs may proceed differently with and without a Delta conveyance. Because the EIR's analysis essentially provides "a presentation of historical observations, rather than an operational analysis," it cannot

meet CEQA's requirements. (*County of Amador et al. v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 935-936.)

173. The EIR ignored SWRCB's recommendation that the baseline fully analyze the 2008 FWS BO/2009 NOAA Fisheries BO as well as subsequent changes in the 2019 BO. The SWRCB noted that the 2019 BO had been challenged in a pending action, and that these changes to the 2008 FWS BO "could have large effects on export operations and Delta hydrodynamics as well as aquatic species."

174. The EIR improperly avoided the SWRCB's recommendation that the EIR include an evaluation of updated flow and salinity objectives in the WQCP.

175. The EIR's faulty baseline, among other defects, undermines its ability to serve as the decision-making document for CEQA responsible agencies, including but not limited to the SWRCB.

176. As discussed further below, the Project baseline is also undermined by reliance on faulty and discredited hydrologic and climate modeling assumptions, and by incorrectly applying the scientific information available for the EIR, including its own studies. That mistake is particularly central to this project, which DWR acknowledges cannot begin operating for at least another 15 years.

The EIR Uses Inadequate Thresholds of Significance to Analyze Impacts

177. The thresholds of significance used in the EIR fail to comply with CEQA. Deficiencies include, but are not limited to, the following.

178. The EIR's impact analysis fails to use thresholds of significance properly tailored to the impacts of this Project. For a project of this magnitude, it is critical that the lead agency adopt thresholds of significance that account for the breadth and scale of potential impacts, rather than more general suggestions that fail to make the required accounting.

179. Examples of impact assessment in which the EIR used inadequate thresholds of significance to analyze impacts include, but are not limited to, fish and aquatic resources, terrestrial resources, air quality, flood protection, agriculture, climate change.

The EIR Does Not Reflect DWR's Independent Judgment

180. CEQA requires a lead agency to prepare and circulate an EIR that reflects the lead agency's independent judgment, and not the judgment of the applicant. CEQA also requires the lead agency to independently review and analyze the EIR that is prepared for a project. (Pub. Resources Code, § 21082.1.) DWR failed to prepare and circulate an EIR that reflects DWR's independent judgment.

181. The entire formulation of the Project and the subsequent environmental review has been tainted by improper influence from the water contractors that expect to receive water as a result of the Project. DWR has allowed the water contractors to make decisions about how to prepare the EIR and how to comply with CEQA and agreed to develop a project based on the water contractors' decision-making, rather than DWR's own independent judgment. A lead agency cannot delegate its own legal responsibilities under CEQA to a third party. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 194; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) On information and belief, the EIR reflects the water contractors' judgment and not DWR's independent judgment.

182. By failing to prepare, circulate, and certify an EIR reflecting its own independent judgment, DWR failed to proceed in a manner required by law.

DWR's Predetermined Tunnel Project Excluded Non-Conveyance Alternatives

183. The EIR failed to include an adequate analysis of alternatives to the Project. The EIR' deficiencies include, but are not limited to, the following examples.

184. DWR unreasonably constrained the initial formulation of alternatives to those alternatives that included some form of new conveyance in the North Delta. While the Project objectives changed over the course of the change from the preferred project being an HCP to being a project permitted under Section 10 of the ESA, DWR never considered non-conveyance alternatives that would reduce the potentially significant impacts of the Project as required by CEQA in the initial formulation of alternatives. This predetermination that new conveyance must be included in all alternatives unreasonably constrained the EIR alternatives analysis in violation of CEQA Guidelines section 15004, subdivision (b)(2), which provides, "[P]ublic

agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance."

185. Doubling down on its predetermination that the Project must include a new conveyance, as early as 2008, DWR forced members of the public interested in participating in the formulation of alternatives to:

> agree[] that the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion . . . The new physical feature of this conveyance system includes the construction and operation of a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta.

(2008 Memorandum of Agreement for Collaboration of Delta Habitat Conservation and Conveyance Program, Planning Phase, p. 3.) The mandate that public participants agree to the new conveyance was later reaffirmed in 2010: "We hereby confirm our support for a focused analysis of the tunnel conveyance approach." (BDCP Steering Committee, February 11, 2010 Conveyance Approach for Effects Analysis for the BDCP.) DWR predetermined 14 ago that it would consider only those alternatives including new conveyance, and also attempted to condition public participation on acceptance of that predetermination. This conduct violates CEQA's prohibition against "tak[ing] any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." (CEQA Guidelines, § 15004, subd. (b)(2)(B).)

DWR Relied on a Speculative and Deficient No Project Alternative

186. Under CEQA the No Project Alternative identifies, in addition to existing conditions, what is reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and consistent with community services." (CEQA Guidelines, § 15126.6, subd. (e)(2).) It must provide a "factually based forecast of the environmental impacts of preserving the status quo," and must provide decision-makers and the public with "specific information" about the condition of the

environment if the project is not approved." (*Planning and Conservation League, supra,* 83 Cal.App.4th at 917.)

187. The No Project Alternative is deficient because it is impermissibly speculative. The EIR makes judgments about future conditions related to climate change and incorporates those into the No Project Alternative, relying on assumptions that are misleading, inconsistent with the best available science, inconsistent with DWR's own analysis elsewhere, or all the above. For example, DWR modeling data for 2040 conditions in the EIR identified a 66% likelihood of 0.5-0.8 ft of sea level rise in 2040, a 0.5% probability of 1.3 ft of sea level rise in 2040. The probability of 1.8 ft of sea level rise in 2040 is an unquantified amount lower than 0.5%. Nonetheless, DWR's 2040 No Project Alternative analysis marginalized the sea level rise scenario with a 66 percent probability, and based its analysis on the most implausible one (1.8 ft by 2040). In so doing, DWR failed to provide the factually based forecast required by CEQA. Speculative reliance on that scenario generated unexplained results, which may mask the likely impacts of the proposed project.

188. The EIR also uses various "predictable" actions in its No Project Alternative, however, several of these predictable actions are not in the relevant project area, nor are they water conveyance projects. (DEIR, p. 3C-3.) The inclusion of these other "predictable" projects in the No Project Alternative assumptions that are unlike the proposed conveyance project violates CEQA because these types of actions would not be the "consequence" of the No Project Alternative. DWR also improperly refused to include Phase II of the SWRCB's WQCP update in the No Project Alternative.

DWR Failed to Analyze a Reasonable Range of Project Alternatives

189. The EIR failed to include a reasonable range of alternatives and to provide adequate detail about the alternatives to allow the public to assess those alternatives' ability to meet Project objectives or to assess their respective environmental impacts. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.6, 15002.)

190. The EIR improperly constrained the identification and development of Project alternatives, failing to satisfy CEQA's requirements that an EIR analyze a reasonable range of

alternatives. The EIR summarily screened out non-conveyance alternatives, and DWR improperly purged its Project review of all non-conveyance alternatives before preparing the EIR. Without studying evidence suggesting the non-conveyance alternatives could feasibly achieve most of the project objectives while significantly lessening one or more impacts, DWR rejected them as not meeting the objective to "[r]estore and protect the ability of the [CVP and SWP] to deliver full contract amounts." This Project objective does not properly relate to the environmental impacts of the Project and is therefore a non-basic Project objective that cannot be used to reject any alternative. Moreover, the Project and all Project alternatives studied in the EIR would seek to meet that goal by unlawfully increasing reliance on the Delta for future water supply.

191. Although Project alternatives that could reduce take of state and federally listed species were available and have been suggested by Plaintiffs and others throughout the development of the Project, the EIR impermissibly refused to consider them as project alternatives. Reduced export alternatives would reduce take of state and federally listed species and should have been considered. (See *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1304 [potentially feasible alternative that might avoid a significant impact must be discussed and analyzed in an EIR so as to provide information to the decision maker about the alternative's potential for reducing environmental impacts].)

192. The EIR failed to provide a good faith, reasoned response to commenters who suggested inclusion of alternatives that would mitigate significant environmental impacts while achieving most Project objectives, including but not limited to: an alternative that utilized conservation and desalination, an alternative location for intakes, alternatives that include improvements to the South Delta diversions to reduce take of protected fish species, and an alternative that would significantly increase Delta outflows.

193. The EIR did not consider any alternatives that maintained and improved existing infrastructure. The EIR considered only alternatives relying on new conveyance, as opposed to consideration of any through-Delta conveyance alternatives that would reduce exports. This approach has a lengthy history in DWR's multiple unsuccessful prior attempts to approve and

build a Delta conveyance. The National Academy of Sciences (NAS) reviewed the draft BDCP in 2011 and commented that "[c]hoosing the alternative project before evaluating alternative ways to reach a preferred outcome would be post hoc rationalization—in other words, putting the cart before the horse."

194. DWR's cramped approach to the screening and assessment of alternatives in the FEIR is strikingly similar to the "cart before the horse" approach that earlier elicited criticism in the NAS report during the review of BDCP and that the DISB also criticized in 2022.

195. As an example, improvements to the existing South Delta export pumps, coupled with maintenance and improvements to the Delta levee system, could meet the Project objectives relating to improved water supplies by facilitating export of water without take of state and federally listed species. The EIR failed to include any alternative that included either improvements and/or fish screen installation at the South Delta export pumps or improvements to levees without new NDDs.

196. The EIR failed to include an evaluation of flow criteria for the Project that would improve conditions for native fish species, which are currently in poor condition given the current cumulative impacts to native fish and wildlife species resulting from existing flow modifications and other activities explained in the SWRCB's 2017 Scientific Basis Report in support of potential updates to the WQCP.

197. The EIR fails to include any comparison of project cost estimates for the nine Tunnel-centric alternatives it includes, despite the necessity of cost analysis to informing technical comparison of project alternatives and their ability to meet a purpose requiring evaluation of cost effectiveness.

198. The EIR's reasonable range of alternatives must be comprised of alternatives that are legally and otherwise "feasible." The EIR improperly ensured that all of the alternatives included in that range contain an isolated conveyance facility and other components that are contrary to one or more laws and are otherwise infeasible, none of those alternatives meets the requisite "feasibility" to be eligible for inclusion in that mandatory range. The EIR's mandatory reasonable range of feasible alternatives is, accordingly, fatally deficient.

199. The EIR fails to integrate a discussion of other actions by agencies with permitting authority over sensitive natural resources. When there is credible evidence that sensitive natural resources, for instance, are within the project area, an EIR must discuss other agencies' authority over those resources and discuss how the project alternatives have been devised to anticipate that authority. (*Banning Ranch*, *supra*, 2 Cal.5th at 938.) This failure to integrate and disclose the ramifications of other agencies' actions for the project alternatives renders the EIR discussion of alternatives inadequate.

The EIR Failed to Adequately Respond to Comments

200. The EIR's failure to adequately respond to comments renders it "fatally defective." (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842.) The FEIR failed to respond in good faith to public comments raising deficiencies with the document. Instead, the FEIR offers a litany of boiler plate language, conclusory statements, and vague documentary references unsupported by specific reference to explanatory information, that are insufficient to comply with CEQA's public participation requirements. (CEQA Guidelines, § 15088, subd. (c).) The EIR's' deficiencies include, but are not limited to, the following examples.

201. Where experts disagree about an EIR's data or methodology, the EIR should summarize main points of disagreement and explain why expert comments have been rejected. (CEQA Guidelines, § 15151; see also *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commissioners* (2001) 91 Ca1.App.4th 1344, 1367, 1371.) The EIR fails to include these critical disclosures. While not expected to foresee the unforeseeable, the agency conducting CEQA review must use its "best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines, § 15144.)

202. The EIR failed to provide reasoned, good faith responses to significant comments on the EIR. For example, DWR failed to respond to detailed supplemental letters with extensive exhibits submitted to DWR in 2023, providing significant new information addressing: (1) the relevance to the EIR's analysis of the 2023 State Auditor's Report criticizing DWR's chronically deficient modeling and assessment of climate and hydrology, as well as numerous other recent climate studies and reports; and (2) new evidence supporting the feasibility and

benefits of less harmful non-conveyance alternatives to the Project that DWR had screened out and excluded from analysis.

203. Contrary to CEQA Guidelines section 15132, DWR also failed in the FEIR to provide these supplemental comments, either verbatim or in summary form.

204. The FEIR repetitively responded to specific technical comments with responses that refer generally to an entire chapter or appendix. Given the size of the document and the fact that some chapters and appendices are thousands of pages long, and the fact that the discussion of impacts to a resource may be spread throughout an EIR, such a general response is insufficient to facilitate informed decision-making. DWR did not provide public comments verbatim in the FEIS, relying instead on its own summaries of comments when it responded. However, many of DWR's purported comment summaries did not fully, fairly, or accurately disclose the public comments at issue.

DWR Failed to Properly Consult with Local Agencies

205. DWR was required to consult with public agencies within, and adjacent to, the area in which the Project would be located. (Pub. Resources Code, § 21104.) On information and belief, DWR failed to consult as required by CEQA with public agency Plaintiffs herein regarding their concerns about the Project, as required by Public Resources Code section 21104.

DWR Unreasonably Restrained the Public's Ability to Comment on the FEIR

206. On December 8, 2023, DWR published the FEIR, which included revised EIR chapters and responses to comments. DWR illegally restrained public comment on the FEIR by failing to include readily available ways to understand how the DEIR had been modified in response to public comments and other changes.

207. Members of the public, including some Plaintiffs herein requested additional time beyond the minimum 10 days to review the FEIR prior to certification and Project approval due to the voluminous EIR and other factors. DWR denied these reasonable requests and issued its Project approvals on December 21, 2023.

208. As a result of DWR's rush to approve the Project, the public had only 13 days during the winter holiday period to scour review and respond to 27,000 pages to look for

changes and new information. DWR failed to provide a redline tracked changes version of the FEIR to the public until after it certified the EIR and approved the Project.

209. DWR's actions constitute a failure to proceed in a manner prescribed by law.

The EIR Presents Information in a Fragmented and Incoherent Manner, Precluding the EIR from Serving as an Effective Informational Document

210. EIRs must be organized and written in a manner that will make them "meaningful and useful to decision-makers and to the public." (Pub. Resources Code, § 21003, subd. (b).) EIRs must be written in plain language, and graphic means of presenting information should be used to enhance an EIR's clarity. (CEQA Guidelines, §§ 15140, 15147.) An EIR must not be written in a way that requires the reader "to sift through obscure minutiae or appendices" to find important components of the analysis. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 649.)

211. The EIR is so lengthy, poorly organized, and difficult to understand that it fails egregiously to satisfy CEQA's most fundamental objective of informing decisionmakers and the public of a project's potentially significant environmental effects. The EIR's organizational deficiencies include, but are not limited to, the following.

212. The EIR contains numerous contradictory and confusing statements that obfuscate the Project's true impacts.

213. The EIR fails to include adequate visual illustrations to allow the public to understand all of the Project components and their likely effects.

214. Although commenters, including the DISB, strongly suggested more use of readily available means such as a clearer organizational structure, summaries and graphics, to improve communication of Project alternatives and their impacts, DWR failed to simplify its presentation so that the public could comprehend the document.

215. DWR's actions constitute a failure to proceed in a manner prescribed by law.

DWR Failed to Recirculate the EIR after Adding Significant New Information to the FEIR

216. Recirculation under Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5, subdivision (a) was required due to the addition of "significant new

information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect after public review, but before certification of the EIR. (See also Pub. Resources Code, § 21092.1; *Laurel Heights Improvement Ass'n. v. Regents of University of California* (1993) 6 Ca1.4th 1112, 1129-1130.)

217. DWR became aware of significant new information prior to certification of the FEIR that mandated re-circulation, yet DWR refused to do so. This new information includes, but is not limited to, the following.

218. Any lowering of groundwater levels would impair the ability of newly formed Groundwater Sustainability Agencies in the Project area to reach sustainability within 20 years of adoption of their Groundwater Sustainability Plans, as required by SGMA. In addition, such changes in groundwater levels would cause a significant water supply and water quality impacts to wells in the vicinity of the Project. The FEIR was modified without adequate explanation to decide that all groundwater impacts from dewatering during construction would be less than significant as a result of the use of cutoff walls, thus avoiding groundwater impacts, without the need for mitigation. At the same time, the FEIR continued to include mitigation measures for groundwater impacts. Without a localized assessment of scope of the impacts on wells and identification of relevant, legally adequate mitigation measures, the public was deprived of a meaningful opportunity to comment on this potentially significant impact and feasible mitigation.

219. Examples of significant new information that required recirculation of the EIR under Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5 include: (1) The May 2023 State Auditor's Report criticizing DWR's chronically deficient modeling and assessment of climate and hydrology; (2) numerous other recent climate studies and reports also issued after the public comment period on the DEIR; and (3) new evidence supporting the feasibility and benefits of less harmful non-conveyance alternatives to the Project that DWR had screened out and excluded from analysis.

220. DWR also included changes to the DEIR in the FEIR that required recirculation. Examples of changes requiring recirculation include: (1) the addition of the Monarch butterfly to Chapter 13; (2) the removal of the analysis of impacts to the western bumble bee in Chapter 13; and the removal of mitigation for impacts to groundwater resources in Chapter 8, among others.

DWR Impermissibly Subsumed Mitigation "Commitments" Within the Project

221. DWR failed to adopt all feasible mitigation measures and alternatives to reduce or avoid significant impacts, in direct contravention of CEQA. (CEQA Guidelines, §§ 15126.6, 15126.4.)

222. An EIR cannot incorporate "the proposed mitigation measures into its description of the project and then conclude[] that any potential impacts from the project will be less than significant." (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-57 [*Lotus*].) Changes in the FEIR to the Groundwater impact determinations and mitigation approach, among other examples, violate the requirement for an EIR to disclose to the public how the level of significance was determined and how mitigation was developed.

223. As in *Lotus* and similar cases involving impermissible mitigation subsumed within the project description, measures DWR relies on in its EIR and approvals are uncertain and may not be enforceable.

224. The adopted mitigation measures and other measures deemed to be part of the Project description—and included separately as "Environmental Commitments" and Avoidance and Minimization Measures ("AMMs") in the MMRP—fail to meet basic legal requirements of enforceability. The failure to separately identify and analyze the significance of impacts without these Environmental Commitments and AMMs "subverts the purposes of CEQA by omitting material necessary to informed decision-making and informed public participation." (*Id.* at 658.)

Unenforceable and Impermissibly Deferred Mitigation Measures

225. 225. DWR failed to adopt all feasible mitigation measures and alternatives to reduce or avoid significant impacts, in direct contravention of CEQA. (CEQA Guidelines, §§ 15126.6, 15126.4.)

226. Here, between the DEIR and the FEIR release, DWR changed certain impact determinations to less than significant. For instance, previously significant effects such as:

- GW-1: Changes in Stream Gains or Losses in Various Interconnected Stream Reaches
- GW-5: Increases in Groundwater Elevations near Project Intake Facilities Affecting Agricultural Drainage

were changed to be less than significant without mitigation. The FEIR included inadequate substantiation for these changes, which removed and/or confused the applicability of necessary mitigation measures.

227. The EIR fails to account for the potential undermining of mitigation commitments due to (1) the Project's potential cost overruns, far exceeding DWR's estimated costs; and (2) major gaps remaining in the Project's anticipated financing, including still absent commitments of water contractor project beneficiaries, the federal government, and the outcome of pending proceedings relating to the lawfulness and validity of DWR's proposed revenue bonds.

228. The shell game DWR plays with Mitigation Measures, Environmental Commitments and AMMs in the EIR undermines it as an informational and decision-making document. Only by many hours of study for an EIR of extraordinary length would it be possible for a member of the public to discern DWR's basis for the impact determinations in the EIR. The failure of the CEQA Findings to include adequate findings with respect to hundreds of allegedly less than significant impacts compounds this fatal error. Likewise, the MMRP fails to adequately inform the public of how numerous impacts would be mitigated to less than significant levels.

229. The Project also impermissibly relies on Adaptive Management to address impacts. Like the Environmental Commitments and AMMs referenced above, Adaptive Management is not enforceable mitigation, but is cast as a Project component.

230. The EIR also systematically relies upon mitigation measures that are impermissibly deferred, and, because they have not been adequately formulated, are unenforceable. (CEQA Guidelines, § 15126.4, subd. (a)(1)(b); see also *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, 1029 [performance criteria must be

articulated at project approval].) Mitigation in the EIR, however, fails to articulate specific performance criteria.

231. "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." (CEQA Guidelines, § 15126.4, sub. (a)(2).) The EIR fails to sufficiently identify any such permit conditions, agreements or other legally-binding instruments that would ensure adequate funding and other conditions are in place to fully implement all of the adopted and/or deferred Mitigation Measures, Environmental Commitments and AMMs.

232. The EIR fails to integrate a discussion of other actions by agencies with permitting authority over other resources. As with the discussion of Project alternatives, when there is credible evidence that resources, including sensitive natural resources, are within the project area, an EIR must discuss other agencies' authority over those resources and discuss how mitigation measures have been devised to anticipate that authority. (*Banning Ranch, supra*, 2 Cal.5th at 938.) The full scope of other agencies' permitting authority over the project is not disclosed in the EIR, nor did DWR adequately consult with the agencies with responsibility for these resources. A discussion or analysis of mitigation measures relating to a resource is inadequate if it does not sufficiently integrate other agencies' authority and likely actions. For instance:

- The EIR failed to explain the relationship of waters of the U.S. under the Clean Water Act and Waters of the State under the Wetland Riparian Area Protection Policy, as well as the effect of the U.S. Supreme Court's decision in *Sackett v. EPA* (2023) 598 U.S. 651, which limited federal jurisdictional "waters" significantly as compared to previous interpretations of the Clean Water Act section 404 by the USACE and USEPA.
- The EIR fails to disclose the fact that the Clean Water Act section 404 permit has been identified by USEPA as candidate for elevation to USACE Headquarters due to its substantial and unacceptable impacts on aquatic resources of national importance.
- The EIR fails to describe the USACE's Section 404 and 408 of the Clean Water Act and Sections 10 and 14 of the Rivers and Harbors Act of 1899 process for consultation with

DWR and other consulting parties under Section 106 of the National Historic Preservation Act regarding historic properties eligible for the National Register of Historic Places and other historic resources within the Project area.

233. The EIR also relies on de facto mitigation disguised as Project components. For instance, the EIR's reliance on real-time operations to manage water quality impacts, for example, is impermissibly deferred mitigation under CEQA.

The EIR Includes a Flawed and Incomplete Analysis of Environmental Impacts and Mitigation

234. The EIR fails to adequately disclose and/or analyze the Project's impacts on the environment. (Pub. Resources Code, § 21100; CEQA Guidelines, § 15126.)

235. Though the EIR purports to analyze the Project at a "project" level of review, the EIR fails to include the level of detail required to conduct project-level review of its widespread and severe impacts, particularly in the Delta itself. Given the colossal scale of the Delta Tunnel, this may be challenging. But with no further environmental review specifically contemplated, just like any project subject to CEQA, this EIR was required to meet applicable project-level review requirements.

236. While DWR identified hundreds of environmental impacts from the Project, DWR failed to analyze some impacts at all, and failed to adequately inform the public and decision-makers about the impacts the EIR purports to analyze. In addition, DWR's impact determinations (less-than-significant, significant and unavoidable, no impact) are contrary to law and not supported by substantial evidence.

237. The impact analysis in the EIR is inadequate across multiple resource areas due to its unlawfully truncated scope of impact analysis. Direct and indirect significant effects of the Project on the environment must be clearly identified and described, giving due consideration to both the short-term and long-term effects. (CEQA Guidelines, § 15126.2, subd. (a).) The EIR unlawfully limits the scope of its analysis. regarding the inadequacy of the EIR to provide an adequate assessment of the Project's potential impacts on the environment, the following paragraphs provide examples of the inadequate analysis in the EIR. Plaintiffs have organized

the allegations by EIR chapter; by doing so, Plaintiffs do not limit the scope of these claim to any particular impact area or chapter of the EIR.

Surface Water Impacts – EIR Chapter 5

238. The scale of the proposed diversions is large enough to radically alter the hydrodynamics of the Delta. For instance, the Project would fundamentally change the way waters are conveyed through the Delta channels, which are part of the State's Plan of Flood Control, interfere with operation of local water diversion and discharge facilities, and generally disrupt surface water conditions throughout the Delta.

239. The EIR includes an inadequate disclosure and analysis of the Project's surface water impacts during both Project construction and operation.

240. The EIR states that changes to surface water resources and water supplies, "by themselves, are not considered an impact under CEQA and thus are not evaluated as impacts." The EIR therefore only describes the potential changes as a basis for understanding potential effects on other surface water-related resources.

241. DWR's failure to consider surface water impacts as environmental impacts requiring analysis is incompatible with the clear requirement of CEQA to analyze environmental impacts.

242. The EIR concedes that there are direct changes on the physical environment resulting from Project operations. Specifically, the Project would result in "consistent decreases . . . in long-term average flows for all months on the Sacramento River north of Courtland (i.e., downstream of the proposed north Delta intakes) due to the diversions of available excess water at the proposed north Delta intakes beyond the needs to satisfy downstream regulatory requirements in the Delta, including Delta outflows and south-of-Delta exports."

243. Decreases in surface water levels directly resulting from operation of the Project would severely interfere with local water supply infrastructure for agricultural and other uses; the EIR fails to perform an adequate analysis on the impacts related to this decrease in water levels.

244. Reductions in water level could lower the water level below the intakes of irrigators downstream of the diversions. The EIR fails to analyze at what point water level reductions would impact diverters, thereby failing to satisfy CEQA's requirement that a lead agency must consider physical changes in the environment which may be caused by the Project.

245. The EIR fails to adequately analyze Project impacts stemming from the low-flow conditions that would be created during Project operation, creating flow levels typically seen during drought periods on the Sacramento River. The impacts of such conditions, especially during the late summer period, which is a critical agricultural water use, are not adequately analyzed in the EIR.

