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**ENDORSED  
FILED  
ALAMEDA COUNTY**  
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Deputy

5 Attorneys for Petitioners:  
6 BUTTE ENVIRONMENTAL COUNCIL  
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
7 CALIFORNIA WATER IMPACT NETWORK

Rc 094 46708

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF ALAMEDA

11 BUTTE ENVIRONMENTAL COUNCIL; )	Case No. (To be Assigned)
12 CALIFORNIA SPORTFISHING PROTECTION )	
13 ALLIANCE; AND CALIFORNIA WATER )	<b>VERIFIED PETITION FOR WRIT OF</b>
14 IMPACT NETWORK, )	<b>MANDATE</b>
15 )	(Code Civ. Proc., § 1084 et seq.; Pub.
16 Petitioners, )	Resources Code, §§ 21168, 21168.5)
17 vs. )	
18 )	
19 CALIFORNIA DEPARTMENT OF WATER )	<b>[CALIFORNIA ENVIRONMENTAL</b>
20 RESOURCES; CALIFORNIA NATURAL )	<b>QUALITY ACT]</b>
21 RESOURCES AGENCY; GOVERNOR ARNOLD )	
22 SCHWARZENEGGER; AND DOES 1-50, )	
23 Respondents, )	
24 )	
25 ALAMEDA COUNTY WATER DISTRICT; )	
26 AMARAL RANCH; ANTELOPE VALLEY )	
27 EAST KERN WATER AGENCY; AVENAL )	
28 STATE PRISON; BANTA CARBONA )	
IRRIGATION DISTRICT; BELLA VISTA )	
WATER DISTRICT; BROADVIEW WATER )	
DISTRICT; BROWNS VALLEY IRRIGATION )	
DISTRICT; BUTTE WATER DISTRICT; )	
BYRON BETHANY IRRIGATION DISTRICT; )	
CARTER MUTUAL WATER COMPANY; )	
CASTAIC LAKE WATER AGENCY; CASTAIC )	
LAKE WATER AUTHORITY; CENTRAL )	
COAST WATER AUTHORITY; CITY OF )	
AVENAL; CITY OF COALINGA; CITY OF )	
HURON; CITY OF SACRAMENTO; CITY OF )	
YUBA CITY; CONAWAY PRESERVATION )	
GROUP; CONTRA COSTA WATER DISTRICT; )	
DEL PUERTO WATER DISTRICT; DESERT )	
WATER AGENCY; DUDLEY RIDGE WATER )	

1 DISTRICT; DUNNIGAN WATER DISTRICT; )  
EAGLE FIELD WATER DISTRICT; EAST BAY )  
2 MUNICIPAL UTILITY DISTRICT; GARDEN )  
HIGHWAY MUTUAL WATER COMPANY; )  
3 GLENN-COLUSA IRRIGATION DISTRICT; )  
GOOSE CLUB FARMS; JAMES IRRIGATION )  
4 DISTRICT; KERN COUNTY WATER AGENCY; )  
LAGUNA WATER DISTRICT; LEWIS RANCH; )  
5 MAXWELL IRRIGATION DISTRICT; MERCED )  
IRRIGATION DISTRICT; MERCY SPRINGS )  
6 WATER DISTRICT; MERIDIAN FARMS )  
WATER COMPANY; METROPOLITAN )  
7 WATER DISTRICT OF SOUTHERN )  
CALIFORNIA; MOJAVE WATER AGENCY; )  
8 NAPA COUNTY FLOOD CONTROL AND )  
WATER CONSERVATION DISTRICT; )  
9 NATOMAS CENTRAL MUTUAL WATER )  
COMPANY; OAK FLAT WATER DISTRICT; )  
10 ORLAND UNIT WATER USER'S )  
ASSOCIATION; ORO LOMA WATER )  
11 DISTRICT; PACHECO WATER DISTRICT; )  
PALMDALE WATER DISTRICT; PANOCHÉ )  
12 WATER DISTRICT; PARROTT INVESTMENT )  
COMPANY; PATTERSON IRRIGATION )  
13 DISTRICT; PELGER MUTUAL WATER )  
COMPANY; PINNACLE LAND VENTURES, )  
14 LLC (BROOMIESIDE FARMS); PLACER )  
COUNTY WATER AGENCY; PLEASANT )  
15 GROVE-VERONA MUTUAL WATER )  
COMPANY; PLUMAS MUTUAL WATER )  
16 COMPANY; PRINCETON-CODORA-GLENN )  
IRRIGATION DISTRICT; PROVIDENT )  
17 IRRIGATION DISTRICT; RECLAMATION )  
DISTRICT 1606; RECLAMATION DISTRICT )  
18 1004; RECLAMATION DISTRICT 108; )  
RICHVALE IRRIGATION DISTRICT; RIVER )  
19 GARDEN FARMS; SACRAMENTO RIVER )  
RANCH; SACRAMENTO SUBURBAN WATER )  
20 DISTRICT; SAN LUIS & DELTA MENDOTA )  
WATER AUTHORITY; SAN BENITO COUNTY )  
21 WATER DISTRICT; SAN BERNARDINO )  
VALLEY MUNICIPAL WATER DISTRICT; )  
22 SAN DIEGO COUNTY WATER AUTHORITY; )  
SANTA CLARA VALLEY WATER DISTRICT; )  
23 SOUTH SUTTER WATER DISTRICT; SUTTER )  
MUTUAL WATER COMPANY; SUTTER )  
24 EXTENSION WATER DISTRICT; SYCAMORE )  
MUTUAL WATER COMPANY; TEHAMA )  
25 COLUSA CANAL AUTHORITY; )  
TRANQUILITY IRRIGATION DISTRICT; )  
26 TULARE LAKE BASIN WATER STORAGE )  
DISTRICT; UPPER SWANSTON RANCH; )  
27 WALNUT VALLEY WATER DISTRICT; WEST )  
28 )

