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12  
13 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 Sierra Club; Center for Biological Diversity;  
16 Planning and Conservation League; Restore the  
17 Delta; and Friends of Stone Lakes National  
18 Wildlife Refuge,

19 Petitioners and Plaintiffs,

20 vs.

21 California Department of Water Resources; and  
22 DOES 1-20,

23 Respondents and Defendants,

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Real Parties in Interest.

Case No.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(Code of Civ. Proc. §§ 1060, 1085, 1094.5; Pub.  
Resources Code §§ 21000 et seq.)

**CEQA CASE**

Action Filed: October 27, 2020

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1 **INTRODUCTION**

2 1. Petitioners and Plaintiffs Sierra Club, Center for Biological Diversity, Planning and  
3 Conservation League, Restore the Delta, and Friends of Stone Lakes National Wildlife Refuge  
4 (“Petitioners”) seek a writ of mandate and declaratory and injunctive relief under California Code of  
5 Civil Procedure sections 1085, 1094.5, and 1060 directing the California Department of Water  
6 Resources (“DWR”) to rescind its Delta Program Revenue Bond General Bond Resolution (No.  
7 DWR-DPRB-1), First Supplemental Resolution Providing for the Issuance of Delta Program Revenue  
8 Bonds Series A (No. DWR-DPRB-2), and its Second Supplemental Resolution Providing for the  
9 Issuance of Delta Program Revenue Bonds Series B (DWR-DPRB-3), all adopted by DWR on August  
10 6, 2020, and to rescind the Bonds authorized by the Resolutions.

11 2. The Resolutions authorize revenue bonds to pay for planning, construction, operation  
12 and maintenance of a tunnel under the Sacramento-San Joaquin Delta. The project (hereinafter “Delta  
13 Tunnel” or “Project”) would withdraw water from the Sacramento River north of the Delta via intakes  
14 located between Freeport and the confluence with Sutter Slough. This water would be conveyed south,  
15 under the Delta, via a tunnel to the Banks Pumping Plant. The Delta Tunnel would divert large  
16 quantities of fresh water from the Sacramento-San Joaquin Delta for export south. Due to the new  
17 points of diversion in the north Delta, freshwater flows that presently contribute to water quality, water  
18 supply, fish, fish habitat, Delta agriculture, and public health would no longer provide these benefits  
19 within the lower Sacramento River, sloughs, and Delta. The new water intakes and tunnels would add  
20 to, rather than replace, the existing pumping facilities in the south Delta of the Central Valley Project  
21 and State Water Project, increasing the potential and possible quantity of water diverted from the Delta  
22 ecosystem.

23 3. The construction and operation of the Project will significantly degrade environmental  
24 conditions in the Sacramento-San Joaquin Delta and the San Francisco Bay-Delta Estuary, including  
25 reduced flows in the Sacramento River, increased salinity levels, reduced food supply, increased  
26 harmful algal blooms, harm to endangered and threatened fish species, and adverse modification of  
27 their designated critical habitat. DWR issued a Notice of Preparation (NOP) of Draft Environmental  
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1 Impact Report (Draft EIR) on January 15, 2020, initiating environmental review of the Delta Tunnel  
2 Project. The NOP listed 24 probable significant environmental effects of the Project.

3 4. DWR failed to proceed in the manner required by law when it adopted the Bond  
4 Resolutions on August 6, 2020. DWR failed to prepare an EIR to accompany or provide information  
5 on the Bond Resolutions and Delta Tunnel Project in violation of the California Environmental  
6 Quality Act (CEQA), codified at Public Resources Code §§ 21000 et seq., including Public Resources  
7 Code § 21102.

### 8 **THE PARTIES**

9 5. Petitioner SIERRA CLUB (the “Club”) is a nonprofit organization of more than  
10 800,000 members worldwide, with more than 160,000 members in California. The Club is dedicated  
11 to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the  
12 responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to  
13 protect and restore the quality of the natural and human environment; and to using all lawful means to  
14 carry out these objectives. The Club’s concerns encompass its members continued ability to enjoy the  
15 unique aesthetic and recreational nature of the Bay-Delta ecosystem, their desire for California to  
16 develop a climate change-resilient water system that is protective of both natural environments and  
17 fulfilling the human right to water, and the proper application of CEQA to provide the public with  
18 vital information about decisions made concerning their health and mitigation from environmental  
19 harms. The Club’s members reside and own property throughout California as well as those areas to be  
20 affected and served by the Project, and use the waters and lands affected by the Project for wildlife  
21 observation, recreation, scientific research, environmental education, and aesthetic enjoyment. The  
22 Club’s particular interest in this case and the issues which the case concerns are addressed herein.

23 6. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit,  
24 public interest organization with approximately 81,000 active members. The Center has offices in  
25 Oakland, Los Angeles, and Joshua Tree, California, as well as offices in Arizona, Florida, New  
26 Mexico, Oregon, Colorado, and Washington, D.C. The Center and its members are dedicated to  
27 protecting diverse native species and habitats through science, policy, education, and environmental  
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1 law. The Center has been a party to many CEQA lawsuits where project approvals threaten  
2 conservation interests due to the lack of adequate environmental review. The Center has a particular  
3 interest in ensuring that the substantive requirements of CEQA are applied to the fullest extent  
4 possible to protect the environment, including the mandate that California public agencies must fully  
5 disclose, analyze, and mitigate a project’s significant environmental effects, and adopt feasible  
6 alternatives to minimize or avoid those effects. The Center’s members reside and own property  
7 throughout California as well as those areas to be served by the Project, and use the waters and lands  
8 affected by the proposed Project for wildlife observation, recreation, scientific research, environmental  
9 education, and aesthetic enjoyment.

