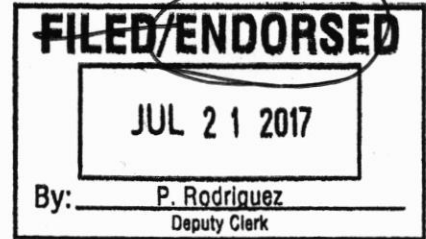


COPY



MICHAEL WEED (SBN 199675)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814-4497  
Telephone: 916-447-9200  
Facsimile: 916-329-4900  
Email: [mweed@orrick.com](mailto:mweed@orrick.com)

SPENCER KENNER (SBN 148930)  
CHRISTOPHER MARTIN (SBN 249129)  
CALIFORNIA DEPARTMENT OF WATER  
RESOURCES, OFFICE OF THE CHIEF COUNSEL  
1416 Ninth Street  
Sacramento, California 95814  
Telephone: 916-653-5791

Attorneys for Plaintiff  
California Department of Water Resources

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES,

Plaintiff,

v.

ALL PERSONS INTERESTED IN THE  
MATTER of the Authorization of California  
WaterFix Revenue Bonds, the Issuance, Sale  
and Delivery of California WaterFix Revenue  
Bonds Series A, Series B and Subsequent  
Series, the Adoption of the California WaterFix  
Revenue Bond General Bond Resolution and  
the Supplemental Resolutions Providing for the  
Issuance of California WaterFix Revenue  
Bonds, and the Proceedings Related Thereto,

Defendants.

Case No.

UNLIMITED JURISDICTION

**COMPLAINT FOR VALIDATION**  
(Cal. Civ. Proc. Code §§ 860-870.5)

**EXEMPT from filing fees per Govt.**  
**Code § 6103.**

34-2017-00215965

1           The California Department of Water Resources (the "Department") brings this *in*  
2 *rem* validation action against all interested persons pursuant to California Code of Civil Procedure  
3 Section 860 *et seq.* and Government Code Section 17700. The Department alleges as follows:

4                           **Nature of the Action**

5           1.       This is a validation action brought under California Code of Civil  
6 Procedure Section 860 *et seq.* (the "Validation Statute") and Government Code Section 17700.  
7 In short, and as described in detail below, the Department seeks a judgment confirming the  
8 validity of (1) bonds the Department has authorized to finance the capital costs of a water facility  
9 known as the California WaterFix; (2) the resolutions the Department adopted in connection  
10 with those bonds; and (3) the pledge of revenues for their repayment.

11          2.       The construction, operation and maintenance of California WaterFix is  
12 subject to statutory and regulatory requirements not at issue in this validation action. The  
13 Department is not alleging herein that it has satisfied all of the statutory and regulatory  
14 requirements to construct the California WaterFix, but only that the Central Valley Project Act  
15 authorizes it to issue revenue bonds to finance the capital costs of the California WaterFix and to  
16 pledge California WaterFix Revenues to secure the payment of debt service on those bonds in  
17 the manner provided by the resolutions. The Department brings this action to obtain a validation  
18 judgment confirming that authority and the validity of the bonds and resolutions the Department  
19 approved and authorized pursuant to that authority.

20                           **The Parties**

21          3.       The Department is and was at all times mentioned herein a department of  
22 the Natural Resources Agency of the State of California existing and operating under the  
23 constitution and the laws of the State. The Department is authorized to bring this action under  
24 the Validation Statute and Government Code Section 17700.

25          4.       The Department has its principal place of business in the County of  
26 Sacramento, California.

27          5.       Defendants are all persons interested in the validity of the California  
28 WaterFix Revenue Bonds, including the California WaterFix Revenue Bonds, Series A, Series B

1 and subsequent Series to be issued pursuant to and in accordance with the authorizing  
2 resolutions ("Series"), the California WaterFix Revenue Bond General Bond Resolution (the  
3 "Resolution"), the first supplement thereto (the "First Supplemental Resolution"), and the second  
4 supplement thereto (the "Second Supplemental Resolution") (each, a "Supplemental  
5 Resolution"), all adopted by the Department to authorize, among other things, the issuance, sale  
6 and delivery of the California WaterFix Revenue Bonds, and the proceedings related thereto.

### 7 **Jurisdiction and Venue**

8 6. The Court has jurisdiction over this case pursuant to the Validation Statute  
9 and Government Code Section 17700. In accordance with Code of Civil Procedure Section 862,  
10 jurisdiction will be complete and established in this Court as of the date specified and to be  
11 published in the Summons. This action is entitled to calendar preference over all other civil  
12 actions before the Court and to speedy hearing and determination under Code of Civil Procedure  
13 Section 867.

