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16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF YOLO

18 FRIENDS OF THE RIVER; CENTER FOR)
19 BIOLOGICAL DIVERSITY; CALIFORNIA)
SPORTFISHING PROTECTION ALLIANCE;)
20 CALIFORNIA WATER IMPACT NETWORK;)
and SAVE CALIFORNIA SALMON)
21)
22 Petitioners)
23 v.)
24 SITES PROJECT AUTHORITY; BOARD OF)
DIRECTORS OF SITES PROJECT)
25 AUTHORITY, and DOES 1 to 20,)
26)
Respondents)
27 _____)
28)

Case No. _____
[Streamlined CEQA Project]
VERIFIED PETITION FOR
WRIT OF MANDATE

INTRODUCTION

1
2 1. Petitioners Friends of the River, Center for Biological Diversity, California
3 Sportfishing Protection Alliance, California Water Impact Network, and Save California
4 Salmon (collectively, “Petitioners”) challenge Respondents Sites Project Authority and Board
5 of Directors of the Sites Project Authority’s (collectively “Respondents”) November 17, 2023,
6 certification of the Final Environmental Impact Report/Environmental Impact Statement for the
7 Sites Reservoir Project (“FEIR”) and required findings under the California Environmental
8 Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.* and approval of the Sites
9 Reservoir Project (“Project”). Petitioners seek a determination from this Court that
10 Respondents’ certification of the FEIR and approval of the Project are invalid and void as the
11 FEIR prepared for the Project fails to satisfy the requirements of CEQA, and the CEQA
12 Guidelines.

13 2. Respondents failed to proceed in the manner required by law, and thus
14 prejudicially abused their discretion, in violation of CEQA, and the CEQA Guidelines, Title 14,
15 California Code of Regulations § 15000 *et seq.* Petitioners seek a writ of mandate from this
16 Court directing Respondents to vacate and rescind the November 17, 2023 certification of the
17 FEIR, the Findings and Statement of Overwriting Considerations for the Project, and approval
18 of the Project.

19 3. As the Project was conceived and created to augment irrigation water supplies, it
20 does not help solve any of the serious environmental problems created by the Central Valley
21 Project and other related water projects—projects that have resulted in water over-
22 appropriation, groundwater depletion, and cascading Bay-Delta ecosystem collapses. They
23 serve as the underlying causes of multiple and synergistic listings of species under the federal
24 Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and California Endangered Species Act
25 (Fish & Game Code, § 2050 *et seq.*). The Authority designed the Project to benefit irrigation,
26 not to store water to meet watershed ecosystem or species conservation needs and the
27 Authority’s environmental review reflects this purpose.

28 4. As demonstrated in the significant comments submitted on the Revised Draft

1 Environmental Impact Report/Supplemental Draft Environmental Impact Statement
2 (“RDEIR”), the FEIR failed to consider a reasonable range of alternatives, failed to use a stable
3 and accurate project description, used an inaccurate environmental baseline and environmental
4 setting, and failed to adequately account for and assess impacts of the project in light of climate
5 change. The FEIR also failed to adequately analyze impacts to aquatic species like Chinook
6 salmon, Delta Smelt, and Longfin Smelt, and to terrestrial wildlife including giant garter snake
7 and migratory birds, fails to disclose significant environmental impacts of the project to these
8 and other species, inappropriately defers the formulation of mitigation measures, and proposes
9 inadequate mitigation measures.

10 PARTIES

11 5. Petitioner FRIENDS OF THE RIVER (“FOR”) is a non-profit organization
12 dedicated to preserving and restoring California’s rivers, streams, and associated watersheds as
13 well as advocating for sustainable water management. FOR accomplishes this goal by
14 influencing public policy and inspiring citizen action through grassroots organizing. FOR was
15 founded in 1973 during the struggle to save the Stanislaus River from the New Melones Dam.
16 Following that campaign, FOR become a statewide river conservation organization. FOR
17 currently has nearly 3,000 members. Members of FOR enjoy the scenic beauty of the
18 Sacramento River, its tributaries and sloughs, as well as raft, kayak, boat, fish, and swim in
19 these waters.

20 6. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-
21 profit conservation organization dedicated to the protection of native species and their habitats
22 through science, policy, and environmental law. The Center has approximately 89,000 members
23 worldwide, including members who live in the Sacramento Valley. The Center has worked for
24 many years to protect imperiled plants and wildlife, open space, air and water quality, and the
25 overall quality of life for people in and around the Sacramento River Valley and Bay-Delta. The
26 Center is committed to ensuring healthy waterways that provide high-quality habitat for the
27 native food web that, in turn, keeps those waters in balance. The Center’s vision includes
28 thoughtful human communities committed to quality of life, conservation, and a smart use of

1 water that leaves enough in waterways for wildlife to survive and thrive.

