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13 PROTECTION ALLIANCE

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA SPORTFISHING
16 PROTECTION ALLIANCE,
17 CALIFORNIA WATER IMPACT
18 NETWORK, AQUALLIANCE,
19 RESTORE THE DELTA, non-profit
20 corporations,

21 Plaintiffs/Petitioners.

22 vs.

20 UNITED STATES BUREAU OF
21 RECLAMATION, a federal agency,
22 SALLY JEWELL, in her capacity as the
23 SECRETARY OF THE UNITED
24 STATES DEPARTMENT OF THE
25 INTERIOR,

26 Defendants/Real Parties in
27 Interest.

25 THOMAS HOWARD, in his official
26 capacity as the Executive Director of the
27 CALIFORNIA STATE WATER
28 RESOURCES CONTROL BOARD, a
state agency; FELICIA MARCUS, in her
official capacity; FRANCES SPIVY-
WEBER, in her official capacity; TAM

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; PETITION FOR WRIT
OF MANDATE

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(Administrative Procedures Act, 5 U.S.C.
§§ 701-706; Verified Petition for Writ of
Mandate, Code Civ. Proc., § 1094.5;
Water Code § 13330)**

1 M. DUDOC, in her official capacity;
2 STEVEN MOORE, in his official
capacity, and DORENE D'ADAMO, in
her official capacity,

3 Defendants/ Real Parties in
4 Interest/Respondents.

5 CALIFORNIA DEPARTMENT OF
WATER RESOURCES, a state agency,

6 Defendant/Real Party in
7 Interest.

8 Plaintiffs/Petitioners CALIFORNIA SPORTFISHING PROTECTION ALLIANCE,
9 CALIFORNIA WATER IMPACT NETWORK, AQUALLIANCE and RESTORE THE
10 DELTA (collectively "Plaintiffs" or "Petitioners") bring this action on their behalf and on
11 behalf of their members and, on information and belief, hereby seek declaratory and
12 injunctive relief under the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701-706,
13 and petition this court for a Writ of Mandate under California Code of Civil Procedure
14 ("CCP") §1094.5:

15 I. INTRODUCTION

16 1. On January 23, 2015, the California Department of Water Resources
17 ("DWR") and the United States Bureau of Reclamation (the "Bureau") jointly applied to the
18 State Water Resources Control Board ("State Board") for a Temporary Urgency Change
19 Petition ("TUCP") requesting temporary modification of requirements included in the State
20 Board's Revised Decision 1641 ("D-1641") to meet water quality standards or objectives in
21 the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta
22 ("Bay-Delta Plan") applicable to licenses and permits held by DWR and the Bureau.
23 Specifically, the TUCP requests modifications to water right requirements to meet the Delta
24 outflow, San Joaquin River flow, Delta Cross Channel ("DCC") Gate closure, and water
25 export limits objectives.

26 2. On February 3, 2015, the State Board issued an order approving in part and
27 denying in part the TUCP (the "Order" or "February 3, 2015 Order").

28 3. The Order cites as authority for relaxing water quality standards otherwise

1 legally applicable to DWR and the Bureau, a waiver of California Water Code § 13247 by
2 California Governor Edmund G. Brown, Jr. in his emergency proclamations and executive
3 orders, stating “[a]bsent suspension of section 13247, the State Water Board could not
4 approve a change petition that modifies the permits and licenses in a way that does not
5 provide for full attainment of water quality objectives in the Bay-Delta Plan, even during a
6 drought emergency.” (February 3, 2015 Order, at p. 13.)

7 4. California Water Code section 13247 only applies to state agencies, and
8 therefore a waiver of section 13247 is inapplicable to federal agencies, such as the Bureau.
9 Accordingly, Defendant Bureau is under a legal obligation to continue to comply with all
10 applicable water quality standards.

11 5. By applying for and operating the Central Valley Project in accordance with
12 the TUCP, the Bureau acted and continues to act arbitrarily and capriciously in a manner not
13 in accordance with law because it is not complying with applicable water quality standards
14 found in the Bay-Delta Plan, Title 40, Code of Federal Regulations (“CFR”), section 131.37,
15 D-1641, and the Central Valley Project Improvement Act, Public Law 102-575 (“CVPIA”).

16 6. Plaintiffs bring the First Cause of Action pursuant to the Administrative
17 Procedures Act, 5 U.S.C. §§ 701-706, seeking a declaration from the Court that Defendant
18 Bureau must comply with all applicable water quality standards found in the Bay-Delta Plan,
19 40 CFR § 131.37, D-1641, and the CVPIA, and that the February 3, 2015 Order’s purported
20 waiver of standards applicable to the Bureau is without authority or effect.

21 7. Plaintiffs bring the Second Cause of Action pursuant to the Administrative
22 Procedures Act APA, 5 U.S.C. §§ 701-706, seeking a declaration from the Court that
23 Defendant Bureau did violate and continues to violate applicable salinity and flow-based
24 water quality standards found in the Bay-Delta Plan, 40 CFR § 131.37, D-1641, and the
25 CVPIA. Plaintiffs seek to enjoin the Bureau from further violating water quality standards.

26 8. Plaintiffs/Petitioners bring the Third Cause Action as a pendant State claim
27 petitioning the Court to issue a writ of mandate pursuant to CCP §1094.5 directing the State
28 Board to set aside the State Board’s February 3, 2015 Order in the matter of specific licenses

1 and permits of Real Parties in Interest DWR and the Bureau because the State Board’s Order
2 is inconsistent with the requirements of the Federal Water Pollution Control Act (the “Clean
3 Water Act” or “the Act”) and its implementing regulations; the Delta Protection Act of 1959;
4 the federally promulgated Estuarine Habitat Criteria for the Bay/Delta estuary at 40 CFR
5 131.37; the Striped Bass spawning criteria between 1 April and 31 May; the Suisun Marsh
6 criteria; the Public Trust Doctrine and California case law; Article 10, Section 2 of the
7 California Constitution; the California Water Code, Code § 1435; SWRCB D-1641; SWRCB
8 D-990; the California Endangered Species Act; Section 5937 of the California Fish & Game
9 Code; Section 7 of the Federal Endangered Species Act; the Federal CVPIA doubling
10 standard for salmon and steelhead; the Governor’s 2014 Declaration of Drought Emergency;
11 Plaintiffs’/Petitioners’ due process rights under both the state and federal constitution;
12 State Water Resources Control Board Resolution 68-16 (Oct. 24, 1968)) (“State Anti-
13 degradation Policy”), the Porter-Cologne Water Quality Control Act (“Porter-Cologne”),
14 California Water Code § 13000, *et seq.* (“Water Code”), the Bay-Delta Plan, the CVPIA, and
15 Title 27 of the California Code of Regulations (“CCR”) § 20090.

16 II. THE PARTIES

17 PLAINTIFFS/PETITIONERS

18 9. CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”) is a
19 California non-profit public benefit organization with its principal place of business in
20 Stockton, California. CSPA’s organizational purpose is the protection, preservation, and
21 enhancement of fisheries and associated aquatic and riparian ecosystems of California’s
22 waterways, including Central Valley rivers leading into the Bay-Delta. This mission is
23 implemented through active participation in water rights and water quality processes,
24 education and organization of the fishing community, restoration efforts, and vigorous
25 enforcement of environmental laws enacted to protect fisheries, habitat and water quality.
26 Members of CSPA reside along the Central Valley watershed and in the Bay-Delta where
27 they view, enjoy, and routinely use the Delta ecosystem for boating, fishing, and wildlife
28 viewing. CSPA’s members derive significant and ongoing use and enjoyment from the

1 aesthetic, recreational, and conservation benefits of the Bay-Delta ecosystem. CSPA and its
2 members have been involved in the administrative proceedings that have been provided to
3 date for the TUCPs, including attending meetings and providing written and oral comments.