14 7. Venue is proper in the Superior Court for the County of Sacramento  
15 pursuant to Government Code Section 17700 and Code of Civil Procedure Section 860.

### 16 **The Project**

17 8. The Department operates, manages and oversees facilities which store,  
18 transport and deliver water to urban and agricultural water agencies throughout the State. To  
19 these ends, since 1960, the Department has approved, planned and constructed an integrated  
20 system of water storage and transportation and power generation facilities (the "Project").

21 9. The Department is authorized to carry out its various duties and functions  
22 in relation to the Project by the Central Valley Project Act (Cal. Water Code §§ 11100 *et seq.*)  
23 (the "CVP Act") and the Burns-Porter Act (Cal. Water Code §§ 12930 *et seq.*), among other  
24 authorities. Among its powers, the Department is authorized to construct units of the "project"  
25 as that term is defined by the CVP Act, and to issue revenue bonds to pay the capital costs of  
26 those units.

27 10. The existing Project transports water from Lake Oroville to delivery  
28 points in Northern California, the North Bay, the South Bay, the Santa Barbara-San Luis Obispo



1 area, the Central Valley and Southern California. From Lake Oroville to the Sacramento-San  
2 Joaquin Delta (the "Delta"),<sup>1</sup> Project water is conveyed predominately via the natural channels  
3 of the Feather and Sacramento Rivers.

4 11. Currently, Project water is conveyed across the Delta through the channels  
5 of the river delta formed by the confluence of the Sacramento and San Joaquin Rivers, as those  
6 channels have been modified over 150 years by the construction of levees, ship and other canals,  
7 flood protection channels, salinity gates and other facilities.

8 12. From the Harvey O. Banks Pumping Plant at the southern edge of the  
9 Delta to points further south, Project water is conveyed by the Project aqueduct system, which  
10 includes a number of additional pumping plants and several pipelines.

#### 11 The California WaterFix

12 13. In recent years, the Department has undertaken to develop a  
13 comprehensive plan for the effective delivery of Project water across the Delta in conjunction  
14 with the conservation and rehabilitation of the environment and species in and around the Delta.

15 14. The Department has approved the financing of the planning and design  
16 and, if and when appropriate, the acquisition and construction of conveyance facilities known as,  
17 and herein referred to as, the "California WaterFix." Broadly described, the California WaterFix  
18 would transport water from new intake points on the Sacramento River across the Delta by two  
19 underground tunnels running below the natural waterways of the Delta to export facilities at the  
20 southern edge of the Delta, thereby reducing the necessity of transporting Project water through  
21 the Delta's natural waterways.

22 15. As described in detail below, the Department has adopted resolutions  
23 authorizing, among other matters, the issuance of revenue bonds, the proceeds of which would  
24 be used to pay the capital costs of the California WaterFix. The Department's statutory authority  
25 to finance the California WaterFix as one or more units of the Project, separate and apart from  
26 other units of the Project and in accordance with the terms of the Resolution and Supplemental  
27 Resolutions, is the subject of this *in rem* validation action.

28 <sup>1</sup> The term "Delta" is defined in California Water Code Section 12220 as a specific geographic area.

**Statutory Authority for the California WaterFix**

16. Under the CVP Act, the Department is authorized to construct and operate the Project and to issue revenue bonds to pay for it. The Department has broad discretion and authority to determine the need for the Project and the nature of Project facilities.

17. Section 11201 of the CVP Act provides: "The project as authorized by this part consists of the units provided for in this chapter [Chapter 2 of the CVP Act]." Chapter 2 encompasses Sections 11200 through 11295.

18. Section 11260 of the CVP Act authorizes the Department to include the California WaterFix as one or more of the units "provided for in this chapter." Section 11260 provides for the following:

The units set forth in publication of the Resources Board entitled "Report on Feasibility of Feather River Project and Sacramento-San Joaquin Delta Diversion Projects Proposed as Features of the California Water Plan," dated May, 1951, as modified in the publication of the Division of Water Resources entitled "Program for Financing and Constructing the Feather River Project as the Initial Unit of the California Water Plan," dated February, 1955, and including the upstream features set forth in Chapter VI of the 1955 report, except the features on the south fork of the Feather River, and as further modified by the recommendations contained in Bulletin No. 78 of the Department of Water Resources, entitled "Preliminary Summary Report on Investigation of Alternative Aqueduct Systems to Serve Southern California," dated February, 1959, and subject to such further modifications thereof as the Department of Water Resources may adopt, and such units or portions thereof may be constructed by the department and maintained and operated by it to such extent and for such period as the department may determine, as units of the Central Valley Project separate and apart from any or all other units thereof.