10 7. Petitioner PLANNING AND CONSERVATION LEAGUE (“PCL”) is a nonprofit  
11 advocacy organization empowered to protect and restore California’s natural environment and to  
12 promote and defend the public health and safety of the people of California, through legislative,  
13 administrative, and judicial action. Founded in 1965, PCL was the first organization devoted to  
14 bettering Californians’ quality of life through environmental legislation. One of the organization’s  
15 earliest accomplishments was the enactment in 1970 of CEQA, which PCL helped draft and has  
16 continually supported over the years, and which lies at the heart of this action. As a party and an  
17 amicus curiae, PCL—on behalf of its twenty-seven institutional members and thousands of individual  
18 members—has contributed to some of the leading cases interpreting CEQA’s provisions. PCL has also  
19 submitted detailed comments addressing environmental review issues in numerous proceedings before  
20 public agencies. Beyond agency proceedings and the courtroom, PCL has published and updated The  
21 Community Guide to CEQA and has sponsored CEQA workshops throughout the state. These  
22 workshops advise interested individuals, governmental and non-governmental organizations, and  
23 locally elected and appointed officials about CEQA’s two-fold purpose of environmental protection  
24 and informed self-government. PCL members reside and own property throughout California as well  
25 as those areas to be served by the Project, and use the waters and lands affected by the proposed  
26 Project.

27 8. Petitioner RESTORE THE DELTA (“RTD”) is a non-profit public benefit organization  
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1 based in Stockton, California. RTD is a coalition of Delta residents, business leaders, civic  
2 organizations, community groups, faith-based communities, union locals, farmers, fishermen, and  
3 environmentalists seeking to strengthen the health of the Bay-Delta estuary and to protect the  
4 environmental interests in the Sacramento-San Joaquin Delta, including but not limited to public  
5 health, fishing, farming, and recreation. With over 60,000 members statewide, RTD advocates on  
6 behalf of local Delta stakeholders to ensure that they have a direct impact on water management  
7 decisions affecting the water quality and well-being of their communities, and water sustainability  
8 policies for all Californians. RTD works through public education and outreach so that all Californians  
9 recognize the Sacramento-San Joaquin Delta as part of California’s natural heritage, deserving of  
10 restoration, seeking a Delta whose waters are fishable, swimmable, drinkable, and farmable,  
11 supporting the health of the San Francisco Bay-Delta Estuary. Members of RTD reside in and along  
12 the Bay-Delta and its watershed and use the waters of the Central Valley and Bay-Delta for drinking,  
13 farming, and for aesthetic, recreational, and educational enjoyment. As just one example of  
14 environmental harms that would be inflicted on RTD members by diversions for the Delta Tunnel  
15 Project, diversions reduce freshwater flows through the Delta causing and worsening harmful algal  
16 blooms which threaten the public health of those drinking, fishing in, or swimming in, Delta waters.

17 9. Petitioner FRIENDS OF STONE LAKES NATIONAL WILDLIFE REFUGE

18 (“Friends,” formerly known as the Stone Lakes National Wildlife Refuge Association) is a  
19 membership-based California nonprofit public benefit corporation organized for the purposes of  
20 protecting, promoting and enhancing the Stone Lakes National Wildlife Refuge (“Stone Lakes NWR”  
21 or “Refuge”), which will be severely and adversely affected by the unmitigated impacts associated  
22 with the construction and operation of the proposed Project. Members of Friends use the Refuge, the  
23 greater Delta, the Sacramento River, and the San Joaquin river to hike, birdwatch, view wildlife,  
24 engage in scientific study, including monitoring activities, and promoting education about Delta  
25 wildlife conservation, especially of avian species. Friends’ members have enjoyed viewing wildlife,  
26 including special status and/or Fully Protected Species such as the greater sandhill crane, in the Refuge  
27 and elsewhere in the Delta. This species’ numbers and vitality depend on an intact and healthy Delta  
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1 ecosystem, and the continued existence of suitable habitat. Where elements of the ecosystem suffer, or  
2 the greater sandhill crane population suffers adverse impacts, Friends' members' recreational uses and  
3 aesthetic enjoyment of those areas are reduced through decreased opportunities to observe wildlife.

4 10. Respondent and Defendant CALIFORNIA DEPARTMENT OF WATER  
5 RESOURCES (DWR) is a Department of the State of California subject to all California law. DWR  
6 adopted the Bond Resolutions that are the subject of this case and is the State lead agency for the  
7 approval of the Delta Tunnel Project under CEQA.

8 11. Petitioners are currently unaware of the true names and capacities of Does 1 through 20,  
9 inclusive, and therefore sue those parties by such fictitious names. Does 1 through 20, inclusive, are  
10 agents of the State government who are responsible in some manner for the conduct described in this  
11 petition, or other persons or entities presently unknown to the Petitioners who claim some legal or  
12 equitable interest in the program that is the subject of this action. Petitioners will amend this petition to  
13 show the true names and capacities of Does 1 through 20 when such names and capacities become  
14 known.

15 12. Petitioners are currently unaware of the true names and capacities of Does 21 through  
16 50, inclusive, and therefore sue those parties by such fictitious names. Does 21 through 50, inclusive,  
17 are persons or entities presently unknown to the Petitioners who may claim some interest as a real  
18 party in interest in the program that is a subject of this action. Petitioners will amend this petition to  
19 show the true names and capacities of Does 21 through 50 when such names and capacities become  
20 known.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 13. Petitioners have had no administrative remedies to exhaust. DWR did not hold any  
23 public hearings or public meetings or afford any notice or opportunity to comment whatsoever before  
24 adopting the subject Bond Resolutions on August 6, 2020.

