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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO

FILE BY FAX

17 CENTRAL DELTA WATER AGENCY,
18 SOUTH DELTA WATER AGENCY, and
19 LOCAL AGENCIES OF THE NORTH
20 DELTA,

Petitioners,

v.

21 CALIFORNIA DEPARTMENT OF WATER
22 RESOURCES, and DOES 1 through 10

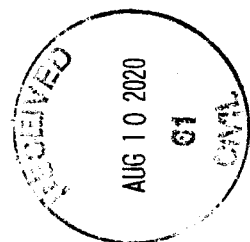
23 Respondents.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE; ELECTION TO PREPARE
THE RECORD OF PROCEEDINGS**

**Action Based on California Environmental
Quality Act**

(Code Civ. Proc., §§ 1085, 1094.5;
Pub. Resources Code, § 21000 et seq.)



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1 INTRODUCTION

2 1. This case concerns geotechnical investigations in furtherance of a Delta
3 Conveyance Project (“DCP”) that would divert Sacramento River water to existing State Water
4 Project (“SWP”) (and potentially Central Valley Project [“CVP”]) facilities in the south Delta
5 for purposes of exporting that water to other parts of the state.

6 2. Respondent/Defendant California Department of Water Resources (“DWR”) is the
7 lead agency under the California Environmental Quality Act (Pub. Resources Code, § 21000, *et*
8 *seq.* [“CEQA”]), in developing the DCP. The most notable physical component of the DCP is
9 development of a massive tunnel that would divert water from the north Delta along the
10 Sacramento River to the existing Banks Pumping Plant, and potentially the federal Jones
11 Pumping Plant, in the south Delta. In order to design and engineer the tunnel, DWR has
12 determined that geotechnical information from several locations is necessary.

13 3. Though an Environmental Impact Report/Environmental Impact Statement
14 (“EIR/EIS”) is already under development for the overall DCP, DWR prepared and adopted a
15 Mitigated Negative Declaration and Initial Study (“MND”) for Geotechnical Drilling, State
16 Clearinghouse No. 2019119073 (“project”) in order to carry out that aspect of the DCP prior to
17 completion of the DCP EIR/EIS. The MND violates CEQA because, among other deficiencies,
18 DWR: (1) failed to follow the procedural mandates of CEQA, (2) piecemealed the project from
19 the larger DCP, and (3) failed to disclose, analyze and mitigate the potentially significant effects
20 of the Project. Based on the inadequate and illegal MND, DWR approved the project and filed a
21 Notice of Determination (“NOD”) on July 9, 2020.

22 4. CEQA requires California public agencies to make decisions that are informed
23 and, therefore, balanced. By basing its decision to approve the Project on a faulty MND, DWR
24 failed to comply with the informational purposes of CEQA as well as its mandatory duties under
25 the statute.

26 5. Petitioners CENTRAL DELTA WATER AGENCY (“CDWA”), SOUTH DELTA
27 WATER AGENCY (“SDWA”), and LOCAL AGENCIES OF THE NORTH DELTA
28 (“LAND”) (collectively “Petitioners”), hereby petition this Court for a writ of mandate and other

1 such relief as may be just and proper directing DWR to comply with CEQA.