19. Section 11290 of the CVP Act provides that the Project "includes such other units as may be from time to time added by the department to the units specifically enumerated. The department may add additional units which are consistent with and which may be constructed, maintained, and operated as a part of the project and in furtherance of the single object contemplated by this part."

20. Section 11454 of the CVP Act authorizes the Department to "do any and all things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this part." In describing the Department's authority under the



1 Burns-Porter Act,<sup>2</sup> the California Supreme Court has stated that “the conduct of an important  
2 public enterprise [such as the Project] requires that broad power and discretion be granted to the  
3 administrative agency in charge of the project.”<sup>3</sup>

4 21. The import of the Department’s broad discretion and authority are  
5 summarized in Section 11126 of the CVP Act, which provides:

6 The construction, operation, and maintenance of the project as  
7 provided for in this part is in all respects for the welfare and benefit  
8 of the people of the State, for the improvement of their prosperity  
9 and their living conditions, and the provisions of this part shall  
therefore be liberally construed to effectuate the purposes and  
objects thereof.

10 22. Pursuant to the CVP Act, the Department has broad powers with respect  
11 to Project facilities, including the power to authorize the planning, design, acquisition,  
12 construction, maintenance and operation of the California WaterFix.

13 23. The CVP Act authorizes the Department to issue revenue bonds to pay the  
14 capital costs of Project facilities, including the California WaterFix.<sup>4</sup>

15 24. Section 11700 of the CVP Act authorizes the Department to issue revenue  
16 bonds “[f]or the purpose of providing money and funds to pay the cost and expense of carrying  
17 out any of the objects and purposes of this part.” Section 11761 provides that the proceeds of the  
18 revenue bonds shall be applied solely for certain purposes, including, but not limited to,  
19 “construction . . . of the project,” “[s]urveys, and the preparation of plans and specifications,”  
20 “the acquisition of . . . property of every kind and description” and “all other costs and expenses  
21 prior to and during construction.”

22  
23 <sup>2</sup> Courts harmonize the Burns-Porter Act, Cal. Water Code §§ 12930 *et seq.*, and the CVP Act. See *Warne v.*  
24 *Harkness*, 60 Cal.2d 579 (1963). California Water Code Section 12931 provides in part that “Any facilities  
25 heretofore or hereafter authorized as a part of the Central Valley Project or facilities which are acquired or  
constructed as a part of the State Water Resources Development System with funds made available [under the Burns-  
Porter Act] shall be acquired, constructed, operated, and maintained pursuant to the provisions of the code governing  
the Central Valley Project, as said provisions may now or hereafter be amended.”

26 <sup>3</sup> *Metropolitan Water District v. Marquardt*, 59 Cal.2d 159, 177 (1963).

27 <sup>4</sup> Implementation of construction and operation of California WaterFix is subject to statutory and regulatory  
28 requirements not at issue in this validation action. The Department seeks in this action, consistent with the purpose  
and function of the Validation Statute, to confirm the Department’s statutory authority to finance the capital costs of  
the California WaterFix with California WaterFix Revenue Bonds secured by a pledge of revenues separate and apart  
from other Project revenues. The Department is not alleging herein that it has satisfied all of the statutory and  
regulatory requirements to begin construction of the California WaterFix.

25. Section 11701 of the CVP Act provides:

Whenever the department determines that it is necessary to carry out any of the objects and purposes of this part, it shall prepare preliminary cost estimates, an estimate of the amount required to be raised for those purposes by the issuance of bonds, and a statement of the probable amount of money, property, materials, or labor, if any, to be contributed from other sources in aid thereof, and shall adopt a resolution declaring that the public interest and necessity require the carrying out of those objects and purposes and authorizing the issuance of bonds for the purpose of obtaining funds in an amount not in excess of that estimated to be required for those purposes.

### **The California WaterFix Financing**

#### **A. The California WaterFix General Bond Resolution and California WaterFix Revenue Bonds**

26. On July 21, 2017, the Department adopted the Resolution, designated "No. DWR-CWF-1" and titled "California WaterFix Revenue Bond General Bond Resolution." A true and correct copy of the Resolution is attached as Exhibit A and incorporated by this reference.