4 10. CALIFORNIA WATER IMPACT NETWORK (“C-WIN”) is a California
5 non-profit public benefit organization with its principal place of business in Santa Barbara,
6 California. C-WIN’s organization purpose is the protection and restoration of fish and
7 wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and
8 other natural environmental resources and uses of the rivers and streams of California,
9 including the Bay-Delta, its watershed and its underlying groundwater resources. C-WIN has
10 members who reside in, use, and enjoy the Bay-Delta and inhabit and use its watershed.
11 They use the rivers of the Central Valley and the Bay-Delta for nature study, recreation, and
12 aesthetic enjoyment. C-WIN and its members have been involved in the administrative
13 proceedings that have been provided to date for the TUCPs, including attending meetings
14 and providing written and oral comments.

15 11. AQUALLIANCE (“AquAlliance”) is a California public benefit corporation
16 organized to protect Northern California’s waters to sustain family farms, recreational
17 opportunities, vernal pools, creeks, rivers, and the Bay-Delta estuary. AquAlliance has
18 members who regularly use the waters of the Delta and its tributaries for recreation,
19 including kayaking, paddling, fishing, and wildlife viewing. AquAlliance members also
20 routinely participate in conservation activities in and around the Bay-Delta estuary and its
21 tributary vernal pools, creeks, and rivers. AquAlliance and its members have been involved
22 in the administrative proceedings that have been provided to date for the TUCPs, including
23 attending meetings and providing written and oral comments.

24 12. RESTORE THE DELTA (“RTD”) is a non-profit public benefit organization
25 based in Stockton, California. RTD is a coalition of Delta residents, business leaders, civic
26 organizations, community groups, faith-based communities, union locals, farmers,
27 fishermen, and environmentalists seeking to strengthen the health of the Bay-Delta estuary
28 and to protect the economic interests of the Sacramento-San Joaquin Delta, including but not

1 limited to fishing, farming, recreation, and tourism. With over 10,000 members statewide,
2 RTD advocates on behalf of local Delta stakeholders to ensure that water management
3 decisions will protect and benefit Delta communities. Members of RTD reside in and along
4 the Bay-Delta and its watershed and use the waters of the Central Valley and Bay-Delta for
5 aesthetic, recreational, and educational enjoyment. RTD and its members have been involved
6 in the administrative proceedings that have been provided to date for the TUCPs, including
7 attending meetings and providing written and oral comments.

8 13. Plaintiffs' members reside in and around the Bay-Delta, and enjoy using the
9 Bay-Delta for recreation and other activities. Plaintiffs' members use and enjoy the waters
10 for which the Bureau, as authorized by the State Board, is causing, and will continue to cause
11 exceedances of water quality standards. Plaintiffs' members use those areas to fish, sail,
12 boat, kayak, swim, bird watch, view wildlife, and engage in scientific study including
13 monitoring activities, among other things. The Bureau's ongoing violations of water quality
14 standards impair each of those uses or contribute to such threats and impairments. Thus, the
15 interests of Plaintiffs' members have been, are being, and will continue to be adversely
16 affected by the Bureau's failure to comply with the law. The relief sought herein will redress
17 the harms to Plaintiffs caused by the Bureau's activities, as authorized by the State Board.

18 14. Plaintiffs have exhausted all of the administrative remedies available from the
19 State Board. Plaintiffs submitted oral and written comments to the State Board during the
20 administrative process conducted for the approval of the TUCP. Plaintiffs' or others'
21 comments in the above proceedings raised each of the claims alleged in this complaint
22 during this administrative process.

23 15. Although there is no administrative process available to Plaintiffs to redress the
24 Bureau's effort to avoid complying with applicable water quality standards or its violations
25 of those standards, Plaintiffs nevertheless raised their concerns about the Bureau's violations
26 before the State Board.

27 16. Continuing commission of the acts and omissions alleged herein will
28 irreparably harm Plaintiffs and their members, for which harm they have no plain, speedy, or

1 adequate remedy at law.

2 **DEFENDANTS/RESPONDENTS/REAL PARTIES IN INTEREST**

3 17. Defendant and Real Party in Interest United States Bureau of Reclamation (the
4 “Bureau”) is a federal agency within the United States Department of the Interior. The
5 Bureau oversees and operates water diversion, delivery, and storage projects throughout the
6 western United States. The Bureau supervises and operates nearly all of the storage and
7 conveyance facilities of the Central Valley Project (“CVP”).

8 18. Defendant and Real Party in Interest Sally Jewell is the Secretary of the United
9 States Department of the Interior, and responsible for overseeing the Bureau and its
10 operation of the Central Valley Project.

11 19. Defendant and Real Party in Interest California Department of Water
12 Resources (“DWR”) is a state agency created under the laws and regulations of the State of
13 California. DWR operates the State Water Project, in tandem with the federal CVP.

14 20. Respondent Thomas Howard is the Executive Director of the State Water
15 Resources Control Board. Mr. Howard, in his capacity as Executive Director is the official
16 that issued the February 3, 2015 Order. The Executive Director, among other duties, is
17 responsible for reviewing and approving TUCPs, including the TUCP at issue herein.
18 Felicia Marcus, Frances Spivy-Weber, Tam M. Dudoc, Steven Moore and Dorene D’Adamo,
19 are the sitting Board members of the California State Water Resources Control Board
20 (collectively “State Board”). The Board members of the State Board constitute the
21 governing body of the State Board, a state agency created under the laws and regulations of
22 the State of California; the State Board is qualified to regulate, and is engaged in the
23 regulation of, water quality within the State of California. When requested, the State Board
24 has authority to review and approve or disapprove, in whole or in part, the Executive
25 Director’s decisions on a TUCP.

26 **III. JURISDICTION AND VENUE**

27 21. Jurisdiction over the first two causes of action is conferred by 28 U.S.C. §
28 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2201

1 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief) and the Administrative Procedures
2 Act, 5 U.S.C. §§ 701-706.

3 22. There exists now between the parties hereto an actual, justiciable controversy
4 in which Plaintiffs are entitled to have a declaration of their rights and of the Defendants'
5 obligations, and further relief, because of the facts and circumstances set forth below.

6 23. Jurisdiction over the third cause of action, a petition for writ of mandate, is
7 proper pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction). This claim arises out of a
8 common nucleus of fact with the first and second causes of action. Plaintiffs/Petitioners
9 bring the Third Cause of Action as a Petition for Writ of Mandate pursuant to sections
10 1094.5 and 1094.6 of the California Code of Civil Procedure and California Water Code §§
11 1435(b), 1439.

12 24. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e).
13 Pursuant to Local Rule 120(d), intra-district venue is proper in Sacramento, California
14 because the locations of the violations are within Sacramento and Solano Counties.

15 25. Under California law, a party that has participated in the regulatory process
16 may subsequently challenge the final agency action in court. (California Water Code §
17 13330, subs. (a)-(b).)

18 26. Plaintiffs/Petitioners are parties that actively participated in the review of the
19 February 3, 2015 Order. Plaintiffs/Petitioners raised each of the issues included herein
20 before the State Board during its administrative proceedings on the Order and subsequent
21 proceedings.

22 27. This complaint is timely filed within the applicable statute of limitations.