25 14. On April 15, 2020, Petitioners Club, Center, PCL, and RTD joined in a joint comment  
26 letter in response to DWR's January 15, 2020 Notice of Preparation ("NOP"). On or about April 17,  
27 Petitioner Friends submitted a comment letter in response to DWR's January 15, 2020 NOP. The NOP  
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1 has been the only opportunity noticed so far by DWR to comment on the Delta Tunnel Project.

2 15. Petitioners have complied with Public Resources Code section 21167.5 by prior service  
3 of a notice upon DWR indicating their intent to file this Petition. Proof of Service of this notification,  
4 with the notification, is attached as Exhibit A to this Petition.

5 16. Petitioners have elected to prepare the record of proceedings in the above-captioned  
6 proceeding or to pursue an alternative method of record preparation pursuant to Public Resources  
7 Code section 21167.6(b)(2). A true and correct copy of the Notice of Election to Prepare the  
8 Administrative Record is attached as Exhibit B to this Petition.

9 17. DWR has not filed any Notice of Exemption, Notice of Determination, or any other  
10 notice with respect to its adoption of the Bond Resolutions on August 6, 2020. This petition is timely  
11 filed in accordance with Public Resources Code section 21167(a) and CEQA Guidelines section  
12 15112(c)(5) (the CEQA Guidelines are codified at 14 Cal. Code Regs. §§ 15000 *et seq.*).

13 18. Petitioners and their members are directly, adversely and irreparably affected, and will  
14 continue to be prejudiced by the adoption of the Bond Resolutions and by the failure of DWR to  
15 comply with CEQA, unless or until this Court provides the relief prayed for in this Petition.

#### 16 **JURISDICTION AND VENUE**

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

19 20. Venue for this action properly lies in the Sacramento County Superior Court because  
20 the Project impacts will be felt in Sacramento County and because Respondent DWR and the Attorney  
21 General, who will be representing Respondent DWR in this action, maintain offices in Sacramento  
22 County. In addition, DWR filed an action to validate the subject Bond Resolutions and Bonds in  
23 Sacramento County Superior Court on August 6, 2020, *California Department of Water Resources, v.*  
24 *All Persons Interested in the Matter of the Authorization of Delta Program Revenue Bonds...* No. 34-  
25 2020-00283112. This CEQA case and DWR's validation case are related cases.

#### 26 **GENERAL ALLEGATIONS**

27 21. In 2009, the California Legislature declared that "the Sacramento-San Joaquin Delta  
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1 watershed and California’s water infrastructure are in crisis and existing Delta policies are not  
2 sustainable,” and responded by passing the Delta Reform Act, codified in the California Water Code at  
3 sections 85000 *et seq.*

4 22. Policies established by the Delta Reform Act include “the policy of the State of  
5 California is to reduce reliance on the Delta in meeting California’s future water supply needs through  
6 a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency  
7 . . .” (Water Code § 85021.) Water Code section 85054 establishes co-equal goals, meaning “the two  
8 goals of providing a more reliable water supply for California and protecting, restoring, and enhancing  
9 the Delta ecosystem.”

10 23. DWR is the lead agency responsible for complying with CEQA including preparation  
11 of the EIR for the Project.

12 24. The Delta Reform Act includes specific provisions applicable to projects intended to  
13 convey water diverted in Northern California around or under the Delta, including Water Code  
14 sections 85320, 85321, and 85322. Water Code section 85320 mandates that the conveyance project  
15 known as the Bay Delta Conservation Plan (“BDCP”) could not be incorporated into the Delta Plan  
16 required by the Delta Reform Act and could not be eligible for state funding unless, among other  
17 things, the project complies with CEQA, and includes “a comprehensive review and analysis of”  
18 (among the listed subjects):

19 A reasonable range of Delta conveyance alternatives, including through-Delta, dual  
20 conveyance, and isolated conveyance alternatives and including further capacity and  
design options of a lined canal, an unlined canal, and pipelines.

21 (Water Code § 85320(b)(2)(B).) DWR’s current Delta Tunnel Project, also known as the Delta  
22 Conveyance Project or the Delta Program, is subject to the requirements set forth in the Delta  
23 Reform Act.

24 25. In about April 2015, DWR and Reclamation dropped the elements of a habitat  
25 conservation plan and natural community conservation plan from the BDCP project and began calling  
26 it California WaterFix.

27 26. On July 21, 2017, DWR gave final approval to and certified the Final EIR for a project  
28

1 virtually identical to this Delta Tunnel Project, except it was called California WaterFix and was to  
2 have two water Tunnels instead of one water Tunnel.

3 27. On July 21, 2017, DWR also adopted Bond Resolutions to pay for the WaterFix  
4 project. DWR also filed a validation action in Sacramento County Superior Court, seeking to validate  
5 the WaterFix Bond Resolutions and Bonds. The action was entitled *California Department of Water*  
6 *Resources, v. All Persons Interested in the Matter of the Authorization of California WaterFix*  
7 *Revenue Bonds...* No. 34-2017-00215965.

8 28. On August 21, 2017, Petitioners joined in an action filed in Sacramento County  
9 Superior Court entitled *California Sportfishing Protection Alliance et al. v. California Department of*  
10 *Water Resources*, No. 34-2017-80002674. The action alleged among other things that the EIR  
11 prepared by DWR failed to comply with CEQA.

12 29. On September 14, 2020, Petitioners joined in an answer filed in Sacramento County  
13 Superior Court to the validation complaint DWR had filed on July 21, 2017.

14 30. Sixteen other cases were also filed challenging DWR's failure to comply with CEQA,  
15 and several other parties also filed answers in opposition to DWR's validation complaint.  
16 Subsequently, following Judicial Council Coordination Proceedings, all of the CEQA cases, two  
17 California Endangered Species Act cases, and the validation case were coordinated and proceeded  
18 before Judge Kevin R. Culhane of the Sacramento County Superior Court, Coordination Proceeding  
19 Case No. JCCP 4942.