2 7. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
3 (“CSPA”) is a California non-profit public benefit organization with its principal place of
4 business in Stockton, California. CSPA’s organizational purposes are the protection,
5 preservation, and enhancement of fisheries and associated aquatic and riparian ecosystems of
6 California’s waterways, including in the Sacramento Valley. This mission is implemented
7 through active participation in water rights and water quality processes, education and
8 organization of the fishing community, restoration efforts, and vigorous enforcement of
9 environmental laws enacted to protect fisheries, habitat and water quality. Members of CSPA
10 reside along the Sacramento Valley watershed where they view, enjoy, and routinely use the
11 ecosystem for boating, fishing, and wildlife viewing. CSPA’s members derive significant
12 benefit through ongoing use and enjoyment from the aesthetic, recreational, and conservation
13 benefits of the Sacramento Valley ecosystem.

14 8. Petitioner CALIFORNIA WATER IMPACT NETWORK (“C-WIN”) is a
15 California non-profit public benefit organization with its principal place of business in Santa
16 Barbara, California. C-WIN’s organization purpose is the protection and restoration of fish and
17 wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and
18 other natural environmental resources and uses of the rivers and streams of California,
19 including the Bay-Delta, its watershed and its underlying groundwater resources. C-WIN seeks
20 to protect the 26 million urban ratepayers south of the Delta from paying for infrastructure that
21 will give them only paper water and little benefit. C-WIN has members who reside in, use, and
22 enjoy the Bay-Delta and inhabit and use its watershed. They use the rivers of the Central
23 Valley and the Bay-Delta for nature study, recreation, and aesthetic enjoyment.

24 9. Petitioner SAVE CALIFORNIA SALMON is a California non-profit public
25 benefit organization. Save California Salmon is dedicated to policy change and community
26 advocacy for Northern California’s salmon and fish dependent people. Save California Salmon
27 supports the fisheries and water protection work of local communities, and advocates for
28 effective policy change for clean water, restored fisheries and vibrant communities.

1 10. Respondent SITES PROJECT AUTHORITY (“Authority”) is a California public
2 entity and joint powers authority subject to California laws. (*See* Joint Exercise of Powers Act,
3 Gov’t Code, § 6500 *et seq.*) The Authority’s primary purpose is to study, promote, develop,
4 design, finance, acquire, construct, manage and operate Sites Reservoir and related facilities
5 such as recreation and power generation. The Authority is the state lead agency for the
6 approval of the Project under CEQA.

7 11. Respondent BOARD OF DIRECTORS OF THE SITES PROJECT AUTHORITY
8 is a body duly authorized under the California Constitution and the laws of the State of
9 California to act on behalf of the Sites Project Authority.

10 12. Petitioners are unaware of the true names and capacities of Respondents identified
11 as Does 1-20. Petitioners are informed and believe, and on that basis, allege, that Respondents
12 Does 1-20, inclusive, are individuals, entities or agencies with material interests affected by the
13 Project with respect to the Project or by Respondents’ actions with respect to the Project. When
14 the true identities and capacities of these Respondents have been determined, Petitioners will,
15 with leave of Court if necessary, amend this Petition to insert such identities and capacities.

16 **NOTICE OF CEQA STREAMLINING PROVISIONS**

17 13. On November 6, 2023, Governor Gavin Newsom certified the Project as a water-
18 related infrastructure project pursuant to Public Resources Code section 21189.82(a)(4)(A).
19 Based upon the Governor’s certification the Project qualifies for judicial streamlining under
20 Senate Bill 149.

21 14. Pursuant to Public Resources Code section 21189.82(a)(4)(B)(ii), the Authority
22 has agreed to pay the costs of preparing the record of proceedings for the project concurrent
23 with the review and consideration of the Project. Pursuant to Board Resolution No. 2023-02,
24 the Executive Director has certified the record of proceedings.

25 15. As the proponent of the Sites Reservoir Project the Authority is proceeding under
26 Public Resources Code sections 21189.80 to 21189.91 and is subject to the California Rules of
27 Court governing judicial streamlining for CEQA actions. (*See* California Rules of Court, Rules
28 3.2220 *et seq.*)

1 16. Pursuant to California Rules of Court, Rule 3.2240, the Authority must pay a fee
2 of \$180,000 to the court within 10-days after service of this Petition for Writ of Mandate.

BACKGROUND INFORMATION

A. THE PROJECT

3
4
5 17. The Project is an off-stream surface water reservoir that would divert water from
6 the Sacramento River to inundate 13,200 acres of land in Glenn and Colusa Counties. The
7 Project includes the construction of eleven dams, a bridge, two regulating reservoirs, new
8 pipelines, and a new conveyance complex.

9 18. The Project includes 23 Storage Partners that represent local and regional water
10 delivery agencies which serve over 24.5 million people and over 500,000 acres of farmland.

11 19. Water released from the Sites Reservoir will be used to meet local, State, and
12 Federal water use needs of public water agencies, anadromous fish species in the Sacramento
13 River watershed, wildlife refuges and habitats, and the Yolo Bypass to help supply food for
14 delta smelt.

15 20. The Project will divert additional water out of the Sacramento River basin without
16 ensuring sufficient flows for salmon species and delta smelt.

