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10 *(additional counsel on following page)*

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

13 CALIFORNIA DEPARTMENT OF WATER
14 RESOURCES,

15 Plaintiff,

16 vs.

17 ALL PERSONS INTERESTED IN THE
18 MATTER of the Authorization of California
19 Water Fix Revenue Bonds, the Issuance, Sale and
20 Delivery of California WaterFix Revenue Bonds
21 Series A, Series B and Subsequent Series, the
22 Adoption of the California WaterFix Revenue
23 Bond General Bond Resolution and the
24 Supplemental Resolutions Providing for the
25 Issuance of California WaterFix Revenue Bonds,
26 and the Proceedings Related Thereto,

27 Defendants,

Case No.: 34-2017-00215965

**VERIFIED ANSWER OF DEFENDANTS
FRIENDS OF THE RIVER, CENTER
FOR BIOLOGICAL DIVERSITY,
SIERRA CLUB CALIFORNIA,
RESTORE THE DELTA, CENTER FOR
FOOD SAFETY and PLANNING AND
CONSERVATION LEAGUE TO
COMPLAINT FOR VALIDATION**

DEPT.: 35

JUDGE: Hon. Alan G. Perkins

Action Filed: July 21, 2017

1 ***Additional counsel:***

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25 *Attorney for Defendant Sierra Club California*

1 These answering Defendants, Friends of the River, Center for Biological Diversity, Sierra Club
2 California, Restore the Delta, Center for Food Safety and Planning and Conservation League, respond
3 to the California Department of Water Resources' (the "Department") Complaint for Validation as
4 follows:

5 **Nature of the Action**

- 6 1. Defendants admit the allegations in paragraph 1.
7 2. Defendants lack sufficient information or belief to be able to answer the allegations in
8 paragraph 2 and deny them on that basis.

9 **The Parties**

- 10 3. Defendants admit the allegations in paragraph 3.
11 4. Defendants admit the allegations in paragraph 4.
12 5. Defendants admit the allegations in paragraph 5.

13 **Jurisdiction and Venue**

- 14 6. Defendants admit the allegations in paragraph 6.
15 7. Defendants admit the allegations in paragraph 7.

16 **The Project**

- 17 8. Defendants admit the allegations in paragraph 8.
18 9. No response is required to paragraph 9 because it calls for legal conclusions; to the
19 extent any facts are stated, Defendants deny each and every allegation set forth therein and further
20 respond that the referenced statutes speak for themselves.

- 21 10. Defendants admit the allegations in paragraph 10.
22 11. Defendants admit the allegations in paragraph 11.
23 12. Defendants admit the allegations in paragraph 12.

24 **The California WaterFix**

- 25 13. Defendants deny the allegations in paragraph 13.
26 14. Defendants deny the allegations in paragraph 14.
27 15. Defendants admit the allegations in the first sentence of paragraph 15. Answering the
28 second sentence in paragraph 15, Defendants admit that the Department's claim that it has such

1 statutory authority to finance the California WaterFix is a subject of this action, but denies that the
2 Department has any such statutory authority.

3 **Statutory Authority for the California WaterFix**

4 16. Defendants deny the allegations in paragraph 16.

5 17. No response is required to paragraph 17 because it calls for legal conclusions; to the
6 extent any facts are stated, Defendants deny each and every allegation set forth therein and further
7 respond that the referenced statute speaks for itself.

8 18. Defendants deny the allegations in the first sentence of paragraph 18. No response is
9 required to the remainder of paragraph 18 because it calls for legal conclusions; to the extent any facts
10 are stated, Defendants deny each and every allegation set forth therein and further respond that the
11 referenced statute speaks for itself.

12 19. No response is required to paragraph 19 because it calls for legal conclusions: to the
13 extent any facts are stated, Defendants deny each and every allegation set forth therein and further
14 respond that the referenced statute speaks for itself.

15 20. No response is required to paragraph 20 because this paragraph calls for legal
16 conclusions; to the extent any facts are stated, Defendants deny each and every allegation set forth
17 therein and further respond that the referenced statute and court decision speak for themselves.

18 21. No response is required to paragraph 21 because this paragraph calls for legal
19 conclusions; to the extent any facts are stated, Defendants deny each and every allegation set forth
20 therein and further respond that the referenced statute speaks for itself.

21 22. No response is required to paragraph 22 because this paragraph calls for legal
22 conclusions; to the extent any facts are stated, Defendants deny each and every allegation set forth
23 therein and further respond that the referenced Act speaks for itself.