20 31. On May 2, 2019, DWR rescinded its 2017 approval of the BDCP/WaterFix project and  
21 set aside its certification of the Final EIR for that project. DWR's Delta conveyance project thus  
22 evolved first from the BDCP to California WaterFix, and now to the Delta Conveyance Project/Delta  
23 Program, herein referred to as the Delta Tunnel Project.

24 32. On May 7, 2019, DWR adopted a Third Supplemental Resolution Rescinding the  
25 California WaterFix Revenue Bond Resolution and First and Second Supplemental Resolutions and  
26 rescinded the Bond authorizations that the Resolution represented.

27 33. In a Joint Case Management Conference Statement filed May 20, 2019, DWR  
28

1 contended that as a result of its rescinding the project approval and certification of the EIR, and its  
2 rescinding of the Bond Resolutions and authorizations, the CEQA cases and the validation case had  
3 become moot.

4 34. On July 10, 2019, Petitioners dismissed the CEQA case they had joined in without  
5 prejudice. The other CEQA cases that had been filed were also dismissed on various dates in June and  
6 July 2019.

7 35. On July 12, 2019, DWR dismissed its WaterFix validation case without prejudice.

8 36. The only issues remaining before the courts in the WaterFix CEQA and validation  
9 cases are Petitioners' efforts (including petitioners in other CEQA cases) to recover their attorneys'  
10 fees in the CEQA and validation cases pursuant to Code of Civil Procedure § 1021.5.

11 37. On January 15, 2020, DWR issued the Notice of Preparation (NOP) of EIR for the  
12 Delta Tunnel Project. According to the NOP, "The proposed project would construct and operate new  
13 conveyance facilities in the Delta that would add to existing SWP [State Water Project] infrastructure.  
14 New intake facilities as points of diversion would be located in the north Delta along the Sacramento  
15 River between Freeport and the confluence with Sutter Slough. The new conveyance facilities would  
16 include a tunnel to convey water from the new intakes to the existing Banks Pumping Plant and  
17 potentially the federal Jones Pumping Plant in the south Delta." (NOP at p. 2.)

18 New facilities proposed for the Delta Conveyance Project include, but are not limited to,  
19 the following:

- 20 - Intake facilities on the Sacramento River
- 21 - Tunnel reaches and Tunnel shafts
- 22 - Forebays
- 23 - Pumping Plant
- 24 - South Delta Conveyance Facilities

25 (NOP at p. 3.)

26 The NOP includes a map, "Figure 1," which shows the areas under consideration for the facilities.

27 (NOP at p. 4.) "Other ancillary facilities may be constructed to support construction of the conveyance  
28 facilities including, but not limited to, access roads, barge unloading facilities, concrete batch plants,  
fuel stations, mitigation areas, and power transmission and/or distribution lines." (NOP at p. 3.)

1 “Under the proposed project, the new north Delta facilities would be sized to convey up to 6,000 cfs of  
2 water from the Sacramento River to the SWP facilities in the south Delta (with alternatives of different  
3 flow rates, as described in the ‘Alternatives’ section below).” (NOP at p. 3.)

4 The proposed project would include two intakes with the maximum diversion capacity of about  
5 3,000 cfs each. The size of each intake location could range from 75 to 150 acres, depending  
6 upon fish screens selection, along the Sacramento River and include a state-of-the-art fish  
7 screen, sedimentation basins, tunnel shaft, and ancillary facilities. An additional 40 to 60 acres  
8 at each intake location would be temporarily disturbed for staging of construction facilities,  
9 material storage, and a concrete batch plans, if needed. (NOP at p. 5.) The proposed single  
10 main tunnel and connecting tunnel reaches would be constructed underground with the bottom  
11 of the tunnel at approximately 190 feet below the ground surface. (NOP at p. 5.)

12 38. On August 20, 2020, the U.S. Army Corps of Engineers published a Notice of Intent to  
13 prepare an Environmental Impact Statement for construction of the proposed Delta Tunnel Project in  
14 the Federal Register. 85 Fed. Reg. 51420 (August 20, 2020.) The Notice included extensive details  
15 about the Delta Tunnel Project. (85 Fed. Reg. 51420 at 51421.)

16 39. The Delta Tunnel Project will have significant effects on the environment. The NOP  
17 lists 24 probable significant environmental effects of the Project. (NOP at pp. 9-10.)

18 40. On April 15, 2020, Petitioners Club, Center, PCL, and RTD joined in a comment letter  
19 to DWR on the NOP and scoping process for the Project. The opening paragraph states:

20 The Draft EIR must have a much larger scope than is set forth in the NOP. A  
21 foundational deficiency is the apparent intention evidenced by the NOP to violate the  
22 CEQA requirement to set forth a range of reasonable alternatives to the project and  
23 evaluate comparative merits of the alternatives. The NOP also evidences apparent  
24 intention to violate the Delta Reform Act and California’s public trust doctrine, in the  
25 course of evading consideration of obvious and required alternatives that would protect  
26 California’s rivers and restore freshwater flows through the San Francisco Bay-Delta  
27 Estuary (Delta) by reducing exports. The Delta is in a state of crisis. The crisis and  
28 CEQA require no-Tunnel alternatives.

Titles of several sections in the 20 page comment letter included: alternatives reducing reliance on the  
Delta are required by the Delta Reform Act; the Draft EIR must include the CEQA-required range of  
reasonable alternatives; the Draft EIR must include the CEQA-required full environmental disclosure;  
this Draft EIR process must be integrated with DWR’s other related processes; DWR must not

1 segment environmental analysis; and DWR must disclose and assess the future reduction in claimed  
2 needs for the Delta Tunnel Project as a result of new technologies and curtailed exports.

