

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

NO. C086215
(Consolidated with Nos. C078249 and C080572)

CENTER FOR FOOD SAFETY, et al.,
Petitioners and Appellants,

v.

CALIFORNIA DEPARTMENT OF WATER RESOURCES,
Defendant and Respondent;

DUDLEY RIDGE WATER DISTRICT, et al.
Real Parties in Interest and Respondents.

On Appeal From the Superior Court of Sacramento
The Hon. Timothy M. Frawley, Presiding
Case No. 34-2016-800002469

**COMBINED BRIEF OF REAL PARTIES IN INTEREST AND
APPELLEES KERN WATER BANK AUTHORITY;
ROLL INTERNATIONAL CORPORATION; PARAMOUNT
FARMING COMPANY LLC; WESTSIDE MUTUAL WATER
COMPANY; DUDLEY RIDGE WATER DISTRICT;
SEMITROPIC WATER STORAGE DISTRICT; TEJON-CASTAC
WATER DISTRICT; AND WHEELER RIDGE-MARICOPA
WATER STORAGE DISTRICT**

NOSSAMAN LLP
Stephen N. Roberts (SBN 62538)
sroberts@nossaman.com
Robert D. Thornton, (SBN 72934)
rthornton@nossaman.com
John J. Flynn III, (SBN 76419)
jflynn@nossaman.com
David Miller, (SBN 274936)
dmiller@nossaman.com
18101 Von Karman Avenue, Ste. 1800
Irvine, CA 92612
Telephone: 949.833.7800
Facsimile: 949.833.7878

ROLL LAW GROUP PC
Kristina Diaz (SBN 151566)
Kristina.Diaz@roll.com
11444 Olympic Blvd., 5th Floor
Los Angeles, CA 90064
Telephone: 310.966.8400
Facsimile: 310.966.8810

Attorneys for Real Parties of Interest and Appellees Roll International Corporation; Roll Law Group PC; Paramount Farming Company LLC; and Westside Mutual Water Company

DOWNEY BRAND LLP
Steven P. Saxton (SBN 116943)
ssaxton@dbsr.com
Kevin M. O'Brien (SBN 122713)
kobrien@DowneyBrand.com
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
Telephone: 916.444.1000
Facsimile: 916.444.2100

YOUNG WOOLDRIDGE, LLP
Steven M. Torigiani (SBN 166773)
storigiani@youngwooldridge.com
Ernest A. Conant (SBN 89111)
econant@youngwooldridge.com
Westchester Corporate Plaza
1800 30th Street, Fourth Floor
Bakersfield, CA 93301-5298
Telephone: 661.327.9661
Facsimile: 661.327.1087

Attorneys for Real Parties in Interest and Appellees Kern Water Bank Authority

Attorneys for Real Parties in Interest and Appellees Kern Water Bank Authority; Dudley Ridge Water District; Semitropic Water Storage District; Tejon-Castac Water District; and Wheeler Ridge-Maricopa Water Storage District

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C086215
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 166773 NAME: Steven M. Torigiani FIRM NAME: Young Wooldridge, LLP STREET ADDRESS 1800 30th Street, Fourth Floor CITY: Bakersfield STATE: CA ZIP CODE: 93314 TELEPHONE NO: 661-327-9661 FAX NO.: 661-327-1087 E-MAIL ADDRESS: storigiani@youngwooldridge.com ATTORNEY FOR (name): Appellee Dudley Ridge Water District	SUPERIOR COURT CASE NUMBER: 34-2016-800002469
APPELLANT/ Center for Food Safety, et al. PETITIONER: RESPONDENT/ California Department of Water Resources, REAL PARTY IN INTEREST: Dudley Ridge Water District, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Appellee Dudley Ridge Water District
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: September 5, 2018

Steven M. Torigiani
 (TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

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APPELLANT/ Center for Food Safety, et al. PETITIONER: RESPONDENT/ California Department of Water Resources, REAL PARTY IN INTEREST: Dudley Ridge Water District, et al.		
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1. This form is being submitted on behalf of the following party (name): Appellee Kern Water Bank Authority
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

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COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C086215
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 72934 NAME: Robert D. Thornton FIRM NAME: NOSSAMAN LLP STREET ADDRESS: 18101 Von Karman Avenue, Suite 1800 CITY: Irvine STATE: CA ZIP CODE: 92612 TELEPHONE NO.: (949) 833.7800 FAX NO.: (949) 833.7878 E-MAIL ADDRESS: rthornton@nossaman.com ATTORNEY FOR (name): Appellee Paramount Farming Company	SUPERIOR COURT CASE NUMBER: 34-2016-800002469
APPELLANT/ PETITIONER: CENTER FOR FOOD SAFETY, et al. RESPONDENT/ REAL PARTY IN INTEREST: CALIFORNIA DEPARTMENT OF WATER RESOURCES/ DUDLEY RIDGE WATER DISTRICT, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
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1. This form is being submitted on behalf of the following party (name): Paramount Farming Company

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Wonderful Orchards LLC	Successor to Paramount Farming Company LLC
(2) Wonderful Orchards Holdings LLC	Owner of 100% interest in Wonderful Orchards LLC
(3) Wonderful Legacy Inc.	Owner of more than 10% interest in The Wonderful Company LLC
(4) Stewart and Lynda Resnick Revocable Trust dated December 27, 1988	Owner of more than 10% interest in The Wonderful Company LLC
(5)	