27. The Resolution defines the "California WaterFix" as "the units described in Project Order No. 40, dated July 21, 2017, subject to such further modifications thereof as the Department in its discretion may adopt." Project Order No. 40 describes the California WaterFix as follows:

- Three north Delta intakes with fish screens along the east bank of the Sacramento River between Clarksburg and Courtland with box conduits, sedimentation basins, gates and a drop structure;
- A single-bore tunnel connecting two of the intakes and the intermediate forebay;
- A single-bore tunnel between the final intake and the intermediate forebay;
- An intermediate forebay on the Glannvale Tract;
- An outlet structure to convey water from the intermediate forebay into each main tunnel bore via a vertical shaft.
- Two 40-foot-inside-diameter tunnels between the intermediate forebay and two 4,500 cfs pumping plants leading to a modified Clifton Court Forebay;

- Modifications to the Clifton Court Forebay;
- Connections and control structures to the Banks and Jones pumping plants;
- A permanent, operable gate where the San Joaquin River and Old River diverge; and
- Associated, related and appurtenant facilities, including, but not limited to, electric transmission lines and roads.<sup>5</sup>

28. Pursuant to the Resolution, the Department authorized the issuance of California WaterFix Revenue Bonds. Section 203 of the Resolution provides, in pertinent part:

Bonds of the Department are hereby authorized for the purpose of obtaining funds to pay California WaterFix Capital Costs<sup>6</sup> and to refund obligations of the Department issued for such purpose. The aggregate principal amount of Bonds which may be executed, authenticated and delivered under this Resolution is not limited except as may hereafter be provided by amendment to this Resolution pursuant to Section 1101(C)(1) or as may be limited by law. The Bonds may be issued in one or more Series, if and when determined by the Department pursuant to one or more Supplemental Resolutions.

29. The Department found and determined in the Resolution, in accordance with the CVP Act, "that the public interest and necessity require the carrying out of the objects and purposes of the Act by the acquisition and construction" of the California WaterFix.

30. Pursuant to and in accordance with Section 11701 of the CVP Act and otherwise in accordance with the CVP Act, the Department also found and determined in the Resolution that: (1) the preliminary cost estimate for California WaterFix, not including bond-related costs such as capitalized interest, costs of issuance and bond reserves, is \$16 billion; (2) the estimated amount of such costs to be raised by the issuance of California WaterFix Revenue Bonds is \$8.8 billion; (3) the probable amount of money, property, materials or labor, if any, to be contributed from other sources in aid of the California WaterFix is \$7.2 billion; and (4) the principal amount of bonds estimated to be required to be issued by the Department for the California WaterFix is \$11 billion.

<sup>5</sup> Capitalized terms not defined herein have the meaning provided in the Resolution or the First or Second Supplemental Resolution, as the case may be.

<sup>6</sup> California WaterFix Capital Costs means, in pertinent part, the Department's costs of construction or acquisition of the California WaterFix, including California WaterFix Planning Costs.



1           31.     The Resolution further provided that, "the California WaterFix is hereby  
2 determined by the Department pursuant to Section 11260 of the Act for purposes of this  
3 Resolution to consist of units of the Central Valley Project that shall be maintained and operated  
4 by the Department separate and apart from all other units of the Central Valley Project in  
5 accordance in all respects with the terms of this Resolution".

6           32.     Pursuant to the Resolution, the California WaterFix Revenue Bonds will  
7 be secured by and paid from "Revenues", which include "all moneys received by the  
8 Department:

9                   (1) under the Water Supply Contracts<sup>[7]</sup> resulting from the  
10 construction, acquisition or operation of the portion of the  
11 California WaterFix the Capital Costs of which are paid or  
12 reimbursed with the proceeds of [California WaterFix Revenue]  
Bonds or earnings from the investment of proceeds of [California  
WaterFix Revenue] Bonds, in the amounts specified in Section 805;

13                   (2) from any other legally available source which the Department in  
14 its discretion determines to be Revenues and so designates in a  
Certificate of the Department filed with the Treasurer; and

15                   (3) as income from the deposit or investment of moneys held in the  
Revenue Fund pursuant to this Resolution."

16           33.     The Resolution provides for security for the California WaterFix Revenue  
17 Bonds, stating in Section 802, "Payment of the principal or Redemption Price of, and interest on,  
18 the [California WaterFix Revenue] Bonds is secured by a first and direct charge and lien upon  
19 the Revenues and all moneys and securities held, and accounts established, under this Resolution  
20 by the Department, the Treasurer, or the Paying Agents, subject only to the provisions of this  
21 Resolution permitting the payment or use thereof for the purposes, in the manner, and upon the  
22 terms and conditions set forth in this Resolution."

23           34.     The revenue stream that will pay operation and maintenance costs of the  
24 California WaterFix and debt service on the California WaterFix Revenue Bonds will come from  
25 payments made by contractors under the Water Supply Contracts. Section 805 of the Resolution  
26 provides:

27  
28 <sup>7</sup> Water Supply Contracts means the contracts, as now or hereafter amended, in existence at the date of the  
Resolution, between the Department and the respective Contractors identified in the Resolution.

