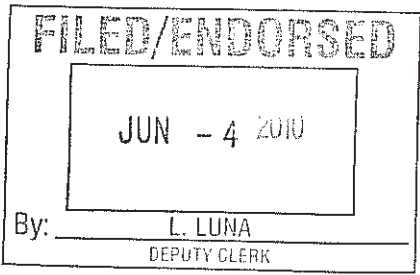


1 Adam Keats (SBN 191157)
 John Buse (SBN 163156)
 2 Adam Lazar (SBN 237485)
 CENTER FOR BIOLOGICAL DIVERSITY
 3 351 California St., Suite 600
 San Francisco, California 94104
 4 Telephone: 415-436-9682
 Facsimile: 415-436-9683
 5 akeats@biologicaldiversity.org
 jbuse@biologicaldiversity.org
 6 alazar@biologicaldiversity.org



7 Attorneys for Petitioners California Water Impact Network, California Sportfishing Protection
 Alliance, Center for Biological Diversity, Carolee Krieger, and James Crenshaw
 8
 9 *additional counsel listed on additional pages*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **IN AND FOR THE COUNTY OF SACRAMENTO**

BY FAX

13	CENTRAL DELTA WATER AGENCY,	)	Case No. 35-2010-80000561
	SOUTH DELTA WATER AGENCY,)	
14	CALIFORNIA WATER IMPACT NETWORK,)	
	CALIFORNIA SPORTFISHING PROTECTION)	
15	ALLIANCE,)	
	CENTER FOR BIOLOGICAL DIVERSITY,	)	FIRST AMENDED PETITION FOR
16	CAROLEE KRIEGER, and JAMES CRENSHAW)	)	WRIT OF MANDATE AND
		)	COMPLAINT FOR DECLARATORY
17	Petitioners / Plaintiffs,	)	AND INJUNCTIVE RELIEF
18	vs.)	
		)	Code Civ. Proc. §§ 860, 1060, 1085,
19	CALIFORNIA DEPARTMENT OF WATER	)	1094.5; Pub. Resources Code § 21000 <i>et</i>
	RESOURCES and DOES 1 – 20,	)	<i>seq.</i> (California Environmental Quality
20		)	Act); Gov. Code §§ 17700, 53510, 53511;
	Respondents / Defendants;	)	Civ. Code § 1550; Cal. Const. Art. 16 §§ 1,
21		)	6.
	KERN COUNTY WATER AGENCY,)	
22)	
	Respondents;	)	Judge: Hon. Timothy M. Frawley
23		)	Dept.: 29
)	
24	ALAMEDA COUNTY FLOOD CONTROL &)	
	WATER CONSERVATION DISTRICT ZONE 7,)	
25	ALAMEDA COUNTY WATER DISTRICT,)	
	ANTELOPE VALLEY – EAST KERN WATER)	
26	AGENCY, CASTAIC LAKE WATER AGENCY,)	
	CENTRAL COAST WATER AUTHORITY,)	
27	CITY OF YUBA, COACHELLA VALLEY)	

1 Adam Keats (SBN 191157)
John Buse (SBN 163156)
2 Adam Lazar (SBN 237485)
CENTER FOR BIOLOGICAL DIVERSITY
3 351 California St., Suite 600
San Francisco, California 94104
4 Telephone: 415-436-9682
Facsimile: 415-436-9683
5 akeats@biologicaldiversity.org
jbuse@biologicaldiversity.org
6 alazar@biologicaldiversity.org

7 Attorneys for Petitioners California Water Impact Network, California Sportfishing Protection
Alliance, Center for Biological Diversity, Carolee Krieger, and James Crenshaw

8 *additional counsel listed on additional pages*
9

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27	CITY OF YUBA, COACHELLA VALLEY)	
)	

1 WATER DISTRICT, COUNTY OF BUTTE,)
COUNTY OF KINGS, CRESTLINE – LAKE)
2 ARROWHEAD WATER AGENCY, DESERT)
WATER AGENCY, DUDLEY RIDGE WATER)
3 DISTRICT, EMPIRE – WESTSIDE WATER)
DISTRICT, KERN WATER BANK)
4 AUTHORITY, LITTLEROCK CREEK)
IRRIGATION DISTRICT, METROPOLITAN)
5 WATER DISTRICT OF SOUTHERN)
CALIFORNIA, MOJAVE WATER AGENCY,)
6 NAPA COUNTY FLOOD CONTROL & WATER)
CONSERVATION DISTRICT, OAK FLAT)
7 WATER DISTRICT, PALMDALE WATER)
DISTRICT, PARAMOUNT FARMING)
8 COMPANY LLC, PLUMAS COUNTY FLOOD)
CONTROL & WATER CONSERVATION)
9 DISTRICT, ROLL INTERNATIONAL)
CORPORATION, SAN BERNARDINO)
10 VALLEY MUNICIPAL WATER DISTRICT,)
SAN GABRIEL VALLEY MUNICIPAL WATER)
11 DISTRICT, SAN GORGONIO PASS WATER)
AGENCY, SAN LUIS OBISPO COUNTY)
12 FLOOD CONTROL & WATER)
CONSERVATION DISTRICT, SANTA)
13 BARBARA COUNTY FLOOD CONTROL AND)
WATER CONSERVATION DISTRICT, SANTA)
14 CLARA VALLEY WATER DISTRICT,)
SEMITROPIC WATER STORAGE DISTRICT,)
15 SOLANO COUNTY WATER AGENCY,)
TEJON-CASTAC WATER DISTRICT,)
16 TEJON RANCH COMPANY, TULARE LAKE)
BASIN WATER STORAGE DISTRICT,)
17 VENTURA COUNTY WATERSHED)
PROTECTION DISTRICT, WESTSIDE)
18 MUTUAL WATER COMPANY WHEELER)
RIDGE-MARICOPA WATER STORAGE)
19 DISTRICT and DOES 41 – 60,)

20 Real Parties in Interest.)
21)
22)
23)
24)
25)
26)
27)

1 *additional counsel for Petitioners:*

2 Donald B. Mooney (SBN 153721)
3 Marsha A. Burch (SBN 170298)
4 LAW OFFICE OF DONALD B. MOONEY
5 129 C St., Suite 2
6 Davis, CA 95606
7 Telephone: 530-758-2377
8 Facsimile: 530-304-2424
9 dbmooney@dcn.org
10 mburchlaw@gmail.com

11 Michael R. Lozeau (SBN 142893)
12 LOZEAU DRURY LLP
13 1516 Oak St. Suite 216
14 Alameda, CA 94501
15 Telephone: 510-749-9102
16 Facsimile: 510-749-9103
17 michael@lozeaudrury.com

18 Attorneys for Petitioners California Water Impact Network, California Sportfishing Protection
19 Alliance, Center for Biological Diversity, Carolee Krieger and James Crenshaw.

20 Dante John Nomellini (SBN 040992)
21 Dante John Nomellini, Jr. (SBN 186072)
22 NOMELLINI GRILLI & McDANIEL
23 PROFESSIONAL LAW CORPORATIONS
24 235 East Weber Ave
25 Stockton, CA 95202
26 Telephone: 209-465-5883
27 Facsimile: 209-465-3956
ngmplcs@pacbell.net

John Herrick (SBN 139125)
LAW OFFICE OF JOHN HERRICK
4255 Pacific Ave
Stockton, CA 95207
Telephone: 209-956-0150
Facsimile: 209-956-0154
jherrlaw@aol.com

S. Dean Ruiz (SBN 213515)
HARRIS, PERISHO, & RUIZ
Brookside Corporate Center
3439 Brookside Rd., Suite 210
Stockton, CA 95219
Telephone: 209-957-4245
Facsimile: 209-957-5338
dean@hp LLP.com

Attorneys for Petitioners South Delta Water Agency and Central Delta Water Agency

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1 **INTRODUCTION**

2 1. This action challenges approval of the Monterey Plus Amendments (“Project”)
3 by California Department of Water Resources (“DWR”), recorded in a Notice of
4 Determination dated May 5, 2010 and DWR’s certification of the Environmental Impact
5 Report (“EIR”) for the Project on February 1, 2010. The components of the Project include:
6 (1) the original Monterey Amendments and two-part transfer; (2) additional amendments
7 identified in Attachment A of the Settlement Agreement described below in this Petition; and
8 (3) additional terms and conditions of the Settlement Agreement described below. All of these
9 elements form the Project and are subject to DWR’s final review and decision.

10 2. As described below, DWR’s approval violated numerous laws, including the
11 California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*, the
12 CEQA Guidelines, title 14 California Code of Regulations, § 15000 *et seq.* (“Guidelines”), as
13 well as provisions of the California Water Code, the California Civil Code, and the California
14 Constitution.

15 3. This action also challenges the validity of the fee-simple “transfer” of the Kern
16 Water Bank¹, whose authorization became final with DWR’s Notice of Determination. This
17 component of the Project would permanently transform that facility from statewide into private
18 control by enacting a two-part transaction: first, from the DWR to the Kern County Water
19 Agency under the Monterey Plus Amendments, and second, Kern County Water Agency’s
20 immediate retransfer from that agency to a novel joint powers authority, Kern Water Bank
21 Authority. While styled as a “transfer,” this hybrid transaction amounts to an unlawful and
22 unconstitutional gift of a critical state asset, ceding effective control of the country’s largest
23 groundwater storage facility to private interests, including majority control by Paramount
24

25 ¹ The term “Kern Water Bank” is most often used to refer to the operational banking facility
26 initially developed by the DWR and subsequently completed and currently operated by the Kern
27 Water Bank Authority. The term is also sometimes used to refer to the entire aquifer in the
southern San Joaquin Valley in Kern, Kings, and Tulare Counties, a large depleted section of
which is known as the Kern Fan Element. In this Petition and Complaint the terms Kern Water
Bank and Kern Fan Element are used interchangeably.

1 Farming Company LLC / Roll International Corporation, one of the world’s largest agricultural
2 and holding companies.

3 4. The Long-Term Water Supply Contracts for the delivery of water from the State
4 Water Project (“SWP”) were entered into between DWR and various water agencies and
5 districts (“SWP Contractors”) beginning in November, 1960. As originally approved and
6 validated, the contracts imposed a set of obligations that guaranteed that the SWP Contractors
7 would be responsible for the repayment of the taxpayer investment in the SWP, would protect
8 the public’s ownership and interest in the SWP and public trust resources, including the
9 freshwater resources of the State, and would allocate water deliveries in consideration of the
10 needs of the environment and the effected ecosystems, the seasonal cycles of wet and dry
11 months, and the periodic cycles of drought and wet years. These constitutionally protected
12 obligations were to remain in effect at least so long as the SWP’s bonds remain outstanding –
13 no earlier than 2035.

14 5. The Monterey Plus Amendments, if allowed to become permanent, would
15 eliminate and/or alter key provisions of these contracts, including provisions that (1) remove
16 the “urban preference” provision that ensures urban SWP Contractors more water in times of
17 drought; (2) remove the contract’s principal safeguard against “paper water” allocations; (3)
18 remove the provision preventing reliance on so-called “surplus water” to build permanent
19 economies; (4) facilitate the gift of the Kern Fan Element of the Kern Water Bank to a
20 privately-controlled joint powers authority; (5) expand the opportunity of local water
21 contractors to transfer and sell what would otherwise be water restricted to agricultural use;
22 and (6) restructure SWP financing in a manner that will deprive the state of vast resources that
23 local contractors would otherwise have been obligated to pay. These and other alterations of
24 the original long term contracts, which would largely transform a system founded in public
25 and statewide accountability to one serving local and private interests, are causing and will
26 cause major environmental impacts.

1 Real Parties in Interest reside throughout the State, making no location more appropriate or
2 convenient.

3 13. Venue for the “reverse-validation” actions and the constitutional action
4 contained herein properly lies in the Sacramento County Superior Court pursuant to Gov. Code
5 § 17700(c) and Code Civ. Proc. § 860, because Defendant DWR is located in Sacramento.
6

7 **PARTIES**

8 14. Petitioner and Plaintiff CENTRAL DELTA WATER AGENCY (“CDWA”) is a
9 political subdivision of the State of California created under the Central Delta Water Agency
10 Act, Chapter 1133 of the Statutes of 1973 as amended. The CDWA encompasses
11 approximately 120,000 acres within San Joaquin County, all of which is within the Bay-Delta.
12 The lands within CDWA jurisdiction are primarily agricultural but also contain recreational
13 developments, significant wildlife habitat and some residential development. The lands are
14 dependent on the water supply in the channels of the Bay-Delta (“in-channel water supply) for
15 irrigation and other beneficial uses. The in-channel water supply is dependent on the flow and
16 quality of both the Sacramento and San Joaquin River systems. All of the lands within the
17 CDWA are contiguous to the channels and sloughs within the CDWA and/or the underground
18 flows of those channels. The water rights pertaining to the lands are principally riparian and
19 are in-part covered by pre-1914, “prior vested” water rights, which enjoy seniority over post-
20 1914 water rights and those rights of DWR. The lands are further entitled to statutory water
21 rights including area of origin preferences pursuant to Water Code sections 11460 *et seq.* and
22 12200 *et seq.* CDWA is empowered to assist landowners to protect and assure a dependable
23 supply of water of suitable quantity sufficient to meet present and future needs. CDWA’s in-
24 channel water supply quality was and continues to be degraded and the reliability of the supply
25 has been and is being harmed by the increased withdrawals from the Delta due to enactment of
26 the Monterey Plus Amendments and privatization of Kern Water Bank. CDWA would be
27 directly, adversely and irreparably harmed by the Project and its components, as described

1 herein, until and unless this Court provides the relief prayed for in this petition.

2 15. Petitioner and Plaintiff SOUTH DELTA WATER AGENCY (“SDWA”) is a
3 political subdivision of the State of California created by the California Legislature under the
4 South Delta Water Agency Act, Chapter 1089 of the Statutes of 1973 as amended. The SDWA
5 encompasses approximately 148,000 acres within San Joaquin County, all of which is within
6 the Bay-Delta. The lands within SDWA jurisdiction are primarily agricultural but also contain
7 recreational developments, significant wildlife habitat areas, and residential. The lands are
8 dependent on the water supply in the channels of the Bay-Delta (“in-channel water supply) for
9 irrigation and other beneficial uses. The in-channel water supply is dependent on the flow and
10 quality of both the Sacramento and San Joaquin River systems. All of the lands within the
11 CDWA are contiguous to the channels and sloughs within the CDWA an/or the underground
12 flows of those channels. The water rights pertaining to the lands are principally riparian and
13 are in-part covered by pre-1914, “prior vested” water rights, which enjoy seniority over post-
14 1914 water rights and those rights of DWR. The lands are further entitled to statutory water
15 rights including area of origin preferences pursuant to Water Code sections 11460 *et seq.* and
16 12200 *et seq.* SDWA is empowered to assist landowners to protect and assure a dependable
17 supply of water of suitable quantity sufficient to meet present and future needs. SDWA’s in-
18 channel water supply quality was and continues to be degraded and the reliability of the supply
19 has been and is being harmed by the increased withdrawals from the Delta due to enactment of
20 the Monterey Plus Amendments and privatization of Kern Water Bank. SDWA would be
21 directly, adversely and irreparably harmed by the Project and its components, as described
22 herein, until and unless this Court provides the relief prayed for in this petition.

