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13 *SAN FRANCISCO BAYKEEPER,*

14 *SHINGLE SPRINGS BAND OF MIWOK INDIANS,*

15 *CALIFORNIA INDIAN ENVIRONMENTAL*

16 *ALLIANCE, RESTORE THE DELTA, GOLDEN STATE*

17 *SALMON ASSOCIATION, and THE BAY*

18 *INSTITUTE*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **COUNTY OF SACRAMENTO**

21 SAN FRANCISCO BAYKEEPER, SHINGLE

22 SPRINGS BAND OF MIWOK INDIANS,

23 CALIFORNIA INDIAN ENVIRONMENTAL

24 ALLIANCE, RESTORE THE

25 DELTA, GOLDEN STATE SALMON

26 ASSOCIATION, and THE BAY INSTITUTE,

27 **Petitioners,**

28 **vs.**

CALIFORNIA DEPARTMENT OF

WATER RESOURCES,

Respondent.

Case No.: 24WM000017

DECLARATION OF JAMES SARMENTO

1 I, James Sarmento, do hereby declare as follows:

2 1. The facts set forth in this declaration are based upon my personal knowledge, and if
3 called as a witness in these proceedings, I could and would testify competently thereto under oath.
4 As to those matters that reflect a matter of opinion, they reflect my personal opinion and judgment
5 upon the matter.

6 2. I am the Executive Director for Cultural Resources for the Shingle Springs Band of
7 Miwok Indians.

8 3. The Shingle Springs Band of Miwok Indians is a federally recognized Indian Tribe
9 committed to protecting and enhancing the quality of life of its members by preserving, protecting,
10 and promoting its history, culture, and traditions, promoting self-sufficiency and a strong work
11 ethic, and exercising the powers of self-government and sovereign immunity, while also providing
12 social, health, economic, and educational resources, opportunities, and services to contribute to the
13 well-being of the Tribal community.

14 4. I reside in Carmichael, California.

15 5. I am aware of the Delta Conveyance Project and the California Department of Water
16 Resources' current plan to begin geotechnical investigations throughout the Sacramento-San
17 Joaquin Delta to begin implementation of that project.

18 6. I am further aware that such investigations will entail the boring of many boreholes,
19 some of which will be over hundreds of feet deep, the dredging of several massive trenches, and
20 multiple vibration tests.

21 7. I am concerned that the geotechnical investigations the California Department of
22 Water Resources plans to undertake beginning in May 2024 will impair and even damage critically
23 important and irreplaceable Tribal cultural resources.
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1 8. Tribal cultural resources in the Delta cannot be understated. The aboriginal territory
2 of the Shingle Springs Band of Miwok Indians encompasses the Delta, and the Tribe relates to the
3 Delta in countless ways.

4 9. Indeed, the Delta itself is a Tribal cultural resource and a cultural landscape, so the
5 geotechnical investigations to be undertaken necessarily will impair the Delta as such and will
6 necessarily impact Tribal members' ability to use and enjoy the Delta for recreational and cultural
7 purposes.
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9 10. Tribal cultural resources in the Delta can be categorized into two categories: living
10 cultural resources like fish, birds, the water, plants, and the Delta itself, and buried cultural
11 resources like relics, artifacts, and remains. And each of these categories of resources are likely to
12 be impacted by the geotechnical investigations the California Department of Water Resources plans
13 to begin in May 2024 as discussed below.
14

15 11. In terms of living cultural resources, Tribal members use the Delta for ceremonial
16 purposes at different times of the year. For example, the Tribe will be hosting a Spring Dance in or
17 around Verona, California in the coming months. And these ceremonies always have and always
18 will involve the Delta, including by catching, cooking, and eating fish, and by utilizing the water for
19 other purposes.
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21 12. Likewise, Tribal members also regularly fish in the Delta recreationally and may be
22 impacted by the geotechnical investigations the California Department of Water Resources plans to
23 begin in May 2024. The boring, dredging, piledriving, and drilling to be undertaken will stir up the
24 sediment at the bottom of the Delta and thereby expose fish and other species to pollutants that have
25 settled on the Delta floor. Once those pollutants are absorbed by fish and bioaccumulate in the fish
26 species fishermen catch, these impacts will be borne out by Tribal members to a negative effect.
27

28 13. And, importantly, Tribal members gather plants for basketweaving in areas nearby
the locations of the geotechnical investigations to be conducted in May 2024. These members'

1 ability to comfortably gather plants there may be impacted by the geotechnical investigations,
2 which may destroy patches of the plants needed for harvesting. And the geotechnical investigations,
3 and vibrations, noise, and work-crews attendant to that, may impair members' ability to harvest.