1 The Department shall charge and collect amounts under the Water  
2 Supply Contracts sufficient to return the costs of the California  
3 WaterFix for the construction or acquisition of which [California  
4 WaterFix Revenue] Bonds have been authenticated and delivered  
5 without regard to whether or not the Department is able to  
6 construct, acquire or operate the California WaterFix. The total  
7 amount of Revenues receivable under all Water Supply Contracts in  
8 any Year shall be the sum of (A) 1.25 times the Annual Debt  
9 Service for such Year to be paid from the Revenue Fund, plus  
10 (B) the amount estimated by the Department, pursuant to Section  
11 605, to be required from the Revenue Fund in such Year to provide  
12 for California WaterFix Operating Expenses, plus (C) any amounts  
13 required by a Supplemental Resolution to be received as Revenues  
14 in order to place moneys in the Reserve Account so as to meet the  
15 requirement of Section 204(A)(11).

16 35. Pursuant to the Resolution, the Department also authorized the issuance of  
17 Bond Anticipation Bonds and Refunding Bonds, as determined by the Department and in  
18 accordance with the terms of the Resolution.

19 36. In Section 207, the Resolution further provides:

20 The validity of the authorization and issuance of any of the  
21 [California WaterFix Revenue] Bonds shall not be dependent upon  
22 or affected in any way by (A) the proceedings taken or to be taken  
23 by the Department for the acquisition, construction or completion  
24 of the California WaterFix, or (B) any contracts made by the  
25 Department in connection therewith, or (C) the failure on the part of  
26 the Department to complete the California WaterFix or to maintain  
27 the same or to make all necessary improvements to or replacements  
28 thereof or any part thereof, or (D) the acquisition or maintenance by  
the Department of all rights, licenses or permits necessary for the  
operation of the California WaterFix.

**B. The First and Second Supplemental Resolutions**

37. On July 21, 2017, the Department adopted the First Supplemental  
Resolution, designated "No. DWR-CWF-2" and titled, "First Supplemental Resolution  
Providing For The Issuance Of California WaterFix Revenue Bonds, Series A", and also adopted  
the Second Supplemental Resolution, designated "No. DWR-CWF-3" and titled, "Second  
Supplemental Resolution Providing For The Issuance Of California WaterFix Revenue Bonds,  
Series B". A true and correct copy of the First Supplemental Resolution is attached as Exhibit B  
and incorporated by this reference, and a true and correct copy of the Second Supplemental  
Resolution is attached as Exhibit C and incorporated by this reference.

1           38. As provided for and authorized by the Resolution, the Department has  
2 determined in the First Supplemental Resolution to issue California WaterFix Revenue Bonds  
3 for the purposes of paying and reimbursing preconstruction costs of California WaterFix,  
4 including California WaterFix Planning Costs. The First Supplemental Resolution provides,  
5 "The Department hereby determines to issue a Series of Bonds authorized to be issued under the  
6 Resolution. The Bonds of this Series shall be designated as and shall be distinguished from the  
7 Bonds of all other Series by the designation 'California WaterFix Revenue Bonds, Series A'.  
8 The aggregate principal amount of the Bonds of Series A at any time Outstanding shall not  
9 exceed the amount determined by the Department prior to the issuance of the Bonds of Series A  
10 as being required to be issued solely for the purposes described in Section 1304." Section 1304  
11 provides, "The Bonds of Series A are to be issued . . . solely to obtain moneys to (i) pay or  
12 reimburse California WaterFix Planning Costs, (ii) pay or reimburse other preconstruction  
13 California WaterFix Capital Costs, (iii) fund a deposit to the Reserve Account in the amount of  
14 the Reserve Account Requirement allocated to the Bonds of Series A, (iv) fund interest on the  
15 Bonds of Series A, and (v) pay costs of issuance of the Bonds of Series A."

16           39. The First Supplemental Resolution further directs, "The amount of  
17 California WaterFix Planning Costs and other preconstruction California WaterFix Capital Costs  
18 incurred by or on behalf of the Department and either paid from the Department's own funds or  
19 paid or advanced by or on behalf of entities other than the Department shall be deposited in the  
20 California WaterFix Preconstruction Cost Account and thereafter shall be transferred in the  
21 amounts specified by Certificate of the Department either (i) to such account of the Department  
22 as may be specified by such Certificate to reimburse such use of the Department's own funds or  
23 (ii) to or upon the order of the recipients specified by Certificate of the Department as (1) having  
24 advanced to the Department amounts that were used to pay California WaterFix Planning Costs  
25 or other preconstruction California WaterFix Capital Costs, and (2) being due reimbursement for  
26 such advances, in each case in the respective amount specified by such Certificate for such  
27 recipient; *provided, however*, that no such reimbursement of any "state agency" as defined by  
28



1 California Water Code Section 11102 shall occur at any time that obligations of the Department  
2 issued for the payment of costs of construction of California WaterFix are outstanding”.