23 16. Petitioner and Plaintiff CALIFORNIA WATER IMPACT NETWORK (“C-
24 WIN”) is a non-profit, public benefit corporation formed under the laws of the State of
25 California for the purpose of protecting and restoring fish and wildlife resources, scenery,
26 water quality, recreational opportunities, agricultural uses, and other natural environmental
27 resources and uses of the rivers and streams of California, including the San Francisco Bay-

1 Delta estuary, also known as the Sacramento-San Joaquin Bay-Delta (“Bay-Delta”), its
2 watershed and its underlying groundwater resources. Officers of the C-WIN reside in, use, and
3 enjoy the Bay-Delta estuary and its watershed, and also pay through their individual bills from
4 their local water service providers for water delivered by the California State Water Project,
5 and are concerned about the cost, quality, allocation, and origins of water delivered from this
6 statewide water system. Members and officers of the California Water Impact Network are
7 deeply concerned about the public interest consequences of continuation of Monterey Plus
8 agreement principles and water project contract amendments implementing it. Consequently,
9 the California Water Impact Network and its members would be directly, adversely and
10 irreparably harmed by the Project and its components, as described herein, until and unless this
11 Court provides the relief prayed for in this petition.

12 17. Petitioner and Plaintiff CALIFORNIA SPORTFISHING PROTECTION
13 ALLIANCE (“CSPA”) is a non-profit organization with more than 2500 members throughout
14 California dedicated to protecting, preserving and enhancing the fisheries and associated
15 aquatic and riparian ecosystems of California waterways, including the Central Valley rivers
16 leading to the Bay-Delta. CSPA and its members actively participate in water rights and water
17 quality processes, engage in education and organization of the fishing community, conduct
18 restoration efforts, and vigorously enforce environmental laws enacted to protect fisheries,
19 habitat and water quality. CSPA’s members reside and own property throughout California as
20 well as those areas served by the State Water Project, and use the waters and lands affected by
21 the State Water Project, including the Bay-Delta, for recreational, wildlife viewing, scientific,
22 and educational purposes. CSPA owns about 20 acres in Collinsville on the Sacramento River
23 near the confluence with the San Joaquin in the Delta. CSPA and its members would be
24 directly, adversely and irreparably harmed by the Project and its components, as described
25 herein, until and unless this Court provides the relief prayed for in this petition. In addition,
26 CSPA’s associated riparian interest in the Sacramento River is directly harmed by the altered
27 management practices of the Monterey Plus Amendments.

1 18. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is
2 a non-profit, public interest corporation with over 42,000 members and offices in San
3 Francisco, Los Angeles, and Joshua Tree, California, as well as offices in Arizona, New
4 Mexico, Oregon, Vermont, and Washington, D.C. CBD and its members are dedicated to
5 protecting diverse native species and habitats through science, policy, education, and
6 environmental law. CBD members reside and own property throughout California as well as
7 those areas served by the State Water Project, and use the waters and lands affected by the
8 State Water Project, including the Bay-Delta, for recreational, wildlife viewing, scientific, and
9 educational purposes. CBD and its members would be directly, adversely and irreparably
10 harmed by the Project and its components, as described herein, until and unless this Court
11 provides the relief prayed for in this petition.

12 19. Petitioner and Plaintiff CAROLEE KRIEGER resides in and is a resident of the
13 City of Santa Barbara, California who has been assessed, and has paid, taxes to the State within
14 the past year. Currently president of Petitioner C-WIN, Carolee Krieger has been an advocate
15 for sound water policy and conservation in California for over 20 years. Carolee Krieger’s
16 conservation and taxpayer interests are harmed through both the Monterey Plus Amendments
17 and the transfer of Kern Fan Element. Carolee Krieger would be directly, adversely and
18 irreparably harmed by the Project and its components, as described herein, until and unless this
19 Court provides the relief prayed for in this petition.

20 20. Petitioner and Plaintiff JAMES CRENSHAW is a resident of the State of
21 California who owns property in the Central Valley of California and has been assessed, and
22 has paid, taxes to the State within the past year. James Crenshaw is a farmer and life-long
23 sport fisherman, and has been president of Petitioner and Plaintiff California Sportsfishing
24 Protection Alliance since the mid-1980s. James Crenshaw’s conservation and taxpayer
25 interests are harmed through both the Monterey Plus Amendments and the transfer of Kern Fan
26 Element. James Crenshaw would be directly, adversely and irreparably harmed by the Project
27 and its components, as described herein, until and unless this Court provides the relief prayed

1 for in this petition.

2 21. Respondent and Defendant CALIFORNIA DEPARTMENT OF WATER
3 RESOURCES is a governmental agency and political subdivision of the State of California
4 charged with the authority to regulate and administer delivery of water through the State Water
5 Project, subject at all times to the obligations and limitations of all applicable state, federal, and
6 other laws, including CEQA and the CEQA Guidelines and Planning and Zoning Laws.
7 Respondent is the lead agency under CEQA for the preparation of the EIR and for the approval
8 of the Project.

9 22. Respondent KERN COUNTY WATER AGENCY (“KCWA”), a State Water
10 Project Contractor, a signatory to the Monterey Plus Amendments, and a member entity of the
11 Kern Water Bank Authority, is presently and has been, at all times relevant hereto, a California
12 special district and political subdivision of the State of California organized and existing under
13 the Kern County Water Agency Act, Cal. Water Code Appendix §§ 99-1 *et seq.*, KCWA
14 served as an intermediary agency in the hybrid transaction that resulted in the Kern Water
15 Bank Authority’s ownership and operation of the Kern Water Bank.

16 23. Real Party in Interest ALAMEDA COUNTY FLOOD CONTROL AND
17 WATER CONSERVATION DISTRICT, ZONE 7, a State Water Project Contractor and
18 signatory to the Monterey Plus Amendments, is a state agency and political subdivision of the
19 State of California, organized and existing under the Alameda County Flood Control and
20 Water Conservation District Act, Cal. Water Code Appendix §§ 55-1 *et seq.*

21 24. Real Party in Interest ALAMEDA COUNTY WATER DISTRICT, a State
22 Water Project Contractor and signatory to the Monterey Plus Amendments, is a water district
23 organized and existing under the California Water District Law, Cal. Water Code §§ 34000 *et*
24 *seq.* with its principal place of business in Fremont, California.

25 25. Real Party in Interest ANTELOPE VALLEY - EAST KERN WATER
26 AGENCY, a State Water Project Contractor and signatory to the Monterey Plus Amendments,
27 is a state agency and political subdivision of the State of California, organized and existing

1 under the Antelope Valley-East Kern Water Agency Law, Cal. Water Code Appendix §§ 98-1
2 *et seq.* (1959 Stat.), with its principal place of business in Lancaster, California.

3 26. Real Party in Interest CASTAIC LAKE WATER AGENCY, a State Water
4 Project Contractor and signatory to the Monterey Plus Amendments, is a political entity of the
5 State of California formerly known as the Upper Santa Clara Valley Water Agency, and
6 organized and existing under the Castaic Lake Water Agency Law, Cal. Water Code Appendix
7 §§ 103-1 *et seq.* (Stats. 1962), with its principal place of business in Newhall, California.

8 27. Real Party in Interest CENTRAL COAST WATER AUTHORITY is a Joint
9 Powers Authority existing under the Joint Exercise of Powers Act, Cal. Gov't Code § 6500 *et*
10 *seq.* with its principal place of business in Buellton, California. The Central Coast Water
11 Authority has been assigned some obligations of State Water Contractors, although it is not a
12 State Water Contractor and is not a signatory to the Monterey Plus Amendments. The Central
13 Coast Water Authority prepared the decertified EIR for the 1995 Monterey Amendments, but
14 its current interest in the Monterey Plus Amendments is unknown to petitioners.

15 28. Real Party in Interest CITY OF YUBA, a State Water Project Contractor and
16 signatory to the Monterey Plus Amendments, is a political entity and subdivision of the State
17 of California, organized and existing under the laws thereof, with its principal place of business
18 in Yuba City, California.

19 29. Real Party in Interest COACHELLA VALLEY COUNTY WATER DISTRICT,
20 a State Water Project Contractor and signatory to the Monterey Plus Amendments, is a public
21 agency organized and existing under the California Water District Law, Cal. Water Code §§
22 34000 *et seq.*, with its principal place of business in Coachella, California.

23 30. Real Party in Interest COUNTY OF BUTTE, a State Water Project Contractor
24 and signatory to the Monterey Plus Amendments, is a public entity and political subdivision of
25 the State of California with its principle place of office in Oroville, California.

26 31. Real Party in Interest COUNTY OF KINGS, a State Water Project Contractor
27 and signatory to the Monterey Plus Amendments, is a public entity and political subdivision of

1 the State of California, organized under the laws thereof, with its principle place of business in
2 Hanford, California.

3 32. Real Party in Interest CRESTLINE - LAKE ARROWHEAD WATER
4 AGENCY, a State Water Project Contractor and signatory to the Monterey Plus Amendments,
5 is a state agency and political subdivision of the State of California, organized and existing
6 under the Crestline-Lake Arrowhead Water Agency Law, Cal. Water Code Appendix §§ 104-1
7 *et seq.* (Stats. 1962) with its principal place of business in Crestline, California.

8 33. Real Party in Interest DESERT WATER AGENCY, a State Water Project
9 Contractor and signatory to the Monterey Plus Amendments, is a state agency and political
10 subdivision of the State of California, organized and existing under the Desert Water Agency
11 Law, Cal. Water Code Appendix §§ 100-1 *et seq.* (Stats. 1961), with its principal place of
12 business in Palm Springs, California.

13 34. Real Party in Interest DUDLEY RIDGE WATER DISTRICT (“DRWD”), a
14 State Water Project Contractor, signatory to the Monterey Plus Amendments and member
15 entity of the Kern Water Bank Authority, is a water district organized and existing under the
16 California Water District Law, Cal. Water Code §§ 39000 *et seq.*, with its principal place of
17 business in Corcoran, California.

18 35. Real Party in Interest EMPIRE WESTSIDE WATER DISTRICT, a State Water
19 Project Contractor that did not sign the Monterey Plus Amendments, is a political subdivision
20 of the State of California organized and existing under the California Water District Law,
21 California Water Code §§ 34000 *et seq.*, with its principal place of business in Stratford,
22 California. Empire Westside is one of two State Water Project Contractors which did not sign
23 and incorporate the Monterey Plus Amendments into its long-term SWP contract.

24 36. Real Party in Interest KERN WATER BANK AUTHORITY (“KWBA”) is a
25 Joint Powers Authority organized on October 16, 1995 and existing under the Joint Exercise of
26 Powers Act, Cal. Gov’t Code § 6500 *et seq.* The member agencies of KWBA are Dudley
27 Ridge Water District, Kern County Water Agency, Semitropic Water Storage District, Tejon-

1 Castac Water District, Westside Mutual Water Company, and Wheeler Ridge-Maricopa Water
2 Storage District. As a result of the two-part transaction arising from the Project, KWBA
3 presently owns, manages and operates the Kern Fan Element and Kern Water Bank, and would
4 do so on a permanent basis if the Project becomes final. As a result of the two-stage transfer
5 authorized and enacted by the Monterey Plus Amendments, and currently implemented only
6 through the Settlement Agreement and Interim Implementation Agreement, KWBA holds title,
7 deed and management responsibilities for the Kern Fan Element and the Kern Water Bank,
8 pursuant to the Joint Powers Agreement for the Kern Water Bank Authority.

9 37. Real Party in Interest LITTLE ROCK CREEK IRRIGATION DISTRICT, a State
10 Water Project Contractor and signatory to the Monterey Plus Amendments, is a political
11 subdivision of the State of California, organized and existing under the laws thereof, with its
12 principle place of business in Littlerock, California.

13 38. Real Party in Interest METROPOLITAN WATER DISTRICT OF SOUTHERN
14 CALIFORNIA, a State Water Project Contractor and signatory to the Monterey Plus
15 Amendments, is a political subdivision of the State of California organized and existing under
16 the Metropolitan Water District Act, California Water Code Appendix §§ 109-1 *et seq.*
17 (Stats. 1927, reenacted 1969) with its principal place of business in Los Angeles, California.

18 39. Real Party in Interest MOJAVE WATER AGENCY, a State Water Project
19 Contractor and signatory to the Monterey Plus Amendments, is a state agency and political
20 subdivision of the State of California, organized and existing under the Mojave Water Agency
21 Law, Cal. Water Code Appendix §§ 97-1 *et seq.* (Stats. 1959), with its principal place of
22 business in Victorville, California.

23 40. Real Party In Interest NAPA COUNTY FLOOD CONTROL AND WATER
24 CONSERVATION DISTRICT, a State Water Project Contractor and signatory to the
25 Monterey Plus Amendments, is a state agency and political subdivision of the State of
26 California, organized and existing under the Napa County Flood Control and Water
27 Conservation District Act, Cal. Water Code Appendix §§ 61-1 *et seq.* (Stats. 1951), with its

1 principal place of business in Napa, California.

2 41. Real Party in Interest OAK FLAT WATER DISTRICT, a State Water Project
3 Contractor and signatory to the Monterey Plus Amendments, is a public agency and political
4 subdivision of the State of California, organized and existing under the laws thereof, with its
5 principle place of business in Westley, California.

6 42. Real Party in Interest PALMDALE WATER DISTRICT, a State Water Project
7 Contractor and signatory to the Monterey Plus Amendments, is a public agency and political
8 subdivision of the State of California, organized and existing under the laws thereof, with its
9 principle place of business in Palmdale, California.

10 43. Real Party in Interest PARAMOUNT FARMING COMPANY LLC is a
11 Delaware-based limited liability corporation, doing business at all times in California.
12 Paramount Farming Company is controlled by Real Party in Interest Roll International
13 Corporation, and is the controlling entity for Real Party in Interest Westside Mutual Water
14 Company. Paramount Farming Company LLC irrigation requirements are serviced in part by
15 SWP water provided by Westside Mutual Water Company.

16 44. Real Party in Interest PLUMAS COUNTY FLOOD CONTROL AND WATER
17 CONSERVATION DISTRICT, a State Water Project Contractor that has not signed the
18 Monterey Plus Amendments, is a public agency and political subdivision of the State of
19 California, organized and existing under the Plumas County Flood Control and Water
20 Conservation District Act, Cal. Water Code Appendix §§ 88-1 *et seq.* (Stats. 1959), with its
21 principal place of business in Quincy, California.

22 45. Real Party in Interest ROLL INTERNATIONAL CORPORATION is a
23 Delaware-based limited liability company and the parent corporation and/or holding company
24 for Real Party in Interest Paramount Farming Company LLC. Through its subsidiary
25 Paramount Farming Company LLC, Roll International Corporation controls Westside Mutual
26 Water Company. For the purposes of this petition and complaint, Petitioners and Plaintiffs are
27 informed and believe that Westside Mutual Water Company, Paramount Farming Company

1 LLC and Roll International Corporation are and have been, at all relevant times,
2 instrumentalities and joint ventures of each other and have been at all relevant times been
3 acting in concert with each other.

4 46. Real Party in Interest SAN BERNARDINO VALLEY MUNICIPAL WATER
5 DISTRICT, a State Water Project Contractor and signatory to the Monterey Plus Amendments,
6 is a public agency and political subdivision of the State of California, organized and existing
7 under the laws thereof, with its principle place of business in San Bernardino, California.

8 47. Real Party in Interest SAN GABRIEL VALLEY MUNICIPAL WATER
9 DISTRICT, a State Water Project Contractor and signatory to the Monterey Plus Amendments,
10 is a public agency and political subdivision of the State of California, organized and existing
11 under the laws thereof, with its principal place of business in Alhambra, California.

12 48. Real Party in Interest SAN GORGONIO PASS WATER AGENCY, a State
13 Water Project Contractor and signatory to the Monterey Plus Amendments, is a state agency
14 and political subdivision of the State of California, organized and existing under the San
15 Gorgonio Pass Water Agency Law, Cal. Water Code Appendix §§ 101-1 *et seq.* (Stats. 1961)
16 with its principal place of business in Beaumont, California.