3 41. On or about April 17, 2020, Petitioner Friends of Stone Lakes National Wildlife Refuge  
4 submitted comments to DWR on the NOP and scoping process for the Project. These comments  
5 emphasized, among other things, the need for DWR to expand the range of Project alternatives to  
6 include alternative means of meeting Project objectives; to evaluate alternatives to infrastructure  
7 components of the Project; to evaluate site and design alternatives to Project intakes; and to disclose  
8 and analyze transmission line impacts.

9 42. DWR took actions that have unlawfully created bureaucratic and financial momentum  
10 behind the Delta Tunnel Project, providing incentive to ignore environmental concerns and foreclose  
11 alternatives to the Project. These actions include:

- 12 • Creation of the Delta Conveyance Design and Construction Authority process by DWR, the  
13 Metropolitan Water District of Southern California (MWD), and several other exporters;
- 14 • Negotiating an amendment to the SWP long-term contracts that would include the capacity  
15 and configuration (including alignment and number of intakes and tunnels) to take the water  
16 from the Sacramento River in the northern Delta to the pumping plants in the southern Delta;
- 17 • Issuing the NOP for the Project, which fails to mention alternatives that would reduce  
18 reliance on the Delta as required by the Delta Reform Act, fails to address No Tunnel and  
19 Delta Reform Act-required “through-Delta” as opposed to “dual conveyance” alternatives,  
20 and fails to discuss alternatives that would increase freshwater flows through the Delta and  
21 protect California’s rivers by reducing exports;
- 22 • Pre-determining that No Tunnel and Through-Delta alternatives had been rejected as not  
23 meeting project objectives, as revealed by DWR at the July 22, 2020, meeting of the Delta  
24 Conveyance Design & Construction Authority/Stakeholder Engagement Committee.  
25 (Minutes, July 22, 2020 including pp. 8-9.)

26 43. On August 6, 2020, DWR adopted Delta Program Revenue Bond General Bond  
27 Resolution (No. DWR-DPRB-1), First Supplemental Resolution Providing for the Issuance of Delta  
28

1 Program Revenue Bonds Series A (No. DWR-DPRB-2), and Second Supplemental Resolution  
2 Providing for the Issuance of Delta Program Revenue Bonds Series B (DWR-DPRB-3.)

3 44. Pursuant to a validation statute, Code of Civil Procedure section 864, the Delta Program  
4 Revenue Bonds “shall be deemed to be in existence upon their authorization” which took place on  
5 August 6, 2020. Pursuant to section 864, the “Bonds ... shall be deemed authorized as of the date of  
6 adoption by the governing body of the public agency of a resolution or ordinance authorizing the  
7 issuance... .” The Bonds are therefore deemed authorized on August 6, 2020.

8 45. DWR filed its Complaint for Validation in Sacramento County Superior Court on  
9 August 6, 2020, seeking the Court’s “judgment confirming the validity of a proposed revenue bond  
10 financing the Department has authorized as the mechanism to finance the cost and expense of the  
11 environmental review, planning, engineering and design, and if and when appropriate, the acquisition  
12 and construction of water conveyance facilities in, about, and through the Sacramento-San Joaquin  
13 Delta (the “Delta Program,” as hereinafter further defined).” (Validation Complaint ¶ 1 at p.1.) The  
14 action is entitled, *California Department of Water Resources, v. All Persons Interested in the Matter of*  
15 *the Authorization of Delta Program Revenue Bonds...* No. 34-2020-00283112. The subject Bond  
16 Resolutions were attached to the Complaint for Validation as Exhibits 1, 2, and 3, respectively.

17 46. DWR’s Bond Resolutions authorize expenditures of funds for more “than a project  
18 involving only feasibility or planning studies for possible future actions” which is exempted from the  
19 EIR requirement set forth in Public Resources Code § 21102. The Bond Resolutions include “Delta  
20 Program Planning Costs” and “Delta Program Capital Costs.” Delta Program Capital Costs are defined  
21 as “the cost and expense of environmental review, planning, engineering, design, and, if and when  
22 determined by the Department to be appropriate, acquisition and construction of units for the  
23 conveyance of water in and about the Sacramento-San Joaquin Delta.” The inclusion of engineering,  
24 design, acquisition, and construction in the Bond Resolutions is alleged in ¶¶ 1, 3, 5, 27, 28, 30, 41,  
25 42, 53, 59, and 83 of the validation complaint; set forth in the General Bond Resolution which is  
26 Exhibit 1 to the complaint at pp. 1, 2, 3, and section 804 at p. 25; and set forth in the Second  
27 Supplemental Resolution which is Exhibit 3 to the complaint at p. 3.

1           47.     DWR’s Bond Resolutions also authorize expenditures of funds for “operating  
2 expenses” meaning the cost of operation and maintenance of the Delta Tunnel Project. Operating  
3 expenses are included in the General Bond Resolution which is Exhibit 1 to the complaint at pp. 1, 2,  
4 3, 4, 5, 21 section 503, 23 section 605, 25 sections 804 and 805; and in the Second Supplemental  
5 Resolution which is Exhibit 3 to the complaint at p. 2.

6           48.     DWR’s Complaint for Validation alleges DWR’s issuance of the NOP on January 15,  
7 2020, “initiating environmental review under the California Environmental Quality Act (“CEQA”) ...  
8 of a potential single tunnel Delta conveyance facility.” (Complaint for Validation ¶ 2 at p.2.) The  
9 Complaint for Validation includes paragraphs anticipating defenses alleging CEQA violations based  
10 on DWR’s failure to prepare an EIR. (Complaint for Validation ¶¶ 26, 27, 33-35, 83, 86-88.)