1 SIDE IRRIGATION DISTRICT; WEST )  
2 STANISLAUS IRRIGATION DISTRICT; )  
3 WESTERN CANAL WATER DISTRICT; )  
4 WESTLANDS WATER DISTRICT; YUBA )  
5 COUNTY WATER AGENCY; AND DOES 51- )  
6 100, )  
7 )  
8 Real Parties In Interest. )  
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1 Petitioners BUTTE ENVIRONMENTAL COUNCIL, CALIFORNIA SPORTFISHING  
2 PROTECTION ALLIANCE, and CALIFORNIA WATER IMPACT NETWORK (hereinafter,  
3 “Petitioners”) allege as follows:

4 1. Petitioners hereby challenge Respondents CALIFORNIA DEPARTMENT OF WATER  
5 RESOURCES, CALIFORNIA NATURAL RESOURCES AGENCY, and GOVERNOR ARNOLD  
6 SCHWARZENEGGER (“Respondents”)’s approval of the 2009 Drought Water Bank (hereinafter,  
7 “DWB” or “Project”) on grounds that said approval violates the California Environmental Quality  
8 Act, at Public Resources Code § 21000 et seq., and the CEQA Guidelines, at 14 California Code of  
9 Regulations § 15000 et seq. (collectively, “CEQA”), and other laws.

10 2. The Drought Water Bank is a “one-year transfer program to obtain water from willing sellers  
11 upstream of the [Sacramento and San Joaquin rivers] Delta for sale to water users experiencing  
12 shortages due to extreme drought conditions and regulatory pumping curtailments.” (See Exhibit 1  
13 [Notice of Exemption].)<sup>1</sup>

14 3. In approving the DWB and making the associated findings, Respondents improperly relied  
15 on the “emergency” exemption provisions of CEQA, and, based thereon, did not otherwise engage  
16 in the environmental impact analysis required under CEQA or otherwise comply with CEQA.

17 4. Unless an exemption applies, CEQA requires that government agencies engage in advance  
18 planning to avoid unnecessary environmental harm before they approve any project that affects the  
19 environment. This advance planning includes preparation of an Environmental Impact Report, which  
20 is “the heart of CEQA” and the “environmental ‘alarm bell’ whose purpose it is to alert the public  
21 and its responsible officials to environmental changes before they have reached ecological points of  
22 no return.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47  
23 Cal.3d 376, 392 (*Laurel Heights I*)).

24 5. The Legislature has included a number of exemptions from CEQA where such advance  
25 planning would interfere with the achievement of other legislative goals. The two statutory  
26 exemptions at issue in this case apply in conditions of “emergency.” But the Legislature has strictly

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27  
28 <sup>1</sup> All exhibits referred to herein are attached hereto and incorporated by reference herein.