17 49. Real Party in Interest SAN LUIS OBISPO COUNTY FLOOD CONTROL
18 AND WATER CONSERVATION DISTRICT, a State Water Project Contractor and signatory
19 to the Monterey Plus Amendments, is a state agency and political subdivision of the State of
20 California, organized and existing under the San Luis Obispo County Flood Control and Water
21 Conservation District Act, Cal. Water Code Appendix §§ 49-1 *et seq.* (Stats. 1945), with its
22 principal place of business in San Luis Obispo, California.

23 50. Real Party in Interest SANTA BARBARA COUNTY FLOOD CONTROL AND
24 WATER CONSERVATION DISTRICT, a State Water Project Contractor and signatory to the
25 Monterey Plus Amendments, is a state agency and political subdivision of the State of
26 California, organized and existing under the Santa Barbara County Flood Control and Water
27 Conservation District Act, Cal. Water Code Appendix §§ 74-1 *et seq.* (Stats. 1955), with its

1 principal place of business in Santa Barbara, California.

2 51. Real Party in Interest SANTA CLARA VALLEY WATER DISTRICT, a State
3 Water Project Contractor and signatory to the Monterey Plus Amendments, is a state agency
4 and political subdivision of the State of California, organized and existing under the Santa
5 Clara Valley Water District Act, Cal. Water Code Appendix §§ 60-1 *et seq.* (Stats. 1951), with
6 its principal place of business in San Jose, California.

7 52. Real Party in Interest SEMITROPIC WATER STORAGE DISTRICT, a member
8 entity of the Kern Water Bank Authority, is a water storage district organized and existing
9 under the California Water District Storage Law, Cal. Water Code §§ 39000 *et seq.*, with its
10 principal place of business in Wasco, California.

11 53. Real Party in Interest SOLANO COUNTY WATER AGENCY (formerly known
12 as the Solano County Flood Control and Water Conservation District), a State Water Project
13 Contractor and signatory to the Monterey Plus Amendments, is a state agency and political
14 subdivision of the State of California, organized and existing under the Solano County Water
15 Agency Act, Cal. Water Code Appendix §§ 64-1 *et seq.* (1989 Stat.).

16 54. Real Party in Interest TEJON-CASTAC WATER DISTRICT, a member entity
17 of Kern Water Bank Authority, is a water district organized and existing under the California
18 Water District Law, Cal. Water Code §§ 39000 *et seq.*, with its principal place of business in
19 Lebec, California. Tejon-Castac Water District is wholly controlled by Real Party in Interest /
20 Defendant Tejon Ranch Company.

21 55. Real Party in Interest TEJON RANCH COMPANY, a publicly-traded
22 corporation incorporated in the State of Delaware at all times relevant here doing business in
23 the State of California. For the purposes of this petition and complaint Tejon Ranch Company
24 controls Real Party in Interest and Defendant Tejon-Castac Water District, a member entity of
25 KWBA, and stores water in and receives water from and/or is expected to store water in and
26 receive water from the Kern Water Bank.

27 56. Real Party in Interest TULARE LAKE BASIN WATER STORAGE DISTRICT,

1 a State Water Project Contractor and signatory to the Monterey Plus Amendments, is a water
2 storage district organized and existing under the California Water District Storage Law, Cal.
3 Water Code §§ 39000 *et seq.*, with its principal place of business in Corcoran, California.

4 57. Real Party in Interest VENTURA COUNTY WATERSHED PROTECTION
5 DISTRICT (formally known as Ventura County Flood Control District), a State Water Project
6 Contractor and signatory to the Monterey Plus Amendments, is a public agency and political
7 subdivision of the State of California, organized and existing under the laws thereof, with its
8 principal place of business in Ventura, California.

9 58. Real Party in Interest WESTSIDE MUTUAL WATER COMPANY, a member
10 entity of the Kern Water Bank Authority, is a private mutual water company existing as a
11 limited liability company under the laws of the State of California, Cal. Corporations Code §§
12 17060 *et seq.*, and Public Utilities Code § 2725 *et seq.*, with its principal place of business in
13 Bakersfield, California. Petitioners are informed and believe that (1) Westside Mutual is a
14 wholly owned subsidiary of Paramount Farming Company, LLC, a Delaware limited liability
15 company doing business in California at all times relevant to this petition and complaint; (2)
16 both these companies are privately owned by Roll International Corporation, a Delaware
17 company doing business in California at all times relevant to this petition and complaint; and
18 (3) Roll International is either the holding company or parent company for the other entities
19 listed in this paragraph.

20 59. Real Party in Interest WHEELER RIDGE-MARICOPA WATER STORAGE
21 DISTRICT, a member entity of the Kern Water Bank Authority, is a water storage district
22 organized and existing under the California Water District Storage Law, Cal. Water Code §§
23 39000 *et seq.*, with its principal place of business in Bakersfield, California.

24 60. Petitioners are currently unaware of the true names and capacities of Does 1
25 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1 through
26 20, inclusive, are agents of the state government or other persons or entities presently unknown
27 to Petitioners who are responsible in some manner for the conduct described in this petition.

1 Petitioners will amend this petition to show the true names and capacities of Does 1 through 20
2 when such names and capacities become known.

3 61. Petitioners are currently unaware of the true names and capacities of Real Parties
4 in Interest, Does 21 through 60, inclusive. Does 21 through 60, inclusive, are persons or
5 entities presently unknown to Petitioners who claim some legal or equitable interest in the
6 Project that is the subject of this action. Petitioners will amend this petition to show the true
7 names and capacities of Does 21 through 60 when such names and capacities become known.

8 9 **GENERAL ALLEGATIONS**

10 **Project Background**

11 62. The State Water Project is a state-wide water conveyance system managed by the
12 Department of Water Resources, which allocates water to 29 State Water Contractors. In
13 general, water is stored in reservoirs in the northern part of the state and conveyed south via the
14 Feather River, Sacramento River, and the San Francisco-San Joaquin Bay Delta, from which it
15 is pumped and conveyed via the California Aqueduct to State Water Contractors in the
16 southern half of the State. These contractors in turn distribute Project water via a series of
17 canals and aqueducts to their customers.

18 63. The California Legislature first approved the building of the SWP, originally
19 designated as the Feather River Project, in 1951.

20 64. In 1956 the Legislature created the DWR out of several other agencies to operate
21 and manage the SWP.

22 65. In 1959 the Legislature passed the Burns-Porter Act (formally known as the
23 California Water Resources Development Bond Act), which authorized the construction and
24 operation of the SWP, as well as the issuance, sale, and repayment of the bonds that have been,
25 and continue to be, the basis for funding the development and operation of the SWP. The
26 Burns-Porter Act was subsequently approved by California voters in November, 1960, and
27 codified in Water Code § 12930 *et seq.*

1 66. Governor Edmund G. Brown, Sr. worked with DWR to create a set of equitable
2 principles designed to manage the SWP for the good of all Californians. DWR published these
3 jointly developed “Contracting Principles for Water Service Contracts under the California
4 Water Resources Development System” in January, 1960. The Contracting Principles describe
5 the manner by which the SWP will be paid for over time. The Principles set a “Delta Water
6 Rate,” to be “based on the cost of construction and the cost of operation, maintenance, and
7 replacement” of the SWP system.

8 67. Voters relied on the Contracting Principles in approving the Burns-Porter Act.

9 68. Bondholders relied on the Contracting Principles in purchasing the bonds issued
10 by DWR. The Legislature also accepted the Contracting Principles, and with knowledge of
11 them, appropriated funds for the SWP in the Budget Act of 1960 (Stats. 1961, ch. 11, p. 20).

12 69. The Contracting Principles specify that the “capital cost component and the
13 minimum maintenance and replacement component [of the Delta Water Rate] will be collected
14 irrespective of the amount of water furnished,” while the (non-minimal) “operation and
15 maintenance component will be collected from the contractors receiving water in proportion to
16 the amount of water furnished.”

17 70. The repayment (plus interest) of the bonds issued for the construction, minimum
18 maintenance and replacement costs of the SWP is thus made by the water contractors
19 collectively, who each pay a share of those total costs proportionate to their allocated share of
20 water, regardless of the amount of water that they actually ever receive.

21 71. The Contracting Principles include provisions stating that the minimum project
22 yield of the SWP would increase due to added storage facilities, and that bond funds would be
23 used to construct added storage facilities.

24 72. Beginning in 1960, DWR entered into long-term delivery contracts with the
25 SWP Contractors, which then consisted of 31 agricultural and urban water contractors, of
26 which 29 presently remain. The long-term contracts were based on the 1960 Contracting
27 Principles. Key provisions in the initial long-term SWP contracts preceding the Monterey Plus

1 Amendments are substantially identical between the contracts. The provisions of these
2 contracts, and the changes to those contracts due to the Monterey Plus Amendments, form the
3 basis for this action.

4 73. The “model contract” upon which other SWP contracts were based was between
5 DWR and Metropolitan Water District of Southern California. The California Supreme Court
6 validated this model contract in *Metropolitan Water District v. Marquardt*, (1963) 59 Cal. 2d
7 159.

8 74. Article 45 of the MWD “Model Contract” validated in *Marquardt* is entitled
9 “Contracts to be Uniform” and states that “Contracts executed by the State for a dependable
10 supply of project water shall be substantially uniform with respect to basic terms and
11 conditions, except as otherwise provided in this article with respect to payment of the capital
12 cost component of the Transportation Charge.” This provision is known as the “uniformity
13 clause.”

14 75. In the 1961 long-term contract between DWR and Alameda County Water
15 District, the “uniformity clause” in Article 45 states that “contracts executed by the State for a
16 dependable supply of project water shall be in substantial conformity with the provisions of the
17 water supply contract between the State and the Metropolitan Water District of Southern
18 California, dated November 4, 1960, except as provided under Article 45 of that contract.”

19 76. The SWP was originally designed to deliver 4.23 million acre-feet (“MAF”) per
20 year of water. However, the majority of SWP facilities were never built. Today, the SWP is
21 capable of delivering only half or less of the amount contracted for by SWP contractors in their
22 long-term contracts. Key facilities originally contemplated for the SWP have never been
23 constructed, including additional project conservation facilities and the damming of rivers now
24 protected under the California Wild and Scenic Rivers Act (Pub. Res. Code §§ 5093.50, *et*
25 *seq.*)

26 77. The amount of water originally anticipated for delivery to each of the SWP
27 Contractors was set forth in Table A of the SWP contracts, and the amount of water contracted

1 for delivery between DWR and each contractor became known as the “Table A amount.”²

2 78. Because the SWP can only deliver half or less of the amounts referenced in the
3 project’s goals in an average year, only a small fraction of the Table A amounts can actually be
4 delivered. The difference between water contracted for in the SWP contracts and the actual
5 water that can be delivered in any given year is known as “paper water.”

6 79. Table A amounts are used to calculate the payments made to the State by each
7 contractor, in accordance with the 1960 Contracting Principles. For the construction costs and
8 the minimal operational, maintenance and replacement costs of the SWP, the rates paid by each
9 contractor are determined in proportion to their Table A Amounts—regardless of whether these
10 amounts are ever delivered. The non-minimal maintenance and operational costs are
11 determined by the amount of water actually delivered to each contractor.

12 80. The water contractors are contractually bound to pay off the bonds that were
13 issued for the construction, operation, maintenance, and replacement costs of the SWP, and
14 must make these payments through the present contract period (until at least 2035).

15 **The Monterey Amendments**

16 81. In December 1994, the DWR held undisclosed meetings with five water
17 contractors: Kern County Water Agency, Metropolitan Water District of Southern California,
18 Coachella Valley Water District, Tulare Lake Basin Water Storage District, and Solano County
19 Water Agency, as well as the Central Coast Water Authority, a local joint powers authority
20 which has assumed certain duties of one State Water Contractor. These meetings resulted in a
21 December 16, 1994 Statement of Principles that described a series of amendments to the long-
22 term contracts for delivery of water through the State Water Project.

23 82. Because these meetings took place in Monterey, California, the statement of
24 principles became known as the Monterey Agreement. Amendments to the SWP contracts
25 based upon these principles became known as the Monterey Amendments.

26 _____
27 ² Although the original SWP Contracts often use the word “entitlements” when referring to the water allocated on
“Table A”, as the Contracts do not create legal entitlements to receive water, the term is not used here.

1 83. Some of the primary changes to the long-term contracts sought in the Monterey
2 Amendments were as follows (these changes are described in more detail in the “Monterey
3 Plus Amendments” subsection, below):

- 4 • Elimination of the “urban preference”: Rather than subjecting agricultural
5 contractors to cuts in their deliveries before subjecting urban contractors,
6 the Monterey Amendments would share these cuts proportionally to each
7 contractor’s Table A amounts;
- 8 • Elimination of the permanent shortage provision, requiring Table A
9 amounts to be proportionally adjusted to reflect available supplies.
- 10 • Elimination of the prohibition on reliance on “surplus” water to build
11 permanent economies.
- 12 • Permanent transfers of Table A amounts: Agricultural contractors would
13 transfer 130,000 acre-feet of Table A amounts to urban contractors and
14 KCWA and DRWD would “retire” 45,000 acre-feet of Table A amounts;
- 15 • Transfer of the Kern Water Bank to KCWA and then to KWBA;
- 16 • Facilitation of the transfer, “borrowing,” and “lending” of Table A amounts
17 outside of contractors’ service areas; and
- 18 • Restructuring of SWP financing to relieve contractors of substantial
19 payments they would otherwise have owed the State.

20 84. The Central Coast Water Authority was chosen to act as the lead agency and
21 produce an EIR for the original project. In October, 1995, the Central Coast Water Authority
22 released the final EIR for the Monterey Amendments, certifying it in December, 1995.

23 85. In December, 1995, the Monterey Amendments were added (but not
24 implemented) as “Amendment 23” to the Kern County Water Agency water supply contract
25 and “Amendment 25” to the Metropolitan Water District of Southern California’s water supply
26 contract. These contract Amendments were not implemented upon execution, due to a self-
27 imposed stay provision appearing in article 29(a) of the Monterey Amendments as originally

1 drafted, which would have prevented implementation while legal challenges filed within 60
2 days of execution of KCWA's and MWD's contract amendments remained pending.

3 86. Most, but not all, of the SWP contractors also approved and signed the Monterey
4 Amendments to their long-term water supply contracts in the two years following the initial
5 execution date.

6 87. Despite the relative obscurity of the Central Coast Water Authority's approval of
7 a project with enormous statewide implications, two non-profit organizations (Planning and
8 Conservation League and Citizens Planning Association of Santa Barbara County) and a state
9 water contractor (Plumas County Flood Control and Water Conservation District) (collectively,
10 "PCL petitioners") challenged the approval and validity of the Monterey Amendments, arguing
11 among other things that the certification of the Program EIR was contrary to law and that
12 CCWA lacked the authority to act as the state-wide lead agency for the project. The petitioners
13 also challenged the validity of DWR's initial attempt to divest the Kern Fan Element from state
14 ownership and operation.

15 88. On August 15, 1996, the Sacramento Superior Court entered judgment against
16 the PCL petitioners. Before the judgment was final in the Superior Court, DWR privately
17 arranged with the SWP contractors that had signed Monterey Amendments to remove the self-
18 imposed stay provision in Article 29(a), which had until then prevented implementation of the
19 Monterey Amendments while litigation was pending. DWR did not inform the PCL petitioners
20 of these efforts, which were also not subject to public review. In approving its waiver to
21 Article 29(a), KCWA recognized the risk that "there may be complexities encountered in
22 disengaging from implementation" in the "improbable event the judgment is overturned and
23 disengagement is required."