17 21. The reservoir inundation area will be in rural, unincorporated areas of Glenn and
18 Colusa Counties, and Project components will be located in Tehama County, Glenn County,
19 Colusa County, and Yolo County.

20 22. The Project will use existing infrastructure to divert unregulated and unappropriated
21 flows from the Sacramento River at Red Bluff and Hamilton City and convey the water to a new
22 off-stream reservoir west of Maxwell, California. New and existing facilities will move water
23 into and out of the reservoir, with ultimate release back to the Sacramento River system via
24 existing canals and a new pipeline located near Dunnigan in Yolo County. Some water released
25 from the Sites Reservoir may also be delivered to local partners off the Tehama-Colusa Canal or
26 the Glenn Colusa Irrigation District Canal downhill of Sites Reservoir.

27 23. The Project includes the following components:

28 a. Improvements to and use of the existing Red Bluff Pumping Plant, Tehama-

1 Colusa Canal, Hamilton City Pump Station, and Glenn-Colusa Irrigation District Main Canal to
2 divert and convey water from the Sacramento River.

3 b. Construction of regulating reservoirs and a conveyance complex to control
4 water conveyance between Sites Reservoir, Tehama-Colusa Canal, and Glenn-Colusa Irrigation
5 District Main Canal. These facilities would include the regulating reservoirs, pipelines, pumping
6 generating plants (“PGPs”), electrical substations, and maintenance buildings.

7 c. Construction of an administration and operations building and a
8 maintenance and storage building near the existing Funks Reservoir.

9 d. Construction of two main dams, the Golden Gate Dam on Funks Creek and
10 the Sites Dam on Stone Corral Creek, to impound water in the new reservoir, and construction of
11 a series of saddle dams and saddle dikes along the northern and eastern rims of the reservoir to
12 close off topographic saddles in the surrounding ridges. The inlet/outlet (“I/O”) works for the
13 reservoir would be located near the Golden Gate Dam.

14 e. Upgrades to the Tehama-Colusa Canal and construction of a new pipeline
15 (the Dunnigan Pipeline) to convey water from the new reservoir to the Colusa Basin Drain and
16 ultimately to the Sacramento River.

17 f. Development of two primary recreation areas and a day-use boat ramp,
18 including the construction of a network of new roads and upgrades to existing roads for
19 maintenance and local access.

20 g. The Peninsula Hills Recreation Area would be located on up to 373 acres
21 along the northwest shore of the new reservoir and the Stone Corral Creek Recreation Area
22 would be located on up to 235 acres along the eastern shore of the new reservoir.

23 h. These new recreational areas would provide multiple recreational amenities,
24 including campsites, boat access, horse trails, hiking trails, and vista points. Both of the primary
25 recreation areas would have a kiosk, access to electricity and potable water, picnic sites, hiking
26 trails, vault toilets, and campsites. The day-use boat ramp and parking area would be located on
27 up to 10 acres on the western side of the new reservoir.

28 i. Construction of a bridge or bypass road to connect Maxwell with the

1 community of Lodoga.

2 j. Construction of approximately 46 miles of new paved and unpaved roads to
3 provide construction and maintenance access to the new facilities, as well as public access to the
4 recreation areas.

5 k. Acquisition and maintenance of a 100-foot buffer around the new reservoir
6 and all related facilities, buildings, and recreation areas.

7 24. The operation and maintenance elements include the following:

8 a. Diversion of water from the Sacramento River at the existing Red Bluff
9 Pumping Plant through the Tehama-Colusa Canal into the existing Funks Reservoir and at the
10 Glenn-Colusa Irrigation District's Hamilton City Pump Station through the Glenn-Colusa
11 Irrigation District Main Canal into a new Terminal Regulating Reservoir.

12 b. Water will be pumped into the new Sites Reservoir from the existing Funks
13 Reservoir and a new Terminal Regulating Reservoir, the water would be pumped into the new
14 Sites Reservoir.

15 c. Diversions will occur between September 1 and June 15, corresponding
16 with the period that the Sacramento River is not fully appropriated.

17 d. Water will be held in storage in the reservoir until requested for release by a
18 Storage Partner. Water releases will generally be made from May to November, but may occur
19 at any time of the year depending on the Storage Partner's need and system conveyance
20 capacity.

21 e. Water will be released from Sites Reservoir via the I/O Works near the
22 Golden Gate Dam back into a Terminal Regulating Reservoir or back into Funks Reservoir.

23 f. Released water can be used along the Glenn Colusa Irrigation District Main
24 Canal, along the Tehama-Colusa Canal, or conveyed to the new Dunnigan Pipeline and
25 discharged to the Colusa Basin Drain and conveyed via the Sacramento River or the Yolo
26 Bypass to a variety of locations in the Delta and south of the Delta.

27 g. Operations will be coordinated with the U.S. Bureau of Reclamation
28 ("Reclamation") and California Department of Water Resources ("DWR") to prevent conflicts

1 with the Central Valley Project (“CVP”) and State Water Project (“SWP”) and exchanges of
2 water may occur with the CVP and SWP.