11           49.     The Delta Program, the Delta Conveyance Project, and the Delta Tunnel Project are all  
12 the same thing: the project that is the subject of DWR’s NOP issued January 15, 2020.

13           50.     DWR’s Bond Resolutions are discretionary projects subject to CEQA. By failing to  
14 conduct any review under CEQA in connection with the Bond Resolutions, DWR has abused its  
15 discretion and failed to proceed in the manner required by law. As a result of DWR’s approvals of the  
16 Bond Resolutions, Petitioners and their members will suffer great and irreparable harm to their  
17 interests, including conservation, wildlife viewing, recreation, boating, kayaking, fishing, and other  
18 activities as described herein. Petitioners have no adequate remedy at law for this irreparable harm.

19           51.     The Project financed by the Bond Resolutions will harm pelagic and anadromous  
20 fisheries in the Bay-Delta and its watershed, including San Francisco Bay, migratory birds including  
21 sandhill cranes, and other natural resources held in trust by the State of California on behalf of its  
22 people by failing to consider the timing and quantity of flows to ensure ecosystem health, by  
23 encouraging and catalyzing the construction of new water delivery conveyance including the Delta  
24 Tunnel Project, upstream water storage, and associated infrastructure, and by prioritizing water  
25 deliveries over ecosystem restoration. Harm to the pelagic and anadromous fishery in the Bay-Delta  
26 and its watershed, including San Francisco Bay, injures Petitioners and their members by threatening  
27 impairment of their use and enjoyment of these species and their habitat.





1 either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA  
2 Guidelines § 15378(a).) CEQA requires agencies to inform themselves about the environmental effects  
3 of their proposed actions, consider all relevant information before taking action, give the public an  
4 opportunity to comment, and avoid or reduce significant environmental impacts when it is feasible to  
5 do so. (Pub. Resources Code § 21000.) The agency’s factual conclusions must be supported by  
6 substantial evidence in the light of the whole record. (Pub. Resources Code §§ 21168, 21168.5; CEQA  
7 Guidelines § 15384(b).)

8 56. The California Supreme Court has held, “[t]he foremost principle under CEQA is that  
9 the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible  
10 protection to the environment within the reasonable scope of the statutory language.’” (*Laurel Heights  
11 Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.)

12 **Violation of Public Resources Code § 21102**

13 57. CEQA mandates in Public Resources Code section 21102:

14 No state agency, board, or commission shall request funds, nor shall any state agency, board,  
15 or commission which authorizes expenditures of funds, other than funds appropriated in the  
16 Budget Act, authorize funds for expenditure for any project, other than a project involving only  
17 feasibility or planning studies for possible future actions which the agency, board, or  
18 commission has not approved, adopted or funded, which may have a significant effect on the  
19 environment unless such request or authorization is accompanied by an environmental impact  
20 report.

21 Feasibility and planning studies exempted by this section from the preparation of an  
22 environmental impact report shall nevertheless include consideration of environmental factors.

23 58. The funds authorized by DWR are not “funds appropriated in the Budget Act.” The  
24 funds authorized by DWR are not limited to “feasibility or planning studies for possible future  
25 actions” but instead include funds for the acquisition, construction, operation and maintenance of the  
26 planned conveyance facilities.

27 59. The Delta Tunnel Project NOP states the probable significant environmental effects of  
28 the Project may include:

- Water Supply: changes in water deliveries.
- Surface Water: changes in river flows in the Delta.

- Groundwater: potential effects to groundwater levels during operation.
- Water Quality: changes to water quality constituents and/or concentrations from operation of facilities.
- Geology and Seismicity: changes in risk of settlement during construction.
- Soils: changes in topsoil associated with construction of the water conveyance facilities.
- Fish and Aquatic Resources: effects to fish and aquatic resources from construction and operation of the water conveyance facilities.
- Terrestrial Biological Resources: effects to terrestrial species due to construction of the water conveyance facilities.
- Land Use: incompatibilities with land use designations.
- Agricultural and Forestry Resources: preservation or conversion of farmland.
- Recreation: displacement and reduction of recreation sites.
- Ascetics and Visual Resources: effects to scenic views because of water conveyance facilities.
- Cultural and Tribal Cultural Resources: effects to archaeological and historical sites in tribal cultural resources.
- Transportation: vehicle miles traveled; effects on road and marine traffic.
- Public Services and Utilities: effects to regional or local utilities.
- Energy: changes to energy use from construction and operation of facilities.
- Air Quality and Greenhouse Gas: changes in criteria pollutant emissions and localized particulate matter from construction and greenhouse gas emissions.
- Noise: changes in noise and vibration from construction and operation of the facilities.
- Hazards and Hazardous Materials: potential conflicts with hazardous sites.
- Public Health: changes to surface water could potentially increase concerns about mosquito-borne diseases
- Mineral Resources: changes in availability of natural gas wells due to construction of the water conveyance facilities.
- Paleontology Resources: effects to paleontological resources due to excavation for borrow and for construction of tunnels and canals.
- Climate Change: increase resiliency to respond to climate change
- Growth Inducement and Other Indirect Effects: changes to land uses as a result of changes in water availability resulting from changes in water supply deliveries

(NOP 9-10.)

60. DWR did not prepare an EIR on the Project prior to adopting the Bond Resolutions and the Bond Resolutions were not accompanied by an EIR or any other CEQA documentation. DWR did not proceed in the manner required by CEQA, including Public Resources Code section 21102, when it adopted the subject Bond Resolutions without having first prepared and certified an accompanying EIR.

1 **DWR’s Adoption of the Bond Resolutions Unlawfully Limited the Choice of Alternatives Before**  
2 **Completion of CEQA compliance**

3 61. Postponing environmental analysis can permit bureaucratic and financial  
4 momentum to build behind a proposed project thereby providing an incentive to ignore environmental  
5 concerns. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.App.4th 116, 135.)