3 40. As provided for and authorized by the Resolution, the Department  
4 determined in the Second Supplemental Resolution to issue California WaterFix Revenue Bonds  
5 for the purpose of paying California WaterFix Capital Costs. The Second Supplemental  
6 Resolution provides, “The Department hereby determines to issue a Series of Bonds authorized  
7 to be issued under the Resolution. The Bonds of this Series shall be designated as and shall be  
8 distinguished from the Bonds of all other Series by the designation ‘California WaterFix  
9 Revenue Bonds, Series B’. The aggregate principal amount of the Bonds of Series B at any time  
10 Outstanding shall not exceed the amount determined by the Department prior to the issuance of  
11 the Bonds of Series B as being required to be issued for the purposes described in Section 1704.”  
12 Section 1704 provides, “The Bonds of Series B are to be issued . . . solely to obtain moneys to  
13 (i) pay or reimburse California WaterFix Capital Costs, (ii) fund a deposit to the Reserve  
14 Account in the amount of the Reserve Account Requirement allocated to the Bonds of Series B,  
15 (iii) fund interest on the Bonds of Series B, and (iv) pay costs of issuance of the Bonds of Series  
16 B.”

17 **Statutory Authorization to Bring this Validation Action**

18 41. Code of Civil Procedure Section 860 provides that a public agency, such  
19 as the Department, may bring an *in rem* action to determine the validity of any matter which  
20 under any other law is authorized to be determined pursuant to the Validation Statute.

21 42. Government Code Section 17700 provides that a state agency may bring  
22 an action to determine the validity of its bonds, warrants, contracts, obligations or evidence of  
23 indebtedness pursuant to the Validation Statute. The Department is a state agency<sup>8</sup> authorized to  
24 bring an action under the Validation Statute pursuant to Government Code Section 17700.

25 43. The Validation Statute provides that the action shall be brought in the  
26 superior court of the county in which the principal office of the agency is located. The principal  
27 office of the Department is located in Sacramento County, California.

28  
<sup>8</sup> California Water Code Section 120.

1                   44.     This action is properly brought by the Department as an *in rem* action  
2 pursuant to Government Code Section 17700 and Code of Civil Procedure Section 860 for the  
3 judicial examination, approval and confirmation of the matters described above, including (i) the  
4 Department's authority under California Water Code Sections 11260, 11500 and 11700 to issue  
5 the California WaterFix Revenue Bonds to finance the capital costs of the California WaterFix  
6 as units of the Project, and to adopt the Resolution, the First Supplemental Resolution, the  
7 Second Supplemental Resolution and subsequent Supplemental Resolutions; and (ii) the validity  
8 of the Resolution, First Supplemental Resolution, Second Supplemental Resolution and the  
9 California WaterFix Revenue Bonds, including the California WaterFix Revenue Bonds, Series  
10 A, Series B and subsequent Series.

11                                   **Service By Publication of Summons**

12                   45.     Pursuant to the Validation Statute, notice of this validation action is to be  
13 given by publication of the Summons in a newspaper of general circulation within the county in  
14 which the action is pending, and in such other counties that the Court may direct.

15                   46.     Though beyond what the law requires, the Department will provide notice  
16 of this validation action by publication of the Summons in all 58 counties in California. In  
17 addition to the required information, the Summons will include a link to the California Natural  
18 Resources Agency and/or the Department's Internet website where any interested person may  
19 obtain a copy of the validation complaint and exhibits.

20                   47.     Publication of summons in the newspapers in all 58 California counties is  
21 the method most likely to give notice to persons interested in these proceedings. The Court  
22 should order publication of the Summons as described above pursuant to Code of Civil  
23 Procedure Section 861 and Government Code Section 6063.

24                   48.     The Department also proposes to provide extensive additional notice of  
25 this validation action to persons and organizations that have previously informed the Department  
26 of their interest in the California WaterFix. Specifically, the Court should order that the  
27 Department: (1) not later than 20 days after the first publication of Summons in this action, email  
28 or mail (as the Department chooses in its discretion) to each of the parties to the Water Supply

1 Contracts a written notice (to be submitted to and approved by the Court, hereinafter, "the  
2 Approved Notice") informing the recipient of this validation action and how to obtain a copy of  
3 the Summons and complaint; (2) not later than 20 days after the first publication of Summons in  
4 this action, email or mail (as the Department chooses in its discretion) the Approved Notice to  
5 persons or entities identified on the interested parties lists maintained by the Department with  
6 respect to the California WaterFix (those lists contain more than 20,000 persons and entities);  
7 and (3) not later than 20 days after the first publication of Summons in this action, email or mail  
8 (as the Department chooses in its discretion) the Approved Notice to persons or entities  
9 identified in the Current Service List, as it exists as of the date the Approved Notice is  
10 transmitted, in the California WaterFix Water Right Change Petition proceeding currently  
11 pending before the State Water Resources Control Board.<sup>9</sup>

12 **First Cause of Action**

13 (Determination of Validity)

14 49. The Department realleges and incorporates by this reference the  
15 allegations of paragraphs 1 through 48 above as though fully set forth herein.