3 h. Water will also be diverted and impounded from Funks and Stone Corral
4 Creeks and releases from Golden Gate Dam and Sites Dam, respectively, will occur into Funks
5 and Stone Corral Creeks to maintain flows to protect downstream water right holders and
6 ecological functions.

7 25. The FEIR contained three alternatives. Alternatives 1 and 3 both provide for a 1.5
8 million acre foot reservoir and differ only to the extent that Reclamation will fund up to 25
9 percent of the Project. Alternative 2 is a slightly smaller reservoir of 1.3 million acre-feet with
10 12,600 acres of inundation with a few less dams and saddle dikes. Other than a slightly smaller
11 inundation area, Alternative 2 is substantially similar to Alternatives 1 and 3.

12 **B. THE AUTHORITY’S ENVIRONMENTAL REVIEW FOR THE PROJECT**

13 26. On November 5, 2001, the DWR released a Notice of Preparation (“NOP”) for the
14 Sites Reservoir Project EIR.

15 27. On February 2, 2017, the Sites Project Authority assumed the role of CEQA lead
16 agency and released a supplemental NOP.

17 28. On August 14, 2017, the Authority released a Draft EIR for the Project.

18 29. On April 22, 2020, the Authority’s Board of Directors directed the Authority staff
19 to prepare and recirculate a Revised Draft Environmental Impact Report (“RDEIR”) to address
20 changes to the proposed Project. The Authority is the lead agency responsible for complying
21 with CEQA, Pub. Resources Code sections 21000, *et seq.* Reclamation is the federal lead
22 agency responsible for complying with the National Environmental Policy Act (“NEPA”), 42
23 U.S.C. section 4321 *et seq.*. The Authority and Reclamation are jointly responsible for preparing
24 an Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) for the Project.

25 30. On November 12, 2021, the Authority released the RDEIR for public comment and
26 review.

27 31. On November 2, 2023, the Authority released the FEIR for the Project. The FEIR
28 includes the public and agency comments received on the RDEIR.

1 **C. THE AUTHORITY’S CERTIFICATION OF THE FEIR AND APPROVAL OF THE PROJECT**

2 32. On November 17, 2023, the Joint Sites Reservoir Committee and the Authority’s
3 Board of Director’s held a public hearing to review and consider the FEIR and Project. At the
4 conclusion of the public hearing the Board approved Board Resolution No. 2023-02 which
5 included the following actions:

- 6 a. Certification of the Final Environmental Impact Report for the Sites
7 Reservoir Project under the California Environmental Quality Act;
- 8 b. Adoption of CEQA Findings;
- 9 c. Adoption of a Statement of Overriding Considerations;
- 10 d. Adoption of the Mitigation, Monitoring and Reporting Program;
- 11 e. Approval of the Sites Reservoir Project as described in the CEQA
12 Findings;
- 13 f. Direction to the Executive Director to File a Notice of Determination and
14 pay all related fees; and
- 15 g. Authorization for the Executive Director to certify the CEQA record of
16 proceedings.

17 33. On November 20, 2023, Respondents filed Notices of Determination with the
18 Tehama County Clerk, Glenn County Clerk, Colusa County Clerk, Yolo County Clerk, and the
19 Office of Planning and Research as provided by Public Resources Code section 21152.

20 **JURISDICTION AND VENUE**

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

23 35. Venue for this action properly lies in Yolo County Superior Court as parts of the
24 Project will be constructed and operated within Yolo County. Suits challenging actions taken
25 by a public official can be filed in any county where some of the environmental effects of the
26 action will be felt. (Code Civ. Proc., § 393(b); *California State Parks Foundation v. Superior*
27 *Court* (2007) 150 Cal.App.4th 826.)

28 //

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 **AND INADEQUACY OF REMEDY**

3 36. Petitioners have exhausted all administrative remedies by submitting written
4 comments during several stages of the Project approval and EIR/EIS processes, including, but
5 not limited to written comments objecting to approval of the project and highlighting CEQA
6 (Pub. Resources Code sections 21000, et seq.) violations and deficiencies in the draft and
7 revised draft EIR/EIS and final EIR/EIS. All issues raised in this Petition were raised by
8 Petitioners, other members of the public, and/or public agencies prior to approval of the Project
9 and certification of the EIR/EIS.

10 37. Petitioners have performed any and all conditions precedent to filing the instant
11 action and have exhausted any and all available administrative remedies to the extent required
12 by law.

13 38. Petitioners have complied with the requirements of Public Resources Code section
14 21167.5 by mailing written notice of this action to the Respondents. A copy of this written
15 notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

16 39. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law
17 unless this Court grants the requested writ of mandate to require Respondents to set aside their
18 approval of the Project and certification of the EIR. In the absence of such remedies, the
19 Respondents approval will remain in effect in violation of State law.

20 40. This action has been brought within 30 days of Respondents filing of the Notices
21 of Determination in Tehama County, Glenn County, Colusa County and Yolo County as
22 required by Public Resources Code section 21167(c).