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: September 19, 2018

Robert D. Thornton
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C086215
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APPELLANT/ PETITIONER: CENTER FOR FOOD SAFETY, et al. RESPONDENT/ REAL PARTY IN INTEREST: CALIFORNIA DEPARTMENT OF WATER RESOURCES/ DUDLEY RIDGE WATER DISTRICT, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
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1. This form is being submitted on behalf of the following party (name): Roll International Corporation

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) The Wonderful Company LLC	Successor to Roll Global LLC which is successor to Roll International Corp.
(2) Wonderful Legacy, Inc.	Owner of more than 10% interest to The Wonderful Company LLC
(3) Stewart and Lynda Renick Recovable Trust dated 12/27/88	Owner of more than 10% interest to The Wonderful Company LLC
(4)	
(5)	

Continued on attachment 2.

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Date: September 19, 2018

Robert D. Thornton
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C086215
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 166773 NAME: Steven M. Torigiani FIRM NAME: Young Wooldridge, LLP STREET ADDRESS 1800 30th Street, Fourth Floor CITY: Bakersfield STATE: CA ZIP CODE: 93314 TELEPHONE NO.: 661-327-9661 FAX NO.: 661-327-1087 E-MAIL ADDRESS: storigiani@youngwooldridge.com ATTORNEY FOR (name): Appellee Semitropic Water Storage District	SUPERIOR COURT CASE NUMBER: 34-2016-800002469
APPELLANT/ PETITIONER: Center for Food Safety, et al. RESPONDENT/ REAL PARTY IN INTEREST: California Department of Water Resources, Dudley Ridge Water District, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
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1. This form is being submitted on behalf of the following party (name): Appellee Semitropic Water Storage District

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

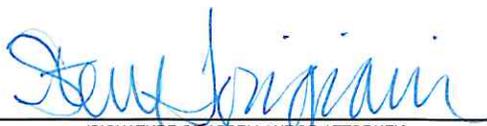
Full name of interested entity or person	Nature of interest (Explain):
(1)	
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Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: September 5, 2018

Steven M. Torigiani
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPELLANT/ PETITIONER: CENTER FOR FOOD SAFETY, et al. RESPONDENT/ REAL PARTY IN INTEREST: CALIFORNIA DEPARTMENT OF WATER RESOURCES/ DUDLEY RIDGE WATER DISTRICT, et al.	
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1. This form is being submitted on behalf of the following party (name): Tejon Ranch Company

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Tejon Ranch Co., a Delaware corporation	Parent company of Tejon Ranch Company
(2) Tejon Ranchcorp (California)	Operating company, landowner and wholly owned subsidiary
(3) Towerview LLC	Owns 14.15% of Tejon Ranch Co.
(4) The Vanguard Group	Owns 10.53% of Tejon Ranch Co.
(5)	

Continued on attachment 2.

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Date: September 19, 2018

Robert D. Thornton
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C086215
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APPELLANT/ PETITIONER: CENTER FOR FOOD SAFETY, et al. RESPONDENT/ REAL PARTY IN INTEREST: CALIFORNIA DEPARTMENT OF WATER RESOURCES/ DUDLEY RIDGE WATER DISTRICT, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
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1. This form is being submitted on behalf of the following party (name): Westside Mutual Water Company LLC

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Wonderful Orchards LLC	Member of Westside Mutual Water Company LLC
(2) Wonderful Nut Orchards LLC	Member of Westside Mutual Water Company LLC
(3) Wonderful Pomegranate Orchards LLC	Member of Westside Mutual Water Company LLC
(4) Wonderful Pistachios & Almonds LLC	Member of Westside Mutual Water Company LLC
(5) Wonderful Citrus LLC	Member of Westside Mutual Water Company LLC

Continued on attachment 2.

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Date: September 19, 2018

Robert D. Thornton
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

Attachment 2

Full name of interested entity or person	Nature of interest (<i>Explain</i>):
(6) Wonderful Citrus II LLC	Member of Westside Mutual Water Company LLC
(7) Wonderful Nurseries LLC (fka Vintage Nurseries LLC)	Member of Westside Mutual Water Company LLC
(8) RF Nut Ranches LLC	Member of Westside Mutual Water Company LLC
(9) RF Citrus Ranches LLC	Member of Westside Mutual Water Company LLC
(10) GC Nut LLC	Member of Westside Mutual Water Company LLC
(11) GC Citrus I LLC	Member of Westside Mutual Water Company LLC
(12) GC Citrus II LLC	Member of Westside Mutual Water Company LLC

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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 166773		SUPERIOR COURT CASE NUMBER: 34-2016-800002469
NAME: Steven M. Torigiani FIRM NAME: Young Wooldridge, LLP STREET ADDRESS: 1800 30th Street, Fourth Floor CITY: Bakersfield STATE: CA ZIP CODE: 93314 TELEPHONE NO.: 661-327-9661 FAX NO.: 661-327-1087 E-MAIL ADDRESS: storigiani@youngwooldridge.com ATTORNEY FOR (name): Appellee Wheeler Ridge-Maricopa Water Storage District		
APPELLANT/ Center for Food Safety, et al. PETITIONER: RESPONDENT/ California Department of Water Resources, REAL PARTY IN INTEREST: Dudley Ridge Water District, et al.		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS		
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1. This form is being submitted on behalf of the following party (name): Appellee Wheeler Ridge-Maricopa Water Storage District
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
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Date: September 5, 2018