23 **IV. PROCEDURAL BACKGROUND**

24 28. On January 17, 2014, Governor Brown issued a Drought Emergency
25 Proclamation ("January 17, 2014 Proclamation") that, among other things, directed the State
26 Water Board to: (a) consider petitions requesting consolidation of the places of use of the
27 State Water Project ("SWP") and Central Valley Project ("CVP"); and (b) consider
28 modifying requirements for reservoir releases or water diversion limitations, where existing

1 requirements were established to implement a water quality control plan.

2 29. For purposes of carrying out the Governor's directives, the January 17, 2014
3 Proclamation suspends California Water Code section 13247 and Division 13 (commencing
4 with section 21000) of the Public Resources Code and regulations adopted pursuant to that
5 Division on the basis that strict compliance with them will prevent, hinder, or delay the
6 mitigation of the effects of the emergency.

7 30. On April 25, 2014, the Governor issued a Proclamation of a Continued State of
8 Emergency ("April 25, 2014 Proclamation"). The April 25, 2014 Proclamation states that
9 the provisions contained in the January 17, 2014 Proclamation remain in full force and
10 effect.

11 31. On December 22, 2014, Governor Brown issued Executive Order B-28-14,
12 which extended the suspension of California Water Code section 13247 contained in the
13 January 17, 2014 and April 25, 2014 Proclamations through May 31, 2016.

14 32. On January 23, 2015, DWR and the Bureau jointly filed a Temporary Use
15 Change Petition ("TUCP") pursuant to California Water Code section 1435 et seq., to
16 temporarily modify requirements in their water right permits and license for the SWP and
17 CVP.

18 33. The TUCP requested temporary modification of requirements included in State
19 Water Resources Control Board Revised Decision 1641 ("D-1641") to meet water quality
20 objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San
21 Joaquin Delta Estuary ("the Bay-Delta Plan").

22 34. Specifically, the TUCP requests modifications to water right requirements to
23 meet the Delta outflow, San Joaquin River flow, Delta Cross Channel (DCC) Gate closure,
24 and export limits objectives.

25 35. On January 27, 2015, Respondent Tom Howard issued a notice of the TUCP
26 and notice of public workshop.

27 36. On February 3, 2015, Respondent Tom Howard issued an order approving in
28 part and rejecting in part the TUCP, subject to specified terms and conditions ("Order" or

1 “February 3, 2015 Order”).

2 37. The Order amends the requirements of Decision 1641 (“D-1641”) for DWR
3 and the Bureau to meet specified water quality objectives by:

4 (a) modifying the minimum Delta outflow levels, such that the minimum Net
5 Delta Outflow Index (“NDOI”) described in Figure 3 of D-1641 during the months of
6 February and March shall be no less than 4,000 cubic-feet per second (“CFS”) on a monthly
7 average, such that the 7-day running average shall not be less than 1,000 CFS below the
8 monthly average, and such that a higher pulse flow may be required through a consultation
9 process with designated representatives from the State Board, the United States Department
10 of Fish and Wildlife, the United States National Marine Fisheries Service and the United
11 States Fish and Wildlife Service (“Fisheries Agencies”) concerning current conditions and
12 potential changes to SWP and CVP operations;

13 (b) modifying the San Joaquin River Flow requirements at Airport Way Bridge, in
14 Vernalis such that the minimum flow rate during the months of February and March shall be
15 no less than 500 CFS on a monthly average;

16 (c) modifying the Delta Cross Channel (“DCC”) Gate Closure requirements
17 specified in Table 3 of D-1641 such that the DCC Gates may be opened during the months of
18 February and March as necessary to preserve limited storage in upstream reservoirs and
19 reduce infiltration of high salinity water into the Delta while reducing impacts to migrating
20 Chinook salmon;

21 (d) modifying the maximum Export Limits specified in Table 3 of D-1641 such
22 that when precipitation and runoff events occur that allow the DCC Gates to be closed and
23 Footnote 10 of Table 3 of D-1641 is being met, but any additional Delta outflow
24 requirements contained in Table 4 of D-1641 are not being met, then exports of natural and
25 abandoned flows are permitted up to D-1641 Export Limits contained in Table 3 at the SWP
26 Banks Pumping Plant and the CVP Jones Pumping Plant; and,

27 (e) modifying the maximum Export Limits specified in Table 3 of D-1641 such
28 that when an NDOI of at least 7,100 CFS is not being met as specified in the Order or the

1 DCC Gates are open, the combined maximum exports at the SWP Banks Pumping Plant and
2 the CVP Jones Pumping Plant shall be no greater than 1,500 CFS.

3 38. On February 13, 2015, within 30 days of the February 3, 2015 Order as
4 required under California Water Code section 1126(b), Plaintiffs/Petitioners CSPA, C-WIN
5 and AquAlliance filed with the State Board's Division of Water Rights a Protest, Objection,
6 Petition for Reconsideration and Petition for Hearing ("CSPA Protest") challenging the
7 TUCP based on environmental and public trust considerations. The CSPA Protest can be
8 downloaded at [http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments_tucp2015/docs/cspa_shutes021315.pdf)
9 [/comments_tucp2015/docs/cspa_shutes021315.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments_tucp2015/docs/cspa_shutes021315.pdf) and is hereby incorporated by reference.

10 39. On February 13, 2015, within 30 days of the February 3, 2015 Order as
11 required under Water Code section 1126(b), Plaintiff/Petitioner RTD filed with the State
12 Board's Division of Water Rights a Protest, Objection, Petition for Reconsideration and
13 Petition for Hearing ("Restore the Delta Protest") against the TUCP based on environmental
14 and public trust considerations. The Restore The Delta Protest can be downloaded at
15 [http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments_tucp2](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments_tucp2015/docs/rtd_stroshane021315.pdf)
16 [015/docs/rtd_stroshane021315.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments_tucp2015/docs/rtd_stroshane021315.pdf) and is hereby incorporated by reference.

17 40. On February 18, 2015, the State Board held a workshop on this matter and
18 received public comment and input on the January 15, 2015 Drought Contingency Plan, the
19 TUCP request, the Order, and any potential future TUCPs.

20 41. Pursuant to California Water Code section 1122 and 1126(b) the State Board
21 had 90 days from the date of the February 3, 2015 Order to act on the CSPA and Restore the
22 Delta Protests, and did not exercise its authority. Accordingly, this Complaint is timely filed
23 within 30 days following the expiration of the 90-day period for reconsideration.

24 V. STATUTORY BACKGROUND

25 ADMINISTRATIVE PROCEDURES ACT

26 42. The First and Second Causes of Action are brought under the judicial review
27 provisions of the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701-706.

28 43. The APA provides that "[a] person suffering legal wrong because of agency

1 action, or adversely affected or aggrieved by agency action within the meaning of a relevant
2 statute, is entitled to judicial review thereof.” (5 U.S.C. § 702.)

3 44. Under the APA, “agency action” “includes the whole or a part of an agency
4 rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” (5
5 U.S.C. § 551(13).) The Bureau is an agency of the Government of the United States as that
6 term is defined in the APA, 5 U.S.C. § 701(b)(1). Defendant and Real Party in Interest Sally
7 Jewell is the Secretary of the United States Department of the Interior, an agency of the
8 Government of the United States as that term is defined in the APA. 5 U.S.C. § 701(b)(1).

9 **WRIT OF MANDAMUS, California Code of Civil Procedure § 1094.5**

10 45. The Third Cause of Action (Petition for Writ of Mandamus pursuant to
11 California Code of Civil Procedure § 1094.5, seeks judicial review of the State Board’s
12 issuance of the February 3, 2015 Order. Plaintiffs’/Petitioners’ authority to challenge
13 Respondents’ decisions in this Court is provided under Water Code § 1126(b). Actions
14 arising under § 1126(b) of the California Water Code are governed by California Code of
15 Civil Procedure § 1094.5. (California Water Code § 1126, subd.(c).)