1 limited the conditions that constitute an “emergency” that would justify ignoring CEQA’s advance  
2 planning requirements. As alleged in more detail below, the 2009 Drought Water Bank does not meet  
3 these statutory requirements, which must be “interpreted in such manner as to afford the fullest  
4 possible protection to the environment within the reasonable scope of the statutory language.” (*Laurel*  
5 *Heights I, supra*, 47 Cal.3d at 390.) Therefore, Respondents abused their discretion in exempting the  
6 Project from environmental review.

### 7 PARTIES

8 6. Petitioner BUTTE ENVIRONMENTAL COUNCIL (“BEC”) is, and at all times relevant to  
9 this proceeding was, a non-profit public benefit corporation founded in 1975, devoted to  
10 environmental education, information referral services, and advocacy. BEC has dedicated over 33  
11 years to protecting the exceptional quality of life in the 1,670 square miles of Butte County, and is  
12 the region’s leading environmental organization. The cities of Chico, Oroville, Gridley, Biggs, and  
13 Paradise bring Butte County’s population to over 204,000. The community-based, non-profit  
14 organization is managed by a board of directors, two staff members, interns and volunteers, and  
15 currently has more than 850 members.

16 7. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”) is, and  
17 at all times relevant to this proceeding was, a non-profit public benefit corporation founded in 1983  
18 to conserve, restore, and enhance the state’s water quality, wildlife, and fishery resources and their  
19 aquatic ecosystems and associated riparian habitats. To further these goals, CSPA actively seeks  
20 federal and state agency implementation of environmental regulations and statutes and routinely  
21 participates in administrative, legislative, and judicial proceedings.

22 8. Petitioner CALIFORNIA WATER IMPACT NETWORK (“C-WIN”) is, and at all times  
23 relevant to this proceeding was, a non-profit public benefit corporation located in Santa Barbara,  
24 California, that advocates for the equitable and environmentally sensitive use of California’s water,  
25 including instream uses, through research, planning, public education, and litigation.

26 9. The actions complained of herein will have detrimental impacts on Petitioners and others.  
27 Petitioners have demonstrated their interest in the DWB Project by, *inter alia*, participating in  
28 numerous public agency meetings and decision-making processes concerning the environmental

1 impacts related to the DWB Project and other state water projects. Petitioners participated in DWR's  
2 process leading up to the Project approval and opposed the DWB Project. The interests of Petitioners  
3 and their members have been, are being, and unless the relief requested herein is granted, will  
4 continue to be adversely affected and injured by Respondents' failure to comply with applicable law  
5 for the DWB Project.

6 10. Respondent CALIFORNIA DEPARTMENT OF WATER RESOURCES (hereinafter,  
7 "DWR") is, and at all times relevant to this proceeding was, an agency of the State of California  
8 located in Sacramento, California. DWR is the lead agency under CEQA for the DWB Project.

9 11. Respondent CALIFORNIA NATURAL RESOURCES AGENCY (hereinafter, "Resources")  
10 is, and at all times relevant to this proceeding was, an agency of the State of California located in  
11 Sacramento, California. Resources oversees DWR's policies, activities, and budget.

12 12. Respondent GOVERNOR ARNOLD SCHWARZENEGGER (hereinafter, "the Governor")  
13 is governor of the State of California.

14 13. Respondents DOES 1 through 50, inclusive, are sued under fictitious names. Petitioners are  
15 ignorant of the true names and capacities, whether individual, corporate, governmental, or otherwise,  
16 of the Respondents named in this Petition as DOES 1 through 50, inclusive, and therefore sue these  
17 Respondents by these fictitious names. Petitioners will amend this Petition to allege their true names  
18 and capacities when ascertained. Petitioners are informed and believe, and based thereon allege, that  
19 each of these fictitiously named Respondents are responsible in some manner for the acts or  
20 omissions alleged herein.