23 **STANDING**

24 41. Because Petitioners' and their respective members' aesthetic and environmental
25 interests are directly and adversely affected by the Respondents' approval of the Project, and
26 because they participated at every phase of the EIR process submitting oral and written
27 comments at the Draft EIR and Final EIR stages, Petitioners have standing to bring this action.

28 //

1 **CAUSE OF ACTION**

2 **(Violation of the California Environmental Quality Act)**

3 42. Petitioners reallege and incorporate by reference Paragraphs 1 through 41,
4 inclusive, of this Petition, as if fully set forth below.

5 43. CEQA is designed to ensure that long-term protection of the environment be the
6 guiding criterion in public decisions. CEQA requires that the lead agency for a project with the
7 potential to cause significant environmental impacts prepare an EIR that complies with the
8 requirements of the statute, including, but not limited to, the requirement to analyze the project’s
9 potentially significant environmental impacts. The EIR must provide sufficient environmental
10 analysis such that the decisionmakers can intelligently consider environmental consequences
11 when acting on the proposed project. Such analysis must include and rely upon thresholds of
12 significance that are based on substantial evidence before the decisionmakers. Additionally, the
13 EIR must analyze feasible mitigation measures and a reasonable range of alternatives to the
14 project.

15 44. “At the ‘heart of CEQA’ [citation] is the requirement that public agencies prepare
16 an EIR” (*Friends of College of San Mateo Gardens v. San Mateo County Community*
17 *College Dist.* (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 944 (“The purpose of the EIR is ‘to
18 provide public agencies and the public in general with detailed information about the effect
19 which a proposed project is likely to have on the environment; to list ways in which the
20 significant effects of such a project might be minimized; and to indicate alternatives to such a
21 project.’ [Citation.]” (*Ibid.*) “The EIR thus works to ‘inform the public and its responsible
22 officials of the environmental consequences of their decisions before they are made,’ thereby
23 protecting ‘not only the environment but also informed self-government.” [Citations.]” (*Id.* at
24 944-945, italics omitted.)

25 45. CEQA also mandates that the lead agency adopt feasible and enforceable
26 mitigation measures that would reduce or avoid any of a project’s significant environmental
27 impacts. (Pub. Resources Code, 21100(b)(3); CEQA Guidelines, § 15126.4(a)(1).) If any of
28 the project’s significant impacts cannot be mitigated to a less than significant level, then

1 CEQA bars the lead agency from approving a project if a feasible alternative is available that
2 would meet the project’s objectives while avoiding or reducing its significant environmental
3 impacts.

4 46. CEQA requires that substantial evidence in the administrative record support all
5 of the EIR and agency’s findings and conclusions, and that the agency explain how the
6 evidence in the record supports the conclusions the agency has reached.

7 47. Respondents committed a prejudicial abuse of discretion and failed to proceed in
8 a manner required by law by relying on an EIR that failed to meet the requirements of CEQA
9 for disclosure, analysis, and/or mitigation of significant project impacts, including on
10 biological resources, water quality, greenhouse gases and cumulative impacts.

11 **A. THE FEIR RELIES UPON AN INACCURATE ENVIRONMENTAL BASELINE**

12 48. The environmental baseline is typically the conditions that exist when the Notice
13 of Preparation is issued. (CEQA Guidelines, § 15125(a).) “Where existing conditions change
14 or fluctuate over time, and where necessary to provide the most accurate picture practically
15 possible of the project’s impacts, a lead agency may define existing conditions by referencing
16 historic conditions, or conditions expected when the project becomes operational, or both, that
17 are supported with substantial evidence.” (*Id.*). In determining whether a project’s impacts
18 are significant, an EIR ordinarily compares those impacts with existing environmental
19 conditions, which are referred to as the “baseline” for the impact analysis. (*Neighbors for*
20 *Smart Rail v Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 447.)

21 49. The EIR fails to use an accurate environmental baseline. The EIR improperly
22 uses an environmental baseline that differed from conditions that existed when the NOP was
23 issued, including: (1) it uses the Trump Administration’s 2019 Biological Opinions for
24 operations of the Central Valley Project and State Water Project as part of the baseline; (2) it
25 omits the State Water Resources Control Board’s 2018 Update of the Bay-Delta Water Quality
26 Control Plan; and (3) it ignores the pending revision of water quality standards for the
27 Sacramento River and flows into, through and from the Delta to San Francisco Bay as the final
28 part of the SWRCB’s forthcoming update of the Bay-Delta Water Quality Control Plan.

1 **B. THE EIR FAILED TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES**

2 50. CEQA requires that an EIR consider a reasonable range of alternatives. (Pub.
3 Resources Code §§ 21002, 21061, 21100; CEQA Guidelines § 15126.6; see, e.g., *Citizens of*
4 *Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 566 (1990) (EIR must consider a
5 reasonable range of alternatives that offer substantial environmental benefits and may feasibly
6 be accomplished.)