16 46. California Code of Civil Procedure § 1094.5(b) provides that “[t]he inquiry in
17 such a case shall extend to the questions whether the respondent has proceeded without, or in
18 excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial
19 abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in
20 the manner required by law, the order or decision is not supported by the findings, or the
21 findings are not supported by the evidence.”

22 47. Any party aggrieved by an order of the State Board may obtain review of the
23 order by filing a petition for writ of mandate not later than 30 days from the date on which
24 the State Board issues the order. (California Water Code § 1126, subd. (b)).

25 48. Where a petition for reconsideration of the order is filed, the time for filing the
26 writ of mandate is extended. (California Water Code § 1126(b).)

27 49. The Order is an order within the meaning of California Water Code § 1126(b).

28

1 50. Plaintiffs/Petitioners are “aggrieved part[ies]” within the meaning of California
2 Water Code § 1126(b). Plaintiffs/Petitioners actively participated in the issuance of the
3 Order, including the timely submission of comments and oral testimony to the State Board’s
4 Executive Officer and the State Board. Petitioners have a beneficial interest in an order
5 requiring the Executive Director or the State Board to set aside the Order in conformance
6 with all requirements of the California Water Code. Plaintiffs/Petitioners are interested in
7 having the laws properly executed and Respondents’ duties properly performed so that the
8 public’s right to, and interest in, environmental protection is fully secured.

9 51. The Third Cause of Action (Petition for Writ of Mandate) is timely filed within
10 30 days of the State Board’s failing to act on the CSPA Protest and Restore the Delta Protest
11 within 90 days of issuance of the Order.

12 52. By making findings pursuant to California Water Code Section 1435(b) that
13 are not supported by evidence, the State Board has committed an abuse of discretion in
14 issuing the Order. Therefore, Petitioner requests that the Order be set aside and re-issued in
15 accordance with the correct procedures as described herein.

16 **CLEAN WATER ACT AND THE BAY-DELTA PLAN**

17 53. The Federal Water Pollution Control Act (“Clean Water Act”) is a federal law
18 that directs the states to adopt water quality standards to protect and enhance the quality of
19 water within the state. (33 U.S.C. § 1313.)

20 54. The water quality standards must incorporate: 1) a designated use for each
21 navigable body of water, and 2) water quality criteria needed to ensure the reasonable
22 protection of each designated beneficial use. 33 U.S.C. § 1313(c)(2). These water quality
23 standards are found in water quality control plans.

24 55. State and Federal agencies are required to comply with water quality control
25 plans. (California Water Code § 13247; CVPIA § 3402(b).)

26 56. California Water Code section 13247 requires state agencies, including the
27 State Board and DWR, to comply with water quality control plans unless otherwise directed

1 or authorized by statute. California Water Code section 13247 is inapplicable to federal
2 agencies, including the Bureau.

3 57. The Clean Water Act and the Central Valley Project Improvement Act require
4 the Bureau to comply with all state water quality control plans. (33 U.S.C. § 1323(a); CVPIA
5 § 3402(b).)

6 58. Pursuant to the Clean Water Act, the State Board adopted a Water Quality
7 Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary in 1978, and
8 amended that plan in 1991, 1995, and again in 2006 (collectively, the “Bay-Delta Plan”).

9 59. The Bay-Delta Plan consists of: (1) beneficial uses to be protected; (2) water
10 quality objectives for the reasonable protection of beneficial uses; and (3) a program of
11 implementation for achieving the water quality objectives. The beneficial uses and water
12 quality objectives established to reasonably protect the beneficial uses are called water
13 quality standards under the Clean Water Act.

14 60. State Board Decision 1641 (“D-1641”), which was issued in December 1999
15 and revised in March 2000, is part of the State Board’s implementation of the Bay-Delta
16 Plan, and provides additional directives for meeting the water quality objectives of the Bay-
17 Delta Plan.

18 61. In addition to California-adopted water quality standards, 40 C.F.R. §
19 131.22(b) allows the EPA to promulgate new or revised water quality standards after
20 determining that such a standard is necessary to meet the requirements of the Clean Water
21 Act. Pursuant to that authority, EPA has promulgated standards that are more protective
22 than the state law standards for the Bay-Delta Estuary (the “EPA Promulgated Bay-Delta
23 Standards”). 40 C.F.R. 131.37.

24 **CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

25 62. The Central Valley Project Improvement Act, Pub. L. No. 102-575, 106 Stat.
26 4600, (1992), was passed in 1992 “[t]o address impacts of the Central Valley Project on fish,
27 wildlife and associated habitats.” (Section 3402(b).)

1 63. Section 3406(b) of the CVPIA directs the Secretary of the Interior to operate
2 CVP “to meet all obligations under state and federal law...and all decisions of the California
3 State Water Resources Control Board establishing conditions on applicable licenses and
4 permits for the project.” (Public Law 102-575, section 3406(b).)

5 64. The CVPIA further provides that the Secretary of the Interior “is authorized
6 and directed to modify Central Valley Project operations to provide flows of suitable quality,
7 quantity, and timing to protect all life stages of anadromous fish...” (3406(b)(1)(B).)

8 65. Section 3406(b)(2) directs the Secretary of the Interior to “dedicate and
9 manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose
10 of implementing the fish, wildlife, and habitat restoration purposes and measures authorized
11 by this title” and “to assist the State of California in its efforts to protect the waters of the
12 San Francisco Bay/Sacramento-San Joaquin Delta Estuary.”

13 66. Pursuant to Section 3406(b)(7) of the CVPIA, the Secretary of the Interior is
14 required to “[m]eet flow standards and objectives and diversion limits set forth in all laws
15 and judicial decisions that apply to Central Valley Project facilities, including, but not
16 limited to, provisions of this title and all obligations of the United States under the
17 ‘Agreement Between the United States and the Department of Water Resources of the State
18 of California for Coordinated Operation of the Central Valley Project and the State Water
19 Project’ dated May 20, 1985, as well as Pub. L. 99-546.”

20 **DELTA PROTECTION ACT OF 1959**

21 67. The Delta Protection Act of 1959 requires that salinity in the Delta be
22 controlled before DWR and the Bureau can export any water from the Delta. Water Code §§
23 12200-12205. The Delta Protection Act prohibits project exports from the Delta until
24 necessary water is provided for salinity control. California Water Code §§ 12202, 12204;
25 *U.S. v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 139.

1 **VI. STATEMENT OF FACTS**

2 **Central Valley Project (“CVP”) and State Water Project (“SWP”) Background**

3 68. The CVP is a federal water management project in California, under the
4 supervision and operation of the Bureau. The CVP is located in and/or diverts water to and
5 from the watershed of the Sacramento and Joaquin Rivers and tributaries.

6 69. The watershed of the Bay-Delta Estuary is a source of water for much of the
7 State of California, providing water used for municipal, agricultural, and environmental
8 purposes.

9 70. The SWP, operated by DWR, and the federally managed CVP, operated by the
10 Bureau, are water management projects that work together to release previously-stored water
11 into the Delta and divert natural flows. The water diverted by the SWP and CVP in the Delta
12 is exported to areas south and west of the Delta through a system of water conveyance
13 facilities including canals, aqueducts, and pump stations. Many of the CVP pumps are
14 shared with the SWP.