246. The EIR fails to account for the effects that increases in applied water salinity, even relatively small ones, can have on soils and plant productivity in its analyses of water quality impacts to Delta agriculture. Even small increases in surface water salinity (water which is applied to crops for irrigation) can adversely affect soil salinity, which adversely affects agricultural plant growth and crop production. Because of the unique soil characteristics of the Delta and high groundwater tables, actions by agricultural water users to avoid or minimize these adverse impacts, such as applying additional water, may not be practical or effective during the plant growing season. The EIR analyzes only averages changes in applied water salinity and evaluates them only for whether water quality standards are violated. The EIR fails to analyze how any increase in supply water salinity might affect crops, in addition to its failure to examine the short- and medium-term effects of the Project. It also, therefore, fails to examine how or if mitigation might be feasible or effective.

247. The EIR's analysis of flood protection impacts fails to consider several factors highly relevant to flood control and protection, including but not limited to the potential for deep flooding at the intake locations if the Sacramento River is breached; the standards to which area levees are currently maintained; and the lack of sufficient flood control at embankments adjacent to the intake locations. Impacts are therefore inadequately mitigated.

248. The EIR fails to disclose Project surface water impacts arising from construction of sedimentation basins. The EIR fails to define the location of proposed sedimentation basins,

but states that they would be excavated to 30 feet. Excavation of this magnitude could cause flooding and/or a potential levee failure during high water periods. The EIR acknowledges that Project-related changes in water elevations would affect navigation and beneficial uses of water, and analyzes impacts for those resource areas, but omits any analysis which focuses specifically on how Project-related and cumulative changes to water levels may impair flood control efforts.

249. The EIR fails to identify and analyze the full extent of impacts on wetlands and waters from Project construction and operation. Maps of construction activity indicate the existing watershed and downstream wetlands would be largely modified by the dumping of large quantities of tunnel muck. The EIR fails to disclose and analyze the impacts to wetlands and surface waters resulting from this significant modification to the watershed.

250. The EIR fails to disclose and analyze how construction and presence of in-channel facilities such as cofferdams would limit the volume of water that the channel can hold, the related flood control impacts due to both the single channel blockage, and the cumulative impacts arising from similar Project-generated blockages throughout the Delta.

251. The EIR similarly fails to disclose and analyze how construction of in-channel and other Project facilities on Delta levees may damage levee integrity through pile-driving, seepage, and erosion, and the related flood control impacts that may arise from this damage. The levees are susceptible to compaction, subsidence, and liquefaction from vibrations from construction-related activity. The EIR did not include an adequate analysis of the impacts the Project would have on these levees.

252. The EIR fails to disclose and analyze flood control impacts that may occur as a result of construction and operation of the proposed NDDs. The EIR acknowledges that the Project would cause local drainage and floodplain impacts but fails to adequately analyze the impacts caused by construction and operation of Project features, particularly intake structures, tunnel shafts, and muck stockpile areas that could disrupt local drainage and affect overland release. The EIR also fails to provide adequate mitigation for any of these impacts.

253. The EIR fails to analyze the long-term effects on surface water and water supply of prolonged use of the NDD facilities. Use of the NDD intakes would increase total SWP

diversions from the Delta, resulting in corresponding decreases in Delta outflow, increases in Delta salinity and residence time, affecting the formation of harmful cyanobacteria and exacerbating existing public health risks to Delta residents. Prolonged use of the NDDs would also increase the frequency of reverse flows in the Delta, resulting in a decrease in water quality, and a reduction in flushing flows in the Delta. Longer residence times results in an accumulation of contaminants in the river and warming of the water due to radiative heating, which then results in increased algal growth.

254. The EIR does not disclose or adequately analyze how increased surface water elevation due changes caused by operation of the Project could cause seepage and related agricultural impacts throughout the Delta.

255. The EIR fails to analyze the surface water elevation changes that may occur during construction due to the creation of coffer dams, gabions, and other in-river structures. These features narrow the cross-section of the river or slough and raise the flood elevation, potentially exceeding levee design requirements. These localized flood impacts are not described in sufficient detail to understand potential impacts to levees, levee roads, docks, bridges, and agricultural intakes. These construction-related in-channel elements would need to be in place for a significant amount of time. Yet, the EIR performs no analysis to determine the impact of any failure of these structures during a winter storm.

256. Project operations would likely change CVP and SWP reservoir operations, but the EIR fails to identify, characterize, quantify or disclose potentially significant impacts from those altered reservoir operations.

257. The EIR fails to disclose and analyze the extent of the Project-created reverse flows in the Sacramento River and their associated impacts. For example, the EIR fails include an adequate analysis of the Project's potential to impact reverse flow events on the Sacramento River at the Freeport Project intake, which could increase in frequency or duration events that force Sacramento Regional County Sanitation District ("Regional San") to cease discharges at the Freeport Project and retain treated effluent in additional storage basins, potentially exceeding their capacity or affecting Regional San's ability to discharge to the river. These events may

also require the Freeport Regional Water Project to cease its water diversions, further impacting the availability of water supplies for residents of Sacramento, Alameda, and Contra Costa counties.

258. Though the EIR concludes that the Project's potential to increase the frequency of reverse flow events would not result in any significant impacts, it states that tidal restoration efforts would be undertaken as mitigation to offset effects of reverse flows caused by Project diversions. The EIR provides no report or information by which to evaluate the adequacy of its analysis of reverse flow events resulting from the Project nor the efficacy of tidal restoration to address these impacts.

259. The EIR modeling of reverse flows in waterways, including but not limited to Middle River, Old River, and/or Marsh Creek is inadequate, as it relies on surface water features which do not simulate current conditions in those waterways.

260. The EIR fails to adequately disclose or analyze how cumulative adverse impacts disclosed in other EIR chapters, such as Surface Water, Groundwater, Water Quality, Soils, and Agriculture, will result in significant surface water impacts, including increased flood risks for Delta water users.

261. The EIR fails to consider surface water impacts from reasonably foreseeable future projects, such as the Yolo Bypass Salmonid Habitat Restoration project and Sites Reservoir. The Yolo Bypass project could divert 12,000 cfs from the Sacramento River for five months out of the year, and at least 1,000 cfs for two additional months, reducing Sacramento River flows. Sites Reservoir would divert up to 4,200 cfs of water from the Sacramento River between September 1 and June 14. As a result of these and other failures, the EIR fails to provide accurate information regarding the Project's cumulative surface water, water quality, and water supply impacts.

262. The EIR fails to analyze surface water impacts and fails to provide any mitigation that addresses Project-generated changes in surface water levels.

Water Supply Impacts – EIR Chapter 6

263. The Project is intended to improve water supplies for export areas but would jeopardize the area of origin-protected needs of Delta farms, communities, cities and industries. In particular, the Project would negatively affect water supplies for smaller farms of the Delta that principally rely on their own water diversion facilities to grow their crops, rather than taking delivery from a district, as do larger farms outside the Delta that are located far away from water sources. In addition, communities that divert surface water from the Delta (e.g., City of Antioch, City of Stockton, East Bay Municipal Utility District, Sacramento County, and Contra Costa County Water Agency) would also bear impacts on their water supplies as a result of construction and operation of the Project.

264. Given the relationship of Delta channels to sea level, an adequate supply of water in the channels supports all in-Delta beneficial uses, assuming adequate water quality. When operation of the SWP and CVP unnaturally lowers channel water levels, the local in-Delta diversions are impaired or prevented. The supply can also become unusable when the operation of the projects increases salinity and other constituents in the water. This occurs both when the constituents are added and when in-Delta flow patterns are altered to create stagnant or null zones where constituents collect.

265. The disclosure and analysis of the Project's water supply impacts during both construction and operation in the EIR is inadequate.

266. The EIR fails to include a water availability analysis, even though the in-basin needs of the Delta watershed far exceed the available water, and the SWP's difficulties with "paper water" have long been well known. In its September 2023 report prepared to inform the pending Phase II WQCP update, the SWRCB concluded that "average regulatory minimum Delta outflows are only about 5 MAF [million acre-feet], or about a third of current average outflows and less than 20 percent of average unimpaired outflows."

267. The SWRCB's September 2023 report also found that "regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and

additional water development absent additional minimum instream flow requirements that ensure flows are preserved in stream when needed for the reasonable protection of fish and wildlife."

268. The original development of the SWP and CVP guaranteed that in-Delta water requirements would always be met prior to exporting flows to out-of-basin users. The EIR does not take that statutory requirement into consideration in its analysis of impacts to in-basin Delta water users.

269. The EIR fails to analyze the Project's effect on local water supplies in the water supply analysis. While the EIR identifies a number of impacts to water supply in export areas, it fails to consider impacts to water supply in the Delta, where the water would be taken. By omitting water supply from examination of potentially significant environmental effects of the Project, the EIR fails the legal duty and the mandate of to provide an informed and accurate analysis of the project and its impacts.

270. The water supply analysis is inadequate because it was conducted using the outdated CalSim 3 model, which is based on an adjusted historical sequence of monthly stream flows over a 94-year period ending in 2015. The EIR wrongly assumes that the hydrology observed over the simulation period of 1921-2015 is representative of the "existing condition," even though long-term changes in hydrology associated with climate change are well underway. In May 2023, the State Auditor concluded that DWR forecasts do not adequately account for climate change identified DWR's failure to develop a long-term plan for the SWP that adequately mitigates and responds to more frequent and severe droughts. In addition, due to its limitations, CalSim3 modeling results for extreme conditions can only provide an approximation of the actual operations that would occur under those conditions, which results in inadequate disclosure of the Project's potential impacts.

271. The EIR analysis of water supply impacts is inadequate because it fails to evaluate and mitigate potentially significant impacts to water supply for water users who rely on water stored in project reservoirs. Changes in the amount of water delivered to a location constitute a physical change to the environment. (See Pub. Resources Code, § 21060.5.) The EIR fails to

analyze impacts from shifting the burden of offsetting Delta water quality and salinity requirements to upstream sources of water, including reservoirs on tributaries to the Delta.

272. The EIR fails to analyze how the anticipated decreases in Sacramento River water levels extending several miles downstream of the proposed new diversions would impact local water supply.

273. The EIR acknowledges that the Project would increase demand for Delta water exports, including transfers, and also analyzes water supply impacts to transferee areas, but performs inadequate analysis of those same impacts on the areas from which the water would be exported or transferred.

274. The EIR fails to analyze the quantity of Delta water available for export after complying with in-Delta water provision requirements for fisheries, and under what circumstances such water would be available.

275. The EIR fails to disclose how reduced carryover storage for SWP and CVP reservoirs may further stress water conditions in dry years, and, therefore, the EIR water supply analysis is premised on incomplete information.

276. The EIR overstates the potential effects of earthquakes on water supplies for export in an attempt to justify the need for the Project to maintain export water deliveries.

277. The EIR fails to adequately analyze Project impacts on water supply quality, availability, and reliability for several classes of Delta water users, including domestic, agricultural, and the wildlife habitat.

278. The EIR fails to identify an additional water supply for the new mitigation requirements defined for Alternative 5 for habitat restoration, which consumptively uses almost twice as much water as most Delta crops. The EIR also fails to disclose that restoration areas would use the same amount of water as existing agriculture.

279. The EIR fails to consider effects on water supply under a scenario that is consistent with the SWRCB's Water Quality Control Basin Plan Flow Criteria requirements for the Sacramento River and for Delta Outflows to improve protections for native fish species, despite requests from the SWRCB to do so in its DEIR comments.

280. The EIR's water supply analysis fails to consider foreseeable future actions that would occur if the Project was not constructed and operated that would help secure water supplies for export, such as levee maintenance and improvements, that would further reduce risks associated with earthquakes.

281. The water supply impacts of the Project on local water uses, in combination with past, present and reasonably foreseeable future projects, are cumulatively significant, and must be re-evaluated to properly understand potential impacts.

282. DWR's failure to adequately analyze the Project-level water supply impacts renders DWR's attempted cumulative impact analysis in adequate.

Flood Protection Impacts – EIR Chapter 7

283. The disclosure and analysis of the Project's flood protection impacts during both construction and operation in the EIR is inadequate. By omitting flood protection from examination of potentially significant environmental effects of the Project, the EIR fails the legal duty and the mandate of to provide an informed and accurate analysis of the project and its impacts. In addition, seismic hazards in the Delta are characterized differently in Chapters 7 than in other EIR chapters (1 and 10), precluding informed decisionmaking and public review.

284. The EIR fails to disclose or analyze Project impacts created by construction activities would prevent RDs from performing inspections, operations, maintenance, and improvements to levees and drainage systems for over a decade. Failure to perform standard upkeep on these systems would increase flood risks.

285. The EIR fails to analyze how construction of the Tunnel would interfere with RDs' ability to ensure proper drainage of islands. For example, Project construction would interfere with the ability to properly drain certain fields where project activities would occur. While the DEIR discusses the placement of cutoff and sheetpile and slurry cutoff walls during construction, the consequences of installing those walls on agricultural operations and drainage are not adequately disclosed.

286. Tunnel construction would require DWR to pump large quantities of water due to dewatering activities, which the EIR characterizes as "localized changes." The EIR references

use of slurry cutoff walls to reduce impacts to local groundwater supplies, but dewatering activities and the use of cutoff walls would negatively impact farmers' ability to properly drain fields. The EIR shows groundwater levels near Hood and Courtland would increase between 1 and 3 feet due to the Project. (DEIR, p. 8B-38.) Impacts of increased groundwater levels on flood control and drainage is not analyzed in the EIR.

287. The DEIR recognizes that "The levee system surrounding each Delta island along the central, easter, and Bethany Reservoir alignments where various shafts and facilities are located provide the first line of defense against flooding during construction." (DEIR, pp. 7-46, 3-145 – 146.) The EIR, however, fails to describe the recommended improvements to the levees that provide the Freshwater Pathway from the Sacramento River to the south Delta pumps even though the SWP would continue to rely heavily on a "dual conveyance" i.e., north and south Delta facilities. However, the EIR fails to analyze how the Project would impact the need for additional maintenance and improvements of the existing levee system.

288. The EIR fails to disclose impacts of the project on flood control from additional maintenance costs and the loss of acreage subject to RD assessments.

289. The Project's flood protection impacts, in combination with those of past, present and reasonably foreseeable future projects, are cumulatively significant, and must be re-evaluated to properly understand potential impacts.

290. The EIR fails to adequately mitigate both Project-level and cumulative flood protection impacts.

Groundwater Impacts – EIR Chapter 8

291. Recent droughts have further strained the State's already overtaxed groundwater supplies. The Project, with its massive ground disturbance and dewatering activities, and removal of vast quantities of water from the Sacramento River, which recharges the aquifers in and around the Delta, would forever impair the ability of areas in the Project path to sustainably manage groundwater. While the EIR indicates that the Project may provide water for recharge purposes to export areas of the state, the EIR fails to fully disclose the havoc this Project would wreak on groundwater resources in and around the Delta.

292. The EIR includes an inadequate disclosure and analysis of the Project's groundwater impacts during both construction and operation of the Project, and implausibly claims that all groundwater resource impacts would be less than significant without mitigation. At the same time, the FEIR continued to include groundwater mitigation measures, for instance, GW-1 was included to "address unforeseen localized impacts on groundwater supplies" (FEIR, p. 8-37) and GW-5 was included to "would further reduce risks of impacts on agricultural drainage (FEIR, p. 8-56).

293. The EIR violates CEQA by failing to clearly disclose the potential for significant impacts prior to the imposition of mitigation measures, omitting material necessary to informed decision-making and informed public participation. As a result of flaws in the EIR, the reader cannot understand how the level of significance was determined and how mitigation was developed. (*Lotus*, *supra*, 223 Cal.App.4th at 655-57.)

294. The EIR does not adequately disclose that the current Project would affect other planning and implementation processes to manage groundwater in areas impacted by the Project.

295. Groundwater levels within the Delta are typically high, thus requiring a substantial dewatering effort in order to construct Project components requiring large-scale excavation, including proposed intakes, intermediate forebays and other work areas. For instance, the EIR acknowledges that up significant dewatering would occur at the intake construction sites. That dewatering could impair local drinking water wells and impact critical groundwater dependent ecosystems.

296. Despite the availability of well information from DWR's own groundwater programs, and well-documented risks associated with declining groundwater supplies identified in the South American Subbasin's Groundwater Sustainability Plan, the EIR fails to disclose and analyze the specific local impacts from construction and operation on individual wells in the vicinity of Project components, such as the intakes, forebays and tunnels.

297. The EIR fails to disclose or analyze land subsidence that may occur in the Delta as a result of dewatering activities that lower groundwater levels. Among other defects, local

hydrogeography was inadequately described, and local settlement and subsidence associated with shallow clay layers is not disclosed.

298. The EIR failed to fully account for the Project's impacts to groundwater in areas upstream of the Delta by prejudicially excluding a credible analysis of the Project's facilitation of groundwater substitution transfer programs.

299. The EIR fails to analyze impacts to individual wells and regional groundwater recharge from the construction of slurry walls. These walls are intended to act as permanent impermeable barriers to groundwater flow, and the EIR does not consider how these new underground barriers would impact wells that rely on the adjacent shallow groundwater aquifers. Local shallow groundwater gradients and site-specific well elevations, or locations of potentially impacted drinking water wells are not disclosed, and further, the Project impacts on those wells is conflated into a coarse-scale regional modeling approach, which is inadequate to assess this fine-scale condition and impact.

300. The EIR fails to disclose and analyze impacts on groundwater recharge from removing peak flows of the Sacramento River in the vicinity of the Project. The EIR's groundwater impacts analysis fails to provide a good faith attempt to disclose how the Project would alter local groundwater levels to provide for an understanding of the groundwater impacts to individual wells and or thresholds articulated in the South American Subbasin Groundwater Sustainability Plan. To the extent the EIR describes initial operating criteria that would primarily divert during periods of higher flows, those peak flows have the highest hydraulic head, are the strongest influence on local groundwater inflows, and are important recharge source. The EIR focuses almost entirely on the generic description of potential direct impacts on wells, which are only part of the water supply balance in the vast area of the Delta that the Project would impact.

301. In addition to the groundwater wells in the vicinity of the Project components, such as the intakes, forebays and other work areas, the massive tunnel itself would be a barrier to groundwater flows and recharge throughout the 45-mile extent. As the EIR found that there was not a potentially significant impact, DWR made no effort to identify, let alone assess the

need for and feasibility of mitigation for these groundwater users in San Joaquin, Yolo, Contra Costa, Solano, and Sacramento County.

302. DWR failed to use best available science to determine the likely groundwater impacts of the Project. In addition to the out-of-date model parameters used in the DEIR, the groundwater data are out of date (generally 1922 through 2015) and can no longer be used with any reliability. Use of this data biases the results, particularly since recent drought years are not included. This error biases the effects by using the wettest years and ignoring the drought and the overall trend to drier years.

303. The EIR failed to disclose that the Project would impair the ability of the South American Subbasin and other areas to comply with the requirements of SGMA to reach groundwater sustainability within 20 years of adoption of Groundwater Sustainability Plans, which were submitted to DWR in 2022 and are now being implemented. Areas east of the proposed new intakes and other areas affected by the construction and operation of the Project are experiencing overdraft, and any reductions in recharge from the Sacramento River or other sources would exacerbate these overdraft conditions, inconsistent with the goals and requirements of SGMA.

304. The mitigation provided for potential impacts to wells from dewatering is inadequate and infeasible considering existing groundwater depletion. Under Mitigation Measure GW-1, "The following additional measures will also be implemented if injection wells are not feasible in an area or not sufficient to offset potential impacts on groundwater levels in the area of influence: 1. Deepen or modify (e.g., lower pump intakes) wells used for domestic or agricultural purposes; potable supplies will be brought in temporarily while wells are modified, if needed. 2. Secure a temporary water supply or compensate farmers for production losses due to a reduction in available groundwater supplies." (FEIR, p. 8-39.) Though the potential for impact and the need for mitigation measures is acknowledged, the EIR fails to disclose this potentially significant CEQA impact. While DWR claims that it would reinject or provide a water supply, there is no identification from where that water would be sourced.

305. While an impact requiring mitigation from multi-year dewatering was identified in the DEIR, this impact was struck in the FEIR without any new explanation of why this impact was no longer significant. (FEIR, p. 8-52.)

306. The EIR fails to adequately mitigate both Project-level and cumulative groundwater impacts.

307. While the EIR uses an average of a 5-foot lowering of groundwater levels as the threshold for a significant impact, a significant impact to the water supplies of some well owners may be caused by lowering less than 5 feet. DWR improperly deferred the necessary localized assessment of scope of the impacts on regional groundwater levels and individual wells.

308. The EIR also provides inadequate mitigation for the 5-foot episodic lowering of groundwater levels. Without providing any analysis, the EIR concludes that if Mitigation Measure GW-1 is implemented, no additional mitigation measures will be necessary. GW-1 entails DWR determining the location of wells within the Project footprint that may suffer dewatering and monitoring water levels in those wells during Project. Simply monitoring wells does not provide mitigation. In addition, if wells become inoperable due to changed water levels, it may be impossible to correct the problem. The idea that simply "injecting water" would resolve the impact is unsupported by any evidence in the record. The groundwater system is complex with multiple clay layers and transmissive zones. Even if injection were feasible, the source of that water, and the impacts on that water supply are not disclosed. The locations of those potential injection wells, the water source, quality, and permitting required are simply ignored in the EIR's truncated analysis.

309. The EIR failed to analyze fails to adequately analyze potential impacts resulting from dewatering activities during Project construction including, but not limited to, the impacts of installing slurry walls mentioned in Mitigation Measure GW-1. The EIR also assumes the slurry walls would function perfectly and fails to address impacts that would occur if they do not. While slurry walls could, if completely keyed into clay, reduce drawdown of local groundwater outside the construction areas, slurry walls may also exacerbate groundwater impacts during and after construction by blocking local wells from groundwater recharge

sources such as the Sacramento River, thereby impairing domestic, agricultural, and wildlife habitat groundwater uses.

310. DWR's less than significant determination for Impact GW-1 is unsupported. DWR's conclusion fails to consider that groundwater wells are screened to draw water at set elevations and it cannot be assumed that those wells could be modified to continue to provide water supplies after construction activities were completed. DWR provides no information about individual wells, their depth of completion, or which aquifer from which water would be drawn.

311. The EIR's Groundwater Mitigation Measures fail to meet basic CEQA mitigation standards. GW-1 impermissibly delegates the authority to DWR to determine the approach to mitigation later, without adequate performance standards.

312. GW-1 is also inadequate because it does not include a threshold of significance that is relevant for groundwater dependent ecosystems ("GDEs") that are dependent on shallow groundwater conditions to survive. A significance threshold of two feet of groundwater decline should have been used, as this level of decline could result in a loss of vigor or death of native vegetation in GDEs. This threshold should be applied to groundwater monitoring wells screened at depths important to the ecosystems.

313. Mitigation Measure GW-5 impermissibly defers formulation of mitigation for the Project's significant groundwater impacts. Under GW-5, mitigation measures to address seepage would be developed in the future. Without additional detail on the impacts and the means to address impacts, this approach is impermissible and further defeats the purpose of the EIR as an informational document for the public and decision-makers.

314. DWR's determination that all groundwater impacts are less than significant without mitigation is not supported by substantial evidence.

315. The groundwater impacts of the Project, in combination with past, present and reasonably foreseeable future Projects are cumulatively significant.

316. DWR's failure to adequately analyze the Project-level groundwater impacts of the Project renders DWR's attempted cumulative impact analysis inadequate. The FEIR claims that

"the contribution of the project to the groundwater overdraft in DeltaGW subregion 4 is reduced by a small amount, ranging from 73 to 226 acre-feet per year, which is a small fraction of average decline of 9,582 acre-feet per year under existing conditions. The model suggests a small increase in groundwater storage; however, the modeled increase is so small as not to be notable." (FEIR, p. 8-52.) This approach to cumulative impacts is in direct contravention to *King's County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, where the court found that an EIR that focused on "the ratio between the project's impacts and the overall problem" did not adequately assess the project's cumulative impacts.

317. While DEIR Chapter 13 (Terrestrial Biological Resources) mentions riparian habitats, it fails to acknowledge the existence of GDEs, impacts to which DWR has identified as an undesirable effect from lowering groundwater elevations. (DEIR, p. 13-14.) EIR Chapter 8 (Groundwater) fails to provide any identification of this critical vegetation community, let alone analyze any of the potential effects of the project's groundwater impacts on it.

318. To be effective, GW-1 would need to include other options for mitigating impacts beyond reinjection, tanked water programs, or well deepening. The reinjection option in GW-1 is inadequate to mitigate groundwater impacts because reinjection may not be able to address impacts to shallow groundwater conditions spread across a large area; indeed, there is no evidence that localized injection will work to uniformly raise groundwater levels across a large footprint. The tanked water and well-deepening options in GW-1 are also inadequate to mitigate groundwater impacts because such programs do not benefit shallow groundwater and ecosystems at all. Additional mitigation options to lessen shallow groundwater and GDE impacts could include providing surface water to agricultural lands near the intakes, reducing groundwater pumping, providing water for recharge in other nearby areas to achieve ecosystem benefits, recharge activities using surface water near the intakes, or other appropriate methods that can mitigate for ecosystem loss or decline relative to a without-Project condition. DWR should consider upstream or in-lieu recharge, which has been modeled to potentially have such effects.

Water Quality Impacts – EIR Chapter 9

319. Delta water quality is currently recognized as impaired for several constituents, either through Clean Water Act Section 303(d) listings adopted by the SWRCB or through other documents issued by the Central Valley Regional Water Quality Control Board. In particular, three water quality constituents cause impaired conditions to exist in the Delta, including HABs, mercury, and electrical conductivity. Such impacts are unacceptable under the Clean Water Act and associated state and federal regulations and policies (including the antidegradation policy), which protect water quality through the attainment and maintenance of conditions which comply with water quality standards, and generally limit water quality degradation.

320. The diversion capacity of the Project is large enough to remove up to about half of the average freshwater inflow from the Sacramento River. According to the initial operating criteria discussed in the EIR, the Project would remove freshwater from the River at all times of the year, including late summer, when water quality in the Delta is already at its worst. The Project thus has the potential to create a permanent drought condition in some areas of the Delta during the late summer period, further stressing the aquatic system upon which farms, communities and aquatic wildlife require.