4 14. Moreover, and critically, I am concerned that the geotechnical investigations the
5 California Department of Water Resources plans to begin in May 2024 will damage or even destroy
6 irreplaceable buried Tribal cultural resources, relics, sites, and remains. Although the Tribe is aware
7 of buried cultural resources in the Delta, there has been no comprehensive survey of the Delta to
8 pinpoint and identify the location and extent of Tribal cultural resources, sites, remains, and relics.
9 As a result, any of the geotechnical investigations to be undertaken may inadvertently discover and
10 thereby damage or destroy irreplaceable buried cultural resources. Even if proper consultation and
11 monitoring occurs, therefore, significant impacts may occur.

12 15. Tribal consultation and monitoring have been difficult with the California
13 Department of Water Resources on past projects, and the Tribe fears that this pattern is likely to
14 continue to recur for this project as well. For example, it took many consultation meetings between
15 the Tribe and the Department for the agency to understand that the entire Delta itself is a critically
16 important cultural resource for the Tribe. And the Tribe commends the Department for reflecting
17 that realization in the environmental review documents for the Delta Conveyance Project.

18 16. That notwithstanding, Tribal consultation has often been a difficult and painful
19 process. Tribal monitors have not been adequately consulted and have often not been given
20 adequate notice of site inspections or activities that require cultural monitors.

21 17. And getting access to private sites has also been exceedingly difficult. Indeed, part of
22 the reason the Tribe does not know more about the precise location of buried or living cultural
23 resources is that Tribal members and monitors, despite being subject matter experts on these topics,
24 have not been granted access to potential work sites or provided adequate notice of site visits to
25 survey for resources like plants, animals, and buried resources.

1 18. Sometimes the Tribe's cultural resource monitors have been notified of events
2 requiring their presence less than 24 hours before such events and sometimes with only about an
3 hour's notice. Given the distances Tribal monitors must travel to sites, this has presented difficulties
4 obtaining what limited access the Tribe has been permitted to survey for resources.

5 19. Likewise, on recent site visits with the California Department of Water Resources,
6 the Tribe's cultural resource monitor could not review soil samples for buried cultural resources.
7 Given these issues, the Tribe fears that the geotechnical investigations are likely to damage or even
8 destroy important and irreplaceable cultural resources.
9

10 20. I am also aware that the California Department of Water Resources has not
11 submitted a written statement to the Delta Stewardship Council certifying that the Delta
12 Conveyance Project is consistent with the Delta Reform Act of 2009 and the 2013 Delta Plan issued
13 by the Delta Stewardship Council, as required by that Act.

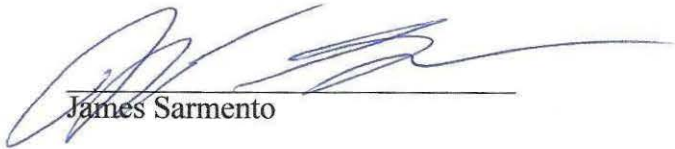
14 21. Though the Tribe has not participated in any proceedings under the Delta Reform
15 Act in the past, it is aware of such proceedings and concerned about such proceedings as they relate
16 to the Delta Conveyance Project.
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18 22. Given the impacts the Delta Conveyance Project is likely to have on Chinook salmon
19 and other fish in the Delta, I do not believe that the California Department of Water Resources can
20 adequately justify how the Delta Conveyance Project is consistent with the Delta Reform Act's
21 stated goal to protect, restore, and enhance the Delta ecosystem and the fish, wildlife, and recreation
22 it supports.
23

24 23. If and when the California Department of Water Resources gets around to drafting
25 and submitting a written statement certifying that the Delta Conveyance Project is consistent with
26 the Delta Reform Act of 2009 and the 2013 Delta Plan, I and my Tribe plan to participate in any
27 subsequent proceedings potentially challenging that certification as inconsistent with the Delta
28 Reform Act and 2013 Delta Plan.

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Executed this Second day of May 2024 in Shingle Springs, California.



James Sarmiento