24 89. On or around August 8, 1996, based upon these undisclosed executive-session
25 waivers and without securing final judgment, DWR implemented the original Monterey
26 Amendments, including the relinquishment of the Kern Fan Element to KCWA, which
27 retransferred it to KWBA one day later.

1 90. The Third District Court of Appeals reversed and ruled in favor of the PCL
2 Petitioners in *Planning and Conservation League v. Department of Water Resources*, (2000)
3 83 Cal.App.4th 892. The Appeals Court ruled that CCWA’s EIR prejudicially failed to
4 analyze implementation of Article 18(b)’s reductions in Table A amounts in its assessment of
5 the No Project Alternative. The Appeals Court recognized the “possibility that local decision-
6 makers are seduced by contractual entitlements and approve projects dependent on water worth
7 little more than a wish and a prayer.”

8 91. The Court also agreed that the Monterey Amendments produced state-wide
9 significant impacts which could not be analyzed by a local agency, and that “the allocation of
10 water to one part of the state has potential implications for distribution throughout the system.”
11 Therefore, only DWR, the agency in charge of state-wide operation and management of the
12 SWP, could act as lead agency. (*Id.*) The Court held that an entirely new Program EIR had to
13 be prepared under the direction of DWR.

14 92. In a separate section of the opinion, the *PCL v. DWR* court held that the trial
15 court erroneously dismissed the reverse-validation action on procedural grounds. (*Id.*)

16 93. On December 13, 2000, the California Supreme Court unanimously denied
17 review in *PCL v. DWR*, and summarily denied separate extraordinary writ petitions filed by
18 KCWA and Wheeler Ridge-Maricopa Water Storage District, which contested the
19 determinations in *PCL v. DWR*.

20 **Monterey Plus Amendments**

21 94. In May 2003, the PCL petitioners and DWR reached a settlement agreement
22 (“Settlement Agreement”), subsequently ratified by the Superior Court in a May 20, 2003
23 Implementation Order.

24 95. Section III sets forth the integral components of this new project, known as the
25 “Monterey Plus Amendments,” including (1) the original Monterey Amendments and two-part
26 transfer; (2) additional amendments identified in Attachment A of the Settlement Agreement;
27 and (3) additional terms and conditions of the Settlement Agreement. All of these elements

1 form the Project and are subject to DWR's final review and decision.

2 96. Under the terms of the Settlement Agreement and Implementation Order, the
3 administration and operation of the SWP and the Kern Water Bank in accordance with the
4 Monterey Amendments was allowed to continue on an interim basis, and only with several
5 additional terms added in the Settlement Agreement, including additional contract
6 amendments, lasting only until the completion of a new decision-making process by DWR and
7 the certification of entirely new CEQA review for the project.

8 97. The Settlement Agreement and its related Interim Implementation Order signed
9 by the Superior Court made clear that the imposition of the Monterey Amendments would not
10 be a *fait accompli*. Accordingly, any long-term management of the SWP related to the
11 Monterey Amendments would require a new agreement ratified by DWR and the SWP
12 Contractors, a new decision made by DWR, and new environmental review conducted
13 pursuant to CEQA.

14 98. Following the signing of the Settlement Agreement and the Interim
15 Implementation Order signed by the Superior Court, DWR and the SWP Contractors executed
16 additional contract amendments referenced in attachment A of the Settlement Agreement, and
17 began its interim implementation of several additional terms of the agreement. DWR
18 commenced its review of the new agreement, referred to here as the Monterey Plus
19 Amendments.

20 99. The draft of the new EIR for the Monterey Plus Amendments was released by
21 DWR in October, 2007.

22 100. Extensive written comments on the Draft EIR were submitted in January, 2008,
23 including those by the *PCL v. DWR* petitioners (Planning and Conservation League, Citizens
24 Planning Association of Santa Barbara County, and Plumas County Flood Control and Water
25 Conservation District) and Petitioners C-WIN, CSPA, Central Delta Water Agency and South
26 Delta Water Agency. Comments from non-SWP Contractors were overwhelmingly critical of
27 the project, and alerted DWR to the legal inadequacies of the EIR. Other comments included

1 farming enterprise Sandridge Partners’ critique of the unfair advantages given to Paramount
2 Farming and its affiliates through the Kern Water Bank transaction. Prior to DWR’s approval
3 of the EIR, Petitioner CBD submitted its own comments.

4 101. DWR certified the final EIR for the Monterey Plus Amendments in February,
5 2010, and issued its Notice of Determination (“NOD”) for the Project on May 5, 2010.

6 102. The NOD states that the “Monterey Plus proposed project is to continue
7 operation under the existing Monterey Amendment to the State Water Project and the existing
8 Settlement Agreement entered in *PCL v. DWR*, (2000) 83 Cal.App.4th 892, in accordance with
9 the terms of those documents as previously executed by the Department and other parties to
10 those documents.”

11 103. The “Findings and Determinations,” published along with the NOD, states that
12 the operation of the Monterey Amendments between 1996 and 2003 did not have any
13 environmental impacts.

14 104. The Monterey Plus Amendments contain revisions to the State Water Project
15 contracts, replacing the word “entitlement” with “Table A amount,” and requiring DWR to
16 prepare biennial reliability reports, as well as additional new terms and conditions specified in
17 the 2003 Settlement Agreement, such as a watershed program in Plumas County. Petitioners
18 do not oppose the elements of the Settlement Agreement that are beneficial to the environment.

19 105. However, the Monterey Plus Amendments as finally adopted would also make
20 permanent key Monterey Amendments provisions that would dramatically alter and revise the
21 long-term contracts for delivery of State Water Project water, to the detriment of petitioners,
22 plaintiffs and the people of California. For the purposes of this Action, these key amendments
23 to the contracts include:

24 ***Article 18***

25 106. Article 18 addresses the distribution of SWP water when the full Table A
26 Amounts listed in the contract cannot be supplied to the SWP Contractor. . The original
27

1 Article 18 had two sub-parts. Article 18(a) originally provided that in times of shortages, water
2 deliveries to agricultural users would be reduced first, before deliveries to urban users. This
3 provision is the contractual embodiment of Water Code § 106, which states that it is “the
4 established policy of this State that the use of water for domestic purposes is the highest use of
5 water and that the next highest use is for irrigation.” (Wat. Code § 106) This concept is
6 informally known as the “urban preference” in the SWP contracts.
7

8 107. This provision also rests on the public utility regulatory principle of an
9 “obligation to serve” end-user municipal customers because they would have no other
10 alternative source for such a vital resource. Existing residential, commercial, and industrial
11 users require stability in their water deliveries. Agricultural users, in contrast, may fallow fields
12 or shift to planting more water-efficient crops in times of shortages.

13 108. The Monterey Plus Amendments change Article 18(a), eliminating the “urban
14 preference” and mandating that in times of temporary shortages deliveries to both agricultural
15 and urban users will be reduced proportionately (with minor exceptions).

16 109. The original Article 18(a) began:

17 In any year in which there may occur a shortage due to drought or other temporary
18 cause in the supply of project water available for delivery to the contractors, with
19 the result that such supply is less than the total of the annual entitlements of all
20 contractors for that year, the State, shall, before reducing deliveries of project
21 water to all contractors, reduce the delivery of project water to each contractor
22 using such water for agricultural purposes by a percentage, not to exceed fifty
23 percent (50%) in any one year or a total of one hundred percent (100%) in any
24 series of seven consecutive years of that portion of the contractor’s annual
25 entitlement for the respective year which is to be put to agricultural use as
26 determined by the State: *Provided*, That such percentage shall be the same for all
27 such contractors. The maximum total reduction in deliveries allowable under the
above provision shall be made before any reduction is made in project water
deliveries for other uses. [...]
(emphasis in original).

110. The Monterey Plus Amendments amend Article 18(a) to state:

In any year in which there may occur a shortage due to drought or any other cause
whatsoever, in the supply of project water available for delivery to the contractors,
with the result that such supply is less than the total of the annual entitlements of
all contractors for that year, the State shall allocate the available supply in
proportion to each contractor’s annual entitlement as set forth in its Table A for

1 that year and shall reduce the allocation of project water to each contractor using
2 such water for agricultural purposes and to each contractor using such water for
3 other purposes by the same percentage of their respective annual entitlements for
4 that year: *Provided*, that the State may allocate on some other basis if such is
5 required to meet minimum demands of contractors for domestic supply, fire
6 protection, or sanitation during the year. [...] (emphasis in original)

7 111. Article 18(b) originally provided for a permanent reduction in Table A Amounts
8 to SWP Contractors in the event that the entire SWP is not fully built-out. By 1994, it was
9 clear that many of the SWP elements contemplated in the Burns-Porter Act were not built, let
10 alone built-out. Among the array of facilities contained in the Burns-Porter Act, none of the
11 reservoir and export facilities from North Coast rivers were undertaken or completed.
12 Likewise, a San Joaquin Valley drainage system and a peripheral canal around the Bay-Delta
13 were not completed. Yet Article 18(b) has yet to be implemented, and DWR has never
14 reduced the original Table A Amounts to reflect the fact that the SWP was never fully built-
15 out, leaving the SWP Contractors' "paper water" in their Table A Amounts.

16 112. The original Article 18(b) began:

17 In the event that the State is unable to construct sufficient additional conservation
18 facilities to prevent a reduction in the minimum project yield, which,
19 notwithstanding preventative or remedial measures taken or to be taken by the
20 State, threatens a permanent shortage in the supply of project water to be made
21 available to the contractors: (1) The annual entitlements and the maximum annual
22 entitlements of all contractors, except to the extent such entitlements may reflect
23 established rights under the area of origin statutes, be reduced proportionately by
24 the State to the extent necessary so that the sum of the revised maximum annual
25 entitlements of all contractors will then equal such reduced minimum project yield
26 [...]

27 113. The Monterey Plus Amendments eliminate Article 18(b) from the SWP
contracts, thus perpetuating the problem of paper water.

114. The Monterey Plus Amendments also remove the "area of origin" requirements
in the original Article 18(c). This provision enabled DWR to decrease Table A amounts in the
event that the Project received insufficient supplies due to water rights given priority over SWP
water under Sections 11460 through 11463 of the Water Code. These Water Code sections
prohibit the State from depriving water rights-holders of adequate supplies in an area where

1 SWP Project water originates, and requires that all needs of a watershed are met before
2 exchanges of water between watersheds may commence under the Project.

3 115. The Monterey Plus Amendments remove Article 18(c) from the SWP contracts.

4 ***Article 21***

5 116. Article 21 concerns the sale and distribution by DWR of “surplus water”. In the
6 original Article 21, DWR could sell and distribute surplus water (water over and above existing
7 Table A Amounts) to SWP Contractors. In the original SWP Contracts, Article 21 surplus
8 water, being of low year-to-year reliability, was intended for use by agriculture and for
9 groundwater replenishment, and its use for urban purposes was restricted. The Monterey Plus
10 Amendments change Article 21 and eliminate these preferences, turning “surplus water” into
11 “interruptible water” and making it equally available to all SWP Contractors.

12 117. The Original Contract’s Article 21 was entitled “Sale of Surplus Water,” and
13 began:

14 If during any year the supply of project water, after appropriate allowances for
15 holdover storage, exceeds the total of annual entitlements of all contractors for that
16 year, the State shall offer to sell and deliver such surplus water for periods expiring
17 not later than the end of such year, without right of renewal, and in a manner and at
18 prices which will return to the State the largest net revenues practicable, and at the
19 minimum, revenues equal to the variable operation, maintenance and power costs
20 incurred in such service of surplus water [...]

21 118. Article 21(g) was added to the SWP long-term contracts in August, 1974 through
22 Amendment 12 to the Contracts, and states that for delivery of Article 21 water the State “shall
23 refuse to deliver such surplus water [...] to the extent that the State determines that such
24 delivery would tend to encourage the development of an economy [...] which would be
25 dependent upon the sustained delivery of surplus water.”

26 119. The Monterey Amendments to the long-term SWP contracts removed the
27 previous version of Article 21 and replaced it with a new Article 21, entitled “Interruptible
Water Service,” which begins: (a) Allocation of Interruptible Water. Each year from water
sources available to the project, the State shall make available and allocate interruptible water
to contractors in accordance with the procedure in Article 18(a). [...]

1 120. The Monterey Plus Amendments remove Article 21(g) from the SWP contracts –
2 thus eliminating the safeguard against establishing economies based on undependable supplies
3 of water

4 ***Article 51***

5 121. The Monterey Plus Amendments add Article 51, titled “Financial Adjustments.”
6 to the long-term SWP contracts. Article 51 decreases the overall repayment obligations
7 required of all SWP contractors by millions of dollars (subsection (d)), while allowing re-
8 payment funds to be directed towards feasibility studies, the San Joaquin Valley Drainage
9 Program, and the CALFED Bay-Delta program. Article 51(g) also allows KCWA and DRWD
10 to reduce their costs associated with “retirement” of the 45,000 acre-feet in the Amendments.

11 ***Article 52***

12 122. The Monterey Plus Amendments add Article 52 to the long-term SWP contracts.
13 Article 52 authorizes the transfer of the Kern Fan Element (one of eight elements comprising
14 the Kern Water Bank) from DWR to Kern County Water Agency (“KCWA”). The Kern Fan
15 Element is an approximately 20,000 acre property on an alluvial fan, and the site of the Kern
16 Water Bank, the world’s largest groundwater storage facility.

17 123. Article 52, titled “Kern Water Bank,” states: “The State shall convey to [KCWA]
18 in accordance with the terms set forth in the agreement between [DWR] and [KCWA] entitled
19 ‘Agreement for the Exchange of the Kern Fan Element of the Kern Water Bank’..., the real
20 and personal property described therein.”

21 ***Article 53***

22 124. The Monterey Plus Amendments add Article 53 to the Contracts. Article 53
23 permits the transfer of 130,000 acre-feet of annual Table A water from “Agricultural
24 Contractors” to “Urban Contractors” or non-contractors.

25 125. Under Article 53, the “Agricultural Contractors” include the State of California
26 as well as Kings County, DRWD, Empire West Side Irrigation District, KCWA, Oak Flat
27 Water District and Tulare Lake Basin Water Storage District.

1 126. Article 53(h) states that “individual contractors may transfer entitlements among
2 themselves in amounts in addition to those otherwise provided for in this article.”

3 127. Article 53(i) provides for temporary decreases totaling 45,000 acre-feet of Table
4 A amounts for two agricultural contractors, KCWA (40,670 AF) and DRWD (“DRWD”)
5 (4,330 AF), to last until the end of the Project repayment period. Under Article 53, “the 45,000
6 acre-feet to be relinquished by KCWA and DRWD thereafter shall be deemed to be costs of
7 project conservation facilities and included in the Delta Water Charge for all contractors in
8 accordance with the provisions of Article 22.”

9 ***Article 56***

10 128. Article 56 of the Monterey Plus Amendments allows contractors to store SWP
11 project water outside of its service area for later use within its service area, and for contractors
12 to provide stored water outside of their service area. The amount allowed to be stored outside
13 the service area is at least 100,000 acre-feet per year and increases proportionate to the total
14 water allocation percentage for a given year.

15 129. Article 56(d) of the Monterey Plus Amendments adds a “Turnback Pool,”
16 provision which permits any SWP water delivered but not needed to be placed into a common
17 “pool” for use by any other contractor who wants it. This provision allows contractors to
18 receive their maximum monthly Table A allotment, even if there is no way to use or store the
19 water, because another contractor can obtain the water through the Turnback Pool.

20 **Kern Water Bank**

21 ***History***

22 130. The Kern Fan Element Water Bank was originally conceived of as a state-wide
23 water storage facility to be used as an integral asset to the State Water Resources Development
24 System. DWR began planning of the facility in the early 1980s.