321. According to the EIR, 16 of the 17 Water Quality impacts analyzed in the EIR would be less than significant even prior to the imposition of mitigation. Only mercury impacts would require mitigation. According to expert comments on the DEIR, however, numerous Project water quality impacts would be "significant." Under CEQA, DWR must disclose and properly mitigate these impacts to the extent feasible. DWR failed to address these comments and continued to claim that Project impacts from increased HABs formation and increases in electrical conductivity, among other water quality impacts, are less than significant and do not require mitigation.

322. A critical flaw in the EIR is the failure to include a stable definition with respect to operations. Although the infrastructure could be operated under a range of scenarios, the EIR relies on a single arbitrary and unrealistic scenario to evaluate water quality impacts. The DEIR's modeling suggests that average use of the north Delta intakes would be small relative to

its maximum conveyance capacity and would only be utilized for roughly 13.5 percent of the Delta's total exports. (DEIR, p. 6A-5.) This low utilization rate indicates that the DEIR has provided low-end operational criteria, thus artificially limiting, and masking, the potential (and likely) environmental impacts of the project.

323. As a consequence of failing to analyze the full range of likely Project operations, the EIR fails to adequately analyze or disclose, and unduly minimizes, Project impacts to water quality. This constitutes a failure to proceed in the manner required by law.

324. DWR's model simulations of future conditions indicate that the salinity of the Delta would increase over time as a result of sea level rise. But the EIR does not disclose if DWR anticipates requiring TUCPs more frequently under these conditions, or the water quality impacts of operating the Project under TUCPs in the future. The EIR's simulation of Project operations failed to include the relaxation of operations rules under TUCPs, such has occurred in recent critically dry years of 2014 and 2015, as well as well as the years of 2016, 2021 and 2022, and, as such, does not adequately inform the public and decisionmakers regarding the likely operations and impacts of the Project.

325. Salinity, which is already at critical levels in some areas of the Delta, directly impacts agricultural productivity and drinking water supplies. The EIR fails to recognize that any increase in existing salinity levels would be a degradation of water quality in the Delta. While the Project could potentially deliver better quality water to the water exporters for export to areas south of the Delta, water quality for local in-Delta uses would worsen as a result of the Project.

326. The DSM2 model used for the EIR's analysis of water quality impacts has serious flaws rendering its results unusable for analyzing the Project's impacts. One example of such flaws, among others, is that the model results indicate that its internal calculations are inconsistent with actual conditions in the channels. For instance, if the model's internal calculations conclude water quality is getting better when in fact it is getting worse, there is no basis for relying on the results for either baseline conditions (without Project) or the under the Project. In addition, the channel configuration assumed in the model is completely different

than actual conditions, which is especially relevant for south Delta channels that are much shallower than assumed in the model. The model's inability to depict conditions in times of low flow, or high salinity, means it cannot accurately determine what the Project's effects are at those times.

327. The EIR's DSM2 water quality modeling also fails to inform decisionmakers and the public because, as the EIR concedes, the modeling is not a predictive tool, and is only intended to be comparative between different scenarios. With respect to salinity increases, for instance, the results in the "with Project" analyses are compared to the threshold Salinity Standards, and the EIR concludes no significant impacts will occur. However, if the model is not predictive, the results cannot be then used to compare them against any standard. In addition, modeling for both scenarios is flawed (e.g., results are inconsistent with actual conditions in the channels and channel configuration assumptions are inaccurate), and the results of the comparison therefore fail to provide any basis for a significance determination.

328. Another flaw rendering the DSM2 modeling unreliable for purposes of determining water quality impacts is that it was not used to analyze Project compliance with all water quality standards and provided comparisons of salinity levels at only selected nodes. The modelling also fails to analyze the Project's impacts during a period of extended drought, similar to those recently experienced in the State, as the period of record in the model ended in 2015.

329. The data sets used in screening and evaluating water quality impact in the EIR are outdated, truncated, and prevent accurate assessment and disclosure of adverse project impacts. Interior Delta sites for source water were not considered, and a number of priority pollutants were infrequently or never sampled. This failure renders screening analysis technically insufficient and renders all subsequent assessments of water quality impacts invalid.

330. DWR's water quality analysis is also flawed because it was presented in the form of long-term averages, masking important information needed to assess the impacts of the Project on water quality within the Delta. The water quality modeling for the EIR used a 15-minute time step, but most of the flow data that was input to the water quality model were

monthly data. The use of monthly time step input flow data masked significant exceedances of daily and D-1641 salinity standards. Monthly averages fail to disclose Project impacts because, among other reasons, D-1641 water quality objectives for municipal and industrial uses are specified as maximum mean daily chloride concentrations, and water quality objectives for agricultural beneficial uses are specified as "the maximum 14-day running average of mean daily EC."

331. By presenting water quality information in the form of statistically aggregated, long-term averages, DWR failed to present information needed to evaluate the impacts of the Project. To fully disclose the likely water quality effects of the Project, the EIR was required to provide information regarding water quality changes on shorter timescales consistent with applicable standards (e.g., D-1641 water quality objectives for salinity), for both the Project and alternative scenarios, and for both existing conditions and conditions in 2040 with climate change.

332. The water quality modeling uses an extremely unlikely scenario that generated unexplained results and that mask the likely impacts, thus failing to inform decisionmakers regarding the likely effects of the Project. The probability of the selected H++ scenario, with 1.8 ft of sea level rise in 2040, is unquantified but is significantly less than 0.5%. DWR failed to simulate hydrodynamics or water quality within the Delta for the much more likely 0.5 ft of sea level rise in 2040, and DWR did not use CalSim 3 or DSM2 to evaluate conditions with 1.3 feet of sea level rise. The failure to model more likely scenarios, and to fully disclose assumptions in the modeling, render the water quality modeling outputs for 2040 under with-Project conditions not credible for purposes of understanding the likely water quality effects of the Project.

333. The EIR wrongly assumes that some water quality impacts in the form of D-1641 salinity exceedances could be resolved through real-time operations, which is different from the assumptions used throughout the EIR. The EIR fails to perform any analysis that would disclose whether that assumption is accurate, and what other impacts may arise from this alternative means of operating the Project.

334. The thresholds of significance tied to meeting regulatory standards also fails to account for impacts to agriculture that occur when applied irrigation water is more saline. The EIR erred in relying only on compliance with D-1641 to assess Project impacts on beneficial uses, including but not limited to agriculture, from increased salinity.

335. The EIR fails to adequately analyze the potential for increased aquatic weeds as a result of reductions in freshwater flows through the Delta caused by the Project.

336. The EIR fails to sufficiently analyze water quality impacts to local water supplies due to Project-related increases in a wide range of water quality constituents, including chloride, bromide, nitrate, pesticides, increased temperatures, and the potential for increased occurrence of HABs such as toxic *Microcystis*. Increases in these constituents would threaten water users' ability to use their water supply, rendering it unusable under existing treatment technologies, and require implementation of additional water treatment processes at significant costs. The EIR's characterization of changes as "minor" is inaccurate and fails to account for the existing treatment processes used in the local areas reliant on Delta water supplies.

337. The EIR fails to adequately disclose or analyze water quality impacts due to Project-related increases in selenium concentrations. The EIR concludes that selenium impacts are unlikely to increase in the western Delta but fails to analyze whether the Project may cause these impacts where they are most likely to occur, the eastern Delta. The EIR performs water quality modelling for a point at which the Project is unlikely to be operable.

338. The EIR's water quality modelling did not account for other water management and environmental activities likely to occur in and upstream of the Delta that may influence water quality impacts.

339. The EIR fails to adequately analyze how the Project may affect dissolved oxygen levels in Delta aquatic habitat and drinking supplies; the EIR fails to analyze impacts to dissolved oxygen levels in the Central, South, and East Delta caused by increased residence time in these areas.

340. DWR's analysis of impacts to HABs fails to consider all factors that lead to increased HABs formation, including light, temperature, nutrients, and water-column dynamics.

It is undisputed that both humans and animals can suffer adverse health impacts due to consuming HABs-tainted water. The EIR makes an unsupported determination that Project impacts due to HABs would be less than significant.

341. The EIR's analysis of HABs impacts is flawed due to errors in estimating residence time and analyzing the impacts of velocity, among other reasons. The EIR's use of a scientifically unsupported and arbitrary method of evaluating residence time masked the impacts of the Project. Because the Project would reduce inflows to the Delta as a whole, it would increase the residence time of water in the Delta (long-term mean monthly residence time would increase by 8%-15%), increasing the likelihood that HABs would occur as compared to existing conditions.

342. The EIR's reliance on a velocity analysis is irrelevant to the potential for the formation of HABs and misleads the public as to the potential for increased HABs under the Project. The EIR's "15-minute absolute velocity" is not relevant because it demonstrates only that the Delta is a strongly tidal system. Algal blooms already form within the Delta under current conditions, particularly in channels with less flushing (i.e., where tidally or daily averaged velocities are low), even though those channels currently experience "15-minute absolute velocity" values identical or similar to those modeled using DSM2 and depicted in the EIR. The EIR's reliance on an irrelevant indicator that would not change as a result of the Project renders the conclusion that the Project would not affect the likelihood or frequency of algal blooms unsupported.

343. The EIR's evaluation of temperature change and its effect on algal growth, along with its conclusion that there will not be an increase in temperature from the Project leading to additional HABs formation in the Delta channels, is unsupported. Reduced flushing flow from the Sacramento River under the Project would result in longer residence times, allowing for a greater amount of radiant energy to be absorbed from the sun. By miscalculating temperature and nutrient increases and relying inappropriately on modeled mean channel velocity to analyze water temperature changes (among other errors), the EIR does not provide a good faith evaluation of Project impacts from increased HABs.

344. The Project's removal of up to half of the flow of the Sacramento River would result in higher nutrient concentrations, promoting more frequent formation of HABs, which the EIR fails to adequately analyze.

345. The EIR failed to include modelling for the areas where HABs are most likely to occur, instead arbitrarily dividing the Delta into sub-regions. Dividing the Delta into subregions for purposes of HABs analysis resulted in an underestimation of the increase in residence time in the Delta as a whole, which is the relevant metric for purposes of HABs formation, under the Project.

346. The EIR fails to analyze how decreases in sediment in waterways downstream of the NDDs would increase the potential for HABs formation. The NDDs would entrain 2% – 8%, suspended sediment otherwise destined to move downstream and an overall total during the 1922–2015 CalSim modeling period of 4% – 5%. (DEIR, Table 12-97, p. 12-165.) Decreased sediment increases water clarity, which can help create conditions that increase the incidence of HABs.

347. The EIR's assumption that HABs can form as early as May or June (Appendix 9E.2.1.8) ignores documented blooms occurring as early as April in 2021, for instance. The DEIR's failure to analyze the potential for HABs formation outside of what DWR considered to be "peak season" renders the EIR's analysis defective.

348. The EIR focuses on HABs' effects on drinking water quality and fails to recognize potentially broad effects of HABs on ecosystems, wild and domestic animals, human health, and recreational activities.

349. Because the EIR makes the unsupported determination that Project water quality impacts from HABs would be less than significant (WQ-14, FEIR, p. 9-183), the EIR impermissibly fails to propose any mitigation for these impacts.

350. The EIR failed to analyze how the Project would meet the flow and other requirements in the SWRCB's WQCP Update for the San Joaquin River (Phase I) adopted in 2018, which is currently being implemented. The EIR failed to address the ability of the Project to meet the flow requirements in the or that may appear in the SWRCB's WQCP Update for the

Sacramento River (Phase II). With the pending development and implementation of these WQCP Updates, DWR may have entirely different obligations to maintain water quality objectives from what is presently required under D-1641. Violation of those requirements would constitute a significant environmental impact requiring CEQA disclosure and potentially mitigation.

351. The EIR fails to adequately disclose or analyze Project water quality impacts due to increased contaminants generally. The EIR concludes that impacts for a number of water contaminants-including selenium, nutrients, total suspended solids, and pesticides-are not significant, or are less than significant, without comparing expected Project levels to existing levels, or protective standards for these contaminants.

352. The EIR fails to adequately analyze potential impacts due to increased methylmercury and other carcinogens in Delta water supplies. The EIR fails to disclose or analyze how the Project's water quality impacts may impair the use of Public Trust resources for protected Public Trust uses such as swimming fishing, and boating.

353. The EIR fails to disclose the 1959 DPA's mandate that exports from the Delta be taken from the "common pool" within the Delta, and not from the uppermost northern tip of the Delta as enabled by the new Tunnel. The common pool has ensured that the state and federal government, as well as the millions of people who receive Delta export water and the owners and operators of hundreds of thousands of acres of farmland that utilize such water, have a direct stake in ensuring that the Delta water quality always remains adequately fresh. The Project's Tunnel, which would bypass the Delta by design, is intended to precisely (and unlawfully) circumvent the common pool, which the EIR fails to disclose.

354. The EIR fails to adequately discuss, analyze and mitigate the environmental impacts caused by circumvention of the common pool within the Delta. Such impacts include, but are not limited to, impacts to Delta water quality and flow from the bypass of freshwater through the Project's Tunnel that would have otherwise flowed through the Delta towards the existing South Delta export pumps in the absence of the tunnels during events such as the following: (1) declared drought emergencies leading to suspension of Delta water quality and

flow requirements, such as those that occur as a result of Temporary Urgency Change Petitions ("TUCPs") issued in the critically dry years of 2014 and 2015, as well as well as the years of 2016, 2021 and 2022, thereby enabling the bypass of such freshwater flows in lieu of utilizing those flows to maintain Delta water quality for the existing South Delta export pumps; (2) individual or widespread levee failures which draw sea water into the Delta, thereby motivating DWR to divert available freshwater through the tunnel rather than allowing that water to flow through the Delta to freshen and restore Delta water quality for the benefit of DWR's South Delta export pumps; and (3) sea level rise, which may similarly motivate DWR to temporarily or otherwise abandon its South Delta export pumps and, hence, abandon the preservation and restoration of water quality within the Delta, in favor of diverting the available freshwater through the Tunnel. The EIR fails to adequately examine, and compare and contrast, how Delta water quality, and all other aspects of the environment, would fare with and without the Tunnel in such events, and the EIR fails to adequately discuss, and DWR fails to ultimately adopt, mitigation measures that would mitigate the environmental impacts that would result from the use of the Tunnel in such events.

355. The EIR fails to consider state and federal anti-degradation policies and neglects to analyze whether the Project complies with those policies. In USEPA comments on the 2022 EIS, the USEPA identified that Project may lead to the significant degradation of waters of the United States; discharge of dredged or fill material may not be permitted which causes or contributes to significant degradation of waters of the United States, including significantly adverse effects on human health or welfare; life stages of aquatic life and other wildlife; aquatic ecosystem diversity, productivity, or stability; and recreational, aesthetic, and economic values. (40 CFR 230.10, subd. (c).) The Delta is already experiencing degraded conditions due to insufficient inflow, increased surface water temperatures, invasive animal and plant species, HABs, and sea level rise. The DEIR indicates that the proposed Project would not ameliorate any of these stressors and is likely to exacerbate many of them. In particular, secondary effects of the discharge on flow conditions downstream of the proposed diversions are likely to result from decreased Sacramento River flows, with multiple potential effects including reduced

primary production (DEIR, p. 12-171 to 174), reduced through-Delta survival of migratory fish (e.g., DEIR pp. 12-121, 12-152), and degraded habitat conditions in receiving waters due to decreased turbidity and increased salinity. The DEIR discusses the ongoing difficulties of highly invasive plants such as water hyacinth in the Delta but does not include measures that would be implemented to reduce the spread and introduction of invasive species within the proposed project area. HABs are also significant source of degradation of waters of the United States in the Delta affecting aquatic life and recreational uses, which the EIR fails to adequately analyze.

356. The EIR fails to adequately mitigate both Project-level and cumulative water quality impacts.

357. The EIR does not provide specific, formulated, enforceable mitigation for water quality impacts.

358. System operators do have some flexibility to respond to unique or anomalous events that may occur in the Delta. However, the degradation of water quality shown in Project modeling results not from a unique or anomalous event, but, rather, from the proposed operations of the Project. Mitigation and Environmental Commitments in the EIR rely on changes in Project operations to correct for anticipated water quality degradation. Prior to certification of the EIR, a Project operations plan was required. Deferring future operations to a future plan is not a proper mitigation.

359. DWR's determination that all water quality impacts other than WQ-6 would be less than significant or would be mitigated to less than significant levels is not supported by substantial evidence.

360. The water quality impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

361. The EIR fails to consider the additive and synergistic impacts of pollutants mixing together as a result of the project. Constituents present together in water supplies can combine to create adverse effects on water quality, yet the EIR includes only two brief sentences on how

additive and synergistic interactions of constituents affect wildlife. The issue is ignored with respect to impacts on water supply use.

362. DWR's failure to adequately analyze the Project-level water quality impacts rendered DWR's attempted cumulative impact analysis inadequate.

363. DWR's failure to adequately analyze the Project-level water quality impacts rendered DWR's attempted cumulative impact analysis inadequate.

Geology and Seismicity Impacts – EIR Chapter 10

364. Objectives of the Project include reducing perceived seismic risks to SWP water supplies. Yet, the EIR includes an inadequate disclosure and analysis of geology and seismicity impacts. In addition, seismic hazards in the Delta are characterized differently in Chapters 10 than in other EIR chapters (1 and 7), precluding informed decisionmaking and public review.

365. The EIR fails to adequately disclose and analyze Project seismicity impacts as a result of the fact that it relies on extensive geotechnical analyses that have not yet occurred. The EIR claims that this analysis will occur prior to construction, but sufficient evidence has not been gathered to support the EIR's conclusion that geology and soils impacts will be less than significant. Nor is effective mitigation of potential impacts possible without this analysis.

366. The EIR fails to adequately disclose or analyze Project-generated seismic impacts resulting from levees being compromised or weakened due to Project construction, including the vibration of the tunnel boring machine, and therefore becoming more vulnerable to a seismic event that may occur during construction.

367. The EIR fails to adequately disclose and analyze how the intensive, long-term dewatering and tunnel boring operations, and other construction and implementation activities associated with the Project, may destabilize soils, farms and levees, resulting in sinkholes, subsidence, levee failures and other impacts within and outside of the Project footprint.

368. The limited analysis in the EIR is based on very generalized soils data. The limited data that has been collected indicate that underlying the surficial peats, clays, sands and silts, a majority of the soil from the ground surface to proposed Tunnel depth consists of sands, coarse sands and gravel; these non-cohesive soils tend to consolidate when vibrated. The EIR

fails to analyze how the constant vibration from tunnel boring machines ("TBM's") could consolidate these soils, and how this consolidation could result in surface as settlement.

369. The EIR fails to analyze settlement impacts that have the potential to damage buildings, levees and other structures along the path of the Tunnel. For instance, the Tunnel would pass near and under the community of Hood and there is a potential for this to damage buildings in Hood along with other buildings along the Tunnel pathway could also be damaged.

370. The FEIR's reference to possibly changing TBM operations and/or using ground improvement methods, such as soil grouting, to reduce the settlement potential are inadequate to address potential settlement impacts. Similarly, the Project-specific instrumentation monitoring program identified in Impact Geo-4 would occur after the fact and would not disclose the potential for settlement prior to the impact occurring; in addition, no performance standard or "allowable criteria" is identified regarding how negative settlement impacts would be identified, avoided or mitigated.

371. In addition, with 45 miles of tunneling proposed, soils will vary over the length of the tunneling Project area. An adequate evaluation of potential impacts cannot be performed until soil borings along the entire length of tunneling are compiled.

372. Some levees along the tunnel alignment have less than 1-foot of freeboard above the 100-year flood. Therefore, any settlement would impact levees that may be deficient in freeboard and static stability. The EIR failed to analyze the location and extent of settlement beneath levees.

373. The EIR fails to adequately mitigate Project-level and cumulative geology and seismicity impacts.

374. DWR's determination that all geology and seismicity impacts would be mitigated to less than significant levels is not supported by substantial evidence.

375. The geology and seismicity impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

376. DWR's failure to adequately analyze the Project-level geology and seismicity impacts renders DWR's attempted cumulative impact analysis inadequate.

Soils Impacts – EIR Chapter 11

377. The magnitude of the Project would include over 3,000 acres of soil disturbance, and the operation of the Project changes Delta hydrology in a manner that would fundamentally affect the soils in the Delta.

378. The EIR fails to include adequate disclosure or analysis of a number of soils impacts, examples of which are provided below.

379. The EIR fails to fully disclose the characteristics of the tunnel muck that would be generated by the Project. The EIR concedes that DWR would perform soil borings to determine strength, compressibility composition, and other characteristics in the future, but this information is not included in the EIR. As a result, it is impossible to predict how much of the muck may be reusable, and for what purposes.

380. Because the EIR fails to predict how much of the muck would be reusable, is also impossible to disclose or analyze impacts related to muck disposal. The EIR failed to disclose or analyze how Project tunnel muck disposal may alter the natural soil profiles and horizons and change soil type, drainage, range of usage and productivity of the soil. The EIR also fails to disclose the impacts associated with the reuse of tunnel muck, which may require trucking to various locations, and conditioning it prior to use. Reuse may also generate habitat impacts and changed flood risks.

381. The EIR did not adequately analyze how saltwater intrusion into the Delta as a result of the Project, and subsequent application of water to lands via irrigation, as well as natural seepage, will affect the salinity of soil and its agricultural productivity.

382. The EIR fails to adequately disclose and analyze Project-related soil erosion of levees, which can result in decreased levee stability and increased seepage.

383. The EIR fails to adequately mitigate both Project-level and cumulative soils impacts.

384. DWR's determination that all soils impacts would be mitigated to less than significant levels is not supported by substantial evidence.

385. The soils impact of the Project, in combination with the impacts of past, present, and reasonably foreseeable future projects, are cumulatively significant.

386. DWR's failure to adequately analyze the Project-level soils impacts renders DWR's attempted cumulative impacts analysis inadequate.

Fish and Aquatic Resources Impacts – EIR Chapter 12

387. The Project would interfere with the main migratory route for several listed fish species and would increase take of fish species, including salmon, steelhead, sturgeon and lamprey, and potentially Delta smelt and longfin smelt. The Project would harm aquatic resources both directly (e.g., mechanical damage, impingement, predation at the NDDs) and indirectly (reductions in flow leading to water quality impairment, increased formation of HABs and other changes), among other impacts.

388. While the EIR attempts to discuss some 20 impacts on fish and aquatic resources, the EIR includes an inadequate disclosure and analysis of Project impacts to fish and aquatic resources during both Project construction and operation.

389. EIR fails to adequately assess how Project impacts would affect the availability and suitability of fisheries both upstream and downstream of the Project.

390. The EIR fails to adequately analyze whether development of experimental shallow wetland habitat is detrimental to salmon and other anadromous fish due to stranding and predation due to the spreading of invasive weeds and other localized impacts.

391. The four Chinook Salmon runs and the various populations of Steelhead would all have to pass by the proposed intakes to complete their life cycles. The proposed NDDs include experimental cylindrical fish screens that are still in conceptual design. These screens would kill fish by direct smashing against the screen, and indirectly harm fish by entraining massive amounts of nutrients in a system that is already nutrient-deprived. There is no evidence that these experimental screens would function properly at this scale in the proposed locations, which are subject to tidal influence.

392. The EIR fails to disclose and analyze how reverse tidal flows caused by the Project would affect fish populations by bringing them repeatedly past the same massive fish screens.

393. The EIR fails to analyze how HABs exacerbated by the Project may affect fish populations, and more generally, the aquatic food web.

394. The EIR finds that impacts to CESA-listed fish species will be less than significant, despite the fact that Project construction and operations could trap or otherwise block fish passage and fails to recognize that CESA continues to be violated at the South Delta pumps. (See *Watershed Enforcers v. Dept. of Water Resources* (2010) 185 Cal.App.4th 969, 977.)

395. The EIR's reliance on thresholds of significance for assessing potential significance the alternatives' operations effects of a change in a modeled outcome of 5% or greater relative to existing conditions, based on "best professional judgment" of EIR authors of aquatic resources chapter, is unsupported.

396. The Delta is currently sediment starved. According to Table 21-8, Alternative 5 would collect and eventually dispose of 10,098 cubic yards per year of sediment. (DEIR, p. 21-45.) The north Delta intakes would entrain sediment, with annual mean entrainment estimates of this suspended sediment otherwise destined to move downstream in the Sacramento River ranging from 2% to 8%, and an overall total during the 1922–2015 CalSim modeling period of 4% – 5%. (DEIR, Table 12-97, p. 12-165). This sediment would have otherwise been suspended and provided visual cover for fish such as the Delta smelt. (*Ibid*.) Decreased sediment also increases water clarity, which can help create conditions that increase the incidence of HABs. (DEIR, p. 9E-7.) The EIR fails to adequately analyze the impact on aquatic resources and water quality of removal of this volume of sediment from the North Delta.

397. The EIR fails to adequately analyze impacts to fish, including Delta smelt and longfin smelt, from the Project's removal of a large quantity of sediment from the Delta, making them more vulnerable to predators. Sediment impacts to existing wetlands from increased scour are also undisclosed.

398. The EIR, in analyzing potential impacts to longfin smelt, ignores how variation in population size over time affects long-term population survival.

399. The EIR fails to adequately disclose and analyze how increased nutrient and contaminant levels caused by the Project would affect bioaccumulation of those contaminants in fish, and the related impacts to reproductive success and embryo and fry mortality.

400. The EIR fails to adequately analyze how operating Project intakes at an area with a larger fish population than the area surrounding the existing South Delta intakes, as well as a documented predator population, would affect loss of fish, eggs, and larvae.

401. The EIR fails to adequately assess whether the Project complies with the flow criteria or biological objectives contained in the DFW document, "Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta Prepared pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009."

402. The EIR fails to adequately analyze Project impacts to aquatic species due to Project-related increases in methylmercury. The EIR erroneously determines that these increases will not have a significant impact because they will allegedly not be as significant as the increases generated by alternatives in the DEIR. Impacts must be measured against the baseline conditions, not the impacts generated by previously proposed alternatives. Further, the EIR appears to rely on the fact that the increased accumulation of mercury in fish tissue is not quantifiable to determine that the impact is less than significant.