Steven M. Torigiani
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
DUDLEY RIDGE WATER DISTRICT 3

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
KERN WATER BANK AUTHORITY 4

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
PARAMOUNT FARMING COMPANY 5

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
ROLL INTERNATIONAL CORP..... 6

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
SEMITROPIC WATER STORAGE DISTRICT 7

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
TEJON-CASTAC WATER DISTRICT 8

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
TEJON RANCH COMPANY 9

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
WESTSIDE MUTUAL WATER COMPANY 10

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS –
WHEELER RIDGE-MARICOPA WATER STORAGE
DISTRICT 12

TABLE OF CONTENTS 13

TABLE OF AUTHORITIES 16

ABBREVIATIONS AND ACRONYMS 20

I. INTRODUCTION AND SUMMARY. 22

II. STATEMENT OF FACTS AND PROCEEDINGS
BELOW..... 24

A. Settlement of the *Planning and Conservation League
litigation*, the 2003 Writ, the 2010 EIR, and Discharge
of the 2003 Writ. 25

B. *Central Delta I*: The 2010 EIR Litigation. 26

C. The 2014 Writ of Mandate. 26

D. Central Delta’s Appeal of the Superior Court Judgment
in *Central Delta I*. 27

E. DWR’s Compliance With the 2014 Writ..... 28

F.	<i>Central Delta III</i> Trial Court Proceedings.....	29
G.	The <i>Central Delta III</i> Appeal.	31
III.	STANDARD OF REVIEW.	32
IV.	THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN IN DISMISSING CLAIMS FOR LACK OF JURISDICTION.....	34
V.	SUBSTANTIAL EVIDENCE SUPPORTS THE 2016 EIR’S ANALYSIS OF THE KERN WATER BANK’S IMPACT ON CROP CONVERSION.....	38
A.	The 2016 EIR Disclosed and Evaluated Crop Conversions in the KWB Service Area After the Monterey Amendments.....	39
B.	The 2016 EIR Compared Crop Conversion in the KWB Service Area to Other Areas of Kern County and the San Joaquin Valley.	40
C.	The 2016 EIR Evaluated the Environmental Impacts of Crop Conversion.	44
D.	Central Delta’s “West Side” Groundwater Argument Is Barred by the CEQA Exhaustion Doctrine.....	45
VI.	CENTRAL DELTA MAY NOT RELITIGATE ITS ARTICLE 21 “NO PROJECT” CLAIM BECAUSE THE CLAIM IS BEYOND THE SCOPE OF THE WRIT AND IS ON APPEAL IN <i>CENTRAL DELTA I</i>	46
A.	The 2014 Writ Limited the Scope of the 2016 EIR to the Single Error Identified in the Court’s CEQA Decision.	47
B.	The 2010 EIR Evaluated Central Delta’s Article 21 Claim. The 2016 EIR Once Again Responded to Central Delta’s Article 21 Claim.	48
C.	The <i>Central Delta I</i> Trial Court Rejected Central Delta’s Article 21 Argument. Central Delta Does Not Get Another Bite of the Apple in <i>Central Delta III</i>	50
VII.	SUBSTANTIAL EVIDENCE SUPPORTS DWR’S COMPLIANCE WITH THE 2014 WRIT. THE TRIAL COURT HAS BROAD DISCRETION TO FASHION AN APPROPRIATE REMEDY.	51
A.	DWR Precisely Followed the 2014 Writ’s Direction.	51
B.	Trial Courts Have Broad Discretion to Fashion an Appropriate CEQA Remedy.....	53

C. Since Central Delta Appealed the Court’s CEQA Remedy in *Central Delta I*, the Trial Court Did Not Have Jurisdiction Over this Issue. 56

VIII. CONCLUSION. 57

CERTIFICATE OF COMPLIANCE 59

PROOF OF SERVICE 60

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Bains v. Moores</i> (2009) 172 Cal.App.4th 445	34
<i>Berkeley Hillside Preservation v. City of Berkeley</i> (2015) 60 Cal.4th 1086	33
<i>California Native Plant Society v. City of Rancho Cordova</i> (2009) 172 Cal.App.4th 603	46
<i>Californians for Alternatives to Toxics v. Dept. of Food and Agriculture</i> (2005) 136 Cal.App.4th 1	53
<i>Central Delta Water Agency v. Kern County Water Agency, Sacramento County Super. Ct. Case No. 34-2010- 80000719</i>	23
<i>Citizens for Open Gov. v. City of Lodi</i> (2012) 205 Cal.App.4th 296	37
<i>Cosgrove v. County of Sacramento</i> (1967) 252 Cal.App.2d 45	32
<i>County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern</i> (2005) 127 Cal.App.4th 1544	53
<i>Friends of the Eel River v. Sonoma County Water Agency</i> (2003) 108 Cal.App.4th 859	43
<i>Golden Gate Land Holdings v. East Bay Regional Park Dist.</i> (2013) 215 Cal.App.4th 353	36, 54
<i>Griset v. Fair Political Practices Commn.</i> (2001) 25 Cal.4th 688	36
<i>Kane v. Redevelopment Agency</i> (1986) 179 Cal.App.3d 899	34