24 23. Defendants deny the allegations in paragraph 23.

25 24. No response is required to paragraph 24 because this paragraph calls for legal
26 conclusions; to the extent any facts are stated, Defendants deny each and every allegation set forth
27 therein and further respond that the referenced statutes speak for themselves.

28 25. No response is required to paragraph 25 because this paragraph calls for legal

1 conclusions; to the extent any facts are stated, Defendants deny each and every allegation set forth
2 therein and further respond that the referenced statute speaks for itself.

3 **The California WaterFix Financing**

4 **A. The California Water Fix General Bond Resolution and California WaterFix Revenue**
5 **Bonds**

6 26. Defendants admit the allegations in paragraph 26.

7 27. No response is required to paragraph 27, which purports to characterize the contents of
8 the Department's July 21, 2017, Resolution and Project Order No. 40, which speak for themselves and
9 are the best evidence of their content. To the extent any facts are stated, Defendants deny each and
10 every allegation set forth therein.

11 28. No response is required to paragraph 28, which purports to characterize the contents of
12 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence
13 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
14 therein.

15 29. No response is required to paragraph 29, which calls for legal conclusions and purports
16 to characterize the contents of the Department's July 21, 2017, Resolution, which Resolution speaks for
17 itself and is the best evidence of its content. To the extent any facts are stated, Defendants deny each
18 and every allegation set forth therein.

19 30. No response is required to paragraph 30, which calls for legal conclusions and purports
20 to characterize the contents of the Department's July 21, 2017, Resolution, which Resolution speaks for
21 itself and is the best evidence of its content. To the extent any facts are stated, Defendants deny each
22 and every allegation set forth therein.

23 31. No response is required to paragraph 31, which purports to characterize the contents of
24 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence
25 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
26 therein.

27 32. No response is required to paragraph 32, which purports to characterize the contents of
28 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence

1 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
2 therein.

3 33. No response is required to paragraph 33, which purports to characterize the contents of
4 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence
5 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
6 therein.

7 34. No response is required to paragraph 34, which purports to characterize the contents of
8 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence
9 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
10 therein.

11 35. No response is required to paragraph 35, which purports to characterize the contents of
12 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence
13 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
14 therein.

15 36. No response is required to paragraph 36, which purports to characterize the contents of
16 the Department's July 21, 2017, Resolution, which Resolution speaks for itself and is the best evidence
17 of its content. To the extent any facts are stated, Defendants deny each and every allegation set forth
18 therein.

19 **B. The First and Second Supplemental Resolutions**

20 37. Defendants admit the allegations in paragraphs 37.

21 38. No response is required to paragraph 38, which purports to characterize the contents of
22 the Department's July 21, 2017, First Supplemental Resolution, which Resolution speaks for itself and
23 is the best evidence of its content. To the extent any facts are stated, Defendants deny each and every
24 allegation set forth therein.

25 39. No response is required to paragraph 39, which purports to characterize the contents of
26 the Department's July 21, 2017, First Supplemental Resolution, which Resolution speaks for itself and
27 is the best evidence of its content. To the extent any facts are stated, Defendants deny each and every
28 allegation set forth therein.

1 40. No response is required to paragraph 40, which purports to characterize the contents of
2 the Department's July 21, 2017, Second Supplemental Resolution, which Resolution speaks for itself
3 and is the best evidence of its content. To the extent any facts are stated, Defendants deny each and
4 every allegation set forth therein.

5 **Statutory Authorization to Bring this Validation Action**

6 41. Defendants admit the allegations in paragraph 41.

7 42. Defendants admit the allegations in paragraph 42.

8 43. Defendants admit the allegations in paragraph 43.

9 44. No response is required to paragraph 44 because it calls for legal conclusions; to the
10 extent any facts are stated, Defendants deny each and every allegation set forth therein and further
11 respond that the referenced statutes speak for themselves.

12 **Service By Publication of Summons**

13 45. Defendants admit the allegations in paragraph 45.

14 46. Defendants lack sufficient information or belief to be able to answer the allegations in
15 paragraph 46 and deny them on that basis.

16 47. Defendants lack sufficient information or belief to be able to answer the allegations in
17 paragraph 47 and deny them on that basis.

18 48. Defendants lack sufficient information or belief to be able to answer the allegations in
19 paragraph 48 and deny them on that basis.

20 **First Cause of Action**

21 (Determination of Validity)

22 49. Defendants incorporate their responses to paragraphs 1 through 48 above as though fully
23 set forth herein.