403. The EIR fails to disclose and analyze how Project-related changes to operations of reservoirs may affect Delta fisheries. The EIR fails to adequately mitigate both Project-level and cumulative impacts to fish and aquatic resources.

404. The EIR proposes no mitigation that would address any impacts to native and listed fish that may be caused by increased cyanobacteria proliferation.

405. The EIR proposes to use an experimental design for the intake fish screens that has not been shown to be effective. Though the EIR contends that the fish screen has a responsive design, it includes no dynamic plan to change screen operations based on the presence of fish.

The only available response is to stop operating the intake pumps, which would take significant time.

406. The proposed locations of the NDDs, both downstream of outside bends of the river, would be expected to be where fish tend to be most abundant. The diversions would also hold the screens 12 feet away from the bank where out-migrating young salmonids tend to hold during daylight hours and migrate during nighttime hours. The size, configuration, and placement of the NDDs are likely to heighten predation on out-migrating young salmon.

407. The EIR's calculates the survival of juvenile winter-run salmon through the Delta decreasing by 1 -10% as a result of the project (DEIR, 12-4) likely underestimates take. A higher percentage of young salmon will likely be exposed to significantly greater predation rates. The EIR estimates do not appear to account for additional mortality from predation. In addition, the EIR fails to account for the effects of increases in flow reversals in the Sacramento River below Georgiana Slough and increases in the proportion of flow entering the interior Delta through Georgiana Slough on fish. Increases in water temperature as a result of reduced flows from the Project are also inadequately disclosed.

408. The EIR includes inadequate mitigation to reduce impacts to migrating salmon and other fish to less than significant levels. For instance, more pulse flow protection periods than the two allotted in the EIR are likely necessary to protect the four Chinook Salmon runs to the less than significant impact assumed in the DEIR. The duration of individual pulse protection could be as little as 3 days total, once per year. Such short pulse protection may not provide a sufficient ecological cue for migration, phenology, and other ecological parameters.

409. References in the EIR to operations to protect fisheries, referring to "real-time operational processes" and "Operations Criteria Concepts" and future studies (DEIR, 3-156 – 157) are inadequate to mitigate fisheries impacts to less than significant levels. Feasible mitigation would include, for example: shutting down one intake or the other, reducing both by various amounts, shifting timing of diversion in regard to daylight, tide or both, reducing diversions every other day or every three days so that some outmigrants are minimally affected.

410. The EIR fails to include an adequate monitoring strategy to measure and integrate sweeping velocities at the fish screens into real-time operational decision making, and the EIR allows relaxation of sweeping velocities without adequate justification and oversight by regulatory agencies.

411. The mitigation identified to reduce impacts to migrating and other fish fails to include performance standards as required by CEQA. Rather, measures such as prioritization of diversion to daylight hours of actual operations would be implemented "to the extent possible."

412. The EIR fails to discuss the uncertainty of mitigation effectiveness, despite ample scientific evidence that mitigation is often less than fully effective at replacing lost ecological structures and functions. The EIR's treatment of mitigation outcomes as certain to offset losses is inconsistent with the available scientific evidence and obscures the equivalency of species losses and gains.

413. To the extent adaptive management is relied upon to reduce impacts to fisheries, development of those plans has been unlawfully deferred. The EIR fails to provide a basic summary of adaptive management goals, measures, monitoring, and process to evaluate the robustness of an adaptive management framework.

414. The EIR's use of a monthly timestep in the EIR is inadequate to understand potential impacts to fisheries; use of a daily approach is needed to understand fisheries and related impacts. Monthly values smooth the data and reduce the highs and lows of daily changes and may obscure important impacts resulting from short-term fluctuations.

415. The EIR does not appear to have fully assessed potential impacts of reducing high flows on aquatic habitat. Ecological consequences from the siphoning of ~30% or more of some river flows into a Tunnel throughout the year is a large modification and the EIR fails to provide evidence that the proposed mitigation would compensate for this modification to the aquatic systems. The high flows needed as cues for migration, reproduction, and other life stages and are not replaced through the proposed mitigation in the EIR.

416. The DEIR failed to include any discussion of Project impacts to sea lions, which are known to occur within the Project study area and are a covered species under the Marine

Mammal Protection Act. Construction of the Tunnel would create underwater noise and include other activities that would harass sea lions in violation of federal law and require an incidental harassment permit from NOAA Fisheries. DWR's late attempt to include a discussion of impacts to sea lions in the FEIR was inadequate.

417. The EIR does not adequately mitigate impacts to fish due to pile driving and other noise-generating activities because it fails to integrate feasible mitigation measures, such as noise dampening bubble curtains and fish avoidance measures.

418. The EIR fails to analyze the potential to reduce take of special status fish species at the South Delta pumps by imposing mitigation measures or adopting alternatives that would improve those facilities as required by FWS and NOAA Fisheries Biological Opinions.

419. DWR's determination that all fish and aquatic resources impacts would be mitigated to less than significant levels are not supported by substantial evidence.

420. No comprehensive cumulative effects analysis is presented for Chapter 12. The EIR fails to consider cumulative impacts occurring among the species (community-scale impacts) from incremental flow changes.

421. The fish and aquatic resources impacts of the Project, in combination with the impacts of past, present, and reasonably foreseeable future projects, are cumulatively significant.

422. DWR's failure to adequately analyze the Project-level fish and aquatic resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

Terrestrial and Biological Resources Impacts – EIR Chapter 13

423. The Project would cause widespread disruption of terrestrial wildlife throughout the Project area during both construction and operation of the Project. While the EIR implicitly acknowledges the scale of biological impacts in recognizing some 57 potential impacts on biological resources, the EIR glosses over the profound impacts the Project would have on the Delta's sensitive biological resources.

424. The EIR includes an inadequate disclosure and analysis of the Project's terrestrial and biological resources impacts during both Project construction and operation.

425. The DEIR also fails to analyze and disclose the cumulative effects at the community/ecosystem levels as well as impacts on primary and secondary productivity, decomposition and biogeochemical processes, and environmental resiliency associated with water moving down the Sacramento River rather than being diverted into the Tunnel. The EIR fails to include a quantitative analysis of how the Project might affect the ability of other plans, policies, and programs to improve conditions for individual species. The EIR also fails to consider cumulative impacts occurring among the species (community-scale impacts) from incremental changes, which are potentially considerable.

426. The EIR's analysis of Project effects on special-status plant and wildlife species fails to quantitatively consider the indirect effects of Project construction and operation.

427. The EIR fails to adequately assess whether the Project complies with the flow criteria or biological objectives contained in the DFW document, "Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta Prepared pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009."

428. The EIR fails to adequately disclose and analyze how increased traffic from the Project, which would run 24 hours at times would affect populations of special status and CESA-listed species, including the giant garter snake and other wildlife. Increased traffic would cause mortality to individuals, limit movement to meet daily and seasonal needs like feeding, sheltering, and reproduction; and cause species to avoid road-adjacent habitat due to increased noise levels. The EIR's assumption that there would be no other vehicles besides shuttles using certain roads, such as Hood Franklin Road in the Wildlife Refuge, is unsupported and the mitigation proposed is unenforceable. The EIR's failure to describe these impacts renders it deficient as an informational document.

429. The EIR fails to disclose Project impacts to biological resources due to emissions of hydrogen sulfide from tunnel muck, which can be fatal to wildlife. Although the EIR analyzed the odor impacts related to this gas, it performed no analysis of the impacts to wildlife that may occur at various concentrations of the gas.

430. The EIR fails to disclose Project impacts to biological resources from erosion in wildlife habitat, damaging foraging and rearing habitat for the giant garter snake and other species.

431. The EIR impermissibly relies on California Natural Diversity Data Base ("CNDDB") records to support absence determinations and/or to screen out species from characterization of a site's wildlife community. As a positive sighting database, it does not predict where species may be found, and the lack of recent sightings of a species in the CNDDB does not support an absence determination.

432. The EIR fails to adequately disclose and analyze impacts to the greater sandhill crane, a Fully Protected Species under the Fish and Game Code, as well as CESA-listed birds such as the tricolored blackbird. Among the Project components likely to create impacts to the greater sandhill crane are loss of a significant portion of the last remaining crane habitat in the region both during Project construction and permanently; avian mortality due to collisions with Project-serving transmission lines; impairment of normal crane activities due to increased noise levels and stress. The EIR fails to adequately analyze these impacts.

433. The EIR fails to adequately disclose and analyze impacts to species of bumble bees that are candidates for listing under the California Endangered Species Act. The crotch's bumble bee (*Bombus crotchii*) is known to occur in the Project area; the FEIR noted occurrences recorded in the CNDDB. Because there is a reasonable likelihood, not refuted by site specific surveys, mitigation was required to be included in the EIR.

434. The FEIR impermissibly removed consideration of impacts of the Project on the western bumble bee, despite the fact that there was an occurrence record in the CNDDB.

435. The EIR fails to include adequate mitigation to avoid impacts to candidate bumble bee species and the Monarch butterfly.

436. The EIR fails to adequately analyze Project impacts to terrestrial and biological resources due to the loss of wetlands habitat. Impact BIO-51 in the EIR contends that impacts from the fill of 61 acres of wetlands would be reduced by implementing the Compensatory Mitigation Plan, which is inadequately defined and assumed to be successful.

437. The EIR fails to disclose impacts associated with the spread of invasive species with potentially adverse effects on the remaining natural communities in the Project area from Project construction. The EIR fails to disclose the Project's impacts to terrestrial and biological resources due to the loss of agricultural and cultivated habitat. The Project would directly destroy 3,788 acres of farmland and temporarily impact 2,340 acres, totaling 6,128 acres of impacted cultivated land. The EIR fails to describe specifically how these lands would be impacted and the resulting effect on native species that rely on cultivated lands habitat. This lack of disclosure constitutes a failure to proceed in a manner required by law.

438. The EIR fails to adequately mitigate both Project-level and cumulative terrestrial and biological resources impacts.

439. The EIR fails to provide adequate evidence supporting less than significant impact determinations (with no mitigation) for numerous biological impacts, including Impacts BIO-6, 15, 17, 19, 43, 49, 50, 52 and 55. Thus, these less than significant impact determinations for these impacts are unsupported and erroneous.

440. The Project purports to create thousands of acres of habitat through conservation easements that would allegedly protect cultivated lands and also mitigate impacts to biological resources. Use of conservation easements is not adequate mitigation because these lands already provide habitat benefits and development in the Delta is already limited by local and state land use restrictions.

441. The EIR fails to adequately describe how the Compensator Mitigation Plan and Environmental Commitments would reduce the Project's terrestrial and biological resources terrestrial impacts to less than significant levels.

442. Project mitigation for destruction of giant garter snake habitat is inadequate. The EIR proposes to undertake habitat restoration after the destruction of habitat. This does not provide displaced giant garter snake refuge in the interim between habitat destruction and restoration. In addition, the current existing habitat provides a corridor for species movement; destruction of any portion of this corridor will strand some population segments and potentially impair the species' genetic integrity.

443. The EIR fails to analyze Project impacts to greater sandhill cranes, including but not limited to impacts associated with disturbance of roost site. The EIR's proposal to conduct surveys on a yearly basis does not alleviate the problem that the impacts from new or unexpected sites were not analyzed in the EIR. DWR's failure to consider impacts beyond three miles from roost sites and the reliance on inaccurate and outdated roost site data, makes the EIR's claim that impacts greater sandhill cranes will be fully avoided is unsupported.

444. The EIR fails to avoid/ and or adequately mitigate impacts to the greater sandhill crane, among other flaws, by only undergrounding of transmission lines, avoiding disturbances such as nighttime lighting, construction noise and truck trips in the vicinity of crane use areas (roosting and foraging), where DWR determines it is "feasible".

445. DWR's determination that undergrounding some new lines, and or co-locating new lines with existing lines, and installing flight diverters on some existing power lines would reduce impacts to greater sandhill cranes and the white-tailed kite (among other birds) to less than significant and meet a "zero take" standard for fully protected species is unsupported.

446. The EIR fails to disclose the impacts of the Project on wildlife corridors in the Project area, including but not limited to high-value habitat connectivity areas. The EIR fails to disclose how Project alignment and infrastructure would significantly impair or sever the functional habitat and its connectivity between the Wildlife Refuge and Cosumnes River Preserve, among other flaws.

447. DWR's determination that all biological resources impacts would be mitigated to less than significant levels is not supported by substantial evidence.

448. The terrestrial and biological resources impacts of the Project, in combination with the impacts of past, present, and reasonably foreseeable future projects, are cumulatively significant.

449. DWR's failure to adequately analyze the Project-level terrestrial and biological resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

450. The EIR fails to integrate a discussion of how other agencies are expected to exercise their permitting authority with respect to terrestrial biological resources. Lead agencies

must consult with other agencies that have authority over sensitive natural resources within the project area. (*Banning Ranch, supra,* 2 Cal.5th 918 at 936.) By not integrating and disclosing these other agency actions, an EIR fails as an informational document.

Land Use Impacts – EIR Chapter 14

451. The Project would fundamentally alter land uses in the Delta, contrary to the careful planning of Delta counties and state and local agencies charged with Delta land use planning.

452. The EIR fails to disclose or analyze all Project impacts to land use. For example, it fails to disclose and analyze conversion of land to restoration land uses in Solano County, as well as land use changes resulting from the temporary and permanent footprints of disturbance associated with construction of project water conveyance and related facilities and buildout of compensatory mitigation habitat sites.

453. The EIR fails to adequately analyze the Project's consistency with the 2009 DRA, which requires that 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, § 29702, subd. (a).)

454. The EIR fails to disclose that the Project is inconsistent with the 2009 DRA in a number of ways, including, but not limited to, the fact that it promotes increased reliance on the Delta, impairs Delta water quality; impairs agricultural operations during Project construction; damages agricultural infrastructure; fails to protect the Delta as a place, and fails to use best available science in Delta water management.

455. DWR's claim that it is not obligated to protect the Delta as a place beyond mitigating significant impacts pursuant to CEQA is incorrect. DWR failed to analyze and mitigate the Project's impacts on land use that relate to DWR's obligation to protect the Delta as a place.

456. Among other flaws, the EIR fails to disclose and analyze conversion of land to restoration land uses in Solano County, as well as land use changes resulting from the temporary

and permanent footprints of disturbance associated with construction of Project water conveyance and related facilities and buildout of compensatory mitigation habitat sites.

457. The EIR fails to address American River Parkway Plan land use policies for potentially impacted land use areas.

458. The EIR fails to disclose how the Project would be inconsistent with Delta Plan Policy DP P2, Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats. This policy requires that water management facilities respect local land use and be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans. The Project is inconsistent with this policy due to the Project's potential to result in increased regulatory requirements and substantial physical modifications to existing land uses in the Delta. For these and other reasons, the EIR fails to demonstrate the Project's consistency with Delta Plan Policy DP P2 to show that the Project was sited to avoid or reduce conflicts with existing land uses.

459. The EIR provides an inadequate analysis of potentially significant impacts due to Project construction and mitigation conflicting with ongoing habitat conservation plans, general plans and other local land use requirements within the Project study and fails to propose or require adequate mitigation for these impacts.

460. The EIR fails to adequately mitigate Project-level and cumulative impacts to land use.

461. The EIR relies on mitigation measures and environmental commitments that may themselves conflict with land use policies, but the EIR fails to disclose adequate information about the nature and location of these measures to determine what these impacts may be. For instance, the Project includes components that have not yet been designed or sited. Without knowing how and where these components would be constructed, the EIR cannot properly disclose conflicts with existing land use designations.

462. DWR's determination that all impacts to land use would be less than significant levels is not supported by substantial evidence.

463. Project impacts to land use, in combination with the impacts of past, present, and reasonably foreseeable future projects, are cumulatively significant.

464. DWR's failure to adequately analyze the Project-level land use resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

Agricultural Resources Impacts – EIR Chapter 15

465. While Project proponents may argue that agriculture in other areas of the state could potentially benefit from the Project, the Project only hurts Delta agriculture. The Delta includes the largest contiguous acreage of Prime Farmland in the state. The Project would directly destroy over 3,787.9 acres of farmland, of which 2,154.2 acres are "important" (prime farmland, farmland of statewide importance, unique farmland, farmland of local importance), and 1,217.8 acres are under Williamson Act or Farmland Security Zone contracts, and indirectly impact thousands of additional acres of currently productive and sustainable Delta agricultural land by destroying or degrading local water supplies, changing water levels such that local supplies become inaccessible, interfering with agricultural operations, and blocking access to agricultural markets—among other negative impacts.

466. The EIR includes an inadequate disclosure and analysis of both the Project's construction and operational impacts to agricultural resources.

467. The Agricultural Impacts chapter fails to disclose either the total acreage of agricultural land that will suffer permanent conversion as a result of the Project, nor does it indicate how many acres will suffer indirect Project impacts.

468. Similarly, the EIR fails to disclose the location of habitat mitigation lands included in the Compensatory Mitigation Plan and how that habitat mitigation would affect the ongoing productivity of agricultural lands. The EIR proposes to layer or "stack" habitat restrictions on top of agricultural conservation easements under the guise of mitigating habitat and farmland losses using the same conservation properties. This approach improperly compromises the efficacy of agricultural mitigation by reducing the long-term agricultural viability of affected parcels.

469. The EIR fails to meaningfully analyze the impacts associated with the thousands of acres of farmland that would be lost or made less productive, on either a temporary or permanent basis, due to Project construction and operation. The EIR fails to acknowledge impacts of both full and partial takings of farms for Project purposes.

470. The EIR fails to analyze the effect on Delta agriculture of the recognized significant and unavoidable impact from increased bird airstrikes under Impact HAZ-5 from restoration. Among other impacts, bird airstrikes would interfere with farmers' ability to conduct necessary aerial spraying.

471. The EIR fails to adequately analyze how Project construction's interference with local surface and groundwater supplies would affect Delta agriculture and fails to account for the fact that even a "temporary" interference can disrupt an entire crop season and/or destroy permanent crops.

472. The EIR fails to adequately analyze how Project-generated changes in groundwater elevations—either by lowering them with groundwater pumping for construction dewatering or cutting off the seepage through cutoff walls at the intakes, or at shafts, etc. as the Project proposes—would have both direct and indirect impacts on Delta agriculture.

473. The EIR fails to adequately disclose and analyze localized impacts to drainage and irrigation caused by the proposed tunnel muck disposal areas, including but not limited to, those proposed within Reclamation District 1002 (Glannvale Tract) and Reclamation District 684 (Lower Roberts Island), as well as impacts to the adjacent farm operations caused by fugitive dust and other impacts from the muck disposal sites.

474. The EIR assumption that multiyear averages of salinity impacts can be compared to water quality standards to determine potential Project impacts constitutes legal error because it ignores actual effects on agricultural productivity from increased salinity in irrigation water. Compliance with standards is a false and deficient surrogate for presenting and analyzing adverse impacts on agriculture.

475. The DSM2 model relied on in the EIR has flaws that make its results unusable for analyzing Project impacts on Delta agriculture, as described in the *Water Quality – Chapter 9* section above.

476. The modeling completed for water quality impacts assumes without substantial evidence that the Project will operate in compliance with water quality standards when the existing SWP and CVP diversions routinely violate these standards, including, but not limited to, the SWRCB's South Delta salinity standards in the WQCP Update (Phase I). For instance, the 0.7 EC standards for the interior southern Delta compliance location of Old River at Tracy Road Bridge were violated every day of the April through August 2022 period. The standard was also violated for all but one day in December 2021, and certain days in January and February of 2022.

477. The EIR fails to disclose or analyze how potential Project-related increases in salinity of surface water and soils would impact agricultural resources from salt loading of soils in the Delta. The EIR fails to address the special vulnerabilities of Delta agriculture to salt loading due to the inability of many areas of the Delta to manage salt loading through typical means such as water application/leaching.

478. The EIR fails to adequately disclose or analyze how Project impacts to water reliability would affect the production of agricultural land and the quality of crops produced.

479. The EIR acknowledges the importance of intricate Delta drainage systems, which manage the interaction of surface water and groundwater through collaborative actions at the farm and local scale, to agriculture in the Project area. Yet, the EIR fails to adequately disclose and analyze how the systems work; nor does it describe how Project disruption of these systems could impact Delta agriculture in either the immediate or broader Project area.

480. The EIR fails to analyze how the anticipated one-foot decrease in North Delta water levels would impact local agriculture, as this water level decline would interfere with irrigating through existing water diversion systems designed for existing flow and water level ranges.

481. The EIR fails to adequately analyze how the Project's impacts to water quality, by promoting increased nutrient levels and therefore higher levels of toxic and non-toxic organisms, including HABs and hyacinth, may impact Delta agriculture. Some organisms may decrease agricultural intake efficiency, while others can harm livestock or diminish crop economic values.

482. The EIR fails to adequately analyze or disclose how Project interference with farm access and infrastructure over the 14-year or longer construction period will impact Delta agricultural resources. The lack of disclosure constitutes a failure to proceed in a manner required by law.

483. DWR's claim that it is not obligated to protect the Delta as a place beyond mitigating significant impacts pursuant to CEQA is incorrect. DWR failed to analyze and mitigate the Project's impacts on agriculture that relate to DWR's obligation to protect the Delta as a place.

484. The EIR fails to adequately mitigate both Project-level and cumulative impacts to agricultural resources.

The EIR does not propose adequate mitigation for Project impacts to agriculture related to Delta drainage systems.

485. The EIR fails to adequately analyze potential impacts to agriculture created by the "no spray" zones that the Project's open water restoration would create.

486. The EIR also improperly defers analysis and formulation of mitigation measures. For example: AG-l *"develop an Agricultural Lands Stewardship Plan (ALSP) to maintain agricultural productivity and mitigate for loss of Important Farmland and land subject to Williamson Act contracts or in Farmland Security Zones"* remains the primary mitigation measure for agricultural impacts. Yet the ALSP is merely a conceptual idea and does nothing to mitigate the very real impacts of the Project on Delta farms. The ALSP lacks any performance standards and defers determination of the feasibility of mitigation to a later, undefined date. Mitigation measure AG-l is inadequate because the ALSP is not defined, not feasible, enforceable, or funded.

487. Mitigation Measure AG-1 also contemplates mitigating the conversion of agricultural land via conservation easements. Mitigation in the form of conservation easements, however, would not help mitigate the severe Project impacts to Delta agriculture unless carried out in a manner consistent with strict standards (including those set forth in many county farmland conservation programs) relating to the soil quality, water resources, development potential, and similar attributes relating to the suitability of conservation lands. Mitigation Measure AG-1 does not incorporate any clear standards or otherwise assure that conservation easements will effectively reduce the impacts of Project-related conversions of farmland.

488. Mitigation Measure AG-1 does not comport with CEQA's mandate that mitigation measures be identified for each significant effect described in an EIR. It fails to consider, for example, that because the Williamson Act affords an additional layer of preservation protection beyond the underlying Important Farmland designation, application of the same mitigation measure, MM AG-1, to both Impact AG-1 and Impact AG-2 is improper. A more rigorous mitigation measure must be applied to impacts that are more severe.

489. The EIR fails to analyze the Project's cumulative impacts to agriculture. There are impacts in nearly a dozen other resource areas that will also create negative impacts (e.g., surface water, groundwater, water quality, land use). To comport with CEQA's requirement of facilitating informed decision-making, the EIR must analyze the compounding effects of these impacts on agriculture.

490. DWR's determination that all impacts to agricultural resources other than AG-1 through AG-4 would be mitigated to less than significant levels is not supported by substantial evidence.

491. Project impacts to agricultural resources, in combination with the impacts of past, present, and reasonably foreseeable future projects, are cumulatively significant.

492. DWR's failure to adequately analyze the Project-level agricultural resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

Recreation Impacts – EIR Chapter 16

493. The Delta currently provides a wide array of recreational opportunities. A survey of the Delta at every time of the year will find members of the public from locations near and far enjoying the unique scenery, culture and environment of the Delta. Disruption caused by the Project would alter the character of the Delta during both construction and operation, severely hindering the Delta's currently rich recreational offerings.

494. The EIR includes an inadequate disclosure and analysis of the Project's recreational impacts during both construction and operation.

495. The EIR fails to include adequate baseline information regarding existing uses of the Delta for recreation. DWR opted not to conduct a full survey of recreational users in 2020 and 2021 and only interviewed eight managers from different recreation providers within the Delta. The baseline used by the EIR also improperly obscured the significance of the Project's effects on recreation and access to recreational facilities by including unrealistic sea level rise projections that were not best available science. The flawed baseline diminished the significance of the Project's effects on recreation and access to recreational facilities.

496. The EIR fails to include visual renderings of the view of the Project's massive intakes and other Project components visible from the Sacramento River and a scenic highway to account for the degradation in views from individuals engaging in water-based recreation and tourism. The lack of disclosure of this impact precludes informed decisionmaking and public review.

497. The EIR fails to adequately assess the impact on recreational activities of increases in populations of mosquitoes and other vectors due to sedimentation basins, lagoons, and other temporary and permanent Project components.

498. The EIR fails to adequately disclose and analyze how Project operations may affect water quality and quantity, including through promoting HABs and affecting salinity, which will in turn cause impacts to recreational uses of the Delta such as swimming, fishing and boating. The EIRs use of an operational assumption that the new intakes would be rarely used

fails to fully disclose likely impacts on recreation due to higher use rates that would further reduce freshwater flows.

499. The EIR fails to adequately disclose and analyze how Project construction impacts would affect water-based recreation. The EIR proposes to concentrate construction activities during the spring and summer months, when people are most likely to use water recreation. The impacts to air quality, increased noise, and the dramatically increased traffic on the roads and in the rivers and channels of the Delta would interfere with use of Delta water bodies for recreation.

500. The EIR fails to disclose or analyze how the Project's impacts may impair the use of Public Trust resources for protected Public Trust recreational uses such as swimming fishing, and boating.

501. Delta recreation includes agritourism activities, such as farm and winery tours and special events. The EIR fails to disclose or analyze Project impacts to agritourism activities in Delta towns that will be in the path of Project construction for well more than a decade.