2 **PARTIES**

3 6. Petitioner CDWA is a political subdivision of the State of California created by
4 the California Legislature under the Central Delta Water Agency Act, chapter 1133 of the
5 statutes of 1973 (Wat. Code, Appendix, 117-1.1, et seq.), by the provisions of which CDWA
6 came into existence in January of 1974. CDWA's boundaries are specified in Water Code
7 Appendix section 117-9.1 and encompass approximately 120,000 acres, which are located
8 entirely within both the western portion of San Joaquin County and the "Sacramento-San
9 Joaquin Delta" as defined in California Water Code section 12220. While the lands within the
10 agency are primarily devoted to agriculture, said lands are also devoted to numerous other uses
11 including recreational, wildlife habitat, open space, residential, commercial, and institutional
12 uses. CDWA is empowered to "sue and be sued" and to take all reasonable and lawful actions,
13 including pursuing legislative and legal action, that have for their general purpose: (1) to protect
14 the water supply of the lands within the agency against intrusion of ocean salinity; and/or (2) to
15 assure the lands within the agency a dependable supply of water of suitable quality sufficient to
16 meet present and future needs. The agency may also undertake activities to assist landowners
17 and local districts within the agency in reclamation and flood control matters. (See Wat. Code,
18 Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and (b), respectively.) CDWA may assist
19 landowners, districts, and water right holders within its boundaries in the protection of their
20 vested water rights and may represent the interests of those parties in water right proceedings
21 and related proceedings before courts of both the State of California and the United States to
22 carry out the purposes of the agency. (See Wat. Code, Appendix, 117-4.2, subd. (b).) Those
23 vested water rights include post-1914 water permits and licenses issued by the SWRCB and its
24 predecessor agencies, overlying rights, statutory rights, contract rights, riparian rights,
25 prescriptive rights, salvage rights, rights to recycled and recaptured water, and rights to artesian
26 flow.

27 7. Petitioner SDWA is a political subdivision of the State of California created by the
28 California Legislature under the South Delta Water Agency Act, chapter 1089 of the statutes of

1 1973 (Wat. Code, Appendix, 116-1.1, et seq.), by the provisions of which SDWA came into
2 existence in January of 1974. SDWA's boundaries are specified in Water Code Appendix
3 section 116-9.1 and encompass approximately 148,000 acres, which are located entirely within
4 both the south-western portion of San Joaquin County and the "Sacramento-San Joaquin Delta"
5 as defined in California Water Code section 12220. While the lands within the agency are
6 primarily devoted to agriculture, said lands are also devoted to numerous other uses including
7 recreational, wildlife habitat, open space, residential, commercial, municipal and institutional
8 uses. SDWA is empowered to "sue and be sued" and to take all reasonable and lawful actions,
9 including pursuing legislative and legal actions, that have for their general purpose: (1) to
10 protect the water supply of the lands within the agency against intrusions of ocean salinity;
11 and/or (2) to assure the lands within the agency a dependable supply of water of suitable quality
12 sufficient to meet present and future needs. The agency may also undertake activities to assist
13 landowners and local districts within the agency in reclamation and flood control matters. (See
14 Wat. Code, Appendix, 116-4.2, subd. (b) & 116-4.1, subds. (a) and (b), respectively.) SDWA
15 may assist landowners, districts, and water right holders within its boundaries in the protection
16 of their vested water rights and may represent the interests of those parties in water right
17 proceedings and related proceedings before courts of both the State of California and the United
18 States to carry out the purposes of the agency. (See Wat. Code, Appendix, 116-4.2, subd. (b).)
19 Those vested water rights include post-1914 water permits and licenses issued by the SWRCB
20 and its predecessor agencies, overlying rights, statutory rights, contract rights, riparian rights,
21 prescriptive rights, salvage rights, rights to recycled and recaptured water, and rights to artesian
22 flow.

23 8. Petitioner LAND, an unincorporated association, is a coalition comprised of
24 reclamation, water and levee districts ("districts") in an approximately 100,000-acre area of the
25 northern geographic area of the Delta. These districts provide water delivery and/or drainage
26 services, and assist in the maintenance of the levees that provide flood protection to Delta
27 communities, homes and farms that contribute to the agricultural productivity of the Delta.

28

1 9. Many of the proposed boring sites (and major components of the even more
2 damaging DCP), would be within CDWA and SDWA boundaries, and also within the area
3 where LAND member districts are located in the north Delta.

4 10. Respondent DWR is a subdivision of the California Natural Resources Agency, an
5 agency of the State of California, and has offices in Sacramento, California. DWR is the lead
6 agency under CEQA for the Project analyzed in the MND approved by DWR on July 9, 2020.

7 11. Petitioners are unaware of the true names and identities of DOES 1 through 10,
8 inclusive, and sues such unnamed Respondents respectively, by their fictitious names.
9 Petitioners are informed and believe, and based thereon allege, that fictitiously named
10 Respondents also are responsible for all acts and omissions described herein. When the true
11 identities and capacities of Respondents have been determined, Petitioners will, with leave of
12 Court if necessary, amend this Petition to include such identities and capacities.