<i>Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.</i> (1988) 47 Cal.3d 376	33
<i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority</i> (2013) 57 Cal.4th 439	33
<i>Planning and Conservation League v. Castaic Lake Water Agency</i> (2009) 180 Cal.App.4th 210	45, 46
<i>Planning and Conservation League v. Dept. of Water Resources</i> (2000) 83 Cal.App.4th 892	25
<i>POET LLC v. Cal. Air Resources Bd.</i> (2013) 218 Cal.App.4th 681	53
<i>Porterville Citizens for Responsible Hillside Development v. City of Porterville</i> (2007) 157 Cal.App.4th 885	45, 46
<i>Preserve Wild Santee v. City of Santee</i> (2012) 210 Cal.App.4th 260	53
<i>Rosedale Rio-Bravo Water District, et al. v. California Department of Water Resources, et al., Super. Ct. Kern County, 2010, No. S-1500-CV-270635</i>	37, 38
<i>Saltonstall v. City of Sacramento</i> (2015) 234 Cal.App.4th 549	45
<i>San Bernardino Valley Audubon Society v. Metropolitan Water Dist. of So. Cal.</i> (2001) 89 Cal.App.4th 1097	53
<i>San Franciscans for Reasonable Growth v. City and County of San Francisco</i> (1989) 209 Cal.App.3d 1502	51
<i>Save Our Residential Environment v. City of West Hollywood</i> (1992) 9 Cal.App.4th 1745	46
<i>Save Tara v. City of West Hollywood</i> (2008) 45 Cal.4th 116	54, 55

<i>Schenck v. County of Sonoma</i> (2011) 198 Cal.App.4th 949	53
<i>Sierra Club v. City of Orange</i> (2008) 163 Cal.App.4th 523	38
<i>Silverado Modjeska Recreation and Park Dist. v. County of Orange</i> (2011) 197 Cal.App.4th 282	37
<i>Stockton Citizens for Sensible Planning v. City of Stockton</i> (2010) 48 Cal.4th 481	52
<i>Summit Media, LLC v. City of Los Angeles</i> (2015) 240 Cal.App.4th 171	32
<i>Topanga Assn. for a Scenic Community v. County of Los Angeles</i> (1974) 11 Cal.3d 506	33
<i>United Prof. Planning v. Superior Court</i> (1970) 9 Cal.App.3d 377	35
<i>Varian Medical Systems v. Delfino</i> (2005) 35 Cal.4th 180	35
<i>Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova</i> (2007) 40 Cal.4th 412	32
<i>Western States Petroleum Assn. v. Super. Ct.</i> (1995) 9 Cal.4th 559	33, 39
<i>Whittier Redevelopment Agency v. Oceanic Arts</i> (1995) 33 Cal.App.4th 1052	35

Statutes

Code of Civil Procedure, § 916	23, 35
Gov’t Code, §§ 6500 et seq.	24
Pub. Resources Code, § 21005, subd. (b).....	33
Pub. Resources Code, § 21083.1	33

Pub. Resources Code, § 21100, subd. (a).....	56
Pub. Resources Code, § 21166.....	37
Pub. Resources Code, § 21167.....	37
Pub. Resources Code, § 21167.1.....	37
Pub. Resources Code, § 21167.4.....	37
Pub. Resources Code, § 21167.6.....	37
Pub. Resources Code, § 21167.8.....	37
Pub. Resources Code, § 21168.5.....	32
Pub. Resources Code, § 21168.9.....	35
Pub. Resources Code, § 21168.9, subd. (a)(1).....	<i>passim</i>
Pub. Resources Code, § 21168.9, subd. (a)(3).....	54
Pub. Resources Code, § 21168.9, subd. (b).....	37
Pub. Resources Code, § 21177, subd. (a).....	45

Regulations

California Code of Regulations, tit. 14, §§ 15000, <i>et seq.</i>	28
California Code of Regulations, tit. 14, § 15091.....	28, 52
California Code of Regulations, tit. 14, § 15092, subd. (a).....	52
California Code of Regulations, tit. 14, § 15384, subd. (a).....	33

ABBREVIATIONS AND ACRONYMS

2007 Draft EIR	2007 Monterey Plus Draft Environmental Impact Report
2010 EIR	2010 Monterey Plus Final Environmental Impact Report
2014 Writ	November 24, 2014 Writ of Peremptory Mandate issued in <i>Central Delta I</i> and <i>Rosedale</i>
2016 EIR	2016 Revised Monterey Plus Final Environmental Impact Report
2017 Judgment	Judgment entered by Superior Court in <i>Center for Food Safety v. Dept. of Water Resources</i>
AOB	Appellants' Opening Brief
Article 21 Water	An article of the SWP long-term water supply contracts between the Department and each individual contractor; which addressed non-Table A water that becomes available on an intermittent, interruptible basis. (AR 11106.)
CD I AA[Vol.#]:[Bates#]	Appellants' Appendix in <i>Central Delta I</i>
Central Delta	Petitioners in <i>Central Delta I</i> , <i>Central Delta II</i> and <i>Central Delta III</i>
<i>Central Delta I</i>	<i>Central Delta Water Agency, et al. v. Department of Water Resources, et al.</i> , Sacramento County Super. Ct. Case No. 34-2010-80000561
<i>Central Delta II</i>	<i>Central Delta Water Agency, et al. v. Kern County Water Agency, et al.</i> , Sacramento County Super. Ct. Case No. 34-2010-80000719
<i>Central Delta III</i>	<i>Center for Food Safety v. Department of Water Resources</i> , Sacramento County Super. Ct. Case No. 34-2016-80002469
CEQA	California Environmental Quality Act (Pub. Resources Code, §§ 21000, <i>et seq.</i>)