502. The EIR recognizes that aesthetic impacts of the project would be significant, but it failed to assess how these aesthetic changes would affect recreational opportunities in the Delta near the many areas that the Project impacts and changes would occur.

503. The Project's degradation in visual aesthetic qualities of Delta waterways and landscapes would reduce recreational enjoyment for many activities, but the EIR fails to analyze the effect of these visual aesthetic qualities on recreation.

504. There are over 25 wineries in the Delta, many of which have tasting rooms for visitors. There are over a dozen other Delta agritourism sites, including some located in Delta legacy towns such as Isleton, Locke, Hood, Walnut Grove, and Courtland. These towns would suffer Project impacts from increased traffic, diminished air quality, impacts to water supply and water quality, and noise pollution. The EIR fails to disclose how disturbances by the Project would negatively impact agritourism activities, which rely heavily on the Delta's natural setting to attract visitors.

505. The EIR fails to adequately disclose and analyze impacts to recreation by limiting and degrading opportunities for wildlife viewing. The public uses the Wildlife Refuge and other locations that would be exposed to Project construction and operational impacts for wildlife viewing. Recreational uses of areas impacted by Project construction and operation would be impaired by the Project.

506. DWR's claim that it is not obligated to protect the Delta as a place beyond mitigating significant impacts pursuant to CEQA is incorrect. DWR failed to analyze and mitigate the Project's impacts on recreation that relate to DWR's obligation to protect the Delta as a place.

507. The EIR fails to comply with Delta Plan Policy DP P2 (Cal. Code Regs., tit. 23, § 5011), which requires water management facilities, ecosystem restoration projects, and flood management infrastructure to be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible. Fishing, boating, swimming, hiking and other recreational uses people currently participate in are considered existing uses for purposes of DP P2. The EIR's analysis of recreation impacts does not consider local use conflicts as contemplated in DP P2, and only discloses that the Project would affect the region's ability to support the existing recreational visitors.

508. DWR's determination that impacts to recreational resources REC-2 and REC-3 would be mitigated to less than significant levels is not supported by substantial evidence.

509. Project impacts to recreational resources, in combination with the impacts of past, present, and reasonably foreseeable future projects, are cumulatively significant.

510. DWR's failure to adequately analyze the Project-level recreational resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

Socioeconomic Impacts – EIR Chapter 17

511. The EIR includes an inadequate disclosure and analysis of the Project's socioeconomic impacts during both Project construction and operation.

512. The EIR fails to support its conclusion that undesirable social effects would be "minimal" in communities closest to potential character changing effects of the Project and in those most heavily influenced by agricultural and recreational activities that the Project would disrupt.

513. The EIR is not supported by a cost estimate, benefit-cost analysis, financial feasibility analysis, cost-effectiveness analysis or any economic and financial analysis that would typically support the planning of a project of this scale.

514. The EIR fails to disclose that a majority of south-of-Delta agricultural water agencies have already opted out of the Project due to cost, including the entire CVP which represents nearly half of Delta water exports. Despite providing no evidence regarding cost-effectiveness, and the readily observable actions of agricultural water agencies that already opted out over cost-concerns, the EIR implausibly makes unsupported statements about all the benefits to agriculture south-of-the-Delta, claiming that the Project would reduce costs to agricultural suppliers in these regions.

515. The EIR's discussion of "Effects in the South-of-Delta SWP/CVP Export Service Areas" including the finding "ECON-7: Socioeconomic Effects in the South-of-Delta SWP/CVP Export Service Areas" is unsupported due to the lack of appropriate cost estimates, economic and financial analysis in addition to the contradictory evidence observed in the opt-out behavior of agricultural contractors served by the CVP.

516. The EIR fails to provide an adequate analysis of socioeconomic effects in the Delta, including effects on agriculture and communities as a result of disruptions during Project construction, as well as reduced water quality for beneficial uses during Project operation.

517. The socioeconomic impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

518. DWR's failure to adequately analyze Project-level socioeconomic impacts renders DWR's attempted cumulative impacts analysis inadequate.

Aesthetics and Visual Resources Impacts – EIR Chapter 18

519. The Project would forever change the Delta, and, in particular, would mar currently bucolic farming communities throughout the Project area. The scale of the Project would dwarf area landmarks and scar the Sacramento River and other Delta waterways and landscapes where Project components are proposed to be built.

520. The EIR includes an inadequate disclosure and analysis of the Project's aesthetics impacts during both Project construction and operation.

521. Impacts AES-1 – AES-3 narrowly consider impacts to "public views," which ignores the cumulative impacts associated with views on and from private lands, including the extensive number of private lands affected by the Project, and privately held lands that are open to the public for commercial and tourism purposes. By narrowly defining the scope of the analysis, the EIR fails to disclose the true impacts to sensitive residential, agricultural, commercial and recreational users.

522. The EIR fails to analyze whether Project construction or operation would conflict with local guidelines on visual quality.

523. The EIR's conclusion that new sources of light or glare resulting from Project construction and operation would not cause significant adverse effects on daytime or nighttime views in the Delta is erroneous and misleading. The rural, undeveloped nature of the Delta renders it highly sensitive to new sources of light. The introduction of fourteen years of construction sites and well-lit industrial facilities thereafter to existing undeveloped (and unlit) farmland is a radical change to the environs and would result in significant changes in visibility of the night sky.

524. The EIR fails to adequately analyze Project impacts to visual resources by disrupting views in the Delta, including the Delta Scenic Loop, which brings visitors to Delta marinas and harbors. EIR fails to adequately disclose visual impacts to upstream reservoirs and fails entirely to analyze visual impacts to the American River and associated American River Parkway.

525. The EIR fails to adequately analyze the Project's impacts on visual resources caused by permanent Project components that would stand above the ground, including the intakes, forebays, surge towers, tunnel shafts, and tunnel boring operations. These impacts would not only degrade the visual character of a National Heritage Area but also permanently diminish the quality of life for Delta residents as well as visitors to the area.

526. Surge towers and maintenance shafts would be located all along the Project route. These towers would become the most dominant visible feature in the region, creating extreme visual conflict with areas existing wildlife habitat and farmland scenery.

527. Degradation in visual aesthetic qualities reduces recreational enjoyment for many activities, but the EIR concludes without substantial evidence that this change would not constitute a substantial change in visual quality because the feature is consistent with the other industrial features, even though the features are not visible from the water nor dominant when viewed from the shoreline.

528. The EIR fails to adequately mitigate both Project-level and cumulative impacts to visual resources. Mitigation measures offer inadequate reductions to visual impacts, and measures to mitigate adverse impacts from new sources of light and glare do not address at all the impacts that would continue after construction is complete.

529. The aesthetic and visual resources impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

530. DWR's failure to adequately analyze Project-level aesthetic and visual resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

Cultural Resources Impacts – EIR Chapter 19

531. Through tunneling alone, the Project would generate more than 14 million cubic yards of tunnel muck, along with disturbing hundreds of acres of work areas during a 14-year construction period. This process is likely to unearth cultural resources from throughout the Delta's history.

532. The EIR includes an inadequate disclosure and analysis of the Project's cultural resources impacts during both construction and operation.

533. The EIR fails to adequately disclose or analyze impacts to cultural resources throughout the vast Project area, including Native American remains, which are known to be buried in the vicinity of several of the Project components.

534. The EIR contains little or no site-specific information regarding cultural resources and has inadequately disclosed how those resources may be impacted by Project construction or operation.

535. The EIR fails to disclose or analyze Project impacts to historical Delta resources. There are a number of nationally designated historic locations within the Project footprint, including Locke, which is designated as National Historic District, and the Walnut Grove Theater, which is on the National Register of Historic Places. National Register criteria are applied inconsistently in the EIR's landscapes' evaluation.

536. The EIR identified only seven (7) historic resources located in Sacramento County that are in the path of at least one of the Project's proposed alternatives and may be significantly impacted by Project construction or operation. The EIR does not discuss or analyze the Project's impacts to cultural and historic resources in the context of the Sacramento-San Joaquin Delta National Heritage Area legislation (2019, S.47). National Heritage Areas ("NHA") are designated by Congress as places where natural, cultural, historic, and recreation resources combine to form a cohesive, nationally important landscape. The EIR's failure to acknowledge the Delta NHA constitutes a glaring omission in its accounting of the Delta's environmental setting with respect to cultural resources, as well as its section discussing applicable laws, regulations and programs.

537. The EIR acknowledges that the Project has the potential to impact the built-environment historical resources in the Delta, but details of those impacts and their specific causes is omitted from the impact discussion.

538. The EIR fails to disclose or analyze Project impacts to the character of Delta communities. A number of Delta communities would be harmed by Project impacts to agriculture, traffic, air quality, water quality, recreation, and other resources. Yet the EIR fails to analyze how these impacts would impair the character of these communities.

539. DWR's claim that it is not obligated to protect the Delta as a place beyond mitigating significant impacts pursuant to CEQA is incorrect. DWR failed to analyze and mitigate the Project's impacts on cultural resources that relate directly to DWR's obligation to protect the Delta as a place.

540. The EIR fails to adequately mitigate both Project-level and cumulative impacts to cultural resources. For example, Mitigation Measure CUL-1 includes the relocation of historic buildings that would otherwise be demolished. This ignores that a resource is considered historical when it has both significance and integrity, and that location is one factor of integrity; a loss of integrity is a loss of a historical resource. Relocation of a historical resource means it is no longer eligible for the California Historical Register or the National Register of Historical Places.

541. The Project's impacts to cultural resources, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

542. DWR's failure to adequately analyze Project-level cultural resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

Transportation Impacts – EIR Chapter 20

543. The Delta's levee roads and bridges are notoriously dangerous and lack capacity for any increased industrial use. The Project's 12- to 14-year construction period would tax these already dangerous roads with thousands of new construction vehicle trips, many of which would be taken in oversized vehicles that would endanger Delta drivers, hinder Delta agriculture and damage Delta roads.

544. The EIR includes an inadequate disclosure and analysis of the Project's transportation impacts during both Project construction and operation. Most notably, it omits from its analysis of increased vehicle miles traveled ("VMT") due to the Project any calculation of construction truck trips, which are instead only included in the roadway segment and intersection analysis. The omission of heavy vehicle traffic from the overall VMT analysis greatly diminishes the appearance of impacts.

545. The EIR fails to discuss impacts to Solano and Yolo counties due to increased VMT during the project's extensive construction period. These two counties house nearly 24 percent of the total estimated construction force available in the Sacramento-San Joaquin Valley, yet the EIR assumes only 10 percent of workers will travel from these counties, with no substantial evidence to support this conclusion. This results in the erroneous appearance of diminished transportation impacts to the region. The EIR states that Yolo and Solano County construction employees would drive to work sites, but when calculating the regional average VMT, the EIR excludes both counties.

546. The EIR also fails to consider rerouting traffic to avoid construction delays (bridge openings, congestion, detours, etc.). County road alternatives to major commuter routes are not designed for heavy cut through traffic. Rerouting and detouring will cause increased VMT by commuters separate from project construction employees.

547. The EIR fails to analyze whether the Project's significant VMT impacts would impact transportation and agricultural operations in the region, including how Project-generated traffic and road closures and detours would interfere with the ability of large vehicles required to harvest Delta crops throughout the year to serve Delta farms.

548. The EIR applies an arbitrary threshold for inclusion in its analysis, including only roadways anticipated to have 50 or more vehicles on them during peak hours, without any substantial evidence to support the use of this threshold. This results in the omission of several area roads from evaluation of impacts that are likely to be significant.

549. The EIR fails to analyze the Project's potential conflicts with Solano County's General Plan, including impacts on transportation routes of regional significance within the context of the County's General Plan. The EIR's omission of analysis of transportation impacts in Solano County likely underestimates the Project's transportation impacts.

550. The EIR fails to disclose potential impacts to the operations of Travis Air Force Base ("AFB") from increased traffic in Solano County as a result of the project. Although mentioned as an Air Transportation Facility located within the vicinity of the project's study area, the EIR did not assess potential impacts on Travis AFB due to its distance from the

construction areas and concludes only that the Project would not affect air travel. However, the EIR did not evaluate the potential impact of additional traffic and congestion on roads surrounding Travis AFB.

551. The EIR's analysis of regional roadways that will be affected is inadequately defined. The EIR only analyzed roads that are within the Sacramento-San Joaquin Delta. All impacted roads within the defined study area should have been reviewed and addressed. Additionally, State Route 99 was omitted from this analysis, though it would likely be utilized by construction traffic.

552. The EIR anticipates major roadway improvements during Project construction but fails to indicate how the changes would adequately accommodate the construction traffic and overall quality of the affected roads.

553. The EIR fails to identify any remediation work proposed after project completion to repair roads back to pre-Project condition, nor does it address how the Project intends to mitigate road deterioration due to heavy construction traffic.

554. Proposed mitigation, such as requiring that construction traffic use only certain roads to minimize impacts, are entirely unenforceable.

555. The EIR fails to describe the specific safety concerns that may be present due to traffic conflicts and safety conditions resulting from increased traffic on roadways. It fails to fully disclose the safety hazards that would be created by the construction of new roads, the intersection of new roads with existing roads, and the increase of construction vehicles on existing roads and intersections.

556. Mitigation measures proposed in the EIR are unenforceable as many suggest actions and control measures that are outside of DWR's authority, such as limitations on traffic on certain roads in specific counties. These measures cannot be considered as viable mitigation because DWR cannot ensure that agreements or encroachment permits would be obtained from the relevant transportation agencies.

557. The EIR fails to disclose the fact that Project-related traffic increases on Delta roads would occur in large part on "levee roads" and, therefore, fails to analyze impacts to levee stability caused by increased traffic and, especially, increased traffic from heavy trucks.

558. The EIR states, without analysis, that the increase in traffic, including heavy trucks carrying Project construction materials, would not necessitate bridge improvements. In addition, the EIR fails to disclose whether the Project would require bridge construction. If it did, that construction would generate significant additional impacts that must be analyzed in the EIR.

559. The EIR does not evaluate impacts to navigation of commercial ships in the Delta channels due to the construction of in-channel Project construction, including cofferdams, which would significantly decrease the area for boat passage at a dozen Delta locations.

560. The EIR fails to disclose the Project impacts related to the routes of barges containing Project construction materials. Though the EIR concludes that the limited use of barges and tugboats for construction would result in no significant impacts from their use, this ignores that Delta channels are unique, and the types of impacts generated by barge traffic depends in part on the route used. Because the EIR fails to disclose the barge routes, the EIR fails to disclose the impacts from barge traffic on Delta waterways.

561. The EIR fails to disclose and analyze the Project's impacts on transportation by increasing road hazards, both by causing the re-routing of Highway 160 in a manner that creates sharp turns and the potential for increased frequency and severity of dense fog from sedimentation basins and the intermediate forebay.

562. Though the Project will generate a significant increase in traffic on roads adjacent to the Wildlife Refuge, the EIR fails to analyze the severity of impacts caused by these increases.

563. The EIR fails to adequately mitigate both Project-level and cumulative traffic and transportation impacts.

564. The transportation impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

565. DWR's failure to adequately analyze Project-level transportation impacts renders DWR's attempted cumulative impacts analysis inadequate.

Public Services and Utilities Impacts – EIR Chapter 21

566. Project construction and operation would require a large array of public services and further burden already taxed local and state programs that provide necessary public services.

567. The EIR fails to disclose all of the facilities and utility pipelines that lie in the construction path of the Project, and DWR has failed to consult with several local utility providers to coordinate construction activity.

568. The EIR fails to adequately disclose and analyze Project impacts on public services and utilities, such as potential impacts due to conflicts with local utility providers whose facilities are in direct conflict with construction of Project facilities, or direct interference with other projects in the Delta being undertaken by local and regional utility providers. The EIR concludes, without substantial evidence and without conducting a full analysis of all the regional utility facilities that lie directly in the Project's construction path, that the Project would not conflict with existing utilities such as water and wastewater pipelines.

569. The EIR fails to adequately disclose and analyze how disposal of tunnel muck and other waste generated by the Project may require the construction of new landfills and/or affect the lifespan of local landfills.

570. The EIR fails to adequately disclose and analyze potential impacts resulting from the need to construct or expand communications facilities, such as relay towers, to serve the Project.

571. The EIR fails to adequately analyze how increases in construction-related traffic would limit public safety routes and increase delay times for emergency services.

572. The EIR fails to adequately analyze how Project construction and operations would generate increased calls and demands for emergency services that would strain local emergency service providers, most of whom operate on a volunteer basis.

573. The EIR fails to disclose and analyze Project impacts to emergency services due to possible re-routing of access roads and waterways used in emergency response. The EIR

discloses that such re-routing may occur but fails to provide any more detail about which such routes may be detoured, the duration of the detours, and impacts associated with using alternative emergency routes.

574. The EIR fails to adequately disclose how post-construction utility restoration will take place. The EIR fails to include any specific mitigation to address impacts to local utility providers.

575. The EIR fails to adequately analyze the impacts increased reverse flow events will have on local and regional utility providers to continue to provide uninterrupted service to the communities that depend on them for water and wastewater needs.

576. The EIR fails to perform a Water Supply Assessment, despite acknowledging that Project construction alone will require water for activities such as dust control, mixing and moisture compaction, tunneling operations at the tunnel launch shaft sites and to make concrete at the three concrete batch plants, as well as for use in restroom facilities at all construction sites. Water would also be used for emergency firefighting purposes at the intakes and tunnel launch shaft sites, and at other construction sites. The EIR's description of how it would satisfy this demand is entirely inadequate, stating only that it will be satisfied through a combination of imports from local sources, exchanges, use of existing riparian diversions, new temporary appropriations, or existing SWP appropriations.

577. The EIR fails to analyze the impacts to water supply facilities or groundwater levels associated with an increase in demand for construction water or supply impacts associated with permanent barriers presented by the pipeline and Project infrastructure. It concludes that impacts to water service systems caused by Project demand for water during construction and operation would be less than significant but offers no substantial evidence in support of this statement.

578. The EIR fails to adequately mitigate both Project-level and cumulative impacts to public services and utilities.

579. DWR's determination that all public services and utilities impacts other than UT-6 and UT-8 would be mitigated to less than significant levels is not supported by substantial evidence.

580. The public services and utilities impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

581. DWR's failure to adequately analyze the Project-level public services and utilities impacts renders DWR's attempted cumulative impacts analysis inadequate.

Energy Impacts – EIR Chapter 22

582. The Project would require substantial energy resources to construct and operate, further stressing the state's energy supplies and undermining efforts to rely more fully on environmentally sound energy sources.

583. The EIR includes an inadequate disclosure and analysis of the Project's energy impacts during both Project construction and operation. Its analysis of the Project's energy use fails to adequately represent the impacts caused by wasteful, inefficient, or unnecessary consumption of energy impacts, as required by CEQA, resulting from its proposal to replace a system of conveyance which requires no outside energy input with one that would require massive amounts of electricity (as exhibited by the Project's need for high-voltage power lines and energy infrastructure) to operate.

584. The EIR improperly concludes that impacts associated with Project energy consumption would be less than significant, despite the fact that the conveyance system's two new pumping plants that require significant additional energy to operate, will result in wasteful, inefficient and unnecessary power consumption compared to the existing condition.

585. The EIR, which estimates that the Project will increase energy use by 35 percent, greatly underestimates impacts on energy consumption compared to existing conditions. As the largest single consumer of electricity in California, any increase in energy use by the SWP is a significant increase in the state. The impact of adding to the state's overall energy use a 35 percent increase in SWP uses is inadequately analyzed in the EIR and would have a significant

impact on the environment, including from the additional GHG emissions generated by this increase.

586. The EIR fails to disclose and analyze potential impacts due to construction and modification of transmission lines. The Project would include miles of permanent new transmission lines and as well as temporary transmission lines, both overhead and underground, and often crossing existing utility lines, but the EIR fails to provide adequate Project-level detail about where and how these lines would be constructed. The EIR does not clearly indicate the location or number of new installations, and fails to fully analyze impacts resulting from their construction.

587. The EIR fails to adequately mitigate both Project-level and cumulative energy impacts as required by Public Resources Code section 21100, subdivision (b)(3) and CEQA Guidelines Appendix F.

588. DWR's determination that all energy impacts would be mitigated to less than significant levels is not supported by substantial evidence.

589. The energy impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

590. DWR's failure to adequately analyze the Project-level energy impacts renders DWR's attempted cumulative impacts analysis inadequate.

Air Quality and Greenhouse Gases Impacts – EIR Chapter 23

591. The EIR minimizes the serious air quality and GHG implications of the 14-year intensive Project construction period across the Delta, as well as the ongoing air quality and GHG emissions of operating the Project and misconstrues guidance by local air districts for construction emissions by, for example, using average daily construction emissions numbers where maximum daily emissions should be calculated.

592. The EIR fails to connect the raw particulate numbers generated by construction and operation of the Project and their effect on air quality with specific adverse effects on human health.

593. The EIR includes an inadequate disclosure and analysis of the Project's air quality and GHG impacts during both Project construction and operation.

594. The EIR fails to analyze all of the mechanisms by which the Project may cause significant air quality impacts during construction and operation, including but not limited to, concrete plants and increased barge activity. The modeling assumptions used for heavy-duty construction equipment are inaccurate and misleading.

595. The EIR fails to disclose and analyze air quality impacts that would occur from hauling and disposing of large quantities of construction material and tunnel muck during 14 years of Project construction.

596. Though the EIR acknowledges that the Project would exceed thresholds of significance for several pollutants, it fails to describe the severity of these impacts or to contextualize them within the area.

597. The EIR's health risk assessment fails to disclose significant health hazards due to exposure of sensitive receptors to localized particulate matter concentrations resulting from Project construction emissions in the Yolo-Solano Air Quality Management District.

598. The EIR fails to address the Project's air quality impacts on environmental justice communities. The EIR concedes that the Project will contribute to the air pollution in the San Joaquin Valley Air Basin (SJVAB) and will "result in exposure of sensitive receptors to substantial localized criteria pollutant emissions and exposure of sensitive receptors to substantial toxic air contaminant emissions." Many of the air quality and GHG emissions impacts will be borne disproportionately by environmental justice communities in the Delta and will remain significant even after mitigation. The EIR, however, concludes, erroneously, that "[c]onstruction of the proposed action would not result in direct or discernible indirect effects on environmental justice populations greater than those on the general population."

599. The Project tunnels would operate during low-flow periods, which would create anaerobic conditions in Tunnel water, generating air pollutant constituents and GHGs; no air quality impacts from these conditions were disclosed or analyzed in the EIR.

600. The EIR fails to evaluate air quality impacts for all pollutants in all air areas affected by Project construction emissions.

601. The EIR fails to consider the air quality impacts associated with decreased water flow caused by the Project.

602. The EIR does not adequately analyze air quality impacts on sensitive receptors.

603. The EIR fails to adequately analyze air impacts due to Particulate Matter 2.5 ("PM2.5") and Particulate Matter 10 ("PM10") emissions. The Project would require grading of about 5,500 acres of land, cut-and-fill of more than 20 million cubic yards of soil, and excavation of about 5.7 million cubic yards of soil. The EIR acknowledges that windblown dust would contribute to particulate matter emissions, yet fails to yet, it does not estimate PM10 and PM2.5 emissions from wind erosion of graded surfaces or storage piles.

604. The EIR fails to adequately analyze air quality and other impacts due to tunnel muck storage. The Project would require the storage of approximately 14.4 million cubic yards of tunnel muck across approximately 403 acres. Tunnel muck storage creates the risk of PM10 and PM2.5 emissions.

605. The EIR impermissibly piecemealed the analysis of total GHG emissions by considering the Project's impacts to GHG emissions from construction and operation and maintenance separately, instead of analyzing the totality of the Project's emissions.

606. The EIR fails to adequately analyze the Project GHG impacts resulting from the power that must be generated over the life of the Project to satisfy the electricity demand on the Project's massive pumps. Typically, this generation is from fossil fuels, causing significant GHG emissions from combustion.

607. The EIR fails to adequately mitigate both Project-level and cumulative air quality and GHG impacts.

608. The EIR impermissibly relies on the DWR Climate Action Plan ("CAP"), which is not framed as mitigation, to mitigate both construction and operational GHG impacts. The EIR determines that because the Project would not prevent DWR from complying with the CAP, Project GHG emissions are less than significant. Though CEQA may allow lead agencies to

rely on compliance with existing plans for GHG mitigation, the CAP includes no enforceable conditions. In particular, there are no monitoring or enforcement conditions for Project GHG emissions to ensure that the reduction anticipated in the CAP would actually occur.

609. The EIR analysis of GHG emissions from construction is inconsistent with CAP guidance. Its determination that GHG emissions would not have a cumulatively significant impact, in part due to the ability to tier from the 2020 Update, is erroneous. The CAP states that for Extraordinary Construction Projects, "DWR would have to analyze the cumulative GHG emissions on a project-specific basis for CEQA purposes." Therefore, the EIR was precluded from utilizing the CAP for its analysis of cumulative GHG impacts.

610. Mitigation Measure AQ-9, development of a GHG Reduction Plan, is not roughly proportional to Project impacts, is impermissibly deferred, is not fully enforceable, and is not based on substantial evidence. There are no specific requirements for this program, which merely includes a list of potential considerations to be used in development that include language that is not specific enough to support the EIR's conclusion that Project impacts on climate change would be less than significant after implementation of Mitigation Measure AQ-9. Mitigation Measure AQ-9 is also ineffective and inadequate because it relies on the purchase of GHG offsets but fails to require purchased offsets to be consistent with California GHG reduction goals and policies.

611. Neither the EIR's Environmental Commitments nor the proposed mitigation measures ensure that Project construction emissions would be reduced to less than significant levels, and the Environmental Commitments lack an enforcement mechanism to mitigate air quality impacts to a less than significant level.