13 **JURISDICTION AND VENUE**

14 12. This Court has jurisdiction over the matters alleged in this Petition pursuant to
15 Code of Civil Procedure sections 536, 527, 1060 and 1085, and Public Resources Code section
16 21168.5.

17 13. Venue is proper in the County of Sacramento under Code of Civil Procedure
18 sections 393, subdivision (b), 394 and 395.

19 14. This Petition is timely filed in accordance with Public Resources Code section
20 21167.

21 15. Petitioners have complied with Public Resources Code section 21167.5 in serving
22 notice of this action to Respondent on August 10, 2020 (Exhibit A).

23 **FACTUAL BACKGROUND**

24 16. In November 2019, DWR circulated the MND for the project at issue in this
25 Petition – also to advance the DCP – for public review and comment. The initial comment
26 period ended on December 20, 2019, and was later extended to January 15, 2020. On January
27 15, 2020, DWR issued a Notice of Preparation (“NOP”) for the DCP EIR.

28 17. According to the MND, the proposed project overwater drilling would take place

1 in the Sacramento River, Sutter Slough, Elk Slough, Snodgrass Slough, Steamboat Slough, the
2 South Mokelumne River, the San Joaquin River, the Mokelumne River, Little Potato Slough,
3 Sycamore Slough, Sand Mound Slough, Old River, Rock Slough, and the Middle River.

4 18. The overwater drilling consists of 56 soil borings up to 200 feet deep beneath the
5 slough or river bottom using a rotary drill rig mounted on a shallow draft barge or ship. The
6 barge or ship will be anchored over the drilling location using spuds that are driven into the
7 channel bottom, potentially creating plumes of sediment and other contaminants from the
8 channel bottom. Sampling would be accomplished through use of an automatic hammer on the
9 drill string in the sandy soils (Standard Penetration Tests ["STP"]), resulting in vibration and
10 noise above and beneath the surface of the water. Samples would also be obtained through the
11 Shelby tube (push) method. Both methods involve use of potentially hazardous drilling fluids
12 and grouting of the boring locations after the core sample is removed. Further, noise and
13 vibrations are part of the project.

14 19. The MND identifies several special status species within the Project area that have
15 a high potential to occur in project areas, including Delta smelt and Winter run Chinook. In
16 addition, marine mammal species, such as sea lions, also occupy the same areas, during the
17 same times and are sensitive to project-related activities. However, DWR relies on a mitigation
18 measure that does not address noise impacts specific to aquatic species and communities.
19 Further, various protected species would be impacted by the project due to hazardous material
20 impacts.

21 20. In recognition of the presence of special status species in the project area, the
22 MND specified that drilling would occur only between August 1 and October 31, because this
23 would "reduce exposure of sensitive fish species and life stages to water work activities."

24 21. The on-land soil investigations would consist of 167 soil borings, 103 cone
25 penetration tests, and up to five noninvasive geophysical survey investigation arrays. The soil
26 borings and the cone penetration tests would go up to 200 feet deep beneath ground surface
27 using a drill rig with auger, casing, and mud-rotary capabilities. Sampling would be collected
28 from borings using a standard penetration tests barrel, modified California sampler, pitcher

1 barrel sampler, 101 mm Geobarrel, 134 mm Geobarrel, Shelby tubes, and grab samples of the
2 cuttings. Further, the project would generate 4,000 truck trips and over 6 million vehicle miles
3 travelled by workers. (MND, Appendix B, pp. 3-4.)

4 22. Geotechnical exploration in the Delta involves penetrating through varying layers
5 of soil into a pressurized aquifer. Therefore, any drilling must prepare for artesian flow and
6 address long-term concerns that improper sealing of borings could lead to future seepage. These
7 impacts can result in levee instability and levee failure, and long-term seepage issues, increasing
8 pumping and other costs and otherwise impairing productive agriculture. In addition,
9 compaction of fields caused by drilling equipment causes long-term farming impacts, for
10 instance by reducing the farmable area and crop productivity

11 23. According to its Joint Exercise of Power Agreement with DWR, the Delta
12 Conveyance Design and Construction Authority (“DCA”) would carry out certain activities in
13 furtherance of the project and the DCP. For instance, the DCA has already entered into
14 approximately \$204 million of contracts with engineering and design firms to carry out
15 geotechnical exploration activities.