21 14. Without conceding that any of the following entities are recipients of the DWB approval  
22 under Public Resources Code section 21167.6.5 or necessary or indispensable parties under Code of  
23 Civil Procedure section 389, Petitioners name the following entities as Real Parties in Interest  
24 because they are listed as potential sellers of water in the 2009 Drought Water Bank Final Addendum  
25 (defined hereinafter):

- 26 (1) Amaral Ranch
- 27 (2) Browns Valley Irrigation District
- 28 (3) Butte Water District

- 1 (4) Carter Mutual Water Company
- 2 (5) City of Sacramento
- 3 (6) Conaway Preservation Group
- 4 (7) Garden Highway Mutual Water Company
- 5 (8) Glenn-Colusa Irrigation District
- 6 (9) Goose Club Farms
- 7 (10) Lewis Ranch
- 8 (11) Maxwell Irrigation District
- 9 (12) Merced Irrigation District
- 10 (13) Meridian Farms Water Company
- 11 (14) Natomas Central Mutual Water Company
- 12 (15) Orland Unit Water User's Association
- 13 (16) Parrott Investment Company
- 14 (17) Pelger Mutual Water Company
- 15 (18) Pinnacle Land Ventures, LLC (Broomieside Farms)
- 16 (19) Placer County Water Agency
- 17 (20) Pleasant Grove-Verona Mutual Water Company
- 18 (21) Plumas Mutual Water Company
- 19 (22) Princeton-Codora-Glenn Irrigation District
- 20 (23) Provident Irrigation District
- 21 (24) Reclamation District 108
- 22 (25) Reclamation District 1004
- 23 (26) Richvale Irrigation District
- 24 (27) River Garden Farms
- 25 (28) Sacramento River Ranch
- 26 (29) Sacramento Suburban Water District
- 27 (30) South Sutter Water District
- 28 (31) Sutter Mutual Water Company

- 1 (32) Sutter Extension Water District
- 2 (33) Sycamore Mutual Water Company
- 3 (34) Upper Swanston Ranch
- 4 (35) Western Canal Water District
- 5 (36) Yuba County Water Agency

6 15. Without conceding that any of the following entities are recipients of the DWB approval  
7 under Public Resources Code section 21167.6.5 or necessary or indispensable parties under Code of  
8 Civil Procedure section 389, Petitioners name the following entities as Real Parties in Interest  
9 because they are listed as potential buyers of water in the 2009 Drought Water Bank Final  
10 Addendum:

- 11 (1) Alameda County Water District
- 12 (2) Antelope Valley East Kern Water Agency
- 13 (3) Avenal State Prison
- 14 (4) Banta Carbona Irrigation District
- 15 (5) Bella Vista Water District
- 16 (6) Broadview Water District
- 17 (7) Byron Bethany Irrigation District
- 18 (8) Castaic Lake Water Agency
- 19 (9) Central Coast Water Authority
- 20 (10) City of Huron
- 21 (11) City of Avenal
- 22 (12) City of Coalinga
- 23 (13) City of Yuba City
- 24 (14) Contra Costa Water District
- 25 (15) Del Puerto Water District
- 26 (16) Desert Water Agency
- 27 (17) Dudley Ridge Water District
- 28 (18) Dunnigan Water District

- 1 (19) Eagle Field Water District
- 2 (20) James Irrigation District
- 3 (21) Kern County Water Agency
- 4 (22) Laguna Water District
- 5 (23) Mercy Springs Water District
- 6 (24) Metropolitan Water District of Southern California
- 7 (25) Mojave Water Agency
- 8 (26) Napa County Flood Control and Water Conservation District
- 9 (27) Oak Flat Water District
- 10 (28) Oro Loma Water District
- 11 (29) Pacheco Water District
- 12 (30) Palmdale Water District
- 13 (31) Panoche Water District
- 14 (32) Patterson Irrigation District
- 15 (33) Reclamation District 1606
- 16 (34) San Diego County Water Authority
- 17 (35) San Bernardino Valley Municipal Water District
- 18 (36) San Benito County Water District
- 19 (37) San Luis & Delta Mendota Water Authority
- 20 (38) Santa Clara Valley Water District
- 21 (39) Tehama Colusa Canal Authority
- 22 (40) Tranquility Irrigation District
- 23 (41) Tulare Lake Basin Water Storage District
- 24 (42) West Stanislaus Irrigation District
- 25 (43) West Side Irrigation District
- 26 (44) Westlands Water District

27 16. Without conceding that any of the following entities are recipients of the DWB approval  
 28 under Public Resources Code section 21167.6.5 or necessary or indispensable parties under Code of

1 Civil Procedure section 389, Petitioners name the following entities as Real Parties in Interest  
2 because Petitioners are informed and believe that they claim an interest in the DWB program as  
3 potential buyers of water:

- 4 (1) East Bay Municipal Utility District
- 5 (2) Walnut Valley Water District
- 6 (3) Castaic Lake Water Authority