612. The EIR's proposed mitigation measures to reduce air quality and GHG emissions impacts are not quantifiable, unenforceable, and offer misleading and inaccurate assessments of total Project impacts after mitigation. Some of these measures, such as the proposed GHG credit program, are inconsistent with CEQA and do not constitute valid mitigation for the Project's GHG emission increases. Other measures require that DWR undertake a "good faith effort" to enter into a development mitigation agreement with the respective air districts in order

to reduce criteria pollutant emissions through the creation of offsetting reductions of emissions occurring within the respective air basins. The EIR's conclusion that these measures will reduce impacts to less-than-significant levels is inaccurate and misleading.

613. DWR's determination that air quality and GHG impacts would be mitigated to less than significant levels is not supported by substantial evidence.

614. The air quality and GHG impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

615. DWR's failure to adequately analyze the Project-level air quality and GHG impacts renders DWR's attempted cumulative impacts analysis inadequate.

616. These failures to identify all of the Project's significant air quality effects constitutes a failure to proceed in a manner required by law.

Noise Impacts – EIR Chapter 24

617. Construction and operation of the Project would bring a variety of new and disturbing noises into currently peaceful and quiet areas of the Delta. The EIR fails to squarely address these new impacts.

618. The EIR includes an inadequate disclosure and analysis of the Project's noise impacts during both Project construction and operation.

619. The EIR improperly declined to analyze noise impacts using thresholds and standards adopted by some jurisdictions affected by Project construction and/or operation, including the County of Sacramento, City of West Sacramento and the Clarksburg Area General Plan (Yolo County), or from rural California counties (including Madera and Fresno) with similar noise environments. Instead, and contrary to its own agency practice with other recent projects, DWR developed its own less restrictive noise thresholds without supporting its choice of thresholds with substantial evidence. The resulting analysis obscures and minimizes the significance of noise impacts in the predominantly rural setting of the Project.

620. The EIR includes an inadequate disclosure and analysis of the Project's noise impacts during both Project construction and operation. The EIR fails to support with substantial evidence its use of 5 dB increases relative to existing ambient noise levels and does

not adequately consider the rural character and setting of the Delta where noise impacts will be felt most acutely.

621. The EIR's proposed mitigation cannot reduce noise impacts to less than significant levels. The EIR assumes the Project would require over 3,000 construction workers in the area for nearly 15 years. This is more than the combined populations of nearby Delta communities Clarksburg, Hood, and Locke. A workforce that outnumbers the local population, working with heavy, noise-emitting equipment would generate noise impacts that cannot be mitigated at all, and certainly not with "visual barriers" or a "temporary noise barrier," as proposed by the EIR.

622. The EIR fails to disclose the connection between the Project's impacts and the health and safety problems caused by those impacts. Specifically, the EIR fails to identify noise levels or the duration at which those levels will impact human health. This omission makes it impossible to determine whether the project's noise levels would create these health impacts. Though the EIR acknowledges that there are health impacts associated with noise emissions, the EIR's generalized discussion fails to indicate the concentrations at which such emissions would trigger the health impacts.

623. The EIR fails to evaluate the Project's noise impacts on the value of the Wildlife Refuge, Staten Island and other publicly funded habitat for the greater sandhill cranes and other sensitive wildlife.

624. The EIR fails to adequately evaluate impacts due to noise the Project would generate during construction and operation at the intakes and pumps.

625. The EIR fails to adequately disclose and analyze potential impacts due to the Project's permanent increase in ambient noise.

626. The EIR fails to adequately analyze impacts arising from noise generated by Project construction, which is anticipated to result in changes to the rural qualities of nearby communities during the 14-year construction timeline. Several communities are in close proximity to the Project's proposed water conveyance structures, including Hood, Courtland, and Walnut Grove. The Project could indirectly cause impacts to gathering places that are in the vicinity of construction areas, such as high schools, libraries, and churches.

627. The EIR improperly defers noise studies to take place during cofferdam pile testing, after which impact analyses would be updated with sound-level values. This renders the EIR informationally deficient and violates CEQA's mandate to conduct adequate impact analyses before the certification of environmental review and project approval.

628. The EIR fails to adequately mitigate both Project-level and cumulative noise impacts.

629. Mitigation Measure NOI-1 is inadequate and fails to include feasible methods of avoiding or minimizing Project-related noise, instead improperly deferring the formulation of additional noise mitigation to DWR and its contractors at the time of Project construction. Furthermore, most of the actions included in NOI-1 require voluntary participation of residents and property owners and are thereby unenforceable and their effectiveness unable to be measured.

630. The noise impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant. DWR's failure to adequately analyze the Project-level noise impacts renders DWR's attempted cumulative impacts analysis inadequate.

631. These failures to identify all of the Project's significant noise effects constitutes a failure to proceed in a manner required by law.

Hazards and Hazardous Materials Impacts – EIR Chapter 25

632. This massive Project would entail numerous activities during construction and operation that involve hazards. Yet the EIR's cursory analysis of potential hazards is incomplete and ultimately uninformative about these hazards affecting workers and local communities.

633. The EIR includes an inadequate disclosure and analysis of the Project's hazards impacts during both construction and operation, including but not limited to the risks to nearby sensitive receptors, such as schools. The EIR contains no analysis of site-specific information regarding the number and locations of gas and water wells that would have to be modified to allow for construction of the tunnel and associated surface facilities.

634. The EIR fails to adequately disclose or analyze hazardous material impacts of the over 14 million cubic yards of tunnel muck anticipated to be generated by Project construction. The EIR fails to disclose what chemical additives may exist in the muck. The EIR does not fully disclose what portion of the muck may be hazardous, how much hazardous muck is likely to be generated by the Project, or how the Project would transport and/or dispose of it, possible outcomes of a spill, or the muck's distance from sensitive receptors.

635. The EIR similarly fails to adequately analyze impacts related to the local storage and handling of these materials. It does not disclose what volatile compounds may be released during drying and handling, and as a result, it is unknown what measures must be taken to protect workers and the public.

636. The EIR fails to adequately disclose the risks related to the release of hazardous materials during tunnel and shaft construction activities, and during tunnel and shaft excavation in the vicinity of past and present oil and gas fields, wells, and surface facilities. It fails to provide preliminary route monitoring for magnetometer surveys for both wellheads and abandoned pipelines which could pose risks during excavation activities.

637. The EIR fails to identify the location of gas wells or pipelines and related surface facilities. It contains no mention of gas wells and depth of tunneling and chances of encountering known or unknown well casings, gases, and fluids.

638. The EIR also indicates that storage sites for tunnel muck may be stored temporarily or permanently. The EIR indicates that muck removed from the tunnel through the launch shafts would be transported by conveyor to handling and storage facilities near launch shaft sites. Muck excavation, testing, drying, and movement from the tunnel launch shaft sites during tunneling operations would occur year-round, 20 hours per day Monday through Friday and 10 hours on Saturdays. The EIR fails to disclose and analyze the impacts of moving, treating, and storing this amount of potentially hazardous material through the region, nor does it disclose how much of the muck must be permanently stored, or describe permanent storage plans.

639. The EIR fails to adequately disclose or analyze health risks from potential toxic constituents in borrow fill. The EIR does not indicate that testing for toxic constituents of surface soils moved during excavation for borrow fill would occur.

640. The EIR fails to analyze the potential impacts from soil conditioners, chemical additives to be mixed with soil excavated during the tunnel boring procedure. The EIR acknowledges that "conditioners or additives used to facilitate tunneling could cause eye and skin irritation if mishandled," but omits any discussion of the potential for toxicity in these chemical additives and provides no evidence for the conclusion that their use will not cause any significant impacts. The EIR relies on soil tests conducted nearly 10 years ago on soil sites different from those that would be used for the Project.

641. The EIR fails to analyze the potential for natural gas or saline water to migrate into shallow groundwater aquifers and contaminate the water supply or create a flammable or explosive buildup of natural gas from disturbance of soils or excessive boring vibrations that damage the well seal or well plug of a gas well.

642. The EIR also fails to analyze the potential impacts of placing tunnel muck in borrow pits. Placing the tunnel muck below the groundwater table creates potential risks of spreading toxic constituents from the tunnel muck to groundwater.

643. The EIR fails to adequately disclose or analyze risks stemming from the anaerobic and anoxic conditions in the tunnel that may occur during non-operational and low flow operational conditions. Such conditions can create arsenate compounds which are harmful to human health and make the water unsuitable for drinking. The EIR failed to identify, characterize, or quantify this risk or describe how such contaminated water would be segregated and disposed.

644. The EIR impermissibly defers studies, reviews, and surveys to identify the location of documented oil and gas wells within the tunnel alignment to a later date. The EIR fails entirely to plan for the identification of unrecorded or historic well sites.

645. The EIR fails to address what impacts might occur or the mitigation that might be needed should the proposed future studies identify a physical hazard to the project such as a

wellhead or gas casing or pipeline. This is a violation of CEQA's mandates regarding mitigation.

646. The EIR offers mitigation measures that are neither enforceable nor effective. Mitigation Measure HAZ-2, for example, impermissibly defers until just before construction begins the preparation of a Phase I Environmental Site Assessment, which would locate sites where hazards may exist.

647. The EIR fails to adequately mitigate both Project-level and cumulative hazards impacts.

648. DWR's determination that all impacts associated with hazardous materials would be mitigated to less than significant levels is not supported by substantial evidence.

649. The hazards impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

650. DWR's failure to adequately analyze the Project-level hazards impacts renders DWR's attempted cumulative impacts analysis inadequate.

651. These failures to identify all of the Project's significant hazards effects constitutes a failure to proceed in a manner required by law.

Public Health Impacts – EIR Chapter 26

652. Fourteen years of construction and permanent massive new water infrastructure in the Delta would threaten public health in a variety of ways not adequately addressed in the EIR.

653. The EIR fails to disclose and analyze all potential public health impacts resulting from Project construction and operation, such as those likely to result from prolonged exposure to high levels of noise over the Project's construction period, which is expected to last nearly a decade and a half, as well as health impacts caused by increases in emissions and worsening air pollution resulting from Project construction and operations.

654. Though the EIR acknowledges that construction noise will greatly exceed thresholds of significance and is considered significant and unavoidable, it fails to fully describe the risks to public health resulting from these increased noise levels.

655. The EIR fails to adequately analyze the Project's potential to cause an increase in transmission of mosquito-borne diseases to humans caused by increased mosquito reproduction in habitat restoration areas adjacent to Delta communities.

656. The EIR fails to analyze the impacts from increased total diversions from the Delta, which result in corresponding decreases in Delta outflow, increases in Delta salinity and residence time, affecting the formation of harmful cyanobacteria and exacerbating existing public health risks to Delta residents. Despite evidence that toxic algal blooms and cyanotoxins, such as Microcystis, are a growing public health threat to Delta residents which will be exacerbated by climate change and any new Delta conveyance that diverts water from the Sacramento River in the northern Delta, the EIR fails to analyze these increased risks to public health.

657. The EIR fails to disclose public health impacts related to disturbance of soils containing trace metals, pesticides, toxicants, or organic matter during construction activities such as pile driving and cofferdam installation, dredging, excavation, and grading. The EIR admits that these ground-disturbing activities could result in soil erosion and runoff, leading to the transport of pesticides and trace metals (i.e., arsenic, aluminum, iron, and manganese) potentially present in soil to nearby surface waters. Though construction is anticipated to last 12 to 14 years, the EIR states that these impacts to drinking water would be "temporary and fairly localized to areas of construction." It determines, therefore, that these impacts will be less than significant.

658. The EIR provides inadequate analysis of the Project's risk of exposing populations in the vicinity of the Project, including residents of Stockton and other Delta communities, to the pathogenic fungus *Coccidioides immitis*, which causes the respiratory illness Valley fever, which can be fatal.

659. The EIR fails to adequately assess the disproportionate burden that Project-related impacts to public health will have on environmental justice communities in the Delta. It ignores its role in contributing to the health issues faced by low-income and minority communities, who are disproportionately affected by environmental health hazards. Its conclusion that the Project

would not result in direct or discernible indirect effects on environmental justice populations greater than those on the general population is without support.

660. The Project involves the construction of two launch shafts and additional muck piles occupying a large area at Lower Roberts Island, this Project alternative would effectively double the earthmoving activities and vehicular traffic on unpaved surfaces as compared to other proposed alternatives and stands to generate the highest fugitive dust emissions in the San Joaquin Valley Air Pollution Control District—impacts to be borne primarily by the residents of Stockton.

661. The EIR provides inadequate analysis of the Project's risk of exposing populations in the vicinity of the Project, including residents of Stockton and other Delta communities to increased incidence of HABs. The EIR relies on incorrect and irrelevant analyses of residence time, thus reaching unsupported conclusions about the Project's potential to increase harmful algal blooms and affect public health and water supply security in the Delta. The EIR's conclusion that the Project would not be expected to cause an increase in residence time and resulting increase in HABs, and that those changes are solely attributable to the increased frequency and intensity of droughts coupled with climate change and sea level rise, is unsupported.

662. The EIR's failure to analyze the full range of health impacts likely to result from Project-related construction and operation activity, as well as its omission of information necessary for the public to understand the Project's likely health risks, are a clear violation of CEQA.

663. The EIR fails to adequately mitigate both Project-level and cumulative public health impacts.

664. DWR's determination that all public health impacts resulting from Project construction and operation are less than significant is not supported by substantial evidence.

665. The public health impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant. DWR's failure

to adequately analyze the Project-level public health impacts renders DWR's attempted cumulative impacts analysis inadequate.

Mineral Resources Impacts – EIR Chapter 27

666. The EIR fails to adequately analyze or disclose risks due to abandoned oil and gas wells. Though the EIR admits that these wells may act as conduits for natural gas, and that the location of these wells is largely unknown, it does not disclose what impacts may occur if the Project does cause these wells to bring natural gas to the surface.

667. The EIR's discussion of the proximity of Project activities to oil and gas fields, wells, and surface facilities is inadequate and incomplete. Its analysis fails to locate the sites of past gas production wells and fails to provide for preliminary route monitoring for magnetometer surveys for both well heads and abandoned pipelines which could endanger tunneling and shaft excavations.

668. The EIR's analysis of the Project's impact on nearby oil and gas fields is inadequate. The tunnel would cross several natural gas pipelines. Some of the facilities under all project alternatives would be excavated within an area of natural gas fields. The natural gas pipelines are generally located near the surface, with depths of less than 10 feet below the surface and pipe diameters less than 24 inches. The top of the tunnel excavation nearest the natural gas lines would be approximately 115 to 120 feet below the surface. Tunnel boring activity would be at a depth greater than 100 feet and could encounter known and unknown well casings.

669. The EIR fails to provide a full range of toxic and combustible gases from the gas fields and production systems within the Delta.

670. The EIR fails to provide a detailed review of all gas fields and wells within 5000 feet of any Project facility and does not provide all appropriate information regarding potential encounters during the construction. It also conflates terminology when discussing potential impacts to wells and pipelines; wells are not pipelines, and wells, which have casings near the surface at depths less than 50 feet, could be encountered from the surface to tunnel depths.

Paleontological Resource Impacts – EIR Chapter 28

671. The 45-mile tunnel would pass through paleontological resources (fossils), including the remains, traces, imprints, or life history artifacts (e.g., nests) of prehistoric plants and animals found in ancient sediments, producing approximately 14.4 million cubic yards of muck in the process. The tunnel boring machine and other Project disturbances could destroy unique paleontological resources in the Modesto, Riverbank, Turlock Lake, Panoche, Miocene fanglomerate, and San Pablo Group formations, geologic units with a high or undetermined sensitivity.

672. The EIR includes an inadequate disclosure and analysis of the Project's paleontological impacts during both construction and operation.

673. The EIR fails to include feasible mitigation to reduce or avoid impacts to paleontological impacts, and also fails to recognize the availability of non-tunnel alternatives to meet Project objectives without causing significant and unavoidable impacts on paleontological resources.

674. The paleontological impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

675. DWR's failure to adequately analyze Project-level paleontological impacts renders DWR's attempted cumulative impacts analysis inadequate.

Environmental Justice Impacts – EIR Chapter 29

676. The Project would bring significant construction and operation impacts into environmental justice communities throughout the Delta. Though the EIR determined these impacts adverse, it failed to do anything about very real effects of the Project on these communities.

677. The EIR fails to disclose and analyze all Project-related environmental justice impacts. The EIR's exclusion of consideration of environmental justice impacts from impacts, including but not limited to, geology and seismicity, hazards and hazardous materials, mineral resources, water supply, surface water, groundwater, water quality, soils, fish and aquatic

resources, terrestrial biological resources, agricultural resources, recreation, transportation, energy, air quality, and paleontological resources was improper.

678. DWR failed to make the EIR process accessible to environmental justice communities. DWR outreach materials regarding the Project failed to include realistic figures showing the scale of the Project or its impacts, forcing reviewers to read thousands of pages of technical documents to gain any understanding of the scope and scale of the Project.

679. The EIR considers the entire Project area as one environmental justice community, masking potentially relevant differences in Project impacts within the Project area's different communities.

680. The EIR fails to adequately disclose or analyze impacts Delta environmental justice communities in the rural areas, as well as towns such as Hood, Clarksburg, and Courtland, and in cities (such as Stockton) that rely on the Delta for a variety of their needs, including but not limited to, water supplies, workplace, homes, subsistence fishing and recreation. The EIR does not adequately consider how construction noise and other Project impacts would impact environmental justice communities, including children who have heightened noise sensitivity. The EIR also does not address the effect of the Project on environmental justice communities in cities such as Stockton, whose drinking water supplies would become more polluted, and more expensive to effectively treat, as a result of the Project.

681. The EIR includes conflicting and unsupported assertions of Project benefits to environmental justice communities outside of the Delta and fails to recognize impacts to environmental justice communities within the Delta, including low-income and minority agricultural workers.

682. The EIR states that impacts, such as groundwater loss and contamination, would be dealt with by relocating individuals or providing an alternative water supply, without explaining how DWR this would be implemented. The displacement of rural environmental justice communities, however, requires extensive analysis and mitigation that is calculated to address the unique concerns of environmental justice communities.

683. Minority farm workers would have greatest exposure and risk from mosquito borne West Nile Virus compared to any population segment due to their greater exposure outdoors in the immediate vicinity of increased West Nile Virus risk from the Project; as a population, these individuals have insufficient economic resources to pay for protections such as insect repellant. Project facilities and operations which generate mosquito populations are adjacent to Delta communities and are upwind of large urban areas.

684. The Environmental Justice Survey conducted by DWR identified that a large proportion of the environmental justice communities rely on the Delta for subsistence fishing. Yet the EIR fails to adequately disclose how the Project – in both construction and operation – would interfere with subsistence fishing and other uses such as recreation by environmental justice communities in the Delta.

685. The DEIR analysis of impacts on recreational fishing opportunities and subsistence fishing for very low-income households (DEIR Chapter 29, p. 29-33) presumes access to "numerous other locations" is possible. This analysis does not address the loss of existing fishing opportunities (an existing use), nor does it consider that those in environmental justice communities may face barriers to access (e.g., transportation, mobility) that prevent them from accessing alternative fishing locations.

686. The EIR fails to include an analysis of environmental justice impacts on tribal cultural resources.

687. The environmental justice impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant. The EIR fails to address the cumulative effects of the Project in combination with other hazards and health burdens experienced by environmental justice communities.

688. The EIR lacks an explanation of its conclusion that effects were not disproportionate on environmental justice communities for impacts including but not limited to flood risk, aesthetic and noise impacts. These conclusions fail to consider the high proportion of environmental justice communities near project activities.

689. The EIR fails to provide adequate mitigation for the Project's identified adverse environmental justice impacts.

Climate Change Impacts – EIR Chapter 30

690. The Project is a massive water infrastructure project with impacts extending for many decades that is not expected to become operational before 2040. Multiple categories of environmental analysis depend centrally on the objectivity, accuracy, and completeness of the EIR's modeling and analysis of climate and hydrology.

691. The EIR's climate and related hydrologic analysis is so foundationally deficient that it undermines the EIR's ability to serve as the decision-making document informing decision-makers and the public about the Project's environmental consequences. For reasons noted below, among others, the EIR's climate analysis has glaring and avoidable errors, relies on misleading and discredited assumptions, fails to address major criticisms, excludes critical information, disregards or misapplies major reports, including its own, avoids and understates. direct and cumulative impacts exacerbated by climate change and fails to use its "best efforts to find out and disclose all that it reasonably can" in the manner CEQA requires. (CEQA Guidelines, § 15144.)

692. The EIR addresses climate change impacts and provides climate change analysis primarily in Chapter 30 and its cited appendices, except for the separate discussion of GHG impacts in Chapter 23. Chapter 30 also purports to climate analysis bearing on numerous other aspects of CEQA review for the Project, including baseline, No Project Alternative, project alternatives, mitigation, and climate's relationship to other specific impacts.

693. The EIR undermines its objectivity by defining the objective of the climate analysis chiefly in terms of Project promotion. The main purpose of this analysis, as DWR defines it, is to show how observed trends and project future conditions "show the need for the proposed project" and "how climate change could influence the project to fulfill its intended purpose." (FEIR, p. 30-1.)

694. This EIR's one-sided approach in its climate analysis turns upside down CEQA's central policy of requiring state agencies to perform their duties so that "major consideration "is

given to preventing environmental damage." (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711; Pub. Resources Code, § 21000, subd. (g).)

695. Applying its Project-promoting objective to an overstressed Delta that often lacks needed freshwater flows, the EIR avoids complete assessment of impacts and operation under climate change. In doing so, it obscures the central realities of a Project that would remove more, rather than less, water from the Delta compared with future conditions that also include changing hydrology.

696. The EIR's assessment of climate resilience fails to objectively and fully study the foreseeable prospect that instead of showing the "need" for the Project or influencing fulfillment of its purposes, climate change will add to likelihood that the Project will be unable to meet its first stated objective, which seeks to "help address anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events."

697. The EIR fails to fully study the foreseeable risk that worsening climate change, coupled with updated flow requirements and other laws requiring reduced water exports from the Delta, will result in a Delta Tunnel that is not only worse for the environment than feasible alternatives unstudied in the EIR, but legally or financially unable to operate effectively, if at all, when finally built and opened. Spending 14 years or more and enduring enormous construction impacts for a multibillion-dollar tunnel that becomes an unusable or barely usable stranded asset would be the opposite of climate resilience.

698. Ignoring or misrepresenting the contents of numerous studies and reports, including DWR's and the SWRCB's own, the EIR slants its assessment of climate and hydrology to minimize or avoid analysis of the overwhelming negative impacts of the Project on the environment in the Delta and elsewhere, and how climate change is likely to exacerbate those impacts.

699. Due to the EIR's distorted analysis and exclusion of required analysis, the extent of greater impacts in the context of climate change remains largely unstudied or avoided in the EIR. These exacerbated impacts are likely to include many, if not most, of the EIR's major

impact categories, including but not limited to surface water and groundwater quality and supply, protected species, recreation, agriculture, and public health, the latter including HABs.

700. The EIR includes an inadequate disclosure and analysis of the Project's climate change impacts during both construction and operation. It also fails to analyze how the speed, magnitude, and intermittent nature of climate change may alter Project outcomes.

701. The EIR fails to adequately mitigate both Project-level and cumulative climate change impacts. The EIR's determination that all climate change impacts would be mitigated to less than significant levels, is untenable in light of DWR's failure to conduct analysis required under CEQA and is also unsupported by substantial evidence.

702. The EIR's misleading analysis of climate and hydrology, and failure to conduct additional analysis overcoming its errors and omissions, fails to meet CEQA's requirement that agencies conducting environmental review "stay in step with the evolving scientific knowledge in state regulatory schemes." (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 504; *County of Butte v. Department of Water Resources* (2023) 90 Cal.App.5th 147, 161.)

703. The EIR relies on discredited and outmoded climate change assumptions in describing the baseline, which obscures the Project's climate change impacts and also misled other stages of project analysis. Among other errors, DWR flouted major criticisms and studies, including those submitted or conducted by government agencies, discrediting DWR's overreliance on historical modeled years dating back to 1921 and ending almost a decade ago. As noted in a detailed technical analysis attached to the DEIR comments of Contra Costa County, due to DWR's flawed reliance on this fixed period of observation, the EIR fails to capture "larger shifts in hydrology," in which climate change is "likely to increase both the number and frequency of critically dry and wet years." The DISB found that the EIR's use of this period failed to account for inter-annual variability, increasingly variable wet and dry cycles, and changes in precipitation and flood flows.

704. Compounding the EIR's overreliance on simulated historical years in its hydrologic analysis, DWR disregarded and excluded significant new information included in the

May 2023 State Auditor's Report criticizing DWR's long deficient modeling and assessment of climate and hydrology. The Auditor's Report confirmed DWR's insufficient documentation and use of historical data no longer reflects current conditions. It found DWR had overestimated projected runoff by an average of 20 to 50 percent, with an overestimate of 100 percent in 2021, and that DWR had already recognized the need to improve its methods and move beyond this approach to historical water years more than 15 years earlier but had failed to correct the problem.

705. The EIR relies on unsupported climate change assumptions in describing the No Project Alternative and does not provide an alternative which does not include these unsupported assumptions. The EIR does not adequately disclose the Project's impacts because it compares Project impacts to a scenario that includes unsupported climate change projections. For example, EIR commenters presented extensive evidence discrediting its unreasonable and speculative modeling assumptions and inconsistent use of evidence. This included central use for the EIR's impact analysis of a highly improbable 2040 modeling scenario (H++) with sea level rise assumed to be 1.8 feet, whose likelihood of occurring was too low even for calculation (less than.5 percent). The EIR notes, but marginalizes for CEQA impact review, another 2040 scenario (0.5 feet) with a much greater (66%) chance of occurring.

706. While heavily relying on a speculative 2020 scenario for impact analysis, the EIR deems other realistic ones to be "outside" and excluded from the CEQA analysis. The EIR's stylized and inconsistent approach includes focus on hotter and wetter future scenarios that are inconsistent with extensive studies and observed data pointing to a hotter and drier future. Underlining DWR's failure, noted by the State Auditor and others, to effectively plan for droughts, the EIR inconsistently avoids modeling and impacts analysis that considered the effect of multiyear droughts such as the one in 2012-2016, as well as more recent hydrology. DWR did not simulate the changed operations that may result during critically dry conditions.