6 62. CEQA Guidelines section 15004(b)(2) provides that “public agencies shall not  
7 undertake actions concerning the proposed public project that would have a significant adverse effect  
8 or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance.”  
9 Section 15004(b)(2)(B) goes on to provide that public agencies shall not: “[o]therwise take any action  
10 which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or  
11 mitigation measures that would ordinarily be part of CEQA review of that public project.”

12 63. DWR’s adoption of the Bond Resolutions and other actions alleged above,  
13 unlawfully limits the choice of alternatives and gives impetus to the Delta Tunnel Project in a manner  
14 that forecloses alternatives that would ordinarily be part of CEQA review of the Project.

15 **Violation of CEQA Public Resources Code § 21065 and CEQA Guidelines § 15378**

16 64. DWR’s adoption of the Bond Resolutions constituted discretionary approvals of  
17 a “project” or “projects” as defined by CEQA, including Public Resources Code section 21065 and  
18 CEQA Guidelines section 15378.

19 65. DWR’s adoption of the Bond Resolutions is not within the exemptions set forth  
20 in CEQA Guidelines section 15378(b)(4), which states that “project” does not include, among other  
21 things:

22 The creation of government funding mechanisms or other government fiscal activities,  
23 which do not involve any commitment to any specific project which may result in a  
24 potentially significant physical impact on the environment.

25 66. CEQA Guidelines section 15378(b)(4) cannot create an exemption to the  
26 requirement for an EIR set forth in Public Resources Code section 21102.

27 67. Even if CEQA did not include Public Resources Code section 21102, DWR’s  
28 adoption of the Bond Resolutions involved sufficient commitment to a specific project, the Delta

1 Tunnel, which may result in a potentially significant physical impact on the environment, such that  
2 Guidelines section 15378(b)(4) does not exempt DWR from the requirements to have prepared an EIR  
3 prior to adopting the Bond Resolutions.

4 **Unlawful Deferral and Piecemealing**

5 68. CEQA prohibits the piecemealing or segmentation of environmental analysis through  
6 breaking down the parts of a single, larger project into smaller pieces to evade review of the whole  
7 project.

8 69. The deferral of preparation and circulation for public review and comment of a draft  
9 EIR and certification of a final EIR instead of completing the CEQA process before adopting the  
10 subject Bond Resolutions, constitutes unlawful deferral and unlawful piecemealing of the  
11 environmental analysis.

12 **SECOND CAUSE OF ACTION**

13 **(Declaratory Relief)**

14 70. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully  
15 set forth herein.

16 71. Petitioners contend that the adoption of the subject Bond Resolutions in the absence of  
17 an EIR violated CEQA. DWR denies these contentions.

18 72. An actual controversy has arisen and now exists between the Petitioners and DWR  
19 regarding their respective rights and duties under CEQA.

20 73. Petitioners desire a judicial determination and declaration of the parties' respective  
21 rights and duties pursuant to Code of Civil Procedure section 1060, including a declaration of whether  
22 DWR failed to proceed in the manner required by CEQA, when it adopted the subject Bond  
23 Resolutions. Such a declaration is necessary and appropriate at this time.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioners pray for relief as follows:

- 26 1. For alternative and peremptory writs of mandate, commanding Respondent DWR to:  
27 a. Rescind and set aside adoption of the Delta Program Revenue Bond  
28

1 Resolutions;

2           b.       Suspend any and all activity that can result in an adverse change or alteration to  
3 the physical environment, until Respondent has complied with all requirements of CEQA and all other  
4 applicable state and local laws and regulations as a directed by this Court pursuant to Public Resources  
5 Code section 21168.9;

6           2.       For a stay, temporary restraining order, preliminary injunction, and permanent  
7 injunction prohibiting any actions by Respondent that can result in any adverse change or alteration to  
8 the physical environment, until Respondent has fully complied with all requirements of CEQA;

9           3.       For a declaration that the adoption of the Bond Resolutions in the absence of any  
10 CEQA documentation is prohibited by CEQA;

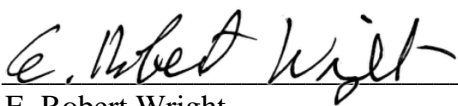
11           4.       For costs of suit;

12           5.       For attorney's fees pursuant to law including Code of Civil Procedure section 1021.5;  
13 and

14           6.       For such other and further relief as the Court deems just and proper.

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19  
20 DATED: October 27, 2020

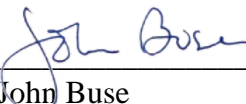
E. Robert Wright  
SIERRA CLUB CALIFORNIA

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24 By:   
25 E. Robert Wright  
26 Attorney for Petitioner/Plaintiffs  
27 Sierra Club, Planning and Conservation League, and  
28 Restore the Delta

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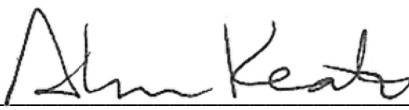
DATED: October 27, 2020

John Buse  
CENTER FOR BIOLOGICAL DIVERSITY

By:   
\_\_\_\_\_  
John Buse  
Ross Middlemiss  
Attorneys for Petitioners/Plaintiffs Center for Biological  
Diversity and Friends of Stone Lakes National  
Wildlife Refuge

DATED: October 27, 2020

Adam Keats  
LAW OFFICE OF ADAM KEATS, PC

By:   
\_\_\_\_\_  
Adam Keats  
Attorney for Petitioners/Plaintiffs Restore the Delta  
and Planning and Conservation League

## Verification

I, Adam Keats, am counsel of record for Petitioners Planning and Conservation League and Restore the Delta. I am signing this verification due to Petitioners' absence from the county of San Francisco, and because facts in the petition are within my knowledge. I have read the foregoing Petition and Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matter that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27<sup>th</sup> day of October, 2020, in San Francisco, California.

