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12 CITY OF FOLSOM, CITY OF ROSEVILLE,
13 SACRAMENTO SUBURBAN WATER DISTRICT and
14 SAN JUAN WATER DISTRICT

Exempt from Filing Fees,
Government Code § 6103

15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

16 COUNTY OF SACRAMENTO

17 CITY OF FOLSOM, CITY OF
18 ROSEVILLE, SACRAMENTO
19 SUBURBAN WATER DISTRICT and SAN
20 JUAN WATER DISTRICT,

Petitioners,

v.

21 CALIFORNIA DEPARTMENT OF WATER
22 RESOURCES and DOES 1 TO 100,
23 INCLUSIVE,

24 Respondents.

Case No. _____

PETITION FOR WRIT OF MANDATE

(Code Civ. Proc., §§ 526, 1085, 1094.5;
Pub. Res. Code, §§ 21167, 21168 and
21168.5.)

1 Petitioners Cities of Folsom and Roseville, San Juan Water District and Sacramento
2 Suburban Water District (“Petitioners”) allege:

3 1. Petitioners bring this action to challenge the decision of respondent California
4 Department of Water Resources (“DWR”) to certify a joint Final Environmental Impact Report
5 and Environmental Impact Statement (State Clearinghouse No. 2008032062) (“FEIR/FEIS”) for
6 the Bay Delta Conservation Plan/California WaterFix and to approve the proposed California
7 WaterFix project (“Project”).

8 2. The Project would include the construction of new water conveyance facilities
9 with three new diversion points on the Sacramento River in the north Delta, construction of two
10 conveyance tunnels underneath part of the Delta and ancillary facilities, and new project
11 operations for the Central Valley Project (“CVP”) and State Water Project (“SWP”).

12 3. In the FEIR/FEIS, DWR and the United States Bureau of Reclamation
13 (“Reclamation”) evaluated under California Environmental Quality Act (“CEQA”) and the
14 National Environmental Policy Act (“NEPA”) the environmental impacts of constructing and
15 operating the Project.

16 4. The Project and FEIR/FEIS fail to comply with CEQA for the reasons described
17 below.

18 5. Because of these flaws, DWR prejudicially abused its discretion and violated
19 CEQA when it certified the FEIR/FEIS and approved the Project. Petitioners ask this Court to
20 (a) issue a peremptory writ of mandate directing DWR to set aside its certification of the
21 FEIR/FEIS and its related decision and findings regarding the Project, and (b) provide related
22 declaratory and injunctive relief.

23 **PARTIES**

24 6. The Cities of Folsom and Roseville are charter cities existing under the laws of
25 the State of California.

26 7. San Juan Water District is a special district existing under the state’s Community
27 Services District Law.

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1 8. Sacramento Suburban Water District is a special district existing under the state's
2 County Water District Law.

3 9. Respondent DWR is a state agency existing under the laws of the State of
4 California. DWR operates the SWP and was the lead CEQA agency for the FEIR/FEIS and
5 Project.

6 10. Does 1 to 100, inclusive, may have, or claim to have, interests in the FEIR/FEIS
7 or the Project, the exact nature of which is unknown to Petitioners. The true names or capacities
8 of Does 1 to 100, inclusive, are unknown to Petitioners, who therefore sues these real parties in
9 interest by fictitious names.

10 **VENUE**

11 11. This action is brought under Code of Civil procedure sections 526, 1085 and
12 1094.5, Public Resources Code sections 21167, 21168 and 21168.5, and Government Code
13 sections 54960 and 54960.1. Venue is proper under Code of Civil Procedure section 393 because
14 Sacramento County is where impacts to surface and groundwater supplies used by Petitioners,
15 and impacts to aquatic resources, would occur. Venue is also proper under Code of Civil
16 Procedure section 395, subdivision (a), because DWR is domiciled in Sacramento County.

17 **PROCEDURAL BACKGROUND**

18 12. In December 2016, Reclamation and DWR issued the FEIR/FEIS.

19 13. On July 21, 2017, DWR certified the FEIR/FEIS under CEQA, adopted Findings
20 and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting
21 Program, and approved the Project. On the same date, DWR filed a Notice of Determination
22 with the Governor's Office of Planning and Research.

23 **NOTICE**

24 14. On August 15, 2017, Petitioners served a notice on DWR by mail informing it of
25 Petitioners' intent to file a petition for writ of mandate challenging DWR's certification of the
26 FEIR/FEIS and approval of the Project. A copy of Petitioners' notice and associated proof of
27 service is attached as Exhibit A and incorporated by reference.
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EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. To the extent Petitioners had to exhaust any administrative remedies, Petitioners did so by submitting written comments on the FEIR/FEIS and earlier draft CEQA documents.