25 131. DWR chose for its groundwater storage site the Kern Fan Element of the Kern
26 Water Bank, a depleted alluvial groundwater reservoir in southern Kern County.

27 132. In 1986, prior to purchase of the surface land above the Kern Fan Element,

1 DWR prepared an EIR for the development of a water bank facility.

2 133. The 1986 EIR raised serious environmental concerns with development of the
3 storage facility, including potential harm to endangered species and impacts to groundwater.

4 ***1987 MOU***

5 134. On March 25, 1987, DWR entered into a Memorandum of Understanding
6 (“MOU”) with KCWA for developing and operating the Kern Water Bank.

7 135. Article 1 of the MOU defines all opportunities by DWR to store imported
8 surface water in the Kern Groundwater Basin as the “Kern Water Bank.”

9 136. Under MOU Article 1, the “primary purpose of the Kern Water Bank is to
10 augment the dependable water supply of the State Water Project. Local benefits are provided
11 “incidental to its primary purpose.”

12 137. MOU Article 4(e), “Operational Criteria,” notes that Kern Water Bank is
13 operated as “an additional SWP conservation facility” and integrated with overall SWP
14 operations. MOU Article 4(e) also notes that “water may be extracted from the Kern Water
15 Bank only to the extent that it was stored previously.”

16 138. MOU Article 5(a) specifies the right of KCWA to acquire the Kern Fan Element
17 land, but if it is not purchased within 90 days, the land is to be purchased by DWR as part of the
18 State Water Resources Development System.

19 139. Under MOU Article 5(a), KCWA retained the right to purchase the Kern Fan
20 Element for ten years after execution of the 1987 agreement, “provided that the Department’s
21 right to use the area for project purposes will be preserved.”

22 140. MOU Article 5(a) declares that “Consistent with Article 11464 of the Water
23 Code the Department shall not sell facilities constructed or acquired for the Kern Water Bank.”

24 141. DWR contracted for the purchase of the Kern Fan Element from Tenneco West,
25 Inc. in 1988.

26 142. In 1990, DWR issued a Supplemental EIR on a proposed state-run Kern Fan
27 Element. The EIR defined the Kern Water Bank as “all opportunities to store and extract State

1 Water Project water in the Kern County groundwater basin, and declares “operational
2 flexibility” and “augment water supplies for the SWP” as the purposes of the project. The EIR
3 identified as impacts caused by the Kern Fan Element the harm to endangered species near the
4 site of the Kern Fan Element, local water quality, decreased groundwater and the potential for
5 “mounding” of groundwater, and harm to endangered winter-run salmon in the Delta caused by
6 increased pumping (which would be made possible by increased storage in Kern Water Bank).

7 143. Instead of finalizing a contract with DWR for state development of the Kern
8 Water Bank, KCWA wished to avoid potential mitigation costs associated with a state-run
9 Kern Water Bank and so sought to have DWR end its activities to develop the bank.

10 144. In 1994 and 1995, DWR staff met with representatives of KCWA and several of
11 its member entities including DRWD, Paramount Farming Company, and Westside Mutual
12 Water Co. to discuss the transfer of the bank to Kern County-based entities. These
13 representatives negotiated a statement of principles that anticipated DWR’s transfer of the
14 Kern Water Bank and relied upon the still-unexecuted Monterey Amendments.

15 ***Exchange Agreement***

16 145. On December 13, 1995, DWR and KCWA signed the “Agreement for the
17 Exchange of the Kern Fan Element of the Kern Water Bank.” (“Exchange Agreement”), which
18 is the first part of the two-part hybrid transfer that gave KWBA ownership and operational
19 control of the Kern Water Bank.

20 146. The Exchange Agreement states that DWR shall convey the Kern Fan Element to
21 “agricultural contractors,” which includes KCWA, as “provided by” Article 52 of the
22 Monterey Plus Amendments.

23 147. The Exchange Agreement states that KCWA will “procure and deliver” 45,000
24 acre-feet of annual agricultural “entitlements” to the State, and that “the exchange of those
25 water entitlements and other provisions of the Monterey Amendments shall be the
26 consideration for the transfer of the Property.”

27 148. Article 52 of the Monterey Plus Amendments repeats this arrangement of the

1 retirement of 45,000 acre-feet of Table A water, of which 40,070 acre-feet is retired by Kern
2 County Water Agency and 4,330 acre-feet is retired by Dudley Ridge, as consideration for the
3 transfer of the Kern Fan Element. Article 52 also declares the costs of 45,000 acre-feet are
4 deemed to be costs of project conservation facilities and included in the Delta Water Charge
5 for all contractors.

6 149. The 45,000 acre-feet of Table A water that was transferred in exchange for the
7 Kern Fan Element was “paper water”; neither KCWA nor DRWD gave up any Table A water
8 that had been delivered in the past or would likely be delivered in the future. Relinquishing
9 this paper water entitlement also relieved KCWA and DRWD of financial obligations they
10 would otherwise have had to pay annually to the state.

11 150. Article 2.2 of the Exchange Agreement states that the Agency shall procure and
12 deliver to the state “retired water entitlements” “as partial consideration for the transfer of the
13 Property and the implementation of the Monterey Principles.” Article 2.2 of the Exchange
14 Agreement also references three million dollars to be paid by the State to KCWA to “limit the
15 State’s environmental liability.”

16 151. Article 3.1 of the Exchange Agreement provides that on closing day, “Agency
17 shall receive from the Title Company a CLTA Owner’s Policy of Title Insurance with liability
18 in the amount of \$33,628,000, insuring fee simple title to the Real Property and Improvements
19 [...].”

20 152. Article 3.3 of the Exchange Agreement provides that KCWA may immediately
21 transfer the Kern Fan Element to “Direct Transferees,” including a joint powers agency.

22 153. Upon executing the Exchange Agreement, ownership and control of Kern Fan
23 Element was transferred from DWR to KCWA. The very next day, KCWA, in turn transferred
24 the Kern Water Bank to the newly-formed KWBA, a Joint Powers Authority controlled by
25 private interests, including corporate agri-businesses and real estate development interests.

26 154. KWBA is comprised of Dudley Ridge Water Storage District, Kern County
27 Water Agency, Semitropic Water Storage District, Tejon-Castac Water District, Westside

1 Mutual Water Company, and Wheeler Ridge-Maricopa Water Storage Districts. While the
2 exact ownership structure of all member entities is not known by Petitioners, the member
3 entities are mostly, if not all, privately controlled. Plaintiffs aver that Westside Mutual Water
4 Company is a subsidiary of Paramount Farming Company LLC, that Tejon-Castac Water
5 District and Wheeler Ridge – Maricopa Water Storage District are controlled by Tejon Ranch
6 Company..

7 155. Article 4.3 of the Exchange Agreement describes how the exchange of the Kern
8 Water Bank is subject to several conditions, including completion of environmental review of
9 the Monterey Amendments under CEQA and CESA and the expiration of the CEQA statute of
10 limitations (with no challenge being filed or a final judgment being entered on such a
11 challenge).

12 156. Article 6 of the Exchange Agreement provides for the indemnification of the
13 state against future claims of environmental damage in exchange for \$3 million in
14 consideration to be paid by the State to KCWA. The indemnification is “excluding any
15 liability to the extent that it arises from Undisclosed Environmental Conditions.” Under
16 Article 6 of the Exchange Agreement, KCWA becomes liable for environmental damage
17 caused by Kern Water Bank.

18 157. Article 13.7 of the Exchange Agreement states that “this Agreement and
19 Monterey Amendments constitute the entire agreement between the parties with respect to the
20 exchange of the Property and supersede all prior and contemporaneous agreements and
21 understandings between the parties hereto relating to the subject matter hereof.”

22 158. The second part of the two-step transfer is performed through another exchange
23 agreement between Kern County Water Agency and Kern Water Bank Authority. The purpose
24 and operational structure of KWBA is set forth in the Joint Powers Agreement, most recently
25 revised in 2005.

26 159. Article II of the KWBA Joint Powers Agreement dictates that management of
27 KWBA is proportional to the share of costs and benefits of the project held by each member

1 entity, and that member entities contributing over 25% of costs receives two seats on the board.

2 160. Article V of the KWBA Joint Powers Agreement sets forth the ownership
3 structure (“Percentage Share of Costs and Benefits of Project”) of KWBA as follows: Westside
4 Mutual Water Company (48.06%), Wheeler Ridge-Maricopa Water Storage District (24.03%),
5 KCWA (9.62%), Dudley Ridge Water District (9.62%), Semitropic Water Storage District
6 (6.67%), and Tejon-Castac Water District (2.00%).

7 161. Among other things, the KWBA Joint Powers Agreement permits the KWBA to
8 acquire, own, sell or transfer water in its own right, to own and hold water in trust for any
9 person or entity, and to operate in the manner and according to the methods under the laws
10 applicable to DRWD.

11 **Impacts of the Interim Implementation of the Monterey Amendments**

12 162. Since the interim implementation of the Monterey Amendments pursuant to the
13 order issued pursuant to the settlement agreement in *PCL v. DWR*, (83 Cal.App.4th 892
14 (2000)), actual impacts of the Amendments include:

15 163. Since the interim implementation of the Monterey Amendments, at least one
16 major housing project—Tejon Mountain Village in Kern County—has been approved that
17 relies on water stockpiled in the Kern Water Bank for a major part of its water supply. Tejon
18 Mountain Village proposes to obtain its water from the Tejon-Castac Water District. Tejon-
19 Castac Water District, wholly controlled by Tejon Ranch Co., is a joint partner and has an
20 ownership share of KWBA. Tejon-Castac Water District expects to draw 4,002 acre-feet a
21 year of water from the Kern Water Bank to supply Tejon Mountain Village and other real
22 estate development on Tejon Ranch.

23 164. Since the interim implementation of the Monterey Amendments, water agencies,
24 districts and corporations have stored hundreds of thousands acre-feet in SWP allotments in
25 Kern Water Bank.

26 165. DWR initiated and managed an Environmental Water Account pursuant to its
27 obligations under CalFED (a cooperative water management program between California and

1 the federal government). The Environmental Water Account was a water storage program
2 managed by DWR that purchased water to mitigate the harm caused by the pumping of water
3 from the Bay-Delta. Water was purchased from a number of sources, including from State
4 Water Contractors and including water stored in the Kern Water Bank.

5 166. Since the interim implementation of the Monterey Amendments, at least \$8.6
6 million has been spent, credited or refunded to water districts and corporations by the State
7 towards purchases for the Environmental Water Account. Main recipients of the EWA funds
8 include Kern County Water Agency, Tejon-Castac Water District, Buena Vista Water Storage
9 District, Paramount Farms, and Blackwell Land LLC. Paramount and Blackwell have each
10 received over \$3 million in checks, refunds and credits from the sale of EWA water.

11 167. Article 21 water deliveries can supply nearly 50% of total SWP deliveries in a
12 given year. In 2006, for example, 731,000 acre-feet of Article 21 water was delivered, of
13 which over 453,000 went to Kern County Water Agency and over 168,000 went to
14 Metropolitan Water District.

15 168. Under the Water Code, the State Water Resources Control Board is charged with
16 regulating water quality and administering the water rights of persons obtaining water rights
17 after 1914. The Board regulates water rights through its authority to issue orders and decisions,
18 and is charged with ensuring that water quality and water rights regulation is coordinated and
19 effective. Under its March 2000 Water Right Decision 1641, State Water Project pumping rates
20 in the Delta increased to their highest levels historically and facilitated implementation of the
21 Monterey Amendments.

22 169. Since the interim implementation of the Monterey Amendments, the San
23 Francisco –San Joaquin Bay Delta Estuary has entered a state of precipitous decline.
24 Endangered Delta smelt and salmon are threatened with extinction, and the salinity barrier
25 separating salt from freshwater has continued to move eastward. The smelt were granted
26 protection in *NRDC v. Kempthorne*, (E.D. Cal. 2007) 506 F. Supp. 2d. 322, which imposed
27 pumping restrictions on SWP and Central Valley Project facilities. Although the levels of

1 additional pumping restrictions needed to address these problems remain unknown, they are
2 likely to constrain SWP deliveries far more than anticipated when the Monterey Amendments
3 were originally approved.
4

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 170. Petitioners have exhausted all administrative remedies by submitting written
7 comments on the Project to Respondent to request compliance with CEQA, including the
8 completion of full and adequate environmental review. All issues raised in this petition were
9 raised before Respondent by Petitioners, other members of the public, or public agencies prior
10 to approval of the Project.

11 171. Petitioners have complied with Public Resources Code section 21167.5 by prior
12 service of a notice upon Respondents indicating their intent to file this Petition. Proof of
13 Service of this notification, with the notification, is attached as Exhibit A.

14 172. Petitioners have elected to prepare the record of proceedings in the above-
15 captioned proceeding pursuant to Public Resources Code Section 21167.6(b)(2).

16 173. This petition is timely filed in accordance with Public Resources Code § 21167
17 and CEQA Guidelines § 15112.
18

19 **FIRST CAUSE OF ACTION**

20 **Violation of the California Environmental Quality Act**

21 **(Public Resources Code § 21000 *et seq.*)**

22 174. Petitioners hereby incorporate by reference each and every allegation set forth in
23 Paragraphs 1 through 360, inclusive.

24 175. The purpose of an EIR is to provide public agencies and the public in general
25 with detailed information about the effect which a proposed project is likely to have on the
26 environment. (Pub. Resources Code § 21061.) Under CEQA, the lead agency is required to
27 prepare a complete and legally adequate EIR prior to approving any discretionary project that

1 may have a significant adverse environmental effect. (Pub. Resources Code §§ 21100(a) and
2 21150). An EIR must fully disclose and analyze all of the project’s potentially significant
3 environmental effects. (Pub. Resources Code § 21100(b)(1)). The EIR should be prepared
4 with a sufficient degree of analysis to provide decision-makers with information which enables
5 them to make a decision which intelligently takes account of environmental consequences.
6 (Guidelines § 15151.) DWR is also required pursuant to CEQA to consider mitigation
7 measures and alternatives to the Project, to adopt all feasible mitigation measures and/or
8 alternatives, to determine that proposed mitigation measures will or will not be effective in
9 avoiding or substantially lessening the Project’s significant environmental impacts, and to
10 make an adequate statement of overriding considerations for those significant environmental
11 impacts deemed unavoidable. (Pub. Resources Code §§ 21002.1(b), 21100(b)(3); Guidelines
12 §§ 15092 and 15093).

13 176. CEQA contemplates an interactive process of assessment and responsive
14 modification that must be genuine. The lead agency must be able to substantially change or
15 disapprove the project through the CEQA review process; using CEQA as a *post hoc*
16 justification for a project is not permitted.

17 **Failure to Provide an Adequate Description of the Project and the Affected Environment**

18 177. CEQA requires an accurate, stable and finite project description of the proposed
19 project; the Project description must “embrace the whole of the action” and include a
20 description of the entire scope of the project. (Guidelines § 15124.)

21 178. The EIR for the Monterey Plus Amendments fails to provide an accurate, stable
22 and finite definition of the project and the affected environment, including but not limited to
23 the following areas:

24 ***Project Objectives***

25 179. CEQA requires a statement of objectives sought by the proposed project.
26 (Guidelines § 15124(b) and (d).) A clearly written statement of objectives in turn assists the
27 lead agency in creating a range of alternatives to evaluate in the EIR. (Guidelines § 15124(b).)

1 The statement of objectives should include the underlying purpose of the project. (*Id.*) If a
2 public agency must make one or more decision on a project, all its decisions subject to CEQA
3 should be listed. (Guidelines § 15124(d)(2).)