16 24. Petitioners and other agencies and individuals provided comments on the Initial
17 Study and MND, detailing, among other things, their concerns regarding the potentially
18 significant impacts of the project including, but not limited to, impacts associated with:
19 aesthetics, agricultural resources, air quality, biological resources, cultural resources, energy,
20 geology and soils, greenhouse gas emissions, hazards and hazardous materials, groundwater and
21 surface water hydrology and water quality, land use and planning, noise, public services,
22 recreation, transportation, tribal cultural resources, utilities and service systems, including flood
23 control and drainage systems; the need for mandatory findings of significance; and, the unlawful
24 separation of review of the project from the larger DCP EIR/EIS that was already underway.

25 25. DWR released the Final MND on July 9, 2020, which included text changes to the
26 MND and responses to comments.

27 26. On July 9, 2020, DWR issued a notice stating that it had adopted the MND for the
28 project and filed a Notice of Determination with the State Clearinghouse.

1 affecting the public interest.

2 35. Issuance of the relief requested in this Petition will confer a significant benefit on
3 the general public by requiring Respondent to carry out its duties under CEQA before approving
4 the project.

5 36. Issuance of the relief requested in this Petition will also result in the enforcement
6 of important rights affecting the public interest by compelling Respondent to engage in a fair,
7 objective, and legally adequate analysis of the project's environmental impacts, and to ensure
8 that the public has a meaningful opportunity to review and comment on these impacts and
9 mitigation measures for that project.

10 37. The necessity and financial burden of enforcement are such as to make an award
11 of attorneys' fees under section 1021.5 of the Code of Civil Procedure appropriate in this case.
12 Absent enforcement by Petitioners, Respondent will proceed with a project that will cause
13 significant, unmitigated environmental impacts that might otherwise have been reduced or
14 avoided through legally adequate environmental review and the adoption of feasible mitigation
15 measures. Absent enforcement by Petitioners, Respondent will improperly benefit from having
16 taken action on the project without the kind of meaningful public participation and procedural
17 legitimacy that only an EIR process can provide.

18 38. Pursuant to Public Resources Code section 21167.7, Petitioners have served a
19 copy of this Petition on the Attorney General's office to give notice that Petitioners brought this
20 lawsuit as a private attorney general under Code of Civil Procedure section 1021.5 (Exhibit B).

21 **FIRST CAUSE OF ACTION**

22 (Violations of CEQA, Pub. Resources Code, § 21000 et seq.)

23 (Abuse of Discretion)

24 39. Petitioners hereby reallege and incorporate the allegations contained in paragraphs
25 1 through 38, inclusive, of the Petition as if fully set forth herein.

26 40. A "project" under CEQA includes "the whole of an action" that may impact the
27 environment. (CEQA Guidelines, § 15378.) "[I]f projects are various steps which taken
28 together obtain an objective, they are a single project for the purposes of CEQA." (*Aptos*

1 *Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 283.) Because the instant soil
2 investigations are an essential component of the single tunnel DCP (DWR cannot design and
3 ultimately construct the DCP without first knowing the detailed underlying soil conditions that
4 the instant soil investigations provide), the project is indeed an essential “step” towards the
5 construction and implementation of the DCP and, accordingly, must be analyzed together with
6 that conveyance project. The MND’s failure to do so constitutes impermissible piecemealing of
7 the “whole of the action.”

8 41. Assuming *arguendo* that the instant soil investigations are not a part of the whole
9 of the action that makes up the DCP, CEQA nevertheless requires the instant soil investigations
10 to be analyzed together with the DCP in a single environmental document because the DCP is a
11 “reasonably foreseeable consequence of the [soil investigations]” and “the [DCP] will be
12 significant in that it will likely change the scope or nature of the [soil investigations] or [their]
13 environmental effects.” (*Laurel Heights Improvement Assn. v. Regents of University of*
14 *California* (1988) 47 Cal.3d 376, 395 (*Laurel Heights*).