ABBREVIATIONS AND ACRONYMS

CEQA Guidelines	California Code of Regulations, Title 14, §§ 15000, <i>et seq.</i>
<i>CFS AA</i> [Vol#]:[Bates#]	Appellants' Appendix in <i>Central Delta III</i>
Delta	Sacramento River-San Joaquin River Delta
Draft 2016 EIR	2016 Monterey Plus Revised Draft Environmental Impact Report
DWR	Department of Water Resources
EIR	Environmental Impact Report
Kern Water Bank Parties	Kern Water Bank Authority, Semitropic Water Storage District, Wheeler Ridge-Maricopa Water Storage District, Tejon-Castac Water District, Dudley Ridge Water District, Roll International Corporation, Paramount Farming Company LLC, Westside Mutual Water Company
KWB	Kern Water Bank
KWBA	Kern Water Bank Authority
RJN	Request for Judicial Notice
<i>Rosedale</i>	<i>Rosedale-Rio Bravo Water Storage District v. Department of Water Resources</i> , Sacramento Super. Ct. Case No. 34-2010-80000703
RAR	Revised Administrative Record
SWP	State Water Project
Table A Amount	The maximum amount of SWP water that the State agreed to make available for delivery to each identified contractor during the year. The State and SWP contractors also use Table A amounts to serve as a basis for allocation of some SWP costs among the contractors.

Appellees and Real Parties in Interest (collectively, “Kern Water Bank Parties”), who below were Real Parties in Interest Kern Water Bank Authority, Dudley Ridge Water District, Paramount Farming Company LLC, Roll International Corporation, Semitropic Water Storage District, Tejon-Castac Water District, Westside Mutual Water Company, and Wheeler Ridge-Maricopa Water Storage District, submit the following in response to the Appellants’ Opening Brief.

I. INTRODUCTION AND SUMMARY.

The Department of Water Resources (“DWR”)¹ approved the Monterey Amendments in **1995** to address critical issues regarding management of the state’s water supply – particularly in drought years. The 23 years of litigation that followed include five trial court judgments, a decision of this Court, years of formal mediation following remand to the Superior Court, a comprehensive settlement agreement, dismissal of a first reverse validation action (from which no appeal was taken), a final judgment in a prior CEQA lawsuit (from which no appeal was taken), dismissal of a second reverse validation lawsuit, and three Environmental Impact Reports.

The Center for Food Safety Appellants (hereinafter, “Central Delta”)² seeks to prolong this “relentless carousel”³ of CEQA lawsuits –

¹ The Kern Water Bank Parties have attempted to minimize the use of acronyms. A glossary of abbreviations and acronyms is included at pages 20 - 21 above.

² There is considerable overlap in the Center for Food Safety Appellants here and the Central Delta Water Agency Appellants in Appeal Nos. C078249 and C080572. For simplicity and clarity, we refer to the Appellants in all three appeals as “Central Delta.”

³ *CFS AA10:1942* [Ruling on Submitted Matter in Center for Food Safety

including the re-adjudication in the trial court of previously dismissed CEQA claims – the very same CEQA claims pending before this Court in related Case No. C078249. In this appeal, Central Delta seeks to reverse the trial court’s 2017 judgment (“2017 Judgment”) that DWR complied with the 2014 Peremptory Writ of Mandate (“2014 Writ”). We refer to this case (*Center for Food Safety v. DWR*) herein as “*Central Delta III* because it is the third of Central Delta’s lawsuits challenging the Monterey Amendments.”⁴

The Court should affirm the Superior Court’s 2017 Judgment for the following reasons:

1. Since the trial court in *Central Delta III* did not have jurisdiction to retry issues pending before the Court of Appeal in *Central Delta I*, the trial court did not abuse its discretion in dismissing such claims. The automatic stay of Code of Civil Procedure section 916 did not apply to the trial court’s review of DWR’s compliance with the 2014 Writ.
2. The 2016 EIR contains an extensive evaluation of potential crop conversion impacts of the Kern Water Bank (“KWB”). DWR’s analyses and findings regarding impacts of crop conversion are supported by substantial evidence.

v. DWR, at p. 11].

⁴ The trial court’s judgment in *Central Delta I* is the subject of the Central Delta’s appeal and the Kern Water Bank Parties’ cross-appeal in No. C078249. Central Delta also filed *Central Delta Water Agency v. Kern County Water Agency*, Sacramento County Super. Ct. Case No. 34-2010-80000719 (“*Central Delta II*”) which the trial court ordered stayed on May 25, 2011.

3. The trial court correctly dismissed claims outside of the scope of the 2014 Writ. The 2014 Writ limited the 2016 Revised EIR to the evaluation of one narrow issue – the potential impacts of the Kern Water Bank “particularly as to potential groundwater and water quality impacts.” The express terms of the 2014 Writ, and a long line of CEQA cases, prohibited Central Delta from getting a second bite of the apple.
4. The form of the 2014 Writ is well within the trial court’s broad discretion under the CEQA remedy statute.