4 180. The EIR fails to provide complete or accurate project objectives and does not
5 accurately describe the purpose of the EIR. The EIR fails to acknowledge the need to make
6 new decisions on multiple issues, including whether or not to approve the Monterey Plus
7 Amendments, whether to adopt an alternative to the proposed Project and/or to increase
8 mitigation for the Project, or whether to adopt no project at all. The EIR errs in stating that the
9 task of the lead and responsible agencies is “to decide whether to continue operating under the
10 proposed project and whether to decide whether to implement one of the alternatives to the
11 proposed project.” The EIR thus fails to recognize that its responsibility is to describe and
12 analyze the whole of the Project as an action whose outcome depends upon DWR’s final
13 project decision—not merely the continuation of the Monterey Amendments, which have
14 proceeded only under an interim order and lack lawful final authorization. This failure
15 amounts to DWR prejudging the outcome of its environmental review of the Monterey Plus
16 Amendments, and undermines CEQA’s fundamental purpose to fully disclose the proposed
17 actions and inform the lead agency’s and the public’s decision-making process, enabling that
18 process to influence the scope and direction of the proposed project.

19 ***Water Rights***

20 181. The California Water Resources Development Act (Burns-Porter), the legislation
21 responsible for the creation of the State Water Project, “shall not be construed as creating any
22 right to water.” Cal. Water Code § 12931.

23 182. The EIR fails to accurately describe the appropriative water rights that the SWP
24 contracts utilize as their basis for appropriation of the Delta, and how those water rights are
25 superior to the senior water rights impacted by withdrawals from the Delta.

26 183. The EIR fails to accurately describe the impact on Delta appropriative water
27 rights caused by changes to Article 21, and fails to include any reference to water rights as the

1 basis for Article 21 deliveries.

2 184. The EIR inaccurately describes the contractual conditions under which Article 21
3 water is delivered.

4 ***Legislative Nature of the Project***

5 185. The EIR fails to accurately describe the relationship of the Project to prior
6 legislative decisions or to accurately describe the authority by which the DWR can alter
7 legislated policy through adoption of contract amendments.

8 ***Public Trust Obligations***

9 186. The EIR fails to adequately describe DWR's obligations under California's
10 public trust doctrine and whether the Project will fully satisfy those obligations. The EIR fails
11 to adequately describe how those obligations may limit the supply of water under the Monterey
12 Plus Amendments.

13 ***Expanded Transfers and Removal of Restrictions***

14 187. The EIR fails to adequately describe the "urban preference" contained in the
15 original Article 18(a), and fails to adequately describe how the Monterey Plus Amendments to
16 Article 18(a) changed this preference, allowing less reliable water formerly designated for
17 agricultural use to be used for municipal purposes.

18 188. The EIR fails to adequately describe how the removal of Article 21(j)'s
19 prohibition on creating economies that are dependent on surplus water, in conjunction with the
20 changes to Articles 18 and 53, enables and encourages additional land development dependent
21 on surplus, seasonal, and interruptible water.

22 189. The EIR fails to adequately describe how the Monterey Plus Amendments' new
23 Article 53 permits water to be transferred to urban districts without the former restrictions that
24 were contained in Article 18(a) and Article 21.

25 190. The EIR fails to adequately describe how Article 53(h) enables the permanent
26 transfer of Table A Amounts above and beyond the 130,000 acre-feet transfer described in
27 Article 53, thus enabling the potential unlimited transfer of water from agricultural contractors

1 (previously restricted to agricultural use) to urban contractors.

2 191. The EIR fails to adequately describe the manner by which (1) the elimination of
3 the urban preference in Article 18; (2) and the potential unlimited transfers (including the
4 enumerated 130,000 acre-feet) of Table A amounts in Article 53; and (3) the changes in SWP
5 management in Article 56, combine to provide water previously restricted for agricultural uses
6 for urban uses and new development.

7 ***Removal of Reduced Yield Provision***

8 192. The EIR fails to adequately describe how the original Article 18(b) served as a
9 “safety valve” preventing reliance on “paper water” allocations, requiring DWR to
10 proportionally decrease SWP contracts’ Table A amounts to reflect lower SWP yields, and
11 fails to adequately describe how Table A amounts will or will not be affected by the removal of
12 Article 18(b).

13 ***Environmental Baseline***

14 193. Under CEQA, an EIR must describe environmental conditions of the project at
15 the time the notice of preparation was published, or if no notice of preparation is published,
16 then at the time the environmental analysis is commenced. This baseline setting will normally
17 constitute the baseline physical conditions by which a lead agency determines whether an
18 impact is significant. (Guidelines § 15125(a).)

19 194. The EIR uses a flawed baseline to determine environmental impacts of the
20 Project. The EIR utilizes the environmental conditions caused by the interim implementation
21 of the Monterey Amendments within its environmental baseline, and fails to properly
22 distinguish the baseline from the No Project alternative.

23 195. The EIR uses inconsistent time periods to compare project impacts.

24 196. The EIR recognizes that the SWP contracts will not expire until 2035, but
25 erroneously limits the time frame for analysis to 2020.

26 197. The EIR erroneously adjusts the baseline to reflect anticipated events, such as
27 anticipated population growth, urban development, increased water demand, and water

1 transfers.

2 ***Legal and Regulatory Framework***

3 198. CEQA requires a statement of the current legal and regulatory framework in
4 which the proposed project will be developed.

5 199. The EIR inaccurately describes the current regulatory framework within which
6 the Monterey Plus Amendments must be considered. These include, but are not limited to, the
7 EIR's failure to adequately describe the Delta Smelt and Delta Salmon Biological Opinions
8 ("BiOps"), available prior to DWR's project decision; or the long-term impacts of species
9 protection and climate change on SWP operations, despite their demonstrated significance in
10 reducing SWP deliveries.

11 ***CALSIM II***

12 200. The EIR misuses the CALSIM II computer model for much of its scientific
13 justification for its project. Normal modeling under CALSIM II results in environmental
14 damage being considered a constraint on water delivery. Yet DWR improperly utilizes
15 CALSIM II in the EIR as a means to assess environmental impact of the Amendments on the
16 environment and for estimating impacts in exports and deliveries. This misuse of CALSIM II
17 in the EIR impermissibly alters the project description and distorts the impacts of the Project.

18 201. The EIR fails to describe how conclusions drawn from CALSIM II are based on
19 flawed data inputs, including but not limited to flawed data relating to future water flow
20 patterns and volume that do not accurately account for changes in long-term environmental
21 conditions, such as global warming.

22 202. The EIR improperly assumes that in CALSIM II modeling, the future Delta
23 water exports will be nearly twice the historic average, while ignoring the BiOps and DWR's
24 inability to meet water quality criteria even under the current pumping regime.

25 203. The EIR inaccurately uses CALSIM II modeling results to favor the Project
26 alternative, without acknowledging that the data can be used to support a range of alternatives,
27 including environmentally superior alternatives, and without describing the possible sources of

1 error with the modeling.

2 204. The EIR fails to address the faulty application of CALSIM II and exaggeration
3 of available supplies in DWR's biennial Reliability Reports prepared pursuant to the Project.

4 205. The EIR fails to address the assumption of CALSIM II modeling that
5 groundwater is a virtually limitless resource.

6 ***Kern Water Bank***

7 206. The EIR fails to adequately describe the transfer of Kern Fan Element of the
8 Kern Water Bank ("KWB") from DWR to KCWA and ultimately to KWBA. The EIR fails to
9 adequately describe the Monterey Plus Amendments' change of the fundamental purpose of
10 the KWB from augmenting the dependable water supply of the SWP to a project operated and
11 maintained for local benefit and the benefit of the member entities.

12 207. The EIR fails to adequately describe the ownership structure of the KWB
13 Authority and fails to adequately describe the circumstances that will lead to the transfer of the
14 KWB, including the role SWP Contractors and other local agencies and entities may have
15 played in preventing DWR from developing the KWB itself.

16 208. The EIR fails to adequately describe how the fee-simple KWB transfer to Kern
17 Water Bank Authority complies with § 11464 of the Water Code and fails to adequately
18 describe how the transfer is lawful under Article 16, § 6 of the California Constitution.

19 209. The EIR fails to adequately describe what continuing authority DWR may have
20 to use the KWB as needed for SWP purposes and fails to adequately describe how Article 52
21 of the Monterey Plus Amendments may affect that authority.

22 210. The EIR fails to adequately describe DWR's original experiences and purposes
23 for the KWB, including but not limited to DWR's intention to use the Kern Water Bank as the
24 state's primary groundwater storage facility and to develop a SWP groundwater recharge
25 program.

26 211. The EIR fails to adequately describe the environmental impacts disclosed in the
27 1986 EIR and 1990 Supplemental EIR prepared by DWR for KWB, including recognition that

1 operation of KWB might have a negative impact on the Bay-Delta.

2 212. The EIR fails to adequately describe DWR's accounting that led to valuing the
3 KWB at \$33 million dollars. The EIR is unavailing as to why DWR's accounting did not
4 assume that the KWB would be used as a water bank, and why the accounting does not include
5 or disclose the full amount invested by DWR in development of KWB.

6 213. The EIR fails to disclose major details of KWB operation, including whether the
7 KWB and KWBA actually acquire and sell water under its own title, or merely provide a
8 facility that allows its member agencies to store and recover water.

9 214. The EIR fails to disclose the amounts of water KWB acquires and sells on a
10 yearly basis.

11 215. The EIR fails to describe or disclose the amounts that member districts have
12 bought and sold from KWB, or to whom KWB water has been sold.

13 216. The EIR fails to describe at what price KWB water has been sold, whether the
14 price for KWB water reflects a mark-up beyond costs.

15 217. The EIR fails to describe the price charged by KWB for storage.

16 218. The EIR fails to describe whether DWR has purchased KWB water, and if so, for
17 what place of use and purpose.

18 219. The EIR fails to describe which sources of water contribute to KWB stored
19 water.

20 220. The EIR fails to describe what quantity of water stored in KWB is supplied
21 variously through SWP Table A allocations, SWP Article 21 water, Central Valley Project
22 water, surface run-off, groundwater, water from the Kern River, and any other possible
23 sources.

24 221. The EIR does not describe whether DWR delivered water to KWB that it
25 intended to re-purchase.

26 222. The EIR does not describe whether KWB pays taxes on the land it owns.

27 223. The EIR does not describe whether Westside Mutual Water District profits from

1 KWB sales and pays taxes on those profits.

2 224. The EIR does not describe whether KWB has received SWRCB approval for
3 changing the place and purpose for use of water.

4 225. The EIR provides an inadequate explanation of the purposes for which KWBA
5 member agencies use their profits from the sale of KWB water.

6 ***“Retirement” of 45,000 AFY***

7 226. The EIR fails to adequately describe the method for valuation of the 45,000 acre-
8 feet per year (“AFY”) “retired” by Article 53, and fails to adequately describe the near-
9 certainty that KCWA and DRWD would never actually take delivery of the 45,000 AFY they
10 “retired.”

11 227. The EIR fails to acknowledge that the 45,000 acre-feet is only retired until the
12 end of the bond repayment period, nor does it adjust the value of this temporary “retirement”
13 accordingly.

14 228. The EIR fails to adequately describe how KCWA and DRWD are required to
15 pay for all Table A amounts, whether delivered or not.

16 229. The EIR fails to adequately describe how KCWA and DRWD financially benefit
17 by “retiring” the 45,000 acre-feet of paper water Table A amounts, since by “retiring” water
18 deliveries that they do not receive they “retire” annual payment obligations and yet suffer no
19 loss of delivery of Table A amounts.

20 ***Environmental Water Account***

21 230. The EIR fails to adequately describe the impact of the Monterey Plus
22 Amendments in facilitating misuse of the Environmental Water Account (“EWA”). The EIR
23 fails to evaluate how increased prices paid for EWA water due to implementation of the
24 Monterey Plus Amendments increases environmental impact, in part through limiting the
25 state’s ability to afford increased water purchases for the EWA .

26 **Failure to Adequately Describe the Project’s Impacts**

27 231. CEQA requires that an EIR disclose and analyze all possible significant

1 environmental impacts of a proposed project. (Pub. Resources Code § 21100(b)(1) and
2 Guidelines § 15126.) The significant impacts should be discussed with emphasis in proportion
3 to the severity and probability of occurrence. (Guidelines § 15143.)

4 232. The EIR failed to address or inadequately addressed entire categories of
5 environmental impacts, including but not limited to the deficiencies described in the section
6 immediately above and those enumerated below. As a result, Respondent failed to proceed in
7 the manner required by law and abused its discretion by failing to fully disclose and analyze
8 the Project’s environmental impacts, including but not limited to the following:

9 ***Biological Impacts***

10 233. The EIR impermissibly underestimates the impacts of the Monterey Plus
11 Amendments on the Delta and its fish populations and state fishery resources, including but not
12 limited to: providing inaccurate estimates of actual “take;” improper analysis of “salvage
13 events;” inadequate evaluation of indirect impacts; and inadequate discussion of impacts to
14 salmonids passing through the Delta.

15 234. The EIR incorrectly concludes that environmental programs in place between
16 1996 and 2003 reduced environmental impacts of the Monterey Plus Amendments to less-than-
17 significant.

18 235. The EIR improperly bases its impact assessment on analyses from Biological
19 Opinions required under the federal Endangered Species Act which were rejected by a federal
20 district court in *NRDC v. Kempthorne* (E.D. Cal. 2007) 506 F. Supp. 2d. 322.

21 236. The EIR improperly relies on the Delta Smelt Risk Assessment Matrix, which
22 was held to be unlawful as designed in *NRDC v. Kempthorne*. (*Id.*)

23 237. The EIR provides an inadequate analysis of the effects of the Monterey Plus
24 Amendments on moving the salinity barrier in the Delta.

25 238. The EIR fails to identify impacts on water quality resulting from the Monterey
26 Plus Amendments, including but not limited to degraded water quality in SWP source waters,
27 in reservoirs and river conveyances, and the Bay-Delta.

1 ***Kern Water Bank***

2 239. The EIR fails to adequately analyze the environmental impacts of the Project’s
3 fee simple transfer of the Kern Water Bank, including but not limited to increased pumping
4 from the Delta and increased deliveries to Monterey Contractors due to the transfer of
5 ownership and operation of the KWB pursuant to the Monterey Plus Amendments.

6 240. The EIR fails to adequately analyze and assess the environmental impacts caused
7 by expanded agriculture, enabled as a result of private control of the KWB and subsequent
8 increased water deliveries resulted from implementation of the Monterey Plus Amendments.

9 241. The EIR fails to analyze the impacts on the environment of transferring control
10 of the KWB from a state agency to a privately-controlled joint powers authority, including but
11 not limited to the difference between the state’s original purpose of using the KWB as a
12 drought mitigation bank and an integral component of its management of the SWP, and the
13 current use of KWB to maximize deliveries of SWP water to benefit KWBA and its member
14 entities. The EIR inadequately assesses the impact caused by the State’s inability to use KWB
15 for drought emergency preparedness, environmental protection, river restoration, and water
16 quality.

17 242. The EIR inadequately describes the Monterey Plus Amendments’ environmental
18 impacts stemming from transfer of control and change of purpose of Kern Fan Element, so that
19 KWB may be used for development of communities dependent on SWP and KWB deliveries.
20 The EIR provides an inadequate analysis of the use of KWB as a “switchyard” between
21 agribusiness and real estate interests to re-purpose agricultural water for new urban
22 development.

23 243. The EIR does not acknowledge the additional environmental pressures and
24 impacts created by operation of the Kern Water Bank as a profit-making enterprise subsequent
25 to implementation of the Monterey Amendments.

26 244. The EIR inadequately explains that operation of the Kern Water Bank has
27 negatively impacted groundwater quality in Kern County.

1 245. The EIR fails to assess environmental impacts of member entities’ profits from
2 Kern Water Bank.