15 42. Moreover, CEQA’s mandatory analysis of cumulative impacts also requires the
16 project to be analyzed together with the DCP in the same environmental document. “Related
17 projects currently under environmental review unequivocally qualify as probable future projects
18 to be considered in a cumulative analysis.” (*Citizens Assn. for Sensible Development of Bishop*
19 *Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 168 (*Citizens Assn.*).

20 43. The MND makes it clear that the entire point of the soil investigations is to
21 “inform and evaluate alternatives . . . for [the DCP] . . .” (MND, p. ii; see also MND, p. 1.)
22 Yet the DCP is not mentioned again throughout the MND, nor are its potential impacts
23 considered in the content of the project’s cumulative impacts or otherwise. The DCA,
24 apparently on behalf of DWR, has in fact already entered into contracts with engineering and
25 design firms, committing millions of dollars to the DCP and its environmental process, which, at
26 the time of the MND, was already under way. DWR and the DCA’s irretrievable commitment
27 of resources and the MND itself make clear that the DCP is a “reasonably foreseeable probable
28 future project” that must be analyzed together with the instant soil investigations. (*Citizens*

1 *Assn.*, supra, 172 Cal.App.3d at 168.) The MND's failure to do so constitutes impermissible
2 piecemealing.

3 44. Other examples of impermissible piecemealing include the MND's unwarranted
4 separation of the instant soil investigations from the reasonably foreseeable, and substantial,
5 *additional* soil investigations and other "field study" investigatory activities that will be required
6 to complete the design and construction of the DCP. These "field studies" include, but are not
7 limited to, seismic studies; geodetic aerial and ground mapping and surveying; utilities surveys;
8 cultural resource studies, including archaeological surveys and architectural and historic
9 resource evaluations; botanical surveys; fisheries studies, including recreational, fisheries and
10 hydrologic surveys; wildlife surveys, including vernal pool, reptilian, amphibian, avian and
11 mammal surveys; and "Phase 1 Environmental Site Assessments."

12 45. DWR's impermissible piecemealing, along with other omissions, is a failure to
13 provide an accurate project description which is essential to meaningful environmental review.
14 (See e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170,
15 1202 ["Where an agency fails to provide an accurate project description, or fails to gather
16 information and undertake an adequate environmental analysis in its initial study, a negative
17 declaration is inappropriate"].)

18 46. In addition, the project description is inadequate because the MND fails to include
19 a readable map, clearly showing where all of the project activities would occur. Without this
20 information, it is impossible to assess the project's potential environmental impacts.

21 47. In adopting the MND despite substantial evidence of a fair argument of significant
22 environmental impacts, DWR failed to comply with the procedural mandates of CEQA designed
23 to ensure informed public decision-making. (Pub. Resources Code, § 21005.)

24 48. Petitioners and members of the public submitted detailed comments substantiating
25 the potentially significant impacts of the project and the inadequacy of mitigation measures
26 provided to address those impacts. Although the comments were clear, DWR failed to
27 adequately consider or respond to comments prior to approving the project in violation of
28 CEQA. (CEQA Guidelines, § 15074, subd. (b).)

1 49. The MND failed to disclose related environmental review and consultation
2 requirements of other local, state and federal jurisdictions, and integrate those related
3 requirements into CEQA review. (CEQA Guidelines, § 15124, subd. (d)(1)(C).) DWR failed to
4 include information regarding other local, state and federal regulatory and permitting regimes
5 with authority over the project in the MND and failed to discuss and analyze how the project
6 will comport with the specific environmental and other requirements of those regimes.