16 50. Based upon the foregoing, the Department is entitled to a judicial  
17 declaration determining all of the following:

18 (a) This action is properly brought under Government Code Section  
19 17700 and the Validation Statute;

20 (b) The Department's adoption of the Resolution, the First  
21 Supplemental Resolution and the Second Supplemental Resolution, and the respective terms  
22 therein, constituted the authorization of the California WaterFix Revenue Bonds within the  
23 meaning of the Validation Statute, including the California WaterFix Revenue Bonds, Series A,  
24 Series B and subsequent Series, and the California WaterFix Revenue Bonds are in existence for  
25 purposes of validation;

26  
27  
28 <sup>9</sup> Information regarding the California WaterFix Water Right Change Petition proceedings can be found at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/water\\_right\\_petition.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml).



1 (c) The Department has the authority under California Water Code  
2 Sections 11260, 11500 and 11700 to issue the California WaterFix Revenue Bonds to finance the  
3 capital costs of the California WaterFix as units of the Project and to (i) adopt and approve the  
4 Resolution and the First and Second Supplemental Resolutions, and each of the recitals, findings,  
5 determinations, and terms therein; (ii) authorize the issuance, sale and delivery of, and issue, sell  
6 and deliver, the California WaterFix Revenue Bonds, including the California WaterFix Revenue  
7 Bonds, Series A, Series B and subsequent Series, pursuant to the terms of the Resolution, the First  
8 Supplemental Resolution, the Second Supplemental Resolution and subsequent Supplemental  
9 Resolutions adopted in accordance with the Resolution; (iii) apply the proceeds of the California  
10 WaterFix Revenue Bonds, Series A, to pay Planning Costs and other preconstruction Capital  
11 Costs of the California WaterFix incurred by the Department prior to the issuance of the Bonds of  
12 Series A, including amounts to be used to reimburse advances for such costs; (iv) subject to  
13 applicable statutory and regulatory requirements, apply the proceeds of the California WaterFix  
14 Revenue Bonds, including the California WaterFix Revenue Bonds, Series B and subsequent  
15 Series, to the purposes and in the manner authorized in the Resolution, including the Second  
16 Supplemental Resolution and subsequent Supplemental Resolutions adopted in accordance with  
17 the Resolution; and (v) pledge the Revenues, including certain Project revenues, to the payment  
18 of debt service on the California WaterFix Revenue Bonds and the California WaterFix Revenue  
19 Bonds, Series A, Series B and subsequent Series;

20 (d) Upon issuance, sale and delivery thereof, the California WaterFix  
21 Revenue Bonds, including the California WaterFix Revenue Bonds, Series A, Series B and  
22 subsequent Series, will be valid, legal and binding obligations of the Department in accordance  
23 with their terms; and

24 (e) In accordance with the Resolution, the validity of the authorization  
25 and issuance of any of the California WaterFix Revenue Bonds shall not be dependent upon or  
26 affected in any way by (A) the proceedings taken or to be taken by the Department for the  
27 planning, design, acquisition, construction or completion of the California WaterFix, or (B) any  
28

1 contracts made by the Department in connection therewith, or (C) the failure on the part of the  
2 Department to complete the California WaterFix or to maintain the same or to make all necessary  
3 improvements to or replacements thereof or any part thereof, or (D) the acquisition or  
4 maintenance by the Department of all rights, licenses or permits necessary for the operation of the  
5 California WaterFix.

6  
7 **Prayer for Relief**

8 The Department prays for relief as follows:

9 51. That the Court order that jurisdiction over the subject matter and all  
10 interested persons be obtained by:

11 (a) Publishing the Summons pursuant to Code of Civil Procedure  
12 Section 861 and Government Code Section 6063 in the manner described herein; and

13 (b) Providing additional notice of this action to interested persons in  
14 the form and manner described herein.