7 51. The EIR fails to consider a reasonable range of alternatives because it only
8 considers a single operational alternative, whereas other operational alternatives could reduce
9 or avoid adverse environmental impacts. The EIR should have evaluated reasonable and
10 feasible alternatives that result in comparatively reduced water diversions from the Sacramento
11 River (particularly during all but wet water year types and during periods of moderate and low
12 flows), because they would result in reduced adverse effects on native fish and wildlife in the
13 Sacramento River and Bay-Delta estuary. The best available science shows that increased
14 flows in the Sacramento River during the winter-spring period and increased Delta outflows
15 are necessary to protect and restore native fish and wildlife populations and their habitats and
16 comply with state and federal law.

17 52. The Authority's failure to include any operational alternatives that could reduce
18 or avoid adverse environmental impacts violates CEQA's requirement to consider a reasonable
19 range of alternatives.

20 **C. THE EIR FAILS TO PROVIDE AN ACCURATE ENVIRONMENTAL SETTING**

21 53. The EIR failed to comply with CEQA's requirements to provide an adequate and
22 accurate description of the environmental setting of the Project area. (CEQA Guidelines §
23 15125.)

24 54. The EIR's description of the environmental setting is inadequate because, but not
25 limited to, its failure to establish that protocol-level surveys were performed on all appropriate
26 species. Also, the Authority failed to conduct new on-the-ground surveys regarding
27 vegetation, wetland, or wildlife resources for preparation of the EIR. Rather, the EIR relied
28 primarily on desktop modeling of land-cover types based on areal imagery to describe the

1 location of plant communities and wetlands.

2 55. The EIR violates CEQA as it relied on outdated, unreliable, and inaccurate habitat
3 and species distribution information even though it was feasible to provide more accurate
4 information. (*See Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th
5 665, 692-94.)

6 **D. THE EIR RELIES UPON AN INACCURATE PROJECT DESCRIPTION**

7 56. CEQA requires that environmental review document contain an accurate
8 description of the entire project. (*See County of Inyo v. City of Los Angeles* (1977) 71
9 Cal.App.3d 185, 193.) CEQA requires a clear explanation of the nature and scope of the
10 proposed project, otherwise it “is fundamentally inadequate and misleading.” (*See Communities*
11 *for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 84-85.) CEQA
12 requires a complete project description to ensure that all of the project’s environmental impacts
13 are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1450, 1454.) “A
14 curtailed or distorted project description may stultify the objectives of the reporting process.
15 Only through an accurate view of the project may affected outsiders and public decision-makers
16 balance the proposal’s benefit against its environmental cost, consider mitigation measures,
17 assess the advantages of terminating the proposal (i.e., the “no project” alternative) and weigh
18 other alternatives in the balance.” (*County of Inyo, supra*, 71 Cal.App.3d at 192-193; see also
19 *Communities for a Better Environment, supra*, 184 Cal.App.4th at 82.) “A curtailed, enigmatic
20 or unstable project description draws a red herring across the path of public input.” (*San*
21 *Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; quoting
22 *County of Inyo, supra*, 71 Cal.App.3d at 197-198.)

23 57. An accurate project description is essential as it allows the public and the decision-
24 makers to evaluate the project’s benefits against its environmental effects. (*County of Inyo v.*
25 *City of Los Angeles, supra*, 71 Cal.App.3d at 192-193.) An inaccurate project description may
26 result in an EIR that fails to disclose impacts associated with the project. (*See Santiago County*
27 *Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) “[O]nly through an accurate
28 view of the project may the public and interested parties and public agencies balance the

1 proposed project's benefits against its environmental cost, consider appropriate mitigation
2 measures, assess the advantages of terminating the proposal and properly weigh other
3 alternatives" (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.) If
4 the description is inadequate because it fails to discuss an aspect of the project, the
5 environmental analysis will probably reflect the same mistake. (See *San Joaquin*
6 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.3d 713, 722-723.)

7 58. The Project Description is vague and ambiguous. For example, the EIR contains
8 inconsistent bypass flow criteria that limit diversions from the Sacramento River in the
9 operational criteria common to all alternatives. Additionally, the Wilkins Slough Flow
10 Protection Criteria (Mitigation Measure Fish-2) is not included in the modeling of the Project
11 and alternatives. The EIR also relies upon different modeling assumptions for the project
12 operations and alternatives in other parts of the EIR which do not reflect the project and
13 alternatives.

14 59. The Project Description also assumes that there will be water exchanges with
15 Shasta and Oroville reservoirs in certain years, which affects operations of those reservoirs and
16 temperature-dependent mortality of salmon. These agreements are not in place and the EIR
17 does not analyze the effects of additional Shasta Dam releases by Reclamation.

18 60. The EIR also fails to identify major project components that will have significant
19 environmental impacts. While the EIR acknowledges that the overall project design is not
20 final, it fails to describe what project components could change and how. The EIR fails to
21 identify the location of 46 miles of new paved and unpaved roads and only provides general
22 information about the corridor where the roads may be located.

23 61. The Project Description is also vague and ambiguous regarding the location and
24 extent of large recreation areas and electrical transmission lines.