15 71. The waterways that make up the Bay-Delta Estuary and its tributaries are also
16 used by fish and wildlife, and have other public trust values. The Bay-Delta Estuary is one
17 of the largest ecosystems for fish and wildlife habitat and production in the United States.
18 Many of the fish that live in or migrate through the estuary are protected under the state and
19 federal Endangered Species Act.

20 **Long-standing Plight of the Bay-Delta’s Anadromous and Pelagic Fisheries**

21 72. Historical and current human activities have degraded the beneficial uses of the
22 Bay-Delta estuary, as evidenced by the declines in populations of many of the biological
23 resources of the Bay-Delta.

24 73. Species that are listed or proposed to be listed, pursuant to state and federal
25 Endangered Species Acts, and that depend upon the Bay-Delta for all or a critical part of
26 their life cycle include: southern Distinct Population Segment (DPS) of green sturgeon
27 (*Acipenser medirostris*), federal threatened, candidate for federal endangered; Delta smelt
28 (*Hypomesus transpacificus*), state endangered, federal threatened, Longfin smelt (*Spirinchus*

1 *thaleichthys*), state threatened, candidate for federal threatened; Central Valley steelhead
2 (*Oncorhynchus mykiss*), federal threatened; Sacramento winter-run Chinook salmon
3 (*Oncorhynchus tshawytscha*), state endangered, federal endangered; Central Valley spring-
4 run Chinook salmon (*Oncorhynchus tshawytscha*), state threatened, federal threatened;
5 Central Valley fall/late-fall-run Chinook salmon (*Oncorhynchus tshawytscha*), federal
6 species of concern, state species of special concern; Sacramento splittail (*Pogonichthys*
7 *macrolepidotus*), state species of special concern; Pacific lamprey (*Entosphenus tridentate*),
8 federal species of concern and river lamprey (*Lampetra ayresi*), state species of special
9 concern. The CVP and SWP also have potential to adversely affect southern resident killer
10 whales or Orcas (*Orcinus orca*), which are federal listed as endangered because they are
11 dependent upon Chinook salmon for 70% of their diet, and a reduced quantity and quality of
12 diet has been identified as one of the major causes of their decline.

13 74. The precipitous collapse of the Central Valley's pelagic and anadromous fish
14 populations has been documented at considerable length. The CVP's water export facilities
15 in the Delta began operation in 1951 and fisheries declined. Following construction of the
16 SWP's Banks Pumping Plant, in 1967, the decline of fisheries accelerated. Since 1967, the
17 California Department of Fish and Wildlife ("DFW") Fall Midwater Trawl abundance
18 indices for striped bass, Delta smelt, longfin smelt, American shad, splittail and threadfin
19 shad have declined by 99.7, 97.8, 99.9, 91.9, 98.5 and 97.8 percent, respectively.

20 75. In 2004, Delta pelagic species experienced a collapse in fish populations
21 known as the "Pelagic Organism Decline." Fish abundance indices for 2002 and 2004 were
22 at record lows for Delta smelt and striped bass, and near record lows for longfin smelt and
23 threadfin shad. These low abundance indices for pelagic species recorded during the 2002-
24 2004 decline continued to the 2012-2015 drought.

25 76. In response to the fourth straight year of drought conditions, the State Board
26 has issued a number of Temporary Urgency Change Orders to the Bureau and DWR under
27 which the State Board waived or failed to enforce water quality standards in 2013, 2014, and
28 2015.

1 77. The State Board’s weakening and waiving of water quality standards through
2 TUCPs during the ongoing drought period has greatly exacerbated conditions for the Delta
3 smelt, causing another dramatic decline in the Delta smelt’s population.

4 78. The Delta smelt are now facing extinction. According to the 2014 Midwater
5 Trawl, conducted monthly from September through December, between 2011 and 2014,
6 abundance indices for Delta smelt and longfin smelt have declined an additional 97.4 and
7 96.7 percent, respectively, from already perilously low abundance levels. In the spring of
8 2015, DFW’s monthly Spring Kodiak Trawl, of spawning Delta smelt, collected only six
9 Delta smelt in March, one Delta Smelt in April and eight in May.

10 79. The U.S. Fish & Wildlife Service’s (“USFWS”) Anadromous Fisheries
11 Restoration Program, established pursuant to the CVPIA, documents that, since 1967, in-
12 river natural production of Sacramento winter-run Chinook salmon and spring-run Chinook
13 salmon have decline by 98.2 and 99.3 percent, respectively, and are only at 5.5 and 1.2
14 percent, respectively, of doubling levels mandated by the CVPIA, the California Water Code
15 and California Fish & Game Code.

16 80. The State Board relaxed Sacramento River temperature criteria in 2014 by
17 moving the temperature compliance point upstream and eliminated much of the spawning
18 habitat for fall-, winter- and spring-run Chinook salmon. The delivery of 1.2 million acre-
19 feet of water to the CVP Sacramento Valley water contractors between April and September
20 depleted the cold-water pool behind Shasta Dam and the resulting lethal temperatures in the
21 river caused the loss of an estimated 95% of eggs and emerging winter-run Chinook salmon,
22 98% of eggs and emerging fall-run Chinook salmon and virtually all of emerging spring-run
23 Chinook salmon. The State Board’s relaxation of Delta outflow requirements in 2015 likely
24 caused the loss of the majority of remaining survivors.

25 81. For 2015, the Bureau has proposed to actually increase deliveries to almost 1.6
26 million acre-feet to the CVP’s Sacramento Valley contractors and has informed the State
27 Board that it is unlikely that it will be able to meet temperature requirements in the
28

1 Sacramento River below Shasta Dam. The loss of two consecutive year classes would be
2 catastrophic to the species.

3 82. Central Valley agriculture has not experienced impacts comparable to the
4 precipitous declines suffered by the Delta smelt during the present drought. According to the
5 annual crop reports submitted by county agricultural commissioners to the California
6 Department of Agriculture, crop production in the San Joaquin Valley increased in each of
7 the last three years. Crop production increased from \$30.47 billion in the last wet year
8 (2011) to \$32.53 billion in the first drought year (2012) and \$35.62 billion in the second
9 drought year (2013). The same is true in the Sacramento Valley, where crop production
10 increased from \$4.22 billion in 2011 to \$4.69 billion in 2012, and \$5.33 billion in 2013.
11 According to the California Economic Development Department, farm jobs also increased
12 between 2012 and 2014, the first three years of the drought.

13 83. The latest indicators show near historic or historic low levels of abundance for
14 all of the Delta's pelagic and anadromous species. All indications are that the populations
15 that depend on the Delta are in extreme risk of added mortality under the present 2015
16 conditions.

17 84. The State Board conducted an extensive public hearing in 2010, pursuant to the
18 Sacramento-San Joaquin Delta Reform Act. Senate Bill No. 1 (SB1) (Stats. 2009 (7th Ex.
19 Sess.) ch 5), (commencing with Wat. Code, Section 85000). The Board concluded, in the
20 Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem released in
21 August 2010, that recent Delta flows are insufficient to support native Delta fishes for
22 today's habitats and that significantly greater flows were necessary to protect public trust
23 resources.

24 85. The DFW also conducted an extensive proceeding in 2010, pursuant to the
25 Delta Reform Act, to develop Quantifiable Biological Objectives and Flow Criteria for
26 Aquatic and Terrestrial Species of Concern Dependent on the Delta. In the report released
27 23 November 2010, DFW found that significantly greater flows and considerably stronger
28 biological objectives were necessary to protect the public trust resources of the Delta. Yet

1 the State Board and Executive Director Howard never implemented those enhanced flows or
2 balanced the public trust with other beneficial uses, and they again failed to do so in
3 evaluating the requests of the Bureau and DWR to relax Delta water quality standards.