15 52. That the Court find that the notice procedures in accordance with the  
16 Validation Statute, and the notice to be provided by the Department in this action as described  
17 above, do and will provide due and proper notice to all persons interested in the subject matter of  
18 this action, and that pursuant to such notice, this Court has jurisdiction over all persons and the  
19 subject matter of this action as of the date specified in the Summons.

20 53. That the Court find that this action is properly brought under California  
21 Government Code Section 17700 and the Validation Statute in the superior court for the County  
22 of Sacramento.

23 54. That judgment be entered on the First Cause of Action determining that:

24 (a) The Department's adoption of the Resolution, the First  
25 Supplemental Resolution, and the Second Supplemental Resolution, and the respective terms  
26 therein, constituted the authorization of the California WaterFix Revenue Bonds within the  
27 meaning of the Validation Statute, including the California WaterFix Revenue Bonds, Series A,  
28

1 Series B and subsequent Series, and the California WaterFix Revenue Bonds are in existence for  
2 purposes of validation;

3 (b) The Department has the authority under California Water Code  
4 Sections 11260, 11500 and 11700 to issue the California WaterFix Revenue Bonds to finance the  
5 capital costs of the California WaterFix as units of the Project and to (i) adopt and approve the  
6 Resolution, the First and Second Supplemental Resolutions and subsequent Supplemental  
7 Resolutions adopted in accordance with the Resolution, and each of the recitals, findings,  
8 determinations, and terms therein; (ii) authorize the issuance, sale and delivery of, and issue, sell  
9 and deliver, the California WaterFix Revenue Bonds, including the California WaterFix Revenue  
10 Bonds, Series A, Series B and subsequent Series, pursuant to the terms of the Resolution, the First  
11 Supplemental Resolution, the Second Supplemental Resolution and subsequent Supplemental  
12 Resolutions adopted in accordance with the Resolution; (iii) apply the proceeds of the California  
13 WaterFix Revenue Bonds, Series A, to pay Planning Costs and other preconstruction Capital  
14 Costs of the California WaterFix incurred by the Department prior to the issuance of the Bonds of  
15 Series A, including to reimburse advances for such costs under the conditions specified in the  
16 First Supplemental Resolution; (iv) subject to applicable statutory and regulatory requirements,  
17 apply the proceeds of the California WaterFix Revenue Bonds, including the California WaterFix  
18 Revenue Bonds, Series B and subsequent Series, to the purposes and in the manner authorized in  
19 the Resolution, the Second Supplemental Resolution and subsequent Supplemental Resolutions  
20 adopted in accordance with the Resolution; and (v) pledge the Revenues, including certain Project  
21 revenues, to the payment of debt service on the California WaterFix Revenue Bonds, including  
22 the California WaterFix Revenue Bonds, Series A, Series B and subsequent Series;

23 (c) Upon issuance, sale and delivery thereof, the California WaterFix  
24 Revenue Bonds and the California WaterFix Revenue Bonds, Series A, Series B and subsequent  
25 Series will be valid, legal and binding obligations of the Department in accordance with their  
26 terms; and

27 (d) In accordance with the Resolution, the validity of the authorization  
28 and issuance of any of the California WaterFix Revenue Bonds shall not be dependent upon or



1 affected in any way by (A) the proceedings taken or to be taken by the Department for the  
2 planning, design, acquisition, construction or completion of the California WaterFix, or (B) any  
3 contracts made by the Department in connection therewith, or (C) the failure on the part of the  
4 Department to complete the California WaterFix or to maintain the same or to make all necessary  
5 improvements to or replacements thereof or any part thereof, or (D) the acquisition or  
6 maintenance by the Department of all rights, licenses or permits necessary for the operation of the  
7 California WaterFix.

8  
9 55. That the Court permanently enjoin and restrain all persons from the  
10 institution of any action or proceeding challenging, *inter alia*, the validity of the Resolution and  
11 the First Supplemental Resolution, the Second Supplemental Resolution, any subsequent  
12 Supplemental Resolution and the respective terms therein, and the California WaterFix Revenue  
13 Bonds, including the California WaterFix Revenue Bonds, Series A, Series B and subsequent  
14 Series, and the proceedings and authorizations leading and resulting thereto, or any matters  
15 herein adjudicated or which at this time could have been adjudicated in this action.

16 56. For costs incurred herein.

17 57. For such other and further relief as the Court may deem just and proper.

18 Dated: July 21, 2017

MICHAEL WEED  
ORRICK, HERRINGTON & SUTCLIFFE LLP

19 SPENCER KENNER  
20 CHRISTOPHER MARTIN  
21 CALIFORNIA DEPARTMENT OF WATER  
22 RESOURCES

23 By: 

24 MICHAEL WEED  
25 Attorneys for Plaintiff  
26 California Department of Water Resources  
27  
28