25 62. The EIR clearly states that major, impactful decisions related to roads, recreation
26 areas, transmission lines, canal modifications, and other project components will occur in the
27 future. The EIR shields these decisions from public review, thus depriving the public of a
28 meaningful opportunity to understand the project's impacts and provide comments on the

1 potentially significant environmental impacts.

2 **E. THE EIR FAILED TO ADEQUATELY, DISCLOSE, ANALYZE AND/OR MITIGATE**
3 **ENVIRONMENTAL IMPACTS**

4 63. The EIR failed to comply with CEQA's requirements in that it failed to
5 adequately disclose, analyze and/or mitigate the Project's significant environmental impacts
6 and cumulative impacts as required by law, and its conclusions regarding the Project's
7 environmental impacts are not supported by substantial evidence.

8 **a. Biological Resources.** The EIR failed to adequately disclose, analyze
9 and/or mitigate the Project's significant impacts to biological resources, including numerous
10 species affected by the Project.

11 i. The EIR failed to adequately assess and mitigate the Project's
12 impacts to winter-run Chinook salmon;

13 ii. The EIR failed to adequately assess and mitigate the Project's
14 impacts to spring-run Chinook salmon;

15 iii. The EIR failed to adequately assess and mitigate the Project's
16 impacts to fall-run Chinook salmon;

17 iv. The EIR failed to adequately assess and mitigate the Project's
18 impacts to steelhead;

19 v. The EIR failed to adequately assess and mitigate the Project's
20 impacts to Delta smelt;

21 vi. The EIR failed to adequately assess and mitigate the Project's
22 impacts to longfin smelt;

23 vii. The EIR failed to adequately assess and mitigate the Project's
24 impacts to fish below Golden Gate Dam and Sites Dam;

25 viii. The EIR failed to adequately assess and mitigate the Project's
26 impacts to wetlands and terrestrial wildlife;

27 ix. The EIR failed to adequately assess and mitigate the Project's
28 impacts to wildlife, including golden eagles, bald eagles, Western pond turtles, and giant garter

1 snakes, among others

2 x. The EIR impermissibly defers formulation of mitigation measures
3 for impacts on wetlands and terrestrial wildlife dependent upon future access to the Project site
4 and future studies (*See* Mitigation Measure WILD 1.1).

5 **b. Cultural Resources.** The EIR failed to adequately disclose, analyze, or
6 mitigate the Project significant impacts to cultural resources. For example, the EIR failed to
7 disclose or analyze entire village sites within the Project footprint that were identified by the
8 Yocha Dehe Wintun Nation and other tribal interests during the comment period. Additionally,
9 several of the proposed recreation areas are to be located on areas of high cultural sensitivity
10 without consideration of alternative locations.

11 **c. Water Quality.** The EIR failed to adequately disclose, analyze and/or
12 mitigate the Project’s significant impacts to water quality. The Project will result in high
13 concentrations of metals during the high flow months of winter when diversions would be
14 occurring to the Site Reservoir. As a result, high concentrations of metals in the source water
15 will adversely impact water quality in Sites Reservoir for most, if not all, the proposed
16 beneficial uses of the stored water.

17 i. The Project will violate water quality standards of the Central
18 Valley Water Quality Control resulting in significant impacts;

19 ii. The Project will result in the development of methylmercury in the
20 Sites Reservoir resulting methylmercury concentrations in fish that exceeds the California sport
21 fish objective;

22 iii. The Project will result in the development of Harmful Algal
23 Blooms.

24 **d. Greenhouse Gas Emissions:** The EIR failed to adequately disclose,
25 analyze and/or mitigate the impacts relating to greenhouse gas (“GHG”) emissions. Methane
26 releases are a significant concern related to greenhouse gasses and accounts for about 20 percent
27 of global emissions. The EIR fails to analyze or disclose the impacts GHG emissions from
28 reservoir releases despite numerous studies analyzing reservoir emissions and federal and state

1 regulations and guidance of the issue of GHGs. The operation of the Project will lead to
2 significant GHG emissions in the form of methane due to its location, shallow nature, and
3 polluted source water. Newer reservoirs are considered to be sources of methane gas.

4 **e. Cumulative Impacts.** The EIR failed to adequately disclose, analyze, or
5 mitigate the Project’s significant cumulative impacts. The EIR failed to acknowledge that the
6 Project’s impacts are cumulatively significant. Although, the EIR admits that despite
7 requirements of the ESA and CESA, “the cumulative impact of past modifications and other
8 past and present projects has contributed to the continuing decline in Central Valley and Delta
9 fish populations and their habitats,” the EIR fails to conclude that “[t]his overall cumulative
10 impact is significant.” Even with the approved mitigation measures the Project’s impacts
11 would cumulatively also be significant. Given the dire status of native fish populations,
12 particularly Delta Smelt, winter-run Chinook salmon, Longfin Smelt, and other species listed
13 under CESA and/or the ESA, the Project’s contribution to cumulative impacts are significant.

14 **F. FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS**

15 64. Respondents’ Findings of Fact and Statement of Overriding Considerations violate
16 the requirements of the CEQA Guidelines. The Findings fail to identify the changes or
17 alterations that are required to avoid or substantially lessen the project’s significant
18 environmental effects (CEQA Guidelines § 15091(a)(1); the Findings and Statement of
19 Overriding Considerations are not supported by substantial evidence. (CEQA Guidelines, §
20 15091(b).)