A handwritten signature in black ink that reads "Adam Keats". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Adam Keats

# **Exhibit A**





***Via FedEx***

October 27, 2020

California Dept. of Water Resources  
1416 9th Street  
Sacramento, CA 95814

**Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act**

Dear California Department of Water Resources,

The Sierra Club, Center for Biological Diversity, Planning and Conservation League, Restore the Delta, and Friends of Stone Lakes National Wildlife Refuge (“Petitioners”) intend to commence an action for writ of mandate to vacate and set aside the decision of the California Department of Water Resources (“Respondent”) to adopt its Delta Program Revenue Bond General Bond Resolution (No. DWR-DPRB-1), First Supplemental Resolution Providing for the Issuance of Delta Program Revenue Bonds Series A (No. DWR-DPRB-2), and its Second Supplemental Resolution Providing for the Issuance of Delta Program Revenue Bonds Series B (DWR-DPRB-3). Petitioners submit this notice pursuant to Public Resources Code section 21167.5.

The action will commence on or after October 27, 2020 and will be based upon Respondent’s failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the aforementioned resolutions and authorizing the bonds associated therewith.

Sincerely,

John Buse  
Senior Attorney  
Center for Biological Diversity

Enclosure: Verified Petition for Writ of Mandate

# **EXHIBIT B**

1 E. Robert Wright (SBN 51861)  
2 Sierra Club California  
3 909 12<sup>th</sup> Street, Suite 202  
4 Sacramento, CA 95814  
5 Tel: (916) 557-1104  
6 Fax: (916) 557-9669  
7 Email: bwrightatty@gmail.com

8 *Attorney for Petitioners and Plaintiffs*  
9 *Sierra Club, Planning and Conservation*  
10 *League and Restore the Delta*

11 *(Additional counsel on following pages)*

12  
13 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 Sierra Club; Center for Biological Diversity;  
16 Planning and Conservation League; Restore the  
17 Delta; and Friends of Stone Lakes National  
18 Wildlife Refuge,

19 Petitioners and Plaintiffs,

20 vs.

21 California Department of Water Resources; and  
22 DOES 1-20,

23 Respondents and Defendants,

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Real Parties in Interest.

Case No.:

**PETITIONERS' NOTICE OF ELECTION  
TO PREPARE THE ADMINISTRATIVE  
RECORD**

[Pub. Res. Code § 21167.6]

**CEQA CASE**

Action Filed: October 27, 2020

1 ***Additional counsel:***

2  
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13 *National Wildlife Refuge*

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21 *Attorney for Petitioners and Plaintiffs Planning and Conservation*  
22 *League and Restore the Delta*

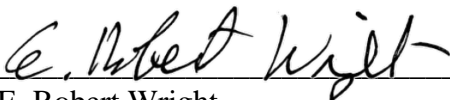
1                   **TO RESPONDENTS CALIFORNIA DEPARTMENT OF WATER RESOURCES:**

2                   In the above-captioned action (the “Action”), Petitioners and Plaintiffs Sierra Club, Center for  
3 Biological Diversity, Planning and Conservation League, Restore the Delta, and Friends of Stone  
4 Lakes National Wildlife Refuge (“Petitioners”) petition this Court for a Writ of Mandate, directed to  
5 the California Department of Water Resources (“Respondent”). Petitioners challenge Respondent’s  
6 August 6, 2020 adoption of bond resolutions approving the issuance of Delta Program Revenue  
7 Bonds. Petitioners seek a determination that Respondent’s adoption of the bond resolutions is invalid  
8 and void and fails to satisfy the requirements of the California Environmental Quality Act (“CEQA”),  
9 Public Resources Code section 21000 *et seq.*, and the CEQA Guidelines, Title 14, California Code of  
10 Regulations, section 15000 *et seq.*

11                   Pursuant to Public Resources Code section 21167.6(b)(2), Petitioners hereby elects to prepare  
12 the record of proceedings related to the Action, or to pursue an alternative method of record  
13 preparation following further discussion with Respondent. The record will be organized  
14 chronologically, paginated consecutively, and indexed so that each document may be clearly identified  
15 as to its contents and source, in a form and format consistent with California Rules of Court, Rule  
16 3.2205. Petitioners will include in the record of proceedings all documents, including transcripts,  
17 minutes of meetings, notices, correspondence, reports, studies, proposed decisions, final drafts, and  
18 any other documents or records relating to Respondent’s determination to adopt the bond resolutions  
19 and issue the Delta Program Revenue Bonds.

20  
21 DATED: October 27, 2020

E. Robert Wright  
SIERRA CLUB CALIFORNIA

22  
23 By:   
24 E. Robert Wright  
25 Attorney for Petitioner/Plaintiffs  
26 Sierra Club, Planning and Conservation League, and  
27 Restore the Delta

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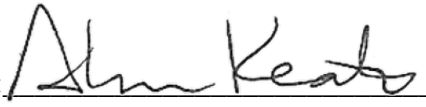
John Buse  
CENTER FOR BIOLOGICAL DIVERSITY

By:  \_\_\_\_\_

John Buse  
Ross Middlemiss  
Attorneys for Petitioners/Plaintiffs Center for Biological  
Diversity and Friends of Stone Lakes National  
Wildlife Refuge

DATED: October 27, 2020

Adam Keats  
LAW OFFICE OF ADAM KEATS, PC

By:  \_\_\_\_\_

Adam Keats  
Attorney for Petitioners/Plaintiffs Restore the Delta  
and Planning and Conservation League