7 50. Among other defects, the MND failed to disclose local permitting requirements for
8 conducting drilling in the counties where the project is located. An initial study is required to
9 include “[a]n examination of whether the project would be consistent with existing zoning,
10 planning, and other applicable land use controls.” (CEQA Guidelines, § 15063, subd. (d).)
11 Absent an analysis of local permitting requirements and absent any consideration of the
12 proposed project’s consistency with local county codes, ordinances, and land use policies, the
13 MND violates CEQA. (*Ibid.*)

14 51. The MND also fails to disclose that the project is a “covered action” under the
15 Delta Plan adopted by the Delta Stewardship Council (“DSC”) pursuant to the Delta Reform Act
16 (Wat. Code, § 85000 et seq.). As a project that would: occur within the Delta; be carried out or
17 funded by a state or local agency; is covered by one or more provisions of the Delta Plan; and
18 would have a significant impact on the achievement of one or both of the coequal goals, or the
19 implementation of flood control programs, the project constitutes a “covered action.” (Wat.
20 Code, § 85057.5, subd. (a).) As a covered action, DWR is required to make a consistency
21 determination with the Delta Plan. Despite the applicability of the Delta Plan to this project, the
22 MND fails to discuss the Delta Plan, let alone analyze whether the project is consistent with it.
23 This is an informational deficiency under CEQA.

24 52. The MND also fails to disclose the authority of and need for project approvals
25 from levee maintaining agencies and the California Central Valley Flood Protection Board. The
26 MND also fails to identify the necessary encroachment permits from Caltrans for exploration
27 activities on State highway right-of-ways.

28 53. DWR also failed to consult with all responsible and trustee agencies as required by

1 CEQA, and failed to provide those same agencies, along with “every other public agency with
2 jurisdiction by law over resources affected by the project,” with notice and a copy of the IS/
3 MND prior to adoption of the final IS/MND as required by CEQA. (CEQA Guidelines,
4 § 15063, subd. (g); CEQA Guidelines, § 15073, subd. (e).)

5 54. The MND failed to disclose, analyze and mitigate the proposed Project’s direct,
6 indirect, and cumulative significant environmental impacts in violation of the substantive
7 mandates of CEQA.

8 55. The MND fails to include adequate detail to address site-specific impacts at each
9 of the hundreds of soil investigation sites included in the project. Instead, the entire “impact
10 analysis” was performed at an overly general, programmatic level that omitted any discussion or
11 consideration of individual environmental or other site-specific conditions present at the specific
12 soil investigation sites. DWR’s failure to investigate, discuss and analyze specific
13 environmental and other conditions at each site, and how the proposed investigations may
14 potentially impact those site-specific conditions, violates CEQA. The MND, as a result, failed
15 to perform, or even attempt to perform, the most basic function of a project-level environmental
16 document: a good faith and meaningful site-specific analysis of the project. DWR’s purported
17 deferral of that site-specific analysis to DWR’s “Reconnaissance Team,” who will purportedly
18 perform site-specific analysis after adoption of the MND and approval of the project—entirely
19 outside the CEQA public review process—turns CEQA on its head.

20 56. The project would lead to significant site-specific and cumulative impacts
21 including, but not limited to, impacts associated with: aesthetics, agricultural resources, air
22 quality, biological resources, cultural resources, energy, geology and soils, greenhouse gas
23 emissions, hazards and hazardous materials, groundwater and surface water hydrology and
24 water quality, land use and planning, noise, public services, recreation, transportation, tribal
25 cultural resources, utilities and service systems, including flood control and drainage systems. In
26 addition, DWR was required to, but failed, to make mandatory findings of significance under
27 CEQA Guidelines section 15065. The existence of a fair argument that these significant impacts
28 may occur required preparation of an EIR.

1 57. The MND also failed to identify feasible mitigation measures to ensure reduction
2 of project impacts. Those measures that are provided lack the detail and enforceability
3 necessary to adequately mitigate project impacts. (See CEQA Guidelines, § 15126.4.) Instead,
4 DWR either impermissibly deferred mitigation or ignored its mitigation obligations entirely. As
5 a result, mitigation provided in the MND, along with the Mitigation Monitoring Program, will
6 be ineffective in reducing potentially significant impacts to less than significant levels. DWR
7 thus failed to reject or condition the project to avoid or minimize its significant impacts as
8 required by CEQA.