STANDING

16. As public agencies that manage and use water supply resources in the American River region, Petitioners have significant, beneficial interests in the matters addressed by this Petition. The Project analyzed in the FEIR/FEIS would impact Petitioners’ ability to deliver safe, reliable water supplies to Petitioners’ customers, as well as impacting Petitioners’ exercise of their property and contractual rights to divert and use water from the American River watershed for beneficial purposes.

ATTORNEYS’ FEES

17. In pursuing this action, which involves the enforcement of important rights affecting the public interest, Petitioners will confer a substantial benefit on the public, including all persons who rely on resources affected by the FEIR/FEIS and the Project. Therefore, Petitioners will be entitled to an award of reasonable attorney’s fees under Code of Civil procedure section 1021.5.

INADEQUATE REMEDY AT LAW – STAY AND INJUNCTION

18. Under Code of Civil procedure sections 1085 and 1094.5, the Court may stay or enjoin the operation of any administrative decision or order involved in this proceeding.

19. Because DWR has approved the Project, there is a real threat that DWR will proceed with the Project despite the inadequate environmental review of the Project’s impacts. In light of DWR’s CEQA violations in certifying the FEIR/FEIS and approving the Project, any action to implement that project is null and void. Petitioners have no plain, speedy or adequate remedy at law for this irreparable harm. Therefore, a stay or preliminary and permanent injunction should issue restraining DWR from taking any additional actions to implement the Project until DWR has complied with CEQA.

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FIRST CAUSE OF ACTION
(Writ of Mandate - Violation of CEQA)

20. Petitioners re-allege and incorporate by reference paragraphs 1 through 19 above.

21. DWR's actions in certifying the FEIR/FEIS, adopting related findings and approving the Project constitute a prejudicial abuse of discretion because DWR failed to proceed in the manner required by law under Public Resources Code section 21166 and the California Code of Regulations, title 14, sections 15162 to 15164. Specifically:

a. DWR failed to adequately analyze the Project's potential direct, indirect and cumulative water supply impacts at Folsom Reservoir and in the Sacramento Region, including, but not limited to, the impacts that will occur to both surface and groundwater supplies in future multi-year droughts;

b. DWR failed to adequately analyze the Project's potential direct, indirect and cumulative impacts to water quality;

c. DWR failed to adequately analyze the Project's potential direct, indirect and cumulative impacts to aquatic species in the Lower American River;

d. DWR failed to adopt feasible mitigation measures to mitigate the Project's potentially significant impacts to American River and Sacramento Region surface and groundwater supplies and to aquatic species in the Lower American River;

e. DWR failed to properly describe the baseline physical conditions in its hydrological modeling, which has infected all of the analysis of the Project's potential environmental impacts;

f. DWR improperly deferred analysis of how the Project's facilities will be operated and the new outflow requirements and other features of the Project;

g. DWR failed to support the analysis in its environmental documents, its findings, and its statement of overriding considerations with substantial evidence;

h. DWR failed to include a clear, stable and accurate project description; and

1 i. Despite having added significant new information to the EIR after the
2 conclusion of the public review period, including information showing that changes to the Project
3 would have potentially significant environmental impacts, DWR failed to recirculate the EIR.

4 22. DWR therefore violated CEQA by certifying the FEIR/FEIS and approving the
5 Project without conforming to the requirements of CEQA. DWR's certification of the
6 FEIR/FEIS and approval of the Project must be set aside.

7 **PRAYER FOR RELIEF**

8 Petitioners pray for the following relief on all causes of action:

9 1. For a peremptory writ of mandate directing DWR to vacate and set aside its
10 certification of the FEIR/FEIS and approval of the Project.

11 2. For an order staying the effects of DWR's certification of the FEIR/FEIS and
12 approval of the Project.

13 3. For issuance of a temporary restraining order, and a preliminary and permanent
14 injunction restraining and prohibiting DWR from carrying out or engaging in any action related
15 to the Project that could cause any change or alteration in the physical environment until DWR
16 has complied with CEQA and all other applicable laws.

17 4. For an order directing DWR to pay Petitioners' reasonable costs of suit.

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28 5. For an order directing DWR to pay Petitioners' reasonable attorneys' fees.

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6. For such other relief as the Court deems proper.

Dated: August ____, 2017

Respectfully submitted,
BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

By: _____
JENNIFER T. BUCKMAN

Attorneys for Petitioners
CITY OF FOLSOM, CITY OF ROSEVILLE,
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DISTRICT