7 17. Real Parties in Interest DOES 51 through 100, inclusive, are sued under fictitious names.  
8 Petitioners are ignorant of the true names and capacities, whether individual, corporate,  
9 governmental, or otherwise, of the Real Parties in Interest named in this Petition as DOES 51 through  
10 100, inclusive, and therefore sue these Real Parties in Interest by these fictitious names. Petitioners  
11 will amend this Petition to allege their true names and capacities when ascertained. Petitioners are  
12 informed and believe, and based thereon allege, that the rights and interests of each of these  
13 fictitiously named Real Parties in Interest would be affected by the granting of the relief Petitioners  
14 seek in this proceeding.

#### 15 FACTUAL BACKGROUND

16 18. The State Water Project ("SWP") is a system of reservoirs, canals, and pumps appended to  
17 the Feather, Sacramento, San Joaquin and other rivers and Delta and operated by DWR to provide  
18 water to water supply agencies throughout the state.

19 19. The Central Valley Project ("CVP") is a similar system of reservoirs, canals, and pumps  
20 appended to the Sacramento and San Joaquin Rivers and Delta and operated by the federal Bureau  
21 of Reclamation ("Reclamation"), also to provide water to water supply agencies throughout the state.

22 20. DWR's and Reclamation's coordinated operation of these projects is often referred to as the  
23 "Coordinated Operations."

24 21. The California Environmental Water Account ("EWA") is a program to increase protection  
25 for fish resources of the San Francisco Bay-Delta estuary and is operated by DWR and Reclamation  
26 in conjunction with their "Coordinated Operations," using the same physical facilities and sources  
27 of water as the SWP and CVP .

28 22. In or around January 2004, DWR and the Bureau of Reclamation approved the EWA for the

1 period 2004 through 2007 based on DWR's certification and Reclamation's approval of a Final  
2 Environmental Impact Statement / Environmental Impact Report ("EIS/EIR") for the EWA ("2004  
3 EWA EIR"), which evaluated the effects of the EWA from 2004 to 2007.

4 23. In or around March 2008, DWR and Reclamation issued a Final Supplemental EIS/EIR to the  
5 EWA Final EIS/EIR ("2008 Supplemental EWA EIR"). The 2008 Supplemental EWA EIR  
6 evaluated the effects of extending the EWA from 2008 through 2011. DWR has not certified and  
7 Reclamation has not approved the 2008 Supplemental EWA EIR, and neither agency has approved  
8 the extension of the EWA from 2008 through 2011.

9 24. In or around 2004, the U.S. Fish & Wildlife Service ("USFWS") issued a biological opinion  
10 on the effects of the Coordinated Operations on Delta smelt, a species of fish listed as threatened  
11 under the federal Endangered Species Act ("ESA"), and its designated critical habitat ("2004 Delta  
12 smelt BO"). In response to a lawsuit challenging this opinion, USFWS reinstated consultation under  
13 Section 7 of the ESA and issued a redrafted opinion in 2005 ("2005 Delta smelt BO").

14 25. On or about May 25, 2007, the United States District Court for the Eastern District of  
15 California (Judge Oliver W. Wanger presiding) issued an order in *Natural Resources Defense*  
16 *Council, et al. v. Kempthorne*, 1:05-cv-1207 OWW GSA (E.D. Cal. 2007), finding that the 2005  
17 Delta smelt BO violated the requirements of the ESA, and ordered the preparation of a new biological  
18 opinion. On or about December 14, 2007, Judge Wanger also issued an interim order curtailing  
19 operations at CVP and SWP export facilities to protect Delta smelt until a new biological opinion was  
20 completed. This order is one of the sources of the "judicially mandated operational curtailments"  
21 referenced in DWR's Draft and Final Addendums (defined hereinafter) for the DWB.

22 26. In or around December 2008, the USFWS issued an updated biological opinion for the  
23 Coordinated Operations and Delta smelt ("2008 Delta smelt BO").

24 27. In or around 2004, the National Marine Fisheries Service ("NMFS") issued a biological  
25 opinion on the effects of the Coordinated Operations on the Sacramento River winter-run Chinook  
26 salmon, the threatened Central Valley spring-run Chinook salmon, and the threatened Central Valley  
27 steelhead, three species of fish listed as endangered or threatened under the ESA ("2004 salmonid  
28 BO").