3 246. The EIR provides inadequate disclosure and analysis of the sources and amounts
4 of groundwater extracted for storage in and operation of the Kern Fan Element and the KWB.

5 247. The EIR fails to assess the environmental impacts of increased private storage
6 resulting from the transfer of Kern Fan Element from state to private control under the
7 Monterey Plus Amendments, and how those impacts are compounded by allowing SWP
8 contractors to store water outside of their own service areas.

9 ***Environmental Water Account***

10 248. The EIR fails to adequately address impacts caused by the depletion of the
11 Environmental Water Account, and environmentally damaging use of the Environmental Water
12 Account, as precipitated by enactment of the Monterey Plus Amendments. If the Monterey
13 Plus Amendments are not made permanent, DWR would pump its own surplus water,
14 transferring less money out of the state system, costing less per acre-foot, and allowing the
15 EWA to purchase more water, which would, in turn, reduce impacts.

16 ***Expanded Transfers and Removal of Restrictions***

17 249. The EIR fails to adequately analyze the environmental impacts of removal of the
18 “urban preference” in the original Article 18(a).

19 250. The EIR fails to adequately analyze the environmental impacts of changing
20 Article 21 of the contract provisions of the SWP long-term contracts from “surplus water” to
21 “interruptible water”, including the enabling of the building of permanent local economies
22 dependent on that interruptible water.

23 251. The EIR fails to adequately analyze the environmental impacts of transfers
24 facilitated under Article 53, including but not limited to Article 53(h)’s provision enabling the
25 unlimited transfer of water above and beyond the 130,000 acre-feet described in Article 53.

26 252. The EIR fails to adequately analyze the environmental impacts of the changes to
27 Articles 18, 21, 53, and 56, that taken together combine to provide water previously restricted

1 for agricultural uses for urban uses and new development.

2 ***Removal of Reduced Yield Provision***

3 253. The EIR fails to adequately analyze the environmental impacts of removing
4 Article 18(b)'s safety valve that prevented reliance on paper water allocations.

5 ***Turnback Pool***

6 254. The EIR fails to adequately assess the environmental impacts of SWP
7 Contractors' enhanced ability to receive Table A amounts through implementation of the
8 Turnback Pool provisions of the Monterey Plus Amendments.

9 ***CALSIM II***

10 255. The EIR fails to adequately assess impacts due to misuse of CALSIM II as a
11 model for determining environmental impacts caused by SWP deliveries. Environmental
12 impacts are a constraint in the CALSIM II model, and not a modeling result. In addition, the
13 model erroneously assumes unlimited groundwater. The EIR fails to make this distinction, or
14 to assess the model's limitations accordingly.

15 ***Climate Change***

16 256. CEQA requires consideration of increases or decreases of greenhouse gases and
17 inducement of man-made changes to the earth's atmosphere ("climate change") due to
18 implementation of a proposed project. (Guidelines § 15064.4)

19 257. The EIR improperly assesses project-related climate impacts, and erroneously
20 asserts that the Monterey Plus Amendments would not increase growth-related greenhouse gas
21 emissions within the SWP service area. The EIR improperly concludes that location of
22 development is inconsequential to increases in greenhouse gas emissions, and fails to recognize
23 that the Monterey Plus Amendments encourage rural and suburban sprawl which in turn
24 increases transportation-related greenhouse gas emissions.

25 258. The EIR fails to adequately address whether the Monterey Plus Amendments'
26 elimination of the permanent shortage provision in Article 18(b) and the proscription on using
27 "surplus" water to build permanent economies in Article 21(g)(i) would impact climate change

1 by eliminating DWR's ability to reconcile SWP supplies and deliveries.

2 ***Growth-Inducing Impacts***

3 259. CEQA requires that an EIR provide full analysis of ways in which a proposed
4 project could foster economic or population growth, or the construction of additional housing,
5 either directly or indirectly, in the surrounding environment. (Pub. Resources Code §
6 21100(b)(5) and Guidelines §§ 15126 and 15126.2.) Physical changes to the environment
7 caused by economic and social impacts should also be considered as a significant effect on the
8 environment. (Guidelines 15164(e).)

9 260. The EIR fails to adequately assess the growth-inducing impacts caused by
10 enactment of the Monterey Plus Amendments. As one example, the Amendments' changes to
11 Articles 18 and 21, when combined with the addition of Articles 52 and 53, together provide
12 strong incentives for creating new residential and commercial developments based on imported
13 SWP water. The EIR mischaracterizes and underestimates the Monterey Plus Amendments'
14 growth-inducing impacts through providing a flawed analysis of these changes and additions to
15 the SWP contracts on increased development.

16 261. The EIR impermissibly defers full assessment of the Project's growth
17 consequences to future assessments of local decision-makers.

18 262. The EIR fails to assess the growth-related impacts of known Monterey Plus
19 Amendments-based water transfers.

20 ***Paper Water***

21 263. The EIR fails to disclose and fully analyze Project-related impacts on the
22 problem of "paper water."

23 264. The EIR erroneously relies upon inflated estimates of future SWP deliveries in
24 its assessment of "paper water."

25 265. The EIR erroneously avoids paper water assessment by relying upon Reliability
26 Reports mandated by the Project, but excluding those reports, and criticisms of them, from the
27 EIR analysis.

1 266. The EIR impermissibly defers the Project’s combined effects on “paper water” to
2 future local assessment.

3 ***Cumulative Impacts***

4 267. CEQA requires that an EIR for a proposed project consider reasonably
5 foreseeable cumulative impacts from a project. (Pub. Resources Code §§ 21100 and Guidelines
6 § 15130.) The EIR fails to provide an adequate cumulative impacts assessment for the
7 Monterey Plus Amendments. The EIR does not assess the cumulative impacts on the Delta of
8 the pumping from the SWP under the Monterey Plus Amendments and the additional pumping
9 from the Central Valley Project, and its potential combined impact on endangered species and
10 other public trust resources.

11 268. The EIR does not assess the cumulative impacts of decreased supplies to the
12 Environmental Water Account as a result of the Monterey Plus Amendments, combined with
13 increased pumping, also as a consequence of enactment of the Monterey Amendments.

14 ***Environmental Consequences of Financial Restructuring***

15 269. The EIR erroneously fails to analyze the environmental consequences associated
16 with the restructuring of SWP financing in the Project, including but not limited to changes
17 included in articles 22, 51, and 53 of the Monterey Plus Amendments.

18 270. The EIR erroneously dismisses as speculative the environmental consequences
19 of the Project’s redirection to local contractors of vast financial resources that would otherwise
20 have been owed to the State.

21 271. The EIR erroneously fails to analyze whether enforcement pre-Monterey Article
22 18(b) could have avoided the high financial and environmental costs of the Project’s financial
23 restructuring.

24 **Alternatives and Mitigation Measures**

25 ***“No Project Alternative”***

26

27

1 272. CEQA requires the preparation of a no-project alternative that addresses existing
2 conditions, as well as what would be reasonably expected to occur in the foreseeable future if
3 the project were not approved. (Guidelines § 15126(e).)

4 273. The EIR fails to proceed in manner required by law by not evaluating an
5 adequate “no project” alternative.

6 274. The EIR’s “no project” alternative impermissibly assumes that DWR would not
7 enforce the original SWP contracts as written.

8 275. The EIR impermissibly assumes that the pre-Monterey Article 21 deliveries
9 would offset the reduced deliveries triggered under pre-Monterey Article 18(b), if Article 18(b)
10 were ever to be enforced by DWR.

11 276. The EIR impermissibly assumes that demand for water would be identical under
12 pre- and post-Monterey Plus Amendments.

13 277. The EIR’s “no project” alternative inadequately accounts for the prohibition on
14 creating dependent economies in pre-Monterey SWP contracts; and fails to acknowledge that
15 Article 21 water is inherently unreliable and undependable as a water source.

16 278. One iteration of the “no project” alternative in the EIR improperly includes some
17 Table A transfers executed under the Monterey Plus Agreement, the conveyance of non-project
18 water, and the storage of contractors’ water outside of contractors’ service area.

19 ***Feasible Alternatives***

20 279. CEQA requires an EIR to examine a range of reasonable alternatives that would
21 feasibly obtain most of the project objectives, but avoid or substantially lessen any significant
22 adverse effects of the project. (Guidelines § 15126.6.)

23 280. DWR erroneously rejects feasible alternatives as infeasible, including but not
24 limited to the “Improved Reliability through Environmental Enhancement” (IEEE) alternative.
25 In addition, the EIR provides no substantial evidence to support its exclusion of feasible
26 alternatives.

27 ***Reasonable Range of Alternatives***

1 281. CEQA requires that an EIR include a reasonable range of alternatives for a
2 proposed project that will foster informed decision-making and public participation.
3 (Guidelines § 15126.6.)

4 282. The EIR provides a limited and incomplete range of feasible alternatives to the
5 proposed project, including an alternative that inappropriately includes significant portions of
6 the proposed project.

7 283. The EIR improperly concludes that the alternatives described in the EIR have
8 similar impacts and outcomes as the proposed project, and does not provide alternatives that
9 are clearly distinguishable from the “no project” alternative and the proposed project.

10 284. The EIR fails to provide and analyze alternatives to the proposed project that
11 would restore operation and title of Kern Water Bank to the State of California.

12 285. The EIR fails to analyze the “Kern transfer with trust conditions” alternative.

13 286. The EIR fails to provide an alternative to the project that ensures consistency
14 with the California Constitution and statewide public trust accountability over management and
15 operation of the Kern Water Bank.

16 287. The EIR fails to analyze an alternative that is climate change-neutral.

17 288. The EIR fails to analyze an alternative that avoids impacts to the Bay-Delta
18 ecosystem.

19 ***Mitigation***

20 289. CEQA requires DWR to adopt feasible mitigation measures in order to
21 substantially lessen or avoid the otherwise significant adverse environmental impacts of
22 proposed projects. (Pub. Resources Code § 21002.) DWR is required pursuant to CEQA to
23 consider mitigation measures and alternatives to the Project, to adopt all feasible mitigation
24 measures and/or alternatives, to determine that proposed mitigation measures will or will not
25 be effective in avoiding or substantially lessening the Project’s significant environmental
26 impacts, and to make an adequate statement of overriding considerations for those significant
27 environmental impacts deemed unavoidable. (Pub. Resources Code §§ 21002(b) and 21081.)

1 290. The EIR fails to properly consider reasonable mitigation measures for the
2 proposed project, including but not limited to mitigation measures that would reduce growth-
3 inducing impacts.

4 291. The EIR fails to properly consider mitigation measures to reduce the impact of
5 the elimination of Article 18(b), which would allow DWR to reduce the total Table A amounts
6 in the long-term SWP contracts.

7 292. The EIR fails to properly consider mitigation measures to offset the increased
8 pumping of Article 21 water, including measures to prohibit distribution of Article 21 water
9 when doing so would harm public trust resources.

10 293. The EIR fails to properly consider mitigation measures that would prioritize
11 water to be stored in the KWB for the protection of public trust resources.

12 294. The EIR incorrectly concludes that DWR's efforts to comply with the
13 Endangered Species Act, such as compliance with pumping plans to protect endangered smelt
14 and salmon, are sufficient to meet the lead agency's mandate under CEQA to mitigate
15 significant environmental effects whenever feasible to protect public trust resources.

16 **Inadequate Response to Comments**

17 295. Respondents failed to respond adequately to comments submitted by Petitioners,
18 other members of the public, and other agencies. Instead, the responses given to numerous
19 comments are conclusory, evasive, confusing, or otherwise non-responsive, contrary to the
20 requirements of CEQA. In addition, Respondents failed to provide an adequate rationale for
21 rejecting alternatives to the Project proposed by Petitioners and other commenting agencies and
22 persons. By failing to provide adequate responses to public comments and proposed
23 alternatives, Respondents failed to proceed in the manner required by law.

24 **Failure to Recirculate EIR**

25 296. CEQA requires that an EIR must be recirculated for additional public and agency
26 comment when new information is added after the EIR's initial circulation but prior to
27 certification.

1 297. Respondents failed to recirculate the EIR despite the availability of significant
2 new information prior to certification regarding the Project’s environmental consequences.

3 **CEQA Findings Not Supported By Substantial Evidence**

4 298. No substantial evidence supports Respondents’ findings adopted pursuant to
5 CEQA, including the findings that the period of the Project’s operation between 1995 through
6 2003 produced no significant environmental impacts, and that water supply, water quality,
7 climate change, air quality, biological resources, cultural resources, traffic, and public safety
8 impacts have been mitigated to less than significant levels.

9 **Statement of Overriding Considerations Not Supported By Substantial Evidence**

10 299. Where no feasible mitigation measures or alternatives are available to avoid or
11 reduce a project’s significant environmental effects, CEQA allows an agency approving a
12 project to adopt a Statement of Overriding Considerations that describes how specific
13 overriding economic, legal, social, technological, or other benefits outweigh the significant
14 environmental effects.

15 300. In approving the Project and certifying the EIR, Respondents concluded that the
16 Project would result in significant unavoidable impacts. Accordingly, Respondents adopted a
17 Statement of Overriding Considerations, including findings that specific considerations make
18 infeasible the mitigation measures or alternatives identified in the EIR for the Project’s
19 unavoidable significant impacts and that economic, social, and other factors justify approval of
20 the Project despite these unavoidable significant impacts.

21 301. Respondents’ adoption of a Statement of Overriding Considerations that
22 purportedly justifies the Project’s significant adverse impacts on the environment is not
23 supported by substantial evidence and represents a failure to proceed in the manner required by
24 law. Similarly, the finding that no feasible alternatives of mitigation measures exist to
25 eliminate or reduce the remaining significant effects is not supported by substantial evidence.

26 **Failure to Provide Notice of Publication of Notice of Decision**

1 307. Plaintiffs bring this Reverse Validation Action pursuant to California law in
2 order to challenge the validity of the fee-simple transfer between DWR and KCWA that
3 conveys, in a two-step transaction, the Kern Water Bank from the State to Kern Water Bank
4 Authority, a privately-controlled Joint Powers Authority with public and private members that
5 is effectively controlled by private entities.

6 308. Pursuant to Article 52 of the Monterey Plus Agreement, the Kern Water Bank
7 Exchange Agreement, and the KWBA Joint Powers Agreement (that establishes KWBA),
8 DWR transferred the Kern Water Bank first to KCWA, which immediately re-transferred it to
9 KWBA.

10 309. Defendant knew or should have known, at the time of the execution of the two-
11 step transfer, that the two-step transfer would result in KWBA obtaining ownership, operation,
12 and control over the Kern Water Bank.

13 310. This Reverse Validation Action is timely pursuant to Code of Civ. Proc. §§ 860,
14 863, and 864 and Article 13.7 of the Exchange Agreement because the operative
15 “authorization” for the Kern Water Bank two-part transfer was not complete and final until
16 publication of the NOD for the Monterey Plus Amendments on May 5, 2010, which followed
17 DWR’s review of the transfer, development and operation of the Kern Water Bank.

18 311. DWR’s two-part transfer of the Kern Water Bank violates multiple provisions of
19 California law and was arbitrary, capricious, and/or entirely lacking in evidentiary support.

20 312. Should this cause of action be determined, for any reason, to be improperly
21 brought or invalid in any way, Petitioners plead in the alternative for a writ of mandamus
22 pursuant to Cal. Civ. Code § 1985.

23 313. Petitioners bring this Reverse Validation Action on the following grounds:

24 **Prohibition on DWR ‘s Transfer of State Water Facilities**

25 314. Water Code § 11464 states that “no water right, reservoir, conduit, or facility for
26 the generation, production, transmission, or distribution of electric power, acquired by the
27

1 DWR shall ever be sold, granted, or conveyed by DWR so that DWR is thereby divested of the
2 title to and ownership of it.” (Water Code § 11464.)