II. STATEMENT OF FACTS AND PROCEEDINGS BELOW.

The 23-year history of the Monterey Amendment litigation is described at length in the briefs of DWR and the Kern Water Bank Parties in the consolidated Appeal in *Central Delta I* (Court of Appeal No. C078249). The discussion here is limited to the facts relevant the trial court’s denial of the Central Delta petition for writ of mandate in *Central Delta III*. As required by the 2014 Writ, the 2016 EIR is focused on the impacts of the Kern Water Bank (“KWB”) groundwater storage and recovery project developed, constructed and operated by the Kern Water Bank Authority (“KWBA”) – a public agency – on about 20,000 acres of land that KWBA acquired in 1996.⁵

⁵ Central Delta mischaracterizes the KWB and the KWBA. The KWBA is a public joint powers authority formed pursuant to the Joint Exercise of Powers Act (Gov’t Code, §§ 6500, *et seq.*). The facts concerning the transfer of the 20,000 acres as part of the Monterey Amendment and KWBA’s subsequent development, construction and operation of the subject KWB are detailed in Kern Water Bank Parties’ briefing filed in the *Central Delta I* appeal.

A. Settlement of the *Planning and Conservation League litigation*, the 2003 Writ, the 2010 EIR, and Discharge of the 2003 Writ.

On June 6, 2003, the Superior Court entered an order approving the Settlement Agreement entered into by parties in the first round of Monterey Amendment CEQA litigation in *Planning and Conservation League v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892 (“PCL”). In accordance with the PCL Settlement Agreement, the Superior Court issued a writ of mandate (“2003 Writ”) requiring DWR to prepare a new EIR regarding the Monterey Amendments (the “2010 Monterey Plus EIR” or “2010 EIR”). In February 2010, DWR certified the 2010 Monterey Plus EIR. (*CD I AA21:5107*.)⁶ On May 4, 2010, the Director of DWR issued its decision to carry out the Monterey Amendments project. (AR22:10924-11005.)⁷ DWR’s Director also instructed the Department as to *how* it should carry out the project: “by continuing to operate under the existing Monterey Amendment . . . and the existing Settlement Agreement.” (AR22:10932. DWR filed its return to the Writ on June 3, 2010. (*CD I AA25:6199-6306*.)

The PCL Plaintiffs did not oppose the discharge of the 2003 Writ. (*CD I AA26:6309-6311*.) The Superior Court entered its August 27, 2010 judgment that the 2010 EIR complied with CEQA. (*CD I AA21:5187*.) No one appealed the 2010 order discharging the 2003 Writ and the Superior Court’s order is a final judgment that the 2010 EIR complied with CEQA.

⁶ The Appellants’ Appendix in *Central Delta I* is denoted herein as “*CD I AA*[Vol#]:[Bates#].”

⁷ The Administrative Record is denoted here as “AR[Vol#]:[Bates#]”, and the Revised Administrative Record is denoted has “RAR[Vol#]:[Bates#].”

B. Central Delta I: The 2010 EIR Litigation.

The Central Delta Appellants did not appear in the 2010 trial court proceedings on DWR’s return to the 2003 Writ. Instead, the Central Delta Appellants filed a new CEQA lawsuit challenging the 2010 EIR. (*CD I AA1:16-89; AA1:99-172* [First Amended Complaint].) The trial court rejected all of Central Delta’s 25 CEQA arguments, except for one argument regarding potential impacts of the operation of Kern Water Bank on groundwater and water quality.

The claims rejected by the trial court in *Central Delta I* included claims that: (i) the form of DWR’s 2010 decision did not comply with the CEQA definition of a project “approval”; (ii) CEQA required DWR to evaluate a **fifth** “no project” alternative that assumed little or no delivery of Article 21 water⁸ for urban uses and orchard crops; and (iii) the 2010 EIR did not adequately evaluate the potential impacts of the Monterey Amendments related to actions by farmers to convert land from annual crops to orchard crops. (*CD I-AA 33:8235-8237, 8242-8245, 8248* [Ruling on Submitted Matter dated March 5, 2014 at pp. 12-14, 19-22, 25].)

C. The 2014 Writ of Mandate.

On November 24, 2014, the trial court issued the 2014 Writ. (*CD I AA37:9205-9208.*) The 2014 Writ ordered DWR to revise the 2010

⁸ Article 21 is an article of the SWP long-term water supply contracts between the DWR and each individual contractor; which addressed non-Table A water that becomes available on an intermittent, interruptible basis. (AR 11106.) Article 21 Water is provided only when all state water contractor Table A requests and DWR’s storage targets and other operational requirements have been met (including endangered species and water quality requirements). (AR:1:222; 2:662-63.) DWR is contractually obligated to deliver Article 21 water if it is available. (AR2:634.)

EIR to correct the one CEQA error relating to the analysis of KWB groundwater impacts “as identified in the Court’s Rulings on Submitted Matter (March 5, 2014).” (*CD I AA37:9207* [p. 3, ¶ 3].) The 2014 Writ provides that “DWR shall be allowed to correct the deficiencies identified in the Court’s Rulings . . . and recertify a revised . . . EIR **without reopening the non-defective portions of the [2010 EIR].**” (*CD I AA37:9206-9207*; RAR 2317, citing to 2014 Writ at 2:26-3:3, emphasis added.) The 2014 Writ required that “[a]t the conclusion of the revised Monterey Plus EIR process, DWR (as lead agency) and KWBA (as responsible agency) shall make a new determination **regarding whether to continue the use and operation of the Kern Water Bank by KWBA.**” (*CD I AA37:9207* [p. 3, ¶ 4], emphasis added.)