24 50. Defendants deny the allegations in paragraph 50.

25 **AFFIRMATIVE DEFENSES**

26 **First Affirmative Defense**

27 51. The Complaint for Validation fails to state facts sufficient to state a cause of action.

28 **Second Affirmative Defense**

1 52. Plaintiff's claims are premature and not ripe for judicial resolution.

2 **Third Affirmative Defense**

3 53. The Delta Reform Act was enacted into law becoming effective in 2010. The Delta
4 Reform Act as codified in Water Code § 85089 mandates that:

5 Construction of a new Delta conveyance facility shall not be initiated until the persons or
6 entities that contract to receive water from the State Water Project and the federal Central
7 Valley Project or a joint powers authority representing those entities have made
arrangements or entered into contracts to pay for both of the following:

- 8 (a) The costs of the environmental review, planning, design, construction, and mitigation,
9 including mitigation required pursuant to Division 13 (commencing with Section
10 21000 of the Public Resources Code) required for the construction, operation, and
11 maintenance of any new Delta water conveyance facility.
12 (b) Full mitigation of property tax or assessments levied by local governments or special
13 districts for land used in the construction, location, mitigation, or operation of new
14 Delta conveyance facilities.

15 54. The issuance of revenue bonds by the Department of Water Resources to finance the
16 capital costs of the California WaterFix project, and other actions by the Department which the
17 Department seeks to Validate in this action, are contrary to law because the Delta Reform Act requires
18 that the persons or entities contracting to receive water from the water projects pay all costs of
19 environmental review, planning, design, construction, and mitigation required for the construction,
20 operation, and maintenance of any new Delta water conveyance facility.

21 55. "The Delta Reform Act recognizes the long-standing principle underlying Reclamation
22 law that the beneficiaries of an improvement or project pay for that improvement project. (Office of
23 Inspector General (OIG), U.S. Department of the Interior, *The Bureau of Reclamation was not
24 Transparent in its Financial Participation in the Bay Delta Conservation Plan, Evaluation*, September
25 7, 2017, p. 7).

26 56. The OIG Evaluation referenced in the paragraph above determined that: "USBR [U.S.
27 Bureau of Reclamation] understated the full cost of its participation in the BDCP [former name for the
28 Water Fix] by \$50 million and subsidized the Federal Central Valley Project (CVP) water contractors'
share of BDCP costs."

57. This Validation action and the Department actions sought to be validated are part of

1 ongoing efforts to unlawfully subsidize the California WaterFix project.

2 58. The California Water Fix project is unlawful under other provisions of the Delta Reform
3 Act in addition to Water Code § 85089, including but not limited to, sections 85021, 85023, 85053,
4 85054, and 85320.

5 59. These answering Defendants have alleged the unlawfulness of the California Water Fix
6 project under the Delta Reform Act as plaintiffs against the Department of Water Resources in a
7 Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, in an action
8 filed August 21, 2017, entitled *California Sportfishing Protection Alliance et al. v. California*
9 *Department of Water Resources*, Superior Court of California, Sacramento, Case Number: 34-2017-
10 80002674. Said action was served on the Department on August 22, 2017.

11 60. The Department cannot obtain any relief in this action prior to either this court or other
12 court with jurisdiction determining whether the Department actions sought to be validated are lawful
13 under the Delta Reform Act.

14 **Fourth Affirmative Defense**

15 61. The California Environmental Quality Act (CEQA) is codified at Public Resources Code
16 Sections 21000 et seq. Guidelines for implementation of CEQA are codified at 14 Cal. Code Regs
17 sections 15000 et seq. Pursuant to CEQA, the CEQA Guidelines, and California case law, agencies
18 may not take any actions that could limit the choice of alternatives or mitigation measures, or give
19 impetus to a planned project in a manner that forecloses alternatives or mitigation measures that would
20 ordinarily be part of CEQA review of that public project.

21 62. The issuance of revenue bonds by the Department for the Water Fix project and other
22 threatened actions the Department seeks to validate would give impetus to the project in a manner
23 foreclosing alternatives and mitigation measures contrary to CEQA.

24 63. These answering Defendants have alleged the unlawfulness of the California Water Fix
25 project under CEQA as plaintiffs against the Department of Water Resources in a Verified Petition for
26 Writ of Mandate and Complaint for Declaratory and Injunctive Relief, in an action filed August 21,
27 2017, entitled *California Sportfishing Protection Alliance et al. v. California Department of Water*
28 *Resources*, Superior Court of California, Sacramento, Case Number: 34-2017-80002674. Said action is

1 the same action alleged in the Third Affirmative Defense, above, and was served on the Department on
2 August 22, 2017.