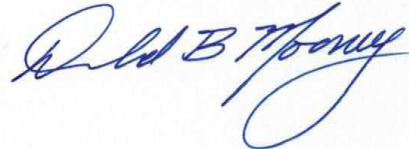
21 65. Where mitigation measures and alternatives to a project are not adopted, the CEQA
22 findings must identify specific economic, legal, social and technological and other
23 considerations that make infeasible the adoption of mitigation measures or alternatives. All
24 CEQA findings must be supported by substantial evidence in the record and must disclose the
25 analytical route by which approval of the project is justified. The findings regarding the
26 impacts, mitigation measures, and alternatives relied upon by Respondents’ approval of the
27 Project are not supported by substantial evidence in the record, and the links between evidence
28 and conclusions are not satisfactorily provided.

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Dated: December 19, 2023

Respectfully submitted,

LAW OFFICES OF DONALD B. MOONEY



By _____

Donald B. Mooney
Attorney for Petitioners Friends of the River,
Center for Biological Diversity; California
Sportfishing Protection Alliance, California Water
Impact Network and Save California Salmon

Dated: December 19, 2023

Respectfully submitted,

CENTER FOR BIOLOGICAL DIVERSITY

By _____


John T. Buse
Frances Tinney
Attorneys for Petitioner Center for Biological
Diversity

VERIFICATION

1
2 I am the attorney for Petitioners Friends of the River, Center for Biological Diversity;
3 California Sportfishing Protection Alliance, California Water Impact Network and Save
4 California Salmon. Petitioners' are all located outside the County of Yolo, State of California,
5 where I have my office. For that reason, I make this verification for and on behalf of Petitioners
6 Friends of the River, Center for Biological Diversity, California Sportfishing Protection
7 Alliance, California Water Impact Network and Save California Salmon pursuant to California
8 Code of Civil Procedure section 446. I have read the Verified Petition for Writ of Mandate and
9 know its contents. The matters stated in it are true and correct based on my knowledge, except
10 as to the matters that are stated therein on information and belief and as to those matters, I
11 believe them to be true.
12

13 I declare under penalty of perjury that the above is true and correct. Executed this 19th
14 day of December 2023, at Davis, California.

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18 _____
19 Donald B. Mooney
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EXHIBIT A

EXHIBIT A

LAW OFFICE OF DONALD B. MOONEY

417 Mace Boulevard, Suite J-334

Davis, CA 95618

530-304-2424

dbmooney@dcn.org

December 18, 2023

**VIA FEDERAL EXPRESS
AND ELECTRONIC MAIL**
jbrown@sitesproject.org

Jerry Brown, Executive Director
Sites Project Authority
122 Old Highway 99 West
Maxwell, CA 95955

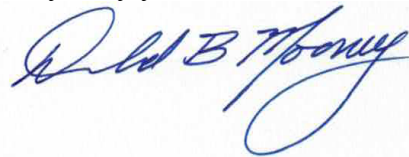
Re: NOTICE OF INTENT TO FILE CEQA PETITION

Dear Mr. Brown:

Please take notice that under Public Resources Code § 21167.5, that Petitioners Friends of the River, Center for Biological Diversity, California Sportfishing Protection Alliance, California Water Impact Network, and Save California Salmon (collectively, “Petitioners”) intend to file a petition for Writ of Mandate in Yolo County Superior Court under the provisions of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*, against the Sites Project Authority and the Board of Directors of the Sites Project Authority (collectively “Authority”). The Petition for Writ of Mandate challenges the Authority’s November 17, 2023 certification of the Final Environmental Impact Report for the Sites Reservoir Project (“FEIR”) and required CEQA findings, and approval of the Sites Reservoir Project (“Project”). Petitioners seek a determination from the Court that Authority’s certification of the FEIR and approval of the Project are invalid and void as the FEIR prepared for the Project fails to satisfy the requirements of CEQA, and the CEQA Guidelines.

The Petition for Writ of Mandate will request that the court direct the Authority to vacate and rescind approval of Board Resolution No. 2023-02. Additionally, the Petition will seek Petitioners’ costs and attorney’s fees associated with this action.

Very truly yours,



Donald B. Mooney
Attorney for Petitioners Friends of the
River, Center for Biological Diversity;
California Sportfishing Protection Alliance,
California Water Impact Network and Save
California Salmon

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Blvd, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On December 18, 2023, I served a true and correct copy of as follows:

NOTICE OF INTENT LETTER DATED DECEMBER 18, 2023

X (by electronic mail) to the person at the electronic mail address set forth below:

X (by overnight delivery service) via Federal Express to the person at the address set forth below:

Jerry Brown
Executive Director
Sites Project Authority
122 Old Highway 99 West
Maxwell, CA 95955
jbrown@sitesproject.org

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 18, 2023 at Davis, California.



Donald B. Mooney