4 86. According to DWR, California has experienced ten multi-year droughts of
5 large-scale extent in the last one hundred years, spanning 41 years. Although the state
6 experiences drought conditions more than forty percent of the time, the CVP and SWP
7 continue to operate and deliver water without consideration of drought conditions. The CVP
8 and SWP draw down reservoir storage under the assumption that the coming year will be
9 wet, providing little reserve storage in the event the following year is dry. In the event of
10 another dry year, the projects endeavor to maximize deliveries in the hope that it will rain
11 next year. This pattern has repeated itself for decades, most recently during the 1987-1992,
12 2000-2002, 2007- 2009 and 2013-2015 droughts.

13 87. In a report on the 1976-1977 drought, DWR observed that “[t]he usual strategy
14 described in discussions with Central Valley surface water project operators who are
15 experiencing a below normal supply is to serve all the water possible on demand of the users,
16 carrying little or no water over to guard against a dry 1977...” and “[t]his strategy is based
17 on the belief that a good crop this year is desirable, since next year will probably be a near-
18 normal or better water supply.” Nothing has changed since those observations were made
19 nearly forty years ago.

20 88. During the summer of 2012, the CVP drew down 2.2 million acre-feet
21 (“MAF”) of water from Shasta Reservoir. The following winter the reservoir gained 1.5
22 MAF but the Bureau drew down 2.24 MAF in the summer of 2013. Shasta reservoir gained
23 approximately 758 thousand acre-feet (TAF) in the winter of 2014 but almost 1.4 MAF was
24 drawn down the following summer. In the winter of 2015, Shasta reservoir gained almost
25 1.7 MAF but the Bureau proposes to deliver almost 1.6 MAF to Sacramento Valley
26 contractors, plus whatever they are required to deliver to repel salinity and comply with
27 water quality standards in the Delta. Should the coming winter be dry, water shortages in
28 2016 are likely to be even worse than 2015. The CVP and SWP have refused to provide a

1 margin of safety and adjusted operations to meet the state's Mediterranean climate and over-
2 subscribed water delivery system.

3 89. The CVP and SWP projects rely on the State Board to bail them out by
4 relaxing standards and reducing water flows crucial to water quality and healthy and
5 reproducible fisheries, and the State Board has obliged the projects by relaxing standards
6 thereby encouraging them to continue to operate on the edge of crisis while fisheries,
7 hanging on the lip of extinction, pay the price. During the drought of 1987-1992, the State
8 Board informed DWR and the Bureau that it would not take enforcement action for more
9 than 245 violations of standards protecting Delta agriculture and fisheries, even though
10 further violations were expected. In response to a 2013 request to weaken standards, State
11 Board Executive Director Tom Howard informed DWR and the Bureau that he would take
12 no action if the projects operated to meet critically dry year criteria, even though 2013 was
13 not a critically dry year. Last year, State Board Executive Director Tom Howard weakened
14 Bay-Delta standards on nine different occasions and, in 2015, has already issued three orders
15 modifying Bay-Delta standards, plus an order regarding temperature control in the
16 Sacramento River. DWR and Bureau have a pending request before the State Board to
17 modify Bay-Delta water quality standards for July through November 2015.

18 90. California water delivery system is increasingly a wet-year system that cannot
19 meet the water demands of its customers in dry and drought years. In average water years,
20 water rights claims throughout the Bay-Delta watershed exceed unimpaired flow by five and
21 one-half times. As drier years occur, that factor increases dramatically as flows decrease and
22 crisis ensues because the system is over-subscribed. Within years following their
23 construction, the CVP and SWP signed contracts for the delivery of almost 14 million acre
24 feet of water or almost half the average unimpaired runoff in the entire basin.

25 **Violations of Water Quality Objectives Outflow**

26 91. The Bureau's operation of the CVP is causing and contributing to rampant
27 violations of the Bay-Delta Water Quality Control Plan and D-1641.

1 92. In a year designated as “critical,” such as 2015, the Bay-Delta Water Quality
2 Control Plan and D-1641 require a Net Delta Outflow Index (“NDOI”) of 7,100 cubic feet
3 per second (“cfs”) during the months of February through June, 4,000 cfs during July, 3,000
4 cfs during August, September and October, and 3,500 cfs during November and December.

5 93. The NDOI monthly averages fell below the standards of 7,100 cfs from
6 February to June. For example, in May 2014, the NDOI monthly average was 3,805 cfs.
7 The NDOI monthly average also fell below 7,100 in June 2014, and March, April and May
8 2015.

9 94. The NDOI monthly averages fell below the standard of 4,000 cfs in July 2014
10 when the NDOI monthly average was 3,286 cfs.

11 95. The NDOI monthly averages fell below the standard of 3,000 cfs in August
12 2014 when the NDOI monthly average was 2,965 cfs.

13 **Collinsville Station**

14 96. The Bureau’s Collinsville Station is located on the Sacramento River,
15 northwest of Sherman Island, in Collinsville, California. The 1995/2006 Standard and D-
16 1641 Salinity/Electrical Conductivity (“EC”) standard require a daily average or 14-day
17 running average at the Collinsville station of 2.64 mmhos/cm.

18 97. The EC 14-day running average measured at Collinsville was over 2.64
19 mmhos/cm on all days in May and June 2013.

20 98. The EC 14-day running average measured at Collinsville was over 2.64
21 mmhos/cm on 16 days in April 2014, and on all days in May and June 2014.

22 99. The EC average measured at Collinsville was over 2.64 mmhos/cm on all days
23 between March 9 and March 31, and on all days during April and May 2015.

24 **San Joaquin River Flow, Vernalis Station**

25 100. The Bureau’s Vernalis Station is located on the San Joaquin River, twelve
26 miles due west of Modesto, California. During a Critical Year, the minimum monthly
27 average flow at Vernalis must be 710 cfs from February to April 14 and May 16 through the
28

1 end of June, with a pulse flow of 3,130 cfs between April 15 and May 15, and 1,000 cfs in
2 October.

3 101. The average flow at Vernalis was less than 710 cfs on all days in June 2014.

4 102. The average flow at Vernalis was less than 1,000 cfs on all days in October
5 2014.

6 103. The average flow at Vernalis was less than 710 cfs on all days between May 16
7 and May 31, 2015.

8 104. The average pulse flow at Vernalis was less than 3,130 cfs on all days between
9 April 15 and May 15, 2015.

10 **Salmon Protection**

11 105. The Bay-Delta Water Quality Control Plan and the Central Valley
12 Improvement Project Improvement Act, P.L. 102-575 § 3406, *et seq.*, and Cal. Fish & Game
13 Code provide a narrative standard that “[w]ater quality conditions shall be maintained
14 together with other measures in the watershed, sufficient to achieve a doubling of natural
15 production of chinook salmon from the average production of 1967-1991, consistent with the
16 provisions of State and federal law.”

17 106. Sacramento winter-run Chinook salmon declined 88.4% from the 54,439
18 counted during the Anadromous Fisheries Restoration Program (“AFRP”) Baseline Period of
19 1967 to 1991, to 6,320 during the AFRP Doubling Period of 1992-2011. Levels of
20 Sacramento winter-run Chinook salmon are only at 5.8% of the CVPIA mandated target, in
21 continuous violation of the narrative standard.

22 107. Sacramento spring-run Chinook salmon declined 97.6% from the 29,412
23 counted during the Anadromous Fisheries Restoration Program (“AFRP”) Baseline Period of
24 1967 to 1991, to 718 during the AFRP Doubling Period of 1992-2011. Levels of
25 Sacramento spring-run Chinook salmon are only at 1.2% of the CVPIA mandated target, in
26 continuous violation of the narrative standard.