9 58. One example of the failure to adequately mitigate the project is the lack of specific
10 mitigation for abandonment and sealing of the holes to prevent future seepage. In addition, the
11 MND fails to require proper preparation for, and measures to deal with, artesian flow that may
12 occur during development of borings.

13 59. The MND fails to adequately analyze the cumulative impacts of the project and
14 had an unduly narrow scope for cumulative projects that were disclosed. As one example, the
15 MND fails to list the DCP as a cumulative project even though DWR released the NOP for the
16 DCP project on the same day the comment period closed for the project at issue in this litigation.

17 60. DWR's actions in adopting the MND and approving the project violate CEQA.
18 Substantial evidence in the record, including evidence from other public agencies, technical
19 experts, and members of the community with personal knowledge and expertise concerning the
20 environmental issues raised herein, as well as substantial evidence in DWR's own documents,
21 demonstrates that DWR was required to prepare an EIR to comply with CEQA prior to
22 considering approval of the project. (See Pub. Resources Code, §§ 21080, subds. (d), (e);
23 CEQA Guidelines, § 15070.)

24 61. While an EIR is required, and the MND is deficient in numerous, substantial
25 respects, the criteria for recirculation of the MND set forth in CEQA Guidelines section 15073.5
26 are also met in light of the "substantial revisions" to the MND by DWR after circulation to the
27 public and prior to its adoption.

62. For all of the above reasons, DWR's failure to support its decisions with findings, to support its findings with substantial evidence, and to act as required by law or regulation constitutes a prejudicial abuse of discretion. Therefore, Petitioners pray for the relief requested below.

PRAYER

WHEREFORE, Petitioners pray for judgment and relief as hereinafter set forth:

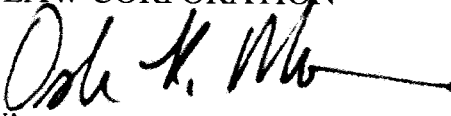
1. That the Court issue an alternative and/or peremptory writ of mandate directing DWR to:
 - a. Vacate and set aside its adoption of the MND;
 - b. Vacate and set aside its approval of the project; and
 - c. Refrain from issuing or approving any further permits or entitlements for the project until the proper CEQA lead agency has prepared and certified a legally adequate environmental document for the project and complied with all other requirements of CEQA, as directed by this Court pursuant to Public Resources Code section 21168.9;
2. That the Court issue a temporary restraining order, a preliminary and permanent injunction barring Respondent and all persons working on their behalf, from proceeding with any activity which may result in any physical change in the environment in the project area pending completion of this litigation and full compliance with CEQA;
3. That the Court issue a peremptory writ of mandate directing DWR to suspend all necessary steps and all activity in furtherance of the project until DWR takes all necessary steps to bring its actions into compliance with CEQA;
4. That the Court issue a declaratory judgment that DWR has failed to comply with CEQA.
5. That Petitioners be awarded costs of this proceeding;
6. That Petitioners be awarded reasonable attorneys' fees for this action pursuant to Code of Civil Procedure section 1021.5, and any other applicable provisions of law; and

///

1 7. That Petitioners be awarded such other and further relief as the Court deems just
2 and proper.

3 Dated: August 10, 2020

SOLURI MESERVE,
A LAW CORPORATION



By: _____
Osha R. Meserve
Attorneys for Petitioners/Plaintiffs
Central Delta Water Agency,
South Delta Water Agency, and
Local Agencies of the North Delta

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1 VERIFICATION

2 I, Osha R. Meserve, am counsel of record for Petitioners Central Delta Water Agency,
3 South Delta Water Agency, and Local Agencies of the North Delta. I sign for Petitioners absent
4 from the county and/or because facts contained in the Petition are within the knowledge of
5 counsel. I have read the foregoing Verified Petition for Writ of Mandate and know the contents
6 thereof. The same is true of my own knowledge, except as to those matters that are alleged on
7 information and belief, and as to those matters, I believe them to be true.

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

10 Executed this 10th day of August, 2020, in Sacramento, California.

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12 OSHA R. MESERVE
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