3 64. The Department cannot obtain any relief in this action prior to either this court or other
4 court with jurisdiction determining whether the Department actions sought to be validated are lawful
5 under CEQA.

6 **Fifth Affirmative Defense**

7 65. The Complaint is uncertain, ambiguous, and vague in defining the nature of the actions
8 sought to be validated and the scope of the relief requested.

9 **Sixth Affirmative Defense**

10 66. The Complaint lacks the specificity required by law, such as to allow this Court to
11 provide Plaintiff the relief it requests.

12 **Seventh Affirmative Defense**

13 67. These answering Defendants reserve all other defenses that may potentially
14 become available as a result of information developed during the case.

15 **Prayer for Relief**

16 These answering Defendants pray for relief and judgment in their favor as follows:

- 17 1. That the Complaint for Validation be dismissed or judgment entered in favor of these
18 answering Defendants;
- 19 2. That Plaintiff take nothing by this suit;
- 20 3. For costs of suit;
- 21 4. For attorney's fees pursuant to law including Code of Civil Procedure section 1021.5;
- 22 and
- 23 5. For such other and further relief as the Court deems just and proper.
- 24
- 25
- 26
- 27
- 28

1 DATED: September 14, 2017

FRIENDS OF THE RIVER

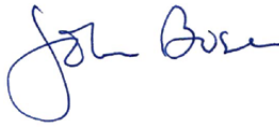
2 

3
4 By: _____

5 E. Robert Wright

6 Attorney for Defendants Friends of the River, Sierra
7 Club California, Restore the Delta, and Planning and
8 Conservation League

9 CENTER FOR BIOLOGICAL DIVERSITY

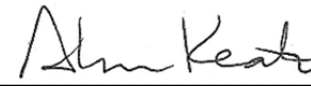
10 

11 By: _____

12 John Buse

13 Attorney for Defendant Center for Biological Diversity

14 CENTER FOR FOOD SAFETY

15
16 By:  _____

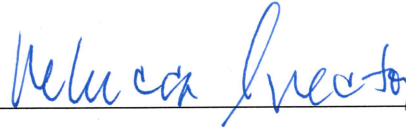
17 Adam Keats

18 Attorney for Defendant Center for Food Safety

VERIFICATION

I, Rebecca Spector, am the West Coast Director of Defendant Center for Food Safety and am authorized to execute this verification on its and other Defendants' behalf. I have read the foregoing Answer to Complaint in Validation and am familiar with its contents. The facts recited in the Answer are true to my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on September 14, 2017, in San Francisco, California.



Rebecca Spector

1 **PROOF OF SERVICE BY NEXT DAY DELIVERY**

2 I, Russell Howze, am over eighteen years of age and not a party to this action. I am employed in
3 the county where the mailing took place. My business address is 303 Sacramento Street, 2nd Floor, San
4 Francisco, CA 94111.

5 On September 14, 2017, I caused to be served the following document(s):

- 6 1. Verified Answer of Defendants Friends of the River, Center for Biological Diversity, Sierra
7 Club California, Restore the Delta, Center for Food Safety and Planning and Conservation
8 League to Complaint for Validation

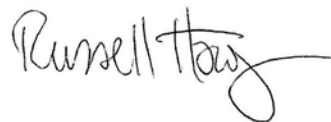
9 on the parties in this action by enclosing them in an envelope and placing the envelope for next day
10 delivery following our ordinary business practices. I am readily familiar with this business's practice
11 for collecting and processing correspondence for mailing. On the same day that correspondence is
12 placed for collection and mailing, it is deposited in the ordinary course of business with the Federal
13 Express in a sealed envelope with delivery fee fully prepaid. The envelope was addressed and mailed as
14 follows:

15 Michael C. Weed
16 Orrick, Herrington & Sutcliffe LLP
17 400 Capitol Mall, Suite 3000
18 Sacramento, CA 95814-9200
19 Tel.: 916-447-9200

Spencer Kenner
California Dept. of Water Resources, Offices
of the Chief Counsel
1419 9th St.
Sacramento, CA 95814
Tel: 916-653-5791

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct.

22 Executed this 14th day of September, 2017 in San Francisco, California.

23
24 

25
26 _____
Russell Howze