D. Central Delta’s Appeal of the Superior Court Judgment in *Central Delta I*.

Central Delta appealed from that judgment in *Central Delta I* raising three CEQA issues⁹: (1) Did the form of DWR’s May 2010 decision regarding the Monterey Amendments violate CEQA?; (2) Did DWR prejudicially abuse its discretion when it failed to evaluate a *fifth* no project alternative including little or no delivery of Article 21 water?; and (3) Was the trial court required to void DWR’s approvals of the Monterey Amendments? (*CFS AA10:1656*¹⁰ [Appellants’ Amended Op. Br. (Oct. 8, 2015).])

⁹ Central Delta also appealed the Court’s decision that Central Delta’s Reverse Validation Causes of Action are time-barred, but that portion of the appeal is not relevant to the appeal in C086215.

¹⁰ The Appellants’ Appendix in *Central Delta III* is denoted herein as “*CFS AA*[Vol.#]:[Bates#].”

Central Delta *did not* appeal the portion of the trial court’s 2014 Writ that required DWR to prepare the 2016 EIR. Nor did it appeal the trial court’s ruling that the 2010 EIR adequately evaluated the potential impacts of the Monterey Amendments related to decisions by farmers in the Kern Water Bank service area converting from annual crops to orchard crops.

E. DWR’s Compliance With the 2014 Writ.

As directed by the 2014 Writ, DWR revised the Project description to include the transfer, development, use and operation of the KWB as a water banking and recovery project. (RAR 511.) The 2016 EIR analyzed potential impacts of the transfer, development, use and operation of the KWB as a water banking and recovery project. (RAR 517-1153.) DWR prepared a revised Draft EIR, circulated that revised Draft EIR for public comment, and conducted two public hearings on the revised Draft 2016 EIR. (RAR 409-2255.) DWR prepared a Final 2016 EIR showing revisions to the Draft 2016 EIR, and including responses to all comments on the Draft 2016 EIR. (RAR 2301-2570.)¹¹

After certifying the 2016 EIR, making the required CEQA findings under CEQA Guidelines¹² section 15091, and adopting mitigation measures, the Director of DWR made the following determination:

¹¹ The organization of the Final 2016 EIR is summarized in the Draft 2016 EIR (RAR 409-1154) and includes the following: (i) the Draft 2007 EIR (RAR 2571-3470); (ii) the appendices to the 2007 Draft EIR (RAR 3471-4848); (iii) the 2010 Final EIR and appendices (RAR 4849-15136); (iv) the 2016 Draft EIR and appendices (RAR 409-2255); and (v) the 2016 Final EIR (RAR 2257-2570.)

¹² “CEQA Guidelines” refers to the State Guidelines for the implementation of CEQA, located at California Code of Regulations, title 14, §§ 15000, *et seq.*

After considering the Final Revised EIR, including all issues raised during preparation of the Revised EIR, and in conjunction with making findings under CEQA Guidelines section 15091, I direct DWR to carry out the proposed project by continuing the use and operation of the [Kern Water Bank] by the [Kern Water Bank Authority].”

(RAR 11.)

The form of DWR’s decision follows precisely the requirements of the 2014 Writ (“DWR (as lead agency) and KWBA (as responsible agency) shall make a new determination **regarding whether to continue the use and operation of the Kern Water Bank by KWBA.**”) (*CD I AA37:9207* [p. 3, ¶ 4], emphasis added.)

On October 21, 2016, DWR filed its return to the 2014 Writ. Central Delta *did not* file objections to DWR’s Return to the 2014 Writ. Central Delta also did not contest the adequacy of the 2016 EIR’s evaluation of the impacts of the Kern Water Bank on groundwater and water quality – *the focus* of the sole error identified by the trial court in *Central Delta I*.

F. *Central Delta III* Trial Court Proceedings.

On October 21, 2016, Central Delta (now renamed as the “Center for Food Safety” petitioners) filed a “new” CEQA lawsuit challenging DWR’s return to the 2014 Writ. Central Delta filed a motion to stay the trial court proceedings on the new CEQA lawsuit in *Central Delta III* pending the resolution of the appeal in *Central Delta I* (C078249). (*CFS AA1:0146-0156.*) The trial court denied the motion to stay. (*CFS AA10:0665-0675.*) The trial court ruled:

Although the proceeding at issue here relates to the judgment in *Central Delta I*, this proceeding does not seek to “enforce,” alter or affect the portion of the judgment appealed from in that case. The *Central Delta I* petitioners did not appeal the portion of the judgment granted in their favor, which is the portion of the judgment requiring DWR to correct the identified deficiencies in the EIR.

(*CFS AA10:0674* [April 7, 2017 Stay Ruling at p. 10].)