3 315. Through enactment of the Monterey Plus Amendments and concurrent execution
4 of the two-part transaction, DWR transferred title and management of the Kern Water Bank to
5 KCWA and then to KWBA so that DWR was divested of title and ownership, in violation of
6 Water Code § 11464.

7 316. Due to the violation of Water Code § 11464, DWR’s two-part transfer and
8 divestment of title and ownership of the Kern Water Bank is contrary to an express provision
9 of the law and therefore is void from inception and non-enforceable. (Cal. Civ. Code §
10 1667(1).)

11 **Invalid Consent to the Contract**

12 317. Mutual consent is a requirement for the valid formation of a contract. Cal. (Civ.
13 Code § 1550(b).) Consent to a contract is not real or free when obtained through fraud. (Cal.
14 Civ. Code § 1567.) Fraud may be actual or constructive, that is, with or without fraudulent
15 intent. (Cal. Civ. Code § 1571.)

16 318. DWR’s two-part transfer of the Kern Water Bank was based on illusory
17 consideration, and the contracting parties lacked statutory authority to enter into the contract.
18 Both are acts of real or constructive fraud with respect to the parties’ consent to enter into the
19 contract.

20 319. Due to lack of real consent to enter into the contract, the two-part transfer of
21 the Kern Water Bank is not a validly formed contract because it violates Cal. Civ. Code §
22 1550.

23 **Illusory Consideration**

24 320. Under California Law, a sufficient cause or consideration is an essential element
25 to formation of a valid contract. (Cal. Civ. Code §§ 1550 and 1605.) Consideration may not
26 be so one-sided as to be unconscionable. California courts are also required to consider the
27

1 relative value of consideration in a transaction alleged to be voidable under fraudulent transfer
2 laws.

3 321. The two-part transfer of Kern Water Bank constitutes a financial transaction, and
4 the Monterey Plus Amendments and the Exchange Agreement financial instruments or
5 contracts, for which consideration of 45,000 acre-feet in retired water was purported to be paid
6 in exchange for the real property known as Kern Fan Element and \$3 million in environmental
7 indemnification paid by the State.

8 322. The “paper water” pledged by KCWA is illusory consideration and is therefore
9 unconscionable. There is no practical value to the 45,000 acre-feet “retired” because KCWA
10 and DRWD had no realistic expectation of receiving that water. Further, the 45,000 acre-feet
11 is no longer “retired” once the bond re-payment period has ended.

12 323. The 45,000 acre-feet “retired” by KCWA acre-feet is illusory consideration
13 because the “retirement” of the 45,000 acre-feet accrues financial benefit to KCWA in its
14 bond-repayment obligations to the detriment of the State. By “retiring” 45,000 acre-feet of
15 “paper water,” KCWA is not obligated to repay the State for that portion of the bond-
16 repayment, even though repayment is required by Burns-Porter and the SWP Contracting
17 Principles. Under the Contracting Principles, repayment of the cost of the SWP is required
18 regardless of the actual amount of water delivered. Therefore the “retirement” of the 45,000
19 acre feet of Table A amounts deprives the State of mandatory bond-repayment requirements
20 demanded of all SWP contractors, including KCWA. “Retiring” 45,000 acre-feet is therefore a
21 second inducement for KCWA, and not a valid consideration for the exchange of Kern Water
22 Bank.

23 324. Due to its illusory consideration, the two-part transfer of the Kern Water Bank
24 violates Cal. Civ. Code §§ 1550 and 1605.

25 **Unconstitutional Gift of Public Funds**

1 325. An agency of the State of California may not make any gift or authorize the
2 making of any gift of any public money or thing of value to any individual, municipal or other
3 corporation. (Cal. Const. Art. 16 § 6).

4 326. As DWR failed to receive sufficient consideration for the transfer of the Kern
5 Water Bank to KWBA, via KCWA, the transfer constitutes a gift of a thing of value and
6 therefore violates Article 16, § 6 of the California Constitution.

7 327. A contract or agreement which executes an unconstitutional act is void and
8 unenforceable. (Cal. Civ. Code §§ 1550(c) and 1667.)

9 328. Due to its violation of Art § 16, Sec 6, the two-part transfer of the Kern Water
10 Bank is void and unenforceable.

11 **Unconstitutional Abrogation of Statutory and Contractual Duties**

12 329. Article 16, § 1 of the California Constitution and subsequent caselaw state that
13 contracts made by the State and ratified by the voters of the State cannot later be materially
14 modified, even by the Legislature.

15 330. The Burns-Porter Act, enacted by the California Legislature and ratified by the
16 voters of the State, authorized the issuance of bonds to fund the construction and operation of
17 the SWP.

18 331. The authorization, issuance and purchase of the SWP bonds formed a contractual
19 relationship between the bondholders, the taxpayers of the State, and the voters of the State that
20 the Legislature—and therefore DWR—cannot abrogate or materially modify.

21 332. The SWP bonds were authorized, issued, and purchased in reliance on the
22 Contracting Principles and the Burns-Porter Act.

23 333. The model contract for all Long-Term Contracts (that of the Metropolitan Water
24 District of Southern California), validated by the Cal. Supreme Court in *Metropolitan Water*
25 *District v. Marquardt*, (1963) 59 Cal. 2d 159 and based on both the Contracting Principles and
26 the Burns-Porter Act, mandated specific repayment terms and obligations applicable to all
27 SWP Contractors.

1 334. The Monterey Plus Amendments materially change the repayment obligations of
2 the SWP Contractors in a number of ways, including but not limited to the changes to Articles
3 18, 22, 51, 52, 53, 54, and 55 described in-part above.

4 335. The Monterey Plus Amendments violate article 45 of the model contract
5 validated by the California Supreme Court in *Marquardt*, which provides that all SWP water
6 contracts "shall be substantially uniform with respect to basic terms and conditions."

7 336. The material changes of the long-term contracts effected by the Monterey Plus
8 Amendments amount to an unconstitutional abrogation of DWR's statutory and contractual
9 duties. (Cal. Const. Art. 16, § 1)

10 **No Authority to Make Contracts**

11 337. California Law requires that parties entering into a contract be capable of
12 contracting. (Cal. Civ Code § 1550(a).)

13 338. An agency which is statutorily proscribed from entering into a specific
14 contractual exchange does not possess the authority to enter into a contract for that proscribed
15 purpose.

16 339. DWR is proscribed from transfer of title and management of a SWP facility
17 pursuant to Water Code § 11464. Therefore, DWR lacks authority to enter into the agreements
18 to transfer the Kern Water Bank, so that the contract formation is incomplete pursuant to Cal.
19 Civil Code § 1550.

20 340. As an administrative agency of the State, DWR cannot assert legislative
21 authority to change re-payment provisions that even the Legislature is forbidden from
22 changing. For this reason, DWR lacks the authority to approve re-structuring of the financial
23 arrangements of the SWP contracts, including the two-part gift of Kern Water Bank, making
24 the Amendments void and unenforceable pursuant to Cal. Civ. Code § 1550.

25 341. The State's loss of re-payment revenue caused by the retirement of 45,000 acre-
26 feet of water constitutes an alteration of the essential re-payment provisions of the bonds and
27

1 the lien placed on SWP projects, caused by execution of the Monterey Plus Amendments and
2 the two-part transfer..

3 342. DWR lacks the statutory authority to alter the terms of re-payment of the bonds
4 issued pursuant to the Burns-Porter Act. Therefore, DWR lacks the authority to enter into the
5 two-part transfer of the Kern Water Bank, making the contract formation incomplete, and the
6 contract void and unenforceable, pursuant to Cal. Civil Code § 1550(a).

7 **Impairment of Bond Agreements**

8 343. The sale of bonds pursuant to the Burns-Porter Act, as approved by the voters of
9 California, created a contractual relationship between the bondholders and the State of
10 California.

11 344. The terms of the Burns-Porter Act are considered incorporated into each bond
12 contract, even if those terms are not expressly stated in the bond contracts.

13 345. In order to protect bondholder security in the SWP, the Burns-Porter Act
14 contains a “non-impairment” requirement for all bond contracts, specifying that the contracts
15 “shall not be impaired by subsequent acts of the legislature during the time when any of the
16 bonds authorized herein are outstanding.” (Wat. Code § 12937(b).)

17 346. By “retiring” the 45,000 acres of Table A water held by KCWA and DRWD—
18 water that has never been delivered due to the incompleteness of the SWP but that KCWA and
19 DRWD are nonetheless obligated to pay DWR for—the two-part transfer of the Kern Water
20 Bank reduces the amount KCWA and DRWD pay DWR.

21 347. Because revenues obtained by DWR from water contractors inure to the direct
22 benefit of the bondholders, reducing these revenues alters the financial framework that
23 bondholders have and continue to rely on when purchasing the bonds, defeating the
24 expectations of the parties under their contracts.

25 348. Reducing the amount that KCWA and DRWD pay for their participation in the
26 SWP is a prohibited legislative act that materially alters the responsibilities of KCWA and
27 DRWD in violation of the Burns-Porter Act. (Wat. Code § 12930 *et seq.*)

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2 **THIRD CAUSE OF ACTION**

3 **Mandate Action for Violation of the California Constitution by DWR and/or KCWA**
4 **(Code Civ Proc. §§ 1085, 1094.5; Cal. Const. Art. 16, §§ 1 and 6)**

5 349. Petitioners hereby incorporate by reference each and every allegation set forth in
6 Paragraphs 1 through 360, inclusive.

7 **Unconstitutional Gift of Public Funds**

8 350. An agency of the State of California may not make any gift or authorize the
9 making of any gift of any public money or thing of value to any individual, municipal or other
10 corporation. (Cal. Const. Art. 16 § 6).

11 351. As DWR and/or KCWA failed to receive actual consideration for the transfer of
12 the Kern Water Bank to KWBA, via KCWA, the transfer constitutes a gift of a thing of value
13 and therefore violates Article 16, § 6 of the California Constitution.

14 352. A contract or agreement which executes an unconstitutional act is void and
15 unenforceable. (Cal. Civ. Code §§ 1550(c) and 1667.)

16 353. Due to its violation of Art § 16, Sec 6, the two-part transfer of the Kern Water
17 Bank is void and unenforceable.

18 **Unconstitutional Abrogation of Statutory and Contractual Duties**

19 354. Article 16, § 1 of the California Constitution and subsequent caselaw state that
20 contracts made by the State and ratified by the voters of the State cannot later be materially
21 modified, even by the Legislature.

22 355. The Burns-Porter Act, enacted by the California Legislature and ratified by the
23 voters of the State, authorized the issuance of bonds to fund the construction and operation of
24 the SWP.

25 356. The SWP bonds were authorized, issued, and purchased in reliance on the
26 Contracting Principles and the Burns-Porter Act.

1 continued operation of the SWP pursuant to the Monterey Plus Amendments and including the
2 transfer and continued operation of the Kern Water Bank by any other entity than the DWR)
3 until Respondents have complied with all requirements of CEQA and all other applicable state
4 and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to
5 Public Resources Code section 21168.9;

6 2. For a stay, temporary restraining order, preliminary injunction, and permanent
7 injunction prohibiting any actions by Respondents, Defendant, and Real Parties in Interest
8 pursuant to Respondents' approval of the Project and certification of the EIR for the Project
9 until Respondents have fully complied with all requirements of CEQA and all other applicable
10 state and local laws, policies, ordinances, and regulations;

11 3. That the Court examine and inquire into the adoption and the validity of the
12 Monterey Plus Amendments, including the Kern Water Bank Exchange Agreement;

13 4. That the Court find that the Monterey Plus Amendments including the Kern
14 Water Bank Exchange Agreement are invalid, illegal, void *ab initio*, voidable, and not binding
15 and are not and will not be in conformity with applicable provisions of law;

16 5. That the court issue an alternative writ of mandamus declaring the two-part
17 transfer contrary to the California Constitution;

18 6. For the imposition of direct or constructive trust conditions in order to remedy
19 the adverse consequences of KCWA's and KWBA's use of the Kern Water Bank and restore
20 lost revenues and accountability to the public and the State of California;

21 7. For costs of the suit;

22 8. For attorney's fees pursuant to the Code of Civil Procedure section 1021.5; and

23 9. For such other and further relief as the Court deems just and proper.
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DATED: June 4, 2010

By: 

Adam Keats
John Buse
Adam Lazar
CENTER FOR BIOLOGICAL DIVERSITY
Attorneys for Petitioners California Water Impact
Network, California Sportfishing Protection Alliance,
Center for Biological Diversity, Carolee Krieger, and
James Crenshaw

DATED: June 4, 2010

By: DANTE JOHN NOMELLINI (by A/c)

Dante John Nomellini
NOMELLINI GRILLI & McDANIEL
Attorney for Petitioners Central Delta Water Agency and
South Delta Water Agency

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VERIFICATION

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am the Executive Director of California Water Information Network, which is a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on June 4th, 2010, at Santa Barbara, California.

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

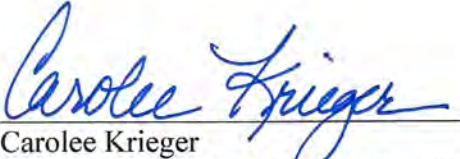

Carolee Krieger
California Water Information Network

EXHIBIT A

PROOF OF SERVICE BY FIRST CLASS MAIL AND ELECTRONIC MAIL

I, Adam F. Keats, declare as follows:

I am employed in the County of San Francisco, State of California. I am over the age of eighteen and my business address is 351 California St., Suite 600, San Francisco, CA 94104.

On June 2, 2010, I served the following document(s) entitled:

NOTICE OF COMMENCEMENT OF ACTION

by delivering by electronic mail to the email addresses below and by placing a copy thereof enclosed in a sealed envelope addressed as follows:

Lester Snow, Director
California Department of Water Resources
PO Box 942836
Sacramento, CA 94836
lester.snow@water.ca.gov

I am readily familiar with my office's practice for collection and processing of correspondence and other materials for mailing with the United States Post Office. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address stated above, following our office's ordinary business practices. On this date, I also transmitted via electronic mail copies of the above document(s).

I also delivered the same document via facsimile on June 3, 2010, to the following facsimile number:
916-653-5028

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Proof of Service was executed on June 3, 2010 at San Francisco County, CA.


Adam F. Keats



June 2, 2010

via First Class Mail and electronic mail

Lester Snow, Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236
lsnow@water.ca.gov

RE: Notice of Commencement of Action

Dear Director Snow,

Pursuant to Cal. Public Resources Code § 21167.5, please take notice that the California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Central Delta Water Agency, South Delta Water Agency, Carolee Krieger and James Crenshaw intend to commence an action in Sacramento Superior Court under the California Environmental Quality Act ("CEQA") against the California Department of Water Resources, concerning the Department's Notice of Determination for the Monterey Plus Amendments on May 5, 2010.

This action will allege that the Department failed to properly follow the procedures and requirements of CEQA in ways including, but not limited to: failure to adequately describe the project's environmental setting, project objectives, relevant provisions (the Amendments), water rights, water transfers, yields, alternatives, and use of analytical models; failure to adequately identify and analyze impacts to biological resources, hydrology, water quality, and growth; and failure to adequately discuss and analyze alternatives and mitigation measures. The action will also contain a "reverse validation action" seeking to invalidate the Monterey Plus Amendments.

Among other things, the Petition will seek to set aside findings that the project satisfies the requirements of CEQA and to enjoin any further implementation of the project until adequate CEQA review is conducted and lawful approvals are obtained.

If you need more information or have any questions please do not hesitate to contact me.

Sincerely,

Adam Keats