707. The EIR fails to incorporate the best available science into its analysis of climate change impacts by using the most recently available scientific information, including climate extremes, computer simulations of ecological futures, and unprecedented drought risk.

708. The EIR's failure to fully and accurately account for the hydrologic consequences of climate change, and its exclusion of required analysis, renders analysis of other resource areas inadequate, as they are not based on all necessary information. DWR's failure to adequately analyze the consequences of climate change for the Project's direct, indirect, cumulative impacts, the Project baseline, the comparison between Project and non-Project alternatives, render the EIR incapable of serving as the final decision document under CEQA.

709. The EIR includes an inadequate disclosure and analysis of the Project's climate change impacts during both construction and operation.

710. The EIR fails to analyze how the speed, magnitude, and intermittent nature of climate change may alter Project outcomes and exacerbate other project impacts. The EIR also fails to clearly and consistently analyze the hydrologic consequences of climate change. The exclusion of such an analysis renders analysis of other resource areas inadequate, as they are not based on all necessary information.

711. The EIR relies on flawed climate change assumptions in describing the baseline, which obscures the Project's climate change impacts.

712. The EIR relies on unsupported climate change assumptions in describing the No Project Alternative and does not provide an alternative which does not include these unsupported assumptions. As a result, the EIR does not adequately disclose the Project's impacts because it compares Project impacts to a scenario that includes unsupported climate change projections.

713. The flawed analysis of GHG impacts in the EIR results in an inadequate disclosure and analysis of the Project's contribution to climate change. The EIR's contention that the Project would be GHG-neutral is unsupported; the EIR must disclose the Project's actual contribution to climate change.

714. The EIR fails to incorporate the best available science into its analysis of climate change impacts by using the most recently available scientific information, including climate extremes, computer simulations of ecological futures, and unprecedented drought risk.

715. The EIR fails to adequately mitigate both Project-level and cumulative climate change impacts.

716. DWR's determination that all climate change impacts would be mitigated to less than significant levels is not supported by substantial evidence.

717. The climate change impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

718. The Project purports to be a response to future climate change yet imposes an outdated 19th Century "plumbing solution" that fails to provide the adaptability needed as conditions change in the future. Instead of providing realistic climate change scenarios and analysis, the EIR shamelessly exploits the threat of climate change to try to mask the overwhelming negative impacts of the Project on the Delta environment. DWR's failure to adequately analyze the Project-level climate change impacts renders DWR's attempted cumulative impacts analysis inadequate.

Growth Inducing Impacts – EIR Chapter 31

719. The EIR fails to identify and analyze the full extent of the project's growth inducing impacts, which must include assessment of growth accommodation. A water infrastructure project, particularly one as massive as the Delta Tunnel, is the of the type of project triggering the need to carefully analyze whether the Project would "remove obstacles" to growth, in part because it may allow for "more construction" in service areas. (CEQA Guidelines, § 15126.2, subd. (d).) The EIR fails to provide substantial evidence in support of its conclusion that the Project would not lead to direct and indirect population growth.

720. DWR's analysis suggests the project will increase deliveries 543,000 acre-feet per year on average, and 316,000 feet per year in dry and critically dry water years. Using DWR's data, that would allow an almost 23 percent increase in average annual Delta exports, accommodating a significant amount of growth never acknowledged in the EIR. Since the EIR also assumes an implausibly low use rate for the Delta Tunnel, the figure could be significantly higher if, for example, regulatory standards are changed, TUCPs are issued in droughts, or the Tunnel accommodates expanded water transfers.

721. Rather than providing substantive evidence and analysis disproving that this significant increase in exports would translate into significant growth inducement, DWR uses semantic distinctions and baseline manipulation, in a convoluted attempt to deny the obvious. Among other things, the EIR conflates supplying additional water to recipient service areas with an expansion of the geographic scope of SWP service areas, ignoring the fact that the Project would support additional growth *within* SWP boundaries. DWR also conflates water conservation and growth avoidance.

722. These avoidance techniques do not provide the analysis CEQA requires. CEQA's informational purposes are "not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.)

723. The EIR's disingenuous efforts to decouple the assessment of water supply and accommodation of urban growth is contrary to both California history and California law. California's Urban Water Management Plans and "show me the water laws" (AB 610 and 221) for example, exist and require detailed water analysis because the link DWR unpersuasively attempts to deny is confirmed by evidence and experience.

724. The EIR fails to adequately analyze and disclose the impacts on economic and population growth resulting from a major infrastructure construction Project that would take nearly a decade and a half to complete and would be in operation indefinitely. The EIR fails to explain why the Project's scale and duration, and associated increased support for businesses and commercial entities in the region over many years, would not induce growth in the Project area.

725. The EIR acknowledges that the Project would involve construction of new permanent access roads at locations within the Project work area to provide access to conveyance structures and other facilities, and that construction of roads in relatively undeveloped areas has the potential to induce growth by facilitating access to such areas, thereby removing a barrier or an obstacle to growth. Its conclusion, therefore, that the Project's

planned new segments of permanent access roads would not induce urban development is unsupported.

726. The Project would potentially have significant impacts, both direct and indirect, on the economic or population growth in the Delta and in regions served by SWP and CVP exports. DWR's failure to adequately analyze the Project's potential to foster growth inducement as a result of Project construction and operation, including by removing barriers to growth and increasing water imports to areas outside the Delta, is inadequate.

Tribal Cultural Resources Impacts – EIR Chapter 32

727. California tribes have been clear that the Project would have irreparable impacts to the Delta as a tribal cultural landscape and is a direct and eminent threat to the culture, history, traditions, natural resources way of life that are not outweighed by alleged benefits of the Project.

728. The EIR includes an inadequate disclosure and analysis of the Project's tribal cultural resources impacts during both construction and operation.

729. The EIR fails to demonstrate consistency with Delta Plan Policy DP P2, to show that the Project was sited to avoid or reduce conflicts with existing land uses by Tribes.

730. California Tribes commenting on the EIR rejected its approach to analyzing impacts on tribal cultural resources, and consultation concluded without Tribal parties' agreement on consultation on measures to mitigate or avoid significant impacts on Tribal cultural resources.

731. The EIR fails to: support its approach to significance criteria for impacts on tribal cultural resources; describe the basis for its rejection of individual features of the tribal cultural landscape for California Register of Historical Resources eligibility; or explain how tribes were consulted on the analysis and conclusions regarding tribal cultural resources impacts in the EIR.

732. The EIR fails to include mitigation measures that consistently include an active role for Tribes in the formulation of mitigation, including the Tribal Cultural Resources Management Plan in associated mitigation measures. To the extent the Tribes are included, their recommendation may or may not be followed depending on feasibility as determined by DWR,

and DWR makes no real commitment to facilitating Tribal access to habitat restoration areas constructed in the Compensatory Mitigation Plan as mitigation for Project impacts to species habitats.

733. The tribal cultural resources impacts of the Project, in combination with the impacts of past, present and reasonably foreseeable future projects, are cumulatively significant.

734. DWR's failure to adequately analyze Project-level tribal cultural resources impacts renders DWR's attempted cumulative impacts analysis inadequate.

The EIR's Cumulative Impacts Analysis Is Deficient

735. CEQA requires that the lead agency analyze cumulative impacts. (Pub. Resources Code, § 21083, subd. (b)(2); CEQA Guidelines § 15064, subd. (h)(1).) A cumulative impact is an impact created as a result of the project when evaluated together with other past, present, and reasonably foreseeable future projects causing related impacts. In performing a cumulative impacts analysis, an EIR must assess the significance of the incremental addition of a project to the combined individual effects of one or more separate projects. The analysis must provide sufficient data to ensure that the cumulative effects are identified and disclosed and must make a good faith and reasonable effort at disclosing all cumulative impacts.

736. The EIR includes an inadequate disclosure and analysis of the Project's cumulative impacts during both construction and operation. The EIR's deficiencies include, but are not limited to, the following examples.

737. The EIR fails to include a single, unified section that addresses cumulative impacts.

738. The EIR fails to acknowledge the scale of the Project in proportion to all other past, present, and reasonably foreseeable future projects causing related impacts. The Project proposes to fundamentally change the flow of the Sacramento River and the hydrology of the Delta. Project impacts dwarf impacts from all other cumulative projects for several resource areas. The EIR thus fails to disclose the significance of the Project's incremental impacts in relation to cumulative projects.

739. The EIR fails to adequately analyze cumulative impacts to Delta agriculture from the combined impacts from land conversion, seepage damage, water quality degradation, soil contamination, blocked access to parcels, and reduced water elevations from the Project.

740. The EIR fails to adequately analyze cumulative impacts due to climate change, including changed rainfall patterns and sea level rise; the limited discussion of these impacts ignores, among other issues, changing snowpack, increased water temperature, increased evapotranspiration, flood flows, and upstream fishery habitat.

741. As one illustration, the EIR does not adequately analyze the planned changes to operations of the Yolo Bypass under the Yolo Bypass project as a cumulative project that may cause related impacts; the Yolo Bypass project would divert additional water from the Sacramento River, further limiting freshwater flows through the Delta. The Project, in combination with planned changes to operations of the Yolo Bypass would contribute to cumulative impacts to water supply, surface water, water quality, aquatic resources, and other environmental resources. These impacts must be assessed cumulatively with the Project impacts.

742. Use of the NDDs to facilitate additional water transfers is a reasonably foreseeable outcome of the Project, and would cause additional surface water impacts, yet the EIR fails to perform a cumulative analysis of surface water impacts that would result from these additional transfers. Increased water transfers would cause additional groundwater, agricultural and other impacts in transferor areas, such as the Sacramento Valley and in the American River Watershed, yet the EIR fails to perform a cumulative analysis of groundwater, agricultural and other impacts that would result from these additional transfers.

743. The EIR fails to adequately mitigate the Project's contribution to significant cumulative effects.

DWR's CEQA Findings and Statement of Overriding Considerations are Not Supported by Substantial Evidence

744. A thin veil for DWR having predetermined the outcome and having utilized an otherwise legally deficient process, DWR's CEQA Findings violate CEQA, and are not

supported by substantial evidence. (CEQA Guidelines, § 15091, subd. (b).)

745. The Findings improperly conclude without substantial evidence that hundreds of Project impacts have been mitigated to less than significant levels, even though they fail to correct the EIR's major problems with the EIR's assessment of impacts and mitigation discussed above.

746. Where a project for which an EIR has been certified has a significant environmental effect, an agency may not carry out that project unless the agency makes findings for each of those significant effects. (*Id.* at subd. (a); Pub. Resources Code, § 21081, subd. (a).) One possible finding is that "[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the environmental effect." (Pub. Resources Code, § 21081, subd. (a)(1).) The CEQA Findings do not include adequate findings for impacts that were potentially significant, but later determined to be less than significant for reasons including but not limited to reliance on Project features deemed "Environmental Commitments" or "Avoidance and Minimization Measures" by DWR. These types of impacts fall within Guidelines section 15091 as the type of impact for which the agency must make CEQA Findings describing what has been done to reduce the impact.

747. The failure to include findings to support impact determinations prevents the public from understanding the full range of Project impacts, and critically, the reasons why the agency has determined the impacts are less than significant. DWR's omission of findings for these impacts constitutes a failure "to bridge the analytic gap between the raw evidence and ultimate decision." (*Topanga Ass'n for a Scenic Cmty. v. County of L.A.* (1974) 11 Cal.3d 506, 515; see also Pub. Resources Code, § 21081, subd. (a)(1).)

748. To the extent that DWR's CEQA Findings do discuss particular impacts, DWR's determination that these impacts would be less than significant is unsupported by substantial evidence, enabled by refusal to analyze evidence, or both. The findings also avoid significant new information introduced by commenters after the release of the DEIR, including the 2023 State Auditor Report, which as addressed above cast major doubt upon the climate and hydrology analysis underpinning the assessment of most of the EIR's impact categories.

749. DWR's statement of overriding considerations for 16 significant and unavoidable impacts is not supported by substantial evidence in the record, as CEQA requires. (CEQA Guidelines, § 15093, subd. (b.)

750. DWR's findings and overriding considerations are ineffective because as discussed further above, it has failed to demonstrate the unavailability of mitigation to reduce or substantially lessen significant environmental impacts, without which the Project cannot be approved. (Pub. Res. Code, § 21002.)

751. DWR failed to properly determine that economic, legal, social, technological, or other benefits of the program were overriding considerations that permitted approval of the Plan Project despite significant and unavoidable impacts on the environment. (CEQA Guidelines, § 15091.)

752. DWR's statement of overriding considerations is ineffective because it "camouflaged" the difference between the Project and other options by making "unsupported claims about economic superiority." (*Woodward Park Homeowners' Association v. City of Fresno* (2007) 140 Cal.App.4th 683, 691.) Although DWR confidently asserts that the Project "will provide protections and benefits to California's economy," it obscures the fact that the EIR and final approval documents rely on a shell game to achieve DWR's purpose of project promotion. After making a central part of the project purpose to consider whether Delta conveyance and diversion facilities can be developed in a "cost effective manner," DWR disabled itself from answering that question by repeatedly refusing to analyze the costs and benefits of a project whose informal cost estimate was $16 billion more than three years before project approval.

753. DWR compounded its unsupported claims of economic superiority by excluding consideration of non-conveyance alternatives that might have better achieved most Project purposes without this tremendous and unknown expense. DWR added to the avoidance by avoiding dispositive criticisms of its climate change and hydrologic analysis, and by failing to disclose a tentative ruling, now final, against the validity of its Delta conveyance bond resolutions.

754. The EIR disingenuously avoids analysis of whether the Delta Tunnel would be cost effective. DWR also failed to disclose much of what it already knew about public criticism of the Project and its precursors for lack of cost effectiveness, legal proceedings bearing on the Project's excessive and uncapped costs, and problematic reliance on revenue bond financing with no assurance of revenue.

755. DWR failed to include a specific Project objective on cost-effectiveness tied to its project purpose and failed to consistently apply that criterion in its screening out of feasible and more cost-effective non-conveyance alternatives. DWR avoided that analysis even after commenters provided detailed reports documenting grounds for concern about cost overruns and criticizing DWR's refusal to include analysis of costs and benefits in its Project review.

756. DWR also heavily relies on its claim that the Project achieves its four listed project objectives. But as discussed above in the context of the EIR, DWR's adopted Project, Alternative 5, is not consistent with the stated Project objectives, and DWR has failed to demonstrate that it can feasibly achieve any of them, much less most or all. The overriding considerations section merely repeats the EIR's general conclusions rather than providing new analysis.

757. No substantial evidence supports DWR's findings in support of the Statement of Overriding Considerations that the Project's purported benefits outweigh its unavoidable significant adverse environmental impacts.

758. No substantial evidence supports DWR's findings that no feasible alternatives or mitigation measures exist to eliminate or reduce the Project's unavoidable significant adverse environmental impacts.

759. No substantial evidence supports DWR's findings that Alternative 4A is the environmentally superior alternative.

760. No substantial evidence supports DWR's findings that alternatives to the Project are not feasible due to costs associated with these alternatives.

SECOND CAUSE OF ACTION
Violation of Fully Protected Species Provisions of Fish and Game Code Section 3511

761. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

762. Under Fish and Game Code section 3511, and subject to exceptions not applicable in this case:

> [A] fully protected bird may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird, and no permit or license previously issued shall have any force or effect for that purpose.

763. "Fully protected" birds subject to the prohibition of Fish and Game Code section 3511 include the greater sandhill crane (*Grus canadensis tabida*) and the white-tailed kite (*Elanus leucurus*). (Fish & G. Code, § 3511; see Exhibit C.)

764. Greater sandhill cranes are winter residents in the Project area, and are found primarily in open freshwater wetlands, including shallow marshes and wet meadows. The most significant current threat to the greater sandhill crane is habitat degradation and destruction, especially on their wintering grounds.

765. The white-tailed kite, another fully protected species found in the Project area, uses low-elevation grasslands, agricultural areas, wetlands, and oak woodlands as habitat.

766. The greater sandhill crane and white-tailed kite are Fully Protected Species, and any "take" of the greater sandhill crane and white-tailed kite is strictly prohibited. (Fish & G. Code, § 3511, subd. (b)(8).) Consequently, the Project must meet a zero "take" performance standard for greater sandhill cranes and the white-tailed kite to avoid running afoul of their Fully Protected Species status.

767. If allowed to proceed, the Project would result in take of greater sandhill cranes and white-tailed kites, DWR assertions to the contrary notwithstanding.

768. With respect to greater sandhill cranes, DWR claims that imposition of a handful of mitigation measures and a Compensatory Mitigation Plan would somehow avoid "take". Yet these same measures are not strictly required. Undergrounding of power lines would occur only

"to the extent possible," and co-location of powerlines on the same vertical prism as existing lines would only be "where feasible." In addition, the feasibility of limiting construction to periods outside of the winter crane season would be determined by the contractor in coordination with a wildlife biologist and is not strictly required. Moreover, greater sandhill cranes are known to be in the Project area outside of the designated winter crane season (September 15 – March 15) in any case.

769. DWR has not adequately supported its determination that the "the measures to avoid "take" of fully protected species for greater sandhill crane throughout the Delta portion of the Project area, including the Wildlife Refuge, would prevent "take" in the form of killing and injuring fully protected species and reducing the range of fully protected species in the northern portion of the Wildlife Refuge.

770. In addition, the EIR only considered potential impacts (take of greater sandhill cranes) within three miles of greater sandhill crane roost sites, despite the fact that the reference relied upon to support a three mile impact zone indicated that greater sandhill cranes use habitat considerably more distant (more than six miles). In addition, the roost site data for greater sandhill cranes relied on in the EIR are outdated, indicating that the points from which the impact zones were analyzed are neither accurate nor useful for the purposes of analyzing the Project's potential to "take" greater sandhill cranes.

771. DWR's proposal to conduct roost site surveys on a yearly basis does not alleviate the problem that the impacts from new or unexpected sites were not analyzed in the EIR. As a result of: (1) DWR's failure to consider impacts beyond three miles from roost sites; and (2) DWR's reliance on inaccurate and outdated roost site data, DWR's claim that "take" of greater sandhill cranes will be fully avoided is unsupported. Even if the impact could be less than significant under CEQA (a point not conceded here), there is insufficient evidence to support a finding that the measures proposed would result in zero take of greater sandhill cranes.

772. Furthermore, construction and operation of powerlines planned as part of the Project would cause a take of both the greater sandhill crane and the white-tailed kite. DWR's determination that undergrounding some new lines, and or co-locating new lines with existing

lines, and installing flight diverters on some existing power lines would meet the required zero-take performance standard is unsupported. DWR's explanation in the FEIR that adding new lines on existing towers would *reduce* impacts on avian species as compared to constructing a new alignment of towers and powerlines is irrelevant. The baseline for comparison is the existing towers and powerlines, not something DWR speculates could be built in the future if lines were not co-located. There is no credible evidence that co-locating new lines on the same towers as existing lines, and the limited installation of flight diverters are effective at completely preventing bird strikes.

773. DWR's claim that there will be no take of greater sandhill crane and white-tailed kite as a result of project activities and infrastructure is unsupported by substantial evidence because it fails to account for the increased possibility of strikes due to unexpected, inadvertent, or unavoidable construction-related disturbances. More activity on the ground increases the likelihood of flushing, which in turn increases the risk of bird strikes with existing powerlines—particularly at night and in foggy conditions. Even if installing flight diverters did minimize the increase in strikes due to construction-related flushing, DWR provides no to support the conclusion that flight diverters would prevent strikes altogether, or that co-locating lines would completely eliminate strikes. The amount of "take" by bird strikes would be further exacerbated by faulty assumptions regarding the foraging range of greater sandhill cranes and DWR's reliance on inaccurate and outdated roost site data.

774. In approving the Project and certifying the Project EIR, DWR has taken actions that will result in take of Fully Protected Species in violation of the Fish and Game Code, as well as in the permanent and temporary destruction of habitat critical to the continuing existence of Fully Protected Species.

775. For the foregoing reasons, DWR failed to act in the manner required by law and prejudicially abused its discretion in approving the Project and certifying the Project EIR, thereby violating Fish and Game Code section 3511.

THIRD CAUSE OF ACTION
Violations of the 1959 Delta Protection Act
(Wat. Code, § 12200 et seq.)

776. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

777. In 1959, the Legislature found and declared that:

> [T]he 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, emphasis added.) Providing that "common source of fresh water" within the Delta for both water users within and outside of the Delta is not optional for DWR. Water Code section 12205 provides:

> 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*.

(Emphasis added; see also Wat. Code, § 107 ["all . . . declarations of policy in this [Water] code shall be given their full force and effect"].)

778. Because one "of the objectives of this part" is the provision of a "common source of fresh water" within the Delta for water users both within and outside of the Delta, DWR has a mandatory duty to integrate its "releases from storage into the [Delta] of water for use outside the area in which such water originates . . . to the maximum extent possible in order to permit the fulfillment of [that] objective[]." (Wat. Code, §§ 12201, 12205.)

779. The hallmark of the proposed Project, however, is the circumvention of that duty. The Project's central feature is the proposed export of water that would otherwise flow into the Delta (i.e., water that DWR releases from storage into the Delta) by way of an "isolated conveyance," i.e., by diverting that water into a tunnel in the northernmost tip of the Delta *before* that water reaches that "common source of fresh water" within the Delta and, hence, *before* that water provides a common source of fresh water for both water users within and outside of the Delta.

780. Such export of water from the northernmost region of the Delta therefore constitutes a direct violation of DWR's duty under Water Code section 12205 to "integrate [its releases of storage water into the Delta for export from the Delta] to the maximum extent possible in order to permit the fulfillment of the objective" of providing that "common source of fresh water." DWR's Project is manifestly intended to do just the opposite, i.e., to avoid integrating its releases from storage into the Delta to provide that supply. Instead, the Project is designed to impermissibly segregate some or all of those releases from that common supply. Because such segregation is directly prohibited by Water Code section 12205, the Project conflicts with, and would violate, the 1959 DPA.

781. Additional objectives of the 1959 DPA include "the provision of salinity control and an adequate water supply for the users of water in the [Delta]." (Wat. Code, § 12202; see also, Wat. Code, § 12201.)

782. Under Water Code section 12205, DWR therefore has an additional duty to integrate its "releases from storage into the [Delta] of water for use outside the area in which such water originates . . . to the maximum extent possible in order to permit the fulfillment of the objectives" of providing that "salinity control and an adequate water supply for the users of water in the [Delta]." (Wat. Code, § 12202.)

783. As proposed, however, the Project would breach that duty by exporting water through the tunnel that is needed to maintain that "salinity control and an adequate water supply for the users of water in the [Delta]." (Wat. Code, § 12202.)

784. Examples of the Project's unlawful intent and effect include DWR's planned deprivation of such salinity control and an adequate water supply via the export of Sacramento River fresh water through the Project's tunnel in the event of extended droughts, individual or widespread levee failures, and sea level rise. When the Delta is experiencing degraded water quality (i.e., high salinity levels) as a result of those events, in lieu of allowing Sacramento River fresh water to flow into the Delta to provide salinity control by restoring that water quality, DWR's plan under the Project is, instead, to export that water through the Project's tunnel, thereby depriving the Delta of that water and, hence, depriving it of that salinity control.

785. This abrogation of Delta salinity control constitutes a direct violation of DWR's duty in Water Code section 12205 to "integrate[] its releases of storage water into the Delta for export from the Delta] to the maximum extent possible in order to permit the fulfillment of the objectives" of providing "salinity control and an adequate water supply for the users of water in the [Delta]." (Wat. Code, § 12202.) For this reason, also, the Project, as proposed, fails as a matter of law and cannot be allowed to proceed.

786. Additionally, the Project, as proposed, violates DWR's duties under Water Code section 12204, which provides:

> In 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 Sections 12202 and 12203 of this chapter.

787. Water Code section 12202, as discussed, requires DWR to provide "salinity control and an adequate water supply for the users of water in the [Delta]." Water Code section 12204, accordingly, prohibits DWR from exporting water through the Project's tunnel that is necessary to provide that salinity control and an adequate water supply.

788. Notwithstanding that duty, the Project would, by design, violate that duty by exporting water through the tunnel that is needed to provide that salinity control and an adequate water supply. As discussed above, examples of such instances include DWR's planned deprivation of the statutorily required salinity control and an adequate water supply in the event of extended droughts, individual or widespread levee failures, and sea level rise. When the water quality (i.e., salinity level) in the Delta is substantially degraded as a result of those events, DWR's proposed Project would export Sacramento River fresh water through the tunnel that is needed to restore that water quality and provide that adequate water supply. Such planned exports therefore directly violate Water Code section 12204 and cannot lawfully proceed.

FOURTH CAUSE OF ACTION
Violations of the 1992 Delta Protection Act
(Pub. Resources Code, § 29700 et seq.)

789. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

790. In the 1992 DPA, the Legislature makes numerous findings and declarations for the protection of the Delta, including the following set forth in Public Resources Code sections 29701 and 29702, respectively:

> "[T]he Sacramento-San Joaquin Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is 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."

(Wat. Code, § 29701, emphasis added.)

> "[T]he basic goals of the state for the delta are the following: (b) *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."

(Wat. Code, § 29702, emphasis added.)

791. DWR's compliance with the policies and goals in the 1992 DPA is mandatory. (See e.g., *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995 [*Klajic*] ["The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine [among other things] whether the agency's action was . . . contrary to established public policy"].) "Generally, a writ [under Code of Civil Procedure section 1085] will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance." (*Pomona Police Officers' Association v. City of Pomona* (1997) 58 Cal.App.4th 578, 584 [*Pomona Police*], quoting *Payne v. Superior Court* (1976) 17 Cal.3d 908, 925.)

792. As is the case with the 2009 DRA, which contains substantially similar findings and declarations (and which is discussed below), far from "preserv[ing]," "protect[ing]," "maintain[ing]," much less "enhance[ing]" the Delta's "irreplaceable resources" and the "overall quality of the Delta environment," the EIR confirms that the Project's construction and operation would substantially impair, and in many cases permanently destroy, those resources and qualities, in direct contravention of the policies and goals set forth in the 1992 DPA.