1 Emmaton Station, Salinity Standard

2 108. The Bureau’s Emmaton Station is located on the Sacramento River, eight miles
3 south of Rio Vista, California. During a Dry Year, the Bay-Delta Water Quality Control
4 Plan and D-1641 require the 14-day running average of mean daily Electrical Conductivity
5 (“EC”) measured at Emmaton not to exceed 0.45 mmhos/cm, between April 1 and June 15,
6 and not to exceed 1.67 mmhos/cm between June 15 and August 15.

7 109. The 14-day running average of mean daily EC was above 0.45 mmhos/cm at
8 Emmaton on three days in April 2013, fifteen days in May 2013, and seven days in June
9 2013; the average was above 2.78 mmhos/cm at Emmaton on ten days in May 2014, eight
10 days in June 2014, and eight days in July 2014.

11 110. During a Critical Year, the Bay-Delta Water Quality Control Plan and D-1641
12 require the 14-day running average of mean daily EC not to exceed 2.78 mmhos/cm between
13 April 1 and August 15 of each year at Emmaton on the Sacramento River. The 14-day
14 running average of mean daily EC was above 2.78 mmhos/cm at Emmaton on ten days in
15 May 2014, eight days in June 2014, and eight days in July 2014.

16 111. The 14-day running average of mean daily EC was above 2.78 mmhos/cm at
17 Emmaton on all days in May 2015.

18 South Delta Salinity Standards

19 112. In all years, the Bay-Delta Water Quality Control Plan and D-1641 require the
20 30-day running average of mean daily Electrical Conductivity (“EC”) not to exceed 1.0
21 mmhos/cm from September through March, and not to exceed 0.7 mmhos/cm from April
22 through August at Vernalis, Brandt Bridge, Old River near Tracy, and Old River near Middle
23 River. The EPA Bay Delta Standards require the 14-day running average of mean daily EC
24 measured at Vernalis and Brandt Bridge not to exceed 0.44 mmhos/cm between April 1 and
25 May 31.

26 113. On all days between April 1 and April 15, 2013, the 30-day running average of
27 mean daily EC exceeded 0.7 mmhos/cm at Vernalis.

1 114. On all days between January 27 and February 8, 2015, the 30-day running
2 average of mean daily EC exceeded 1.0 mmhos/cm at Vernalis.

3 115. On 12 days in January 2013, 10 days in February 2013, and three days in
4 March 2013, the 14-day running average of mean daily EC exceeded 1.0 mmhos/cm at Old
5 River near Tracy.

6 116. On 26 days in April 2013, and on all days in June, July, and August 2013, the
7 14-day average of mean daily EC exceeded 0.7 mmhos/cm at Old River near Tracy.

8 117. On all days between January and March 2014 and on all days in December
9 2014, the 14-day running average of mean daily EC exceeded 1.0 mmhos/cm at Old River
10 near Tracy.

11 118. On all days between April and August 2014, the 14-day running average of
12 mean daily EC exceeded 0.7 mmhos/cm at Old River near Tracy.

13 119. On all days between January and May 2015, the 14-day running average of
14 mean daily EC exceeded 1.0 mmhos/cm at Old River near Tracy.

15 120. On all days in January 2015, and 15 days in February 2015, the 14-day running
16 average of mean daily EC exceeded 1.0 mmhos/cm at Brandt Bridge.

17 **VII. CLAIMS FOR RELIEF**

18 **FIRST CAUSE OF ACTION**

19 **Violation of CWA, CVPIA and APA – Failure to Comply with Central Valley Project** 20 **Improvement Act (By Plaintiffs against Defendants Bureau of Reclamation and Sally** 21 **Jewell, in her official capacity)**

22 21. Plaintiffs re-allege and incorporate the above paragraphs, as if fully set forth
23 herein.

24 22. The January 27, 2015 TUCP requests temporary modification of requirements
25 included in the Water Board's Decision 1641 to meet water quality objectives in the Bay-
26 Delta Plan.

27 23. Governor Brown's Executive Orders waiving Water Code section 13247 do
28 not waive the duty of the Bureau to comply with all water quality standards pursuant to the
Central Valley Project Improvement Act. Neither Governor Brown nor the State Board nor

1 its Executive Director has the authority to waive the Bureau's duty under the CVPIA to
2 comply with all water quality standards. Nevertheless, the State Board Executive Officer's
3 February 3, 2015 Order purports to waive applicable standards for the Bureau.

4 124. Notwithstanding the February 3, 2015 Order, the Bureau must operate the CVP
5 in compliance with the Bay-Delta water quality standards, the Central Valley Project
6 Improvement Act and the Clean Water Act.

7 125. Despite Plaintiffs' protests, Plaintiffs are informed and believe, and thereupon
8 allege, that the Bureau is operating the CVP consistent with the February 3, 2015 Order's
9 waiver of applicable water quality standards. The Bureau's operation of the CVP in a
10 manner relying on the February 3, 2015 Order's waiver of applicable water quality standards
11 is inconsistent with law within the meaning of the APA, 5 U.S.C. § 706(2). An actual,
12 justiciable controversy exists for which Plaintiffs are entitled to have a declaration issue that
13 the Bureau is required to comply with the CVPIA and all applicable water quality standards
14 notwithstanding the February 3, 2015 Order and that, in regard to the Bureau, the February 3,
15 2015 Order is without force or effect.

16 **SECOND CAUSE OF ACTION**

17 **Violation of CWA, CVPIA and APA – Operation of CVP in Violation of Water Quality**
18 **Standards (By Plaintiffs against Defendants Bureau of Reclamation and Sally Jewell, in**
19 **her official capacity)**

20 126. Plaintiffs re-allege and incorporate the above paragraphs, as if fully set forth
21 herein.

22 127. Plaintiffs are informed and believe, and thereupon allege, that Defendant
23 Bureau has been operating the Central Valley Project in violation of applicable water quality
24 standards contained in the Bay-Delta Plan, D-1641, the EPA Bay-Delta Standards, the Delta
25 Protection Act, and the Central Valley Project Improvement Act. Plaintiffs are informed and
26 believe, and thereupon allege, that the Bureau is operating the Central Valley Project in a
27 manner that is harming designated beneficial uses of the Bay-Delta.

28 128. Plaintiffs are informed and believe, and thereupon allege, that the Bureau has
violated and continues to violate numerous water quality standards applicable to the Bay-

1 Delta. These include the Bay-Delta outflow standards contained in the Bay-Delta Plan and
2 D-1641, the flow standards measured at Vernalis station on the San Joaquin River contained
3 in the Bay-Delta Plan and D-1641, the Electrical Conductivity standard measured at
4 Collinsville station, the Electrical Conductivity standards measured at Emmaton contained in
5 the Bay-Delta Plan and D-1641, the Electrical Conductivity standards measured at Vernalis
6 contained in the Bay-Delta Plan, D-1641, and the EPA Bay-Delta Standards, the Electrical
7 Conductivity standards measured at Old River near Tracy contained in the Bay-Delta Plan
8 and D-1641, and the Electrical Conductivity standards measured at Brandt Bridge contained
9 in the Bay-Delta Plan, D-1641, and in the EPA Bay-Delta Standards.

10 129. Plaintiffs are informed and believe, and thereupon allege, that the Bureau
11 violated and continues to violate the narrative standard contained in the Bay-Delta Plan and
12 the CVPIA that “Water quality conditions shall be maintained together with other measures
13 in the watershed, sufficient to achieve a doubling of natural production of Chinook salmon
14 from the average production of 1967-1991, consistent with the provisions of State and
15 federal law.” At all times relevant to this action, Chinook salmon were not maintained at a
16 level sufficient to achieve a doubling of natural production of Chinook salmon from the
17 average production of 1967-1991.

18 130. Plaintiffs are informed and believe, and thereupon allege, that the Bureau
19 violated and continues to violate the Delta Protection Act’s ban on water exports when
20 salinity standards are not met. Cal. Water Code §§ 12202, 12204. At all times relevant to
21 this action, Defendants exported water from the Bay-Delta without salinity standards being
22 maintained.

23 131. The Bureau’s ongoing failure to comply with the Bay-Delta Standards, D-
24 1641, and the CVPIA, as set forth above, is arbitrary, capricious, an abuse of discretion, not
25 in accordance with law, and without observance of procedure required by law within the
26 meaning of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set
27 aside by this Court.

THIRD CAUSE OF ACTION

**Writ of Mandate Cal. Code Civ. Proc. § 1094.5 and Water Code § 1126(b)
(By Plaintiffs/Petitioners against Respondents Thomas Howard, Felicia Marcus,
Frances Spivy-Weber, Tam M. Dudoc, Steven Moore and Dorene D’Adamo)**

132. Petitioners incorporate by reference the allegations in the paragraphs set forth above.

133. The February 3, 2015 Order approves, in part, a petition for temporary urgency change in permit and license conditions under Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of DWR for the SWP and License 1986 and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 20245, and 16600 (Applications 23, 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 14858B, and 19304, respectively) of the Bureau of Reclamation for the CVP subject to certain conditions.

134. In order to approve the temporary urgency change petition, the State Board Executive Officer was required to make the following findings: (1) that BOR and DWR have an urgent need to make the proposed change; (2) the proposed change may be made without injury to any other lawful user of water; (3) the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and (4) the proposed change is in the public interest. (California Water Code, § 1435, subd. (b)(1-4).)

135. Under California Water Code § 1435, subdivision (c), an “urgent need” means “the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented....”

136. Petitioners are informed and believe, and thereupon allege, that the State Board Executive Officer’s four findings pursuant to California Water Code, § 1435, subd. (b) are “not supported by the evidence” and therefore constitute an abuse of discretion within the

1 meaning of Cal. Code Civ. Proc. § 1094.5(b). It is not in the public interest or consistent
2 with the Public Trust Doctrine to bring fisheries and other public trust resources to the brink
3 of extinction by chronic relaxation of legally promulgated standards because DWR and the
4 Bureau refuse to pursue reasonable measures to address drought scenarios that occur more
5 than 40% of time in California. The Order will have a devastating environmental impact by
6 degrading water quality in the estuary and sending native fisheries that evolved and
7 flourished over millennia into extinction by depriving them of water crucial to their survival.

8 137. Petitioners are informed and believe, and thereupon allege, that in issuing the
9 Order, the State Board Respondents have “not proceeded in the manner required by law”
10 within the meaning of Cal. Code Civ. Proc. § 1094.5(b) because the Order violates
11 applicable state and federal laws, including but not limited to:

- 12 (a) The Delta Protection Act of 1959;
- 13 (b) the federally promulgated Estuarine Habitat Criteria for the Bay/Delta estuary at
14 40 CFR 131.37;
- 15 (c) the Striped Bass spawning criteria between 1 April and 31 May;
- 16 (d) the Suisun Marsh criteria;
- 17 (e) the Public Trust Doctrine and California case law;
- 18 (f) Article 10, Section 2 of the California Constitution;
- 19 (g) the California Water Code, Code § 1435;
- 20 (h) SWRCB D-1641;
- 21 (i) SWRCB D-990;
- 22 (j) the California Endangered Species Act;
- 23 (k) Section 5937 of the California Fish & Game Code;
- 24 (l) Section 7 of the Federal Endangered Species Act;
- 25 (m) the Federal Clean Water Act;
- 26 (n) the Federal CVPIA doubling standard for salmon and steelhead;
- 27 (o) the Governor’s 2014 Declaration of Drought Emergency; and,
- 28 (p) Petitioners’ due process rights under both the state and federal constitutions by
Respondents’ modification of standards adopted in a lengthy public evidentiary
process through a series of arbitrary decisions without holding evidentiary
hearings on the requested TUCP and on necessary measures to protect gravely
threatened fish species during current drought and depleted storage conditions,

1 despite multiple requests for formal hearings by numerous parties over the past
2 three years.

3 138. Petitioners are informed and believe, and thereupon allege, that Respondents
4 have the proceeded without, or in excess of, jurisdiction and that the Order therefore
5 constitutes an abuse of discretion within the meaning of Cal. Code Civ. Proc. § 1094.5(b).

6 139. Petitioners are informed and believe, and thereupon allege, that the Order is
7 “not supported by the findings” and therefore constitutes an abuse of discretion within the
8 meaning of Cal. Code Civ. Proc. § 1094.5(b).

9 140. Petitioners are informed and believe, and thereupon allege, that Respondents’
10 findings in the Order are “not supported by the evidence” and therefore constitute an abuse
11 of discretion within the meaning of Cal. Code Civ. Proc. § 1094.5(b).

12 **VIII. PRAYER FOR RELIEF**

13 WHEREFORE, Petitioners pray for judgment as follows:

14 1. Declare Defendant Bureau of Reclamation and Sally Jewell are required to
15 comply with all Bay-Delta water quality standards as alleged herein;

16 2. Declare that the February 3, 2015 Order does not relieve the Bureau of
17 Reclamation and Sally Jewell of their duty to comply with all applicable Bay-Delta water
18 quality standards;

19 3. Declare that the Bureau of Reclamation violated and is violating the Bay-Delta
20 standards, the Central Valley Project Improvement Act, and the Administrative Procedure
21 Act;

22 4. Issue a declaratory judgment that the Bureau’s compliance with the Board’s
23 February 3, 2015 Order is arbitrary, capricious, an abuse of discretion, and not in accordance
24 with law;

25 5. Enjoin Defendants Bureau of Reclamation and Sally Jewell from operating the
26 CVP in further violation of the water quality standards in the Bay-Delta Plan and D-1641;

27 6. That the court issue a writ of mandate against Respondents Thomas Howard
28 and members of the State Board setting aside the February 3, 2015 Order.

7. That the court award Plaintiffs/Petitioners costs and expenses including
reasonable attorneys’ fees according to law.

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8. That the court award any such other and further relief as it deems appropriate.

Dated: June 3, 2015

Respectfully submitted,

LOZEAU DRURY LP

By: /s/ Michael Lozeau
Michael Lozeau
Attorneys for Plaintiffs/Petitioners
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE, CALIFORNIA WATER IMPACT
NETWORK, AQUALLIANCE and RESTORE
THE DELTA

LAW OFFICES OF ANDREW L. PACKARD

By: /s/ Andrew L. Packard
Andrew L. Packard
Attorneys for Plaintiffs/Petitioners
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE, CALIFORNIA WATER IMPACT
NETWORK, AQUALLIANCE and RESTORE
THE DELTA

VERIFICATION

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I, Andrew L. Packard, state that I am an attorney representing Plaintiffs/Petitioners. I have read the foregoing Complaint/Petition and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Civil Procedure Code section 446, subdivision (a) as Plaintiffs/Petitioners' counsel because the Plaintiffs/Petitioners are both absent from Sonoma County, where I have my office, and the facts are within my knowledge.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on June 3, 2015, at Petaluma, California.

/s/ Andrew L. Packard
Andrew L. Packard