793. The construction and operation of the Project is also contrary to the co-equal goals set forth in Public Resources Code section 29702 (which are also set forth in the 2009

DRA and also discussed below). Public Resources Code section 29702, subdivision (a), provides:

> The Legislature further finds and declares that the basic goals of the state for the Delta are the following: (a) Achieve the two coequal 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.

794. The Project's noncompliance with these co-equal goals includes the Project's failure to "provid[e] a more reliable water supply for [Delta exporters]" "in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Pub. Resources Code, § 29702.)

795. The Project seeks to provide a more reliable water supply for Delta exporters during events such as extended droughts, levee failures, and sea level rise by depriving the Delta of freshwater flows needed to maintain salinity control and an adequate water supply for water users within the Delta during such events, should they occur. Improvements to the reliability of the water supply for Delta exporters during such events would therefore be achieved by directly impairing the reliability of the water supply for water users within the Delta during those events. Such impairment harms, rather than "protects [much less] enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." Such impairment directly contradicts Public Resources Code section 29702 and, for this reason as well, the Project, as proposed, cannot proceed.

FIFTH CAUSE OF ACTION
Violations of the Watershed Protection Act
(Wat. Code, § 11460 et seq.)

796. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

797. Water Code section 11460 of the Watershed Protection Act provides:

> In the construction and operation by the department [i.e., DWR and USBR] 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.

798. Despite this prohibition against operating the Project in a manner that "directly or indirectly" deprives the Delta of its "prior right to all of the water reasonably required to adequately supply the beneficial needs of the [Delta] or any of the inhabitants or property owners therein," DWR intends to operate the Project in a manner that does precisely that. Instances of such deprivations include DWR's planned use of the Delta Tunnel to export Sacramento River fresh water away from the Delta that is "reasonably required to adequately supply the beneficial needs" of the Delta and its inhabitants during events that result in substantial degradation of the water quality in the Delta, such as extended droughts, levee failures, and sea level rise.

799. It is during and after such events that the Delta and its inhabitants would require that fresh water the most. Yet, in direct contravention of its duties under Water Code section 11460, the Project would deprive the Delta and its inhabitants of such fresh water. Without upholding the clear requirements of section 11460, DWR seeks to implement a project that it estimates could increase SWP exports out of the Delta by an average of 543,000 acre-feet per year on average (out of 2,429,000 acre-feet) and by 316,000 acre-feet per year in dry and critically dry water years. Moreover, DWR proceeded to final approval without even incorporating into its analysis any determination of the water needed to protect Delta flows according to the SWRCB.

800. Such deprivations would be unlawful under the Watershed Protection Act and, therefore, the Project, as proposed, cannot proceed. Additionally, the anticipated adverse impacts to surface water and groundwater quality and quantity within the Delta and other areas of origin that would result from the construction and operation of the Project, as proposed, likewise would result in direct and/or indirect deprivations of those areas' prior rights to that water, and to the unimpaired quality of that water, in violation of Water Code section 11460.

SIXTH CAUSE OF ACTION
Violations of the 2009 Delta Reform Act
(Pub. Resources Code, § 9700 et seq.)

801. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

802. The 2009 DRA provides comprehensive protections for the Delta. As with the other acts, DWR's approval of the Project and its certification of the EIR violate the 2009 Delta Reform Act in numerous substantial respects.

803. The 2009 DRA sets out numerous policies of the State of California that apply to the management of the Delta. These policies constitute the "coequal goals" of the 2009 Delta Reform Act and are generally applicable provisions of the Water Code.

804. The 2009 DRA also directs the DSC to adopt a Delta Plan for long-term management of the Delta. The Delta Plan is the mechanism by which the DSC may review covered actions. (See Wat. Code, § 85059.) The DSC evaluates covered actions for consistency with the Delta Plan when a party challenges an agency's certification of consistency. (Wat. Code, § 85225.10.) This review process pertains specifically to the Delta Plan and is separate from the 2009 DRA's policies.

805. The 2009 DRA defines the coequal goals of Delta water management 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.) As the policies of the State of California, the coequal goals apply generally to the Project and are not exclusively the purview of the DSC. The coequal goals are judicially enforceable. (See e.g., *Klajic, supra*, 90 Cal.App.4th at 995; *Pomona Police*, *supra*, 58 Cal.App.4th at 584.)

806. DWR's approval of the Project and certification of the EIR conflict directly with the 2009 DRA's co-equal goal of creating a more reliable water supply in California. No water availability analysis has been performed to determine the Project's impacts to water supply; had a water availability analysis been performed, it would have disclosed the fact that the Project

relies on "paper water," i.e., water that exists only on paper." (*Planning and Conservation League*, *supra*, 83 Cal.App.4th at 908, fn. 5.)

807. Compounding that avoidance, DWR completed its review and decision-making without analyzing available evidence about Delta flows, including earlier reports and studies and the SWRCB's September 2023 report in the Phase II WQCP Update process, which confirmed severe problems with oversubscription.

808. DWR's approval of the Project and certification of the EIR also violate the 2009 DRA's co-equal goal of protecting, restoring, and enhancing the Delta ecosystem. The Project simply relocates impacts from the export of Delta water to a different region of the Delta and includes no protective, restoration or enhancement measures in excess of mitigation required to reduce project impacts pursuant to other laws, e.g., CEQA, and, as alleged elsewhere herein, even those measures are themselves deficient as a matter of law and/or when reviewed under a substantial evidence standard. Operation of the Project, if implemented, would also significantly degrade water quality, thereby impairing or precluding development of other habitat restoration projects.

809. DWR's approval of the Project and certification of the EIR also conflict directly with the 2009 DRA's requirement that Delta water be managed in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta. (Wat. Code, § 85054.) The Project would instead cripple the Delta's sustainable and wildlife-friendly agricultural operations, destroy special status species Delta habitat in and out of the water, and plague the Project area with overwhelming and lengthy construction activity. Project operations would impair or destroy currently reliable local surface and groundwater supplies and, eventually, the Delta communities that depend on those supplies.

810. "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." (Wat. Code, § 85021.) The Project directly conflicts with the policy of reduced reliance because it would export growth inducing

water supplies from the Delta that *increase*—rather than *decrease*—reliance on the Delta to meet present and future water supply needs outside the Delta.

811. In the 2009 DRA, the Legislature declared state policy, in pertinent part, as follows: "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 . . . ." (Wat. Code, § 85021.) The Project does precisely the opposite. In addition to increasing reliance on Delta water, the Project's enormous cost would also reduce availability of funding for projects that actually would reduce reliance on Delta water. The participating water contractor agencies are considering issuing bonds to finance Project construction. Incurring this increased public debt from the bonds would impair the ability of water contractor agencies to secure funds for other water projects that improve regional water self-reliance and reduce reliance on the Delta. The EIR fails to adequately disclose and analyze the full nature and extent to which the Project would directly and indirectly increase reliance upon the Delta, nor does it identify and analyze measures to mitigate or avoid that increase in reliance upon the Delta.

812. In approving the Project and certifying the EIR, DWR abrogated its affirmative duty to comply with the mandates and promote the express objectives of the foregoing enactments and laws.

813. In approving the Project and certifying the EIR, DWR erroneously portrayed the section 85021's requirement to reduce reliance on the Delta as permissive rather than mandatory. DWR disingenuously portrayed itself as powerless to give effect to this provision because it calls for regional investment, without noting that the statute announces a "statewide" policy, and that it is the state agency that manages the SWP and allocates water to 29 regional water contractors. Moreover, as to investment, DWR confirms in the EIR that if the Project is built and operated, the regional SWP contractors, not DWR, would need to pay its costs.

814. For the foregoing reasons, DWR failed to act in the manner required by law and prejudicially abused its discretion in approving the Project and certifying the EIR.

SEVENTH CAUSE OF ACTION
Violation of the Common Law Public Trust Doctrine

815. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

816. 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, supra,* 67 Cal.2d at 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.)

817. The Public Trust Doctrine in California encompasses all navigable lakes and streams and protects navigable waters from harm caused by diversion of non-navigable tributaries, including those diverted and harmed by the Project. The Public Trust Doctrine also applies to extractions of groundwater that adversely affect navigable waterways.

818. The Public Trust Doctrine provides for protecting people's common interest in California's streams, lakes, marshlands and tidelands, and DWR has "an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust whenever feasible." (*National Audubon Society v. Superior Court of Alpine County* (1983) 33 Ca1.3d 419, 446 [*National Audubon*].)

819. The Legislature has acknowledged that "[t]he longstanding constitutional principle of reasonable use and the Public Trust Doctrine shall be the foundation of state water management and are particularly important and applicable to the Delta." (Wat. Code, § 85023).

820. The people's interests under the Public Trust include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state. Preservation of Public Trust resources in their natural state is also essential to the Public Trust Doctrine. (See *National Audubon, supra,* 33 Cal.3d at 434-35.)

821. An agency's duty to perform a Public Trust analysis prior to approving a project is not necessarily discharged by virtue of performing CEQA review. (*S.F. Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 242.) Instead, public agencies have an independent

duty to perform a Public Trust consistency analysis, based on substantial evidence in the record, as part of an adequate CEQA review. (*Ibid*.)

822. The Project EIR does not contain any water availability analysis that would show, at a minimum, what water will be available to satisfy existing obligations, including protection of the Public Trust, in addition to Project-facilitated exports. The EIR also fails to include sufficient analysis of how Project groundwater extraction activities during construction and diversions during operations would affect Public Trust resources.

823. The Project approval documents fail to adequately address DWR's Public Trust duties.

824. Plaintiffs are informed and believe, and thereon allege, that DWR's failure to adequately consider and analyze the Public Trust in approving the Project will harm trust resources and the Plaintiffs' and the people's rights and interests in those resources—including fishing, hunting, bathing, swimming, boating, and preserving navigable waters of the state—and thus violates the Public Trust Doctrine.

825. Plaintiffs are informed and believe, and thereupon allege, that by failing to adequately consider, analyze and protect the Public Trust, DWR violated the state's duty to protect Public Trust resources.

EIGHTH CAUSE OF ACTION
Violation of the Central Valley Project Act
(Wat. Code Section 11100 et seq.)

826. Plaintiffs incorporate by reference each and every allegation in the preceding paragraphs of this Petition as though fully set forth herein.

827. In its related 2020 Validation Action based on the CVPA, DWR sought to validate three bond resolutions and pledges of revenue for a "Delta Program" that excluded non-conveyance options for a Delta conveyance. DWR relied on its authority to adopt "further modifications" of CVPA's Feather River Project unit under Water Code section 11260, subject to other requirements of the CVPA cited in its bond resolutions.

828. In comments on the FEIR submitted on December 15, 2023, San Joaquin County criticized its lack of any "meaningful evidence or analysis" to construe DWR's proposed Delta

tunnel as eligible for CVPA revenue bonds and its mistaken assumption that the Delta Tunnel would be "essentially self-funded" through the revenue bonds of SWP contractors. San Joaquin County noted it would be "exceptionally risky" to proceed to EIR certification and a final project decision.

829. Without addressing or responding to San Joaquin County's criticisms, and without taking or identifying any further action under the CVPA, DWR certified the EIR and approved the Project on December 21, 2023.

830. On January 16, 2024, the Sacramento Superior Court filed its Final Statement of Decision and directed judgment against DWR in the 2020 Validation Action, concluding DWR exceeded its delegated authority under the CVPA, and could not adopt the Delta Program or issue revenue bonds to finance it under the CVPA.

831. Should it become necessary in this action, Plaintiffs reserve the opportunity to assert that the Project is not in a "unit" or "further modification" of a unit of the state's CVP under water code section 11260 or by virtue of any other provision of the water code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Vacate DWR's Notice of Determination for the Project;

2. Issue a peremptory writ of mandate commanding DWR to vacate and set aside its certification of the FEIR, its approval of the Project, and any and all approvals rendered pursuant to and/or in furtherance of all or any part of the Project;

3. Preliminarily and permanently enjoin DWR from taking any action in furtherance of constructing or operating the Project unless and until Defendant complies with the requirements of CEQA, the Fish and Game Code, the 1959 DPA, the 1992 DPA, the Watershed Protection Act, the 2009 DRA, the Public Trust Doctrine, and the CVPA.

4. Award Plaintiffs the costs of this action, including their reasonable attorneys' fees; and

5. Grant other such relief as the Court deems just and proper.

Dated: January 22, 2024

FREEMAN FIRM

By: _____
THOMAS H. KEELING
Attorney for Plaintiffs/Petitioners
County of San Joaquin, County of Contra Costa and Contra Costa County Water Agency, County of Solano, County of Yolo and Central Delta Water Agency

Dated: January 22, 2024

SOLURI MESERVE,
A LAW CORPORATION

By: _____
OSHA R. MESERVE
Attorney for Plaintiffs/Petitioners
County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, Central Delta Water Agency, and Local Agencies of the North Delta

Dated: January 22, 2024

LAW OFFICES OF ROGER B. MOORE

By: _____
Roger B. Moore
Attorney for Plaintiffs/Petitioners
County of San Joaquin, County of Contra Costa and Contra Costa County Water Agency, County of Solano, County of Yolo and Central Delta Water Agency

VERIFICATION

I, Osha R. Meserve, am counsel of record for Plaintiffs County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, Central Delta Water Agency, and Local Agencies of the North Delta. I sign for Plaintiffs absent from the county and/or because facts contained in the Petition and Complaint are within the knowledge of counsel. I have read the foregoing Petition and Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

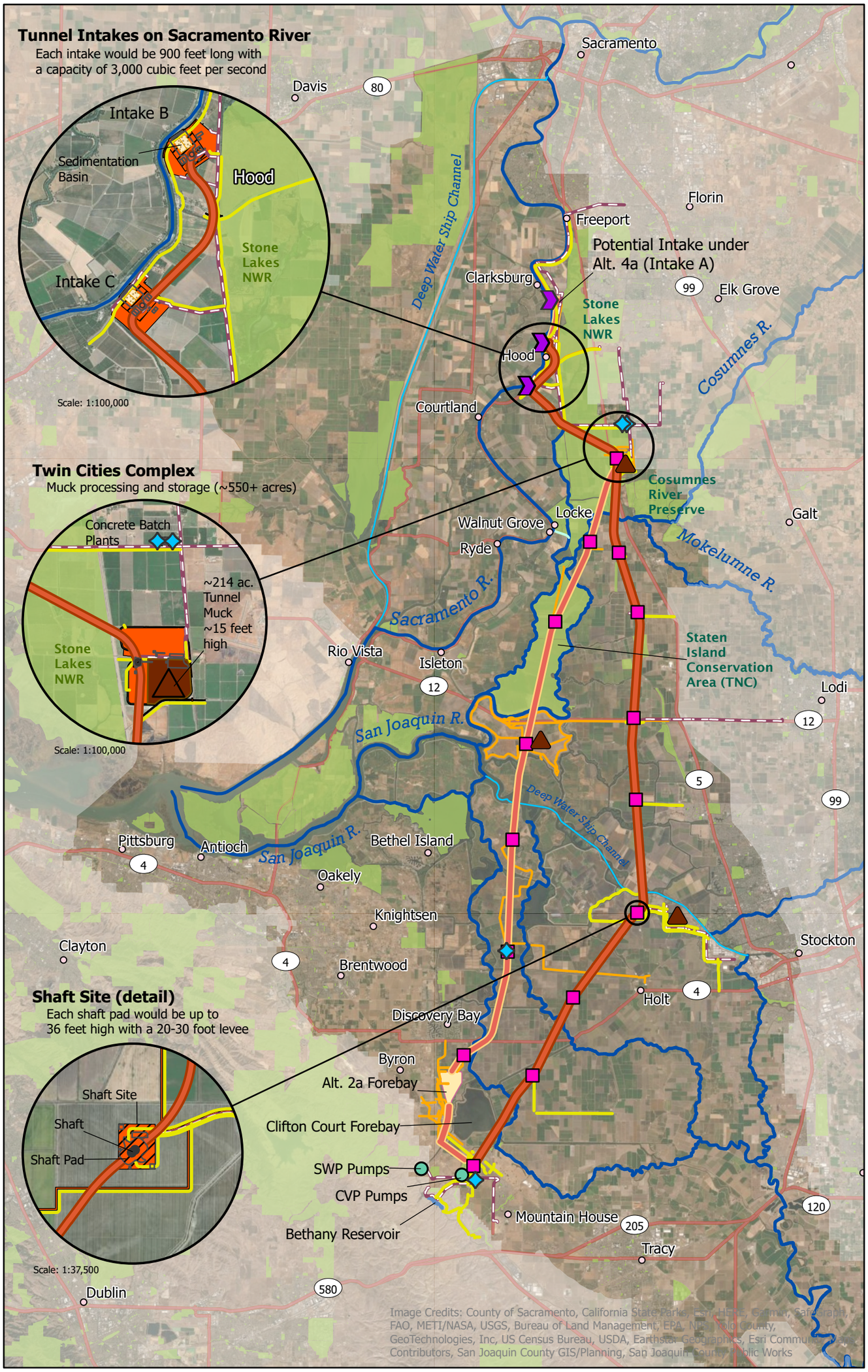
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day in January, 2024, in Sacramento, California.

OSHA R. MESERVE

EXHIBIT A

DWR Tunnel Impacts on the California Delta

Proposed (2022)



Permanent Impact
Work Area
Parks and Public Lands

Major Rivers
Deep Water Ship Channel
Delta Cross Channel
Highways
New Utilities

Tunnel Muck Site
Shaft Site
Intake Site
Concrete Batch Plant
Shaft

Alternative 5 / Bethany
(Proposed Project)
Tunnel (45 mi. long, 39' outer diameter)
Roads and Connections

Alternative 2a / Central
Tunnel (42 mil. long, 44' outer diameter)
Roads and Connections

Scale: 1:350,000
0 2.5 5 10 Miles
Projection: State Plane Zone III NAD83 Feet

Prepared Sep 2022 by Valley Spatial
Locations Approximate
Project Components: DWR (2022)
State Lands: gis.data.ca.gov (2019)

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EXHIBIT B

Delta Conveyance Project Permitting and Review Status: INCOMPLETE

PERMIT	MOST RECENT UPDATE	STATUS		OVERALL PROGRESS
		COMPLETE	INCOMPLETE	
Environmental Review/Agency				
CEQA *Department of Water Resources*	Draft EIR circulated for public review July 27, 2022	☑	☐	Complete
	Final EIR released December 8, 2023	☑	☐	
	Certification of EIR & Notice of Determination December 21, 2023	☑	☐	
NEPA *U.S. Army Corps of Engineers*	Draft EIS circulated for public review December 16, 2022 *Analyzing Construction of Tunnel Only*	☑	☐	5/8 Steps Complete
NEPA *Agency Unknown*	Draft EIS Analyzing Operation of Tunnel	☐	☒	It appears this process has not begun.
	Final EIS Analyzing Operation of Tunnel	☐	☒	It appears this process has not begun.
Other Environmental Processes				
Federal Endangered Species Act Biological Opinion *NOAA Fisheries; U.S. Fish and Wildlife Service*		☐	☒	It appears only 2/6 Steps Complete
California Endangered Species Act, Section 2081, Incidental Take Permit *California Department of Fish and Wildlife*		☐	☒	It appears only 1/6 Steps Complete
California Fish and Game Code, Section 1602, Lake and Streambed Alteration Agreement *California Department of Fish and Wildlife*		☐	☒	0/5 Steps Complete It appears this process has not begun.

Delta Conveyance Project Permitting and Review Status: INCOMPLETE

PERMIT	MOST RECENT UPDATE	STATUS		OVERALL PROGRESS
		COMPLETE	INCOMPLETE	
Other Environmental Processes (Continued)				
Federal Clean Water Act, Section 404 *U.S. Army Corps of Engineers*	Amended application submitted July 7, 2022	☐	☒	1/5 Steps Complete
Wetland Riparian Area Protection Policy *State Water Resources Control Board*		☐	☒	It appears this process has not begun
Rivers and Harbors Act, Section 10 *U.S. Army Corps of Engineers*	Amended application submitted July 7, 2022	☐	☒	1/5 Steps Complete
Rivers and Harbors Act, Section 14, 33 USC Section 408 *U.S. Army Corps of Engineers*	Central Valley Flood Protection Board Statement of No Objection submitted May 22, 2020	☐	☒	It appears only 1/5 Steps Complete
Water Rights Petition *State Water Resources Control Board*		☐	☒	0/11 Steps Complete This process has not begun.
Clean Water Act, Section 401, and Porter-Cologne Act Water Quality Certification & Waste Discharge Requirements *State Water Resources Control Board*		☐	☒	0/3 Steps Complete It appears this process has not begun.
Delta Reform Act, Consistency with Delta Plan *Delta Stewardship Council*		☐	☒	0/7 Steps Complete It appears this process has not begun.
National Historic Preservation Act, Section 106, Programmatic Agreement *U.S. Army Corps of Engineers*	Revised draft circulated to consulting parties January 27, 2023	☐	☒	3/5 Steps Complete

For more information on the Delta Conveyance Project's environmental compliance and permitting processes, visit https://www.deltaconveyanceproject.com/planning-processes. Additional permits, including local permits and those related to construction, also still need to be obtained.

EXHIBIT C

Foraging greater sandhill cranes in North Delta

White-tailed kite within Stone Lakes NWR

EXHIBIT D

SOLURI MESERVE
a law corporation

tel: 916.455.7300 · fax: 916.244.7300
510 8th Street · Sacramento, CA 95814

January 19, 2024

SENT BY MAIL AND EMAIL

California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
(DWRLegalService@water.ca.gov)

California Department of Water Resources
Thomas Gibson, General Counsel
Office of General Counsel
(thomas.gibson@water.ca.gov)

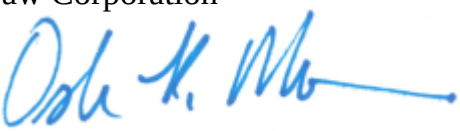
RE: Notice of Commencement of Action against California Department of Water Resources

To the California Department of Water Resources:

Please take notice, under Public Resources Code section 21167.5, that Petitioners and Plaintiffs County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, Central Delta Water Agency, and Local Agencies of the North Delta intend to file a petition for writ of mandate and complaint for injunctive relief under the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. ["CEQA"]) (among other claims) against the California Department of Water Resources ("DWR"). Plaintiffs challenge DWR's environmental review and approval of the construction and operations of the Delta Conveyance Project or Delta Tunnel Project. The lawsuit will be based on violations of CEQA and other applicable statutes. The exact nature of the allegations and relief sought is described in the Verified Petition for Writ of Mandate and Complaint for Injunctive Relief that Plaintiffs plan to file on or before January 22, 2024.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve

Attachment: Proof of Service

PROOF OF SERVICE

I hereby declare that I am employed in the City of Sacramento, County of Sacramento, California. I am over the age of 18 years and not a party to the action. My business address is 510 8th Street, Sacramento, California 95814.

On January 19, 2024, I served the attached document:

NOTICE OF COMMENCEMENT OF ACTION AGAINST CALIFORNIA DEPARTMENT OF WATER RESOURCES

on the following parties or attorneys for parties, as shown below:

California Department of Water Resources P.O. Box 942836 Sacramento, CA 94236-0001 Emails: DWRLegalService@water.ca.gov thomas.gibson@water.ca.gov

Service was caused as follows:

✓ **BY FIRST CLASS MAIL**: I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the U.S. Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service. On the date written above, following ordinary business practices, I placed for collection and mailing at my place of business the attached document in a sealed envelope, with postage fully prepaid, addressed as shown above.

✓ **BY ELECTRONIC MAIL**: I caused each such document to be sent by electronic mail to the addressees at the email addresses listed above. The document was served electronically from my place of business at 510 8th Street, Sacramento, California, 95814, from my electronic service address at legal@semlawyers.com.

I declare under the penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California on January 19, 2024.

Mae Ryan Empleo

EXHIBIT E

SOLURI MESERVE
a law corporation

tel: 916.455.7300 · fax: 916.244.7300
510 8th Street · Sacramento, CA 95814

January 22, 2024

SENT BY MAIL AND EMAIL (CEQA@doj.ca.gov)

Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

RE: Notice to Attorney General of Commencement of Action against California Department of Water Resources

To the Attorney General of the State of California:

Please take notice, under Public Resources Code section 21167.7 and Code of Civil Procedure section 388, that Petitioners and Plaintiffs County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, Central Delta Water Agency, and Local Agencies of the North Delta intend to file a petition for writ of mandate and complaint for injunctive relief under the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. ["CEQA"]) (among other claims) against the California Department of Water Resources ("DWR"). Plaintiffs challenge DWR's environmental review and approval of the Delta Conveyance Project or Delta Tunnel Project. The lawsuit will be based on violations of CEQA and other applicable laws. The exact nature of the allegations and relief sought is described in the Verified Petition for Writ of Mandate and Complaint for Injunctive Relief that Plaintiffs plan to file on January 22, 2024, and is attached hereto as Exhibit 1.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: Osha R. Meserve

Attachments: Exhibit 1, Petition & Complaint
Proof of Service

PROOF OF SERVICE

I hereby declare that I am employed in the City of Sacramento, County of Sacramento, California. I am over the age of 18 years and not a party to the action. My business address is 510 8th Street, Sacramento, California 95814.

On January 22, 2024, I served the attached document:

Notice to Attorney General of Commencement of Action against California Department of Water Resources

on the following parties or attorneys for parties, as shown below:

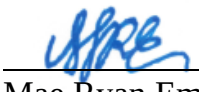
Rob Bonta
Attorney General
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550
CEQA@doj.ca.gov

Service was caused as follows:

✓ **BY FIRST CLASS MAIL**: I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the U.S. Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service. On the date written above, following ordinary business practices, I placed for collection and mailing at my place of business the attached document in a sealed envelope, with postage fully prepaid, addressed as shown above.

✓ **BY ELECTRONIC MAIL**: I caused each such document to be sent by electronic mail to the address at the email address listed above. The document was served electronically from my place of business at 510 8th Street, Sacramento, California, 95814, from my electronic service address at legal@semlawyers.com.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed at Sacramento, California on January 22, 2024.



Mae Ryan Empleo