On August 18, 2017, the trial court held a hearing on DWR’s return to the 2014 Writ and on the petition in *Central Delta III*. On October 2, 2017, the trial court issued a lengthy decision denying the petition in its entirety. (*CFS AA10:1932-1948*.) The trial court concluded:

1. The appeal in *Central Delta I* did not prevent the trial court from determining DWR’s compliance with the *unappealed* portion of the 2014 judgment and the 2014 Writ.
2. Central Delta’s appeal of the 2014 judgment, however, prevents the court from reconsidering issues embraced by the Central Delta appeal. The issues in *Central Delta III* embraced by the appeal include whether (a) CEQA required DWR to evaluate a fifth no project alternative involving declaration of a permanent shortage and limited or no Article 21 water deliveries, and (b) the form of DWR’s May 2010 decision (to continue to operate the SWP in accordance with the Monterey Amendments) is a valid CEQA “approval.”
3. Public Resources Code section 21168.9 and the express terms of the 2014 Writ precludes Central Delta’s relitigating CEQA issues decided against them in *Central Delta I*. The issues

previously decided against Central Delta include (a) the adequacy of the evaluation of impacts of conversion from annual to orchard crops, (b) whether DWR was required to evaluate a fifth no project alternative including limited or no delivery of Article 21 water, and (c) whether the form of DWR's approval specified in the 2014 Writ complied with CEQA.

4. "DWR has done precisely what the 2014 Writ required by determining 'to carry out the proposed project by continuing the use and operation of the [Kern Water Bank] by [the Kern Water Bank Authority]. Thus, the court rejects [Central Delta's] argument that it was not a valid project 'approval.'"
5. DWR was not required to recirculate the 2016 EIR because of the alleged existence of "new information" regarding the conversion from annual crops to orchard crops.
6. Substantial evidence supports the 2016 EIR evaluation and findings regarding the impacts of the Kern Water Bank regarding the conversion from annual crops to orchard crops.
7. The Final EIR adequately responded to Central Delta's comments regarding the impacts of "hardening of demand."

On October 20, 2017, the trial court entered its Judgment in *Central Delta III* in favor of DWR and the real parties in interest and against Central Delta. (CFS AA11:1961-1963.)

G. The *Central Delta III* Appeal.

On December 20, 2017, Central Delta filed its notice of appeal from the trial court Judgment in *Central Delta III*. (CFS AA11:1985.) The

Court consolidated the appeal in *Central Delta III* with Central Delta's two pending appeals and the Kern Water Bank Parties' cross-appeal in *Central Delta I*.

In the cross-appeal in *Central Delta I*, the Kern Water Bank Parties assert that Central Delta's CEQA challenges to the 2010 EIR are barred by res judicata. If the Court so finds, Central Delta's CEQA challenges to the 2016 Revised EIR in this case are moot.

III. STANDARD OF REVIEW.

Review of Trial Court Determination that DWR Compliance with 2014 Writ. Central Delta appeals from the trial court Judgment that DWR complied with the 2014 Writ. The Court reviews the trial court's determination that DWR complied with the 2014 Writ for abuse of discretion. (*Summit Media, LLC v. City of Los Angeles* (2015) 240 Cal.App.4th 171, 182.) "Not much if any leeway is left to the appellate court to control the action of the trial court, when the trial court had before it substantial evidence on which to act." (*Ibid.* quoting *Cosgrove v. County of Sacramento* (1967) 252 Cal.App.2d 45, 50.)

CEQA Standard of Review. The standard of review under CEQA is also whether DWR prejudicially abused its discretion. (Pub. Resources Code, § 21168.5; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 ("Vineyard").) Central Delta bears the burden of demonstrating that DWR failed to proceed in the manner required by law, or that the agencies' factual determinations are not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *Vineyard, supra*, 40 Cal.4th at p. 426.)

Because issues of DWR's compliance with the 2014 Writ are factual, the substantial evidence standard applies. "Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, **even though other conclusions might also be reached.**" (CEQA Guidelines, § 15384, subd. (a), emphasis added.) A court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." (*Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 573-574.) The question under the substantial evidence test is **not** whether there is substantial evidence to support the conclusions of the opponents of a project; the question is **only** whether there is substantial evidence to support the decision of the agency in approving the project. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 407.) The court must resolve reasonable doubts in favor of the administrative finding and decision. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.)

Under CEQA "there is no presumption that error is prejudicial" (Pub. Resources Code, § 21005, subd. (b); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463 [agency use of future condition baseline was not prejudicial].)

When determining whether the agency proceeded in the manner required by law, a reviewing court may not impose procedural or substantive requirements beyond those explicitly stated in CEQA and the CEQA Guidelines. (Pub. Resources Code, § 21083.1; see also *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1107.)

Review of Trial Court’s Denial of Motion to Stay. The Court reviews the trial court’s denial of the motion to stay for abuse of discretion. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 480.)

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING CLAIMS FOR LACK OF JURISDICTION.

In *Central Delta I* the trial court rejected Central Delta’s claims that (1) CEQA required DWR to evaluate a *fifth* no project alternative that assumed little or no delivery of Article 21 water, and (2) the form of DWR’s 2010 approval of the DWR (to continue to operate the SWP in accordance with the Monterey Amendments) did not constitute a CEQA project “approval.” Central Delta appealed from the dismissal of these claims in its appeal in *Central Delta I*.

Central Delta then plead the same claims in the *Central Delta III* petition. (CFS AA1:10-34.) The trial court in *Central Delta III* concluded that it did not have jurisdiction to adjudicate these claims because the same issues were on appeal. (CFS AA10:1942 [Oct. 2, 2017 Ruling at p. 11].) Accordingly, the trial court dismissed the claims and denied the *Central Delta III* petition.

Central Delta concedes that the trial court correctly decided that the trial court did not have jurisdiction over two claims that were the subject of the pending appeal in *Central Delta I*. (AOB at p. 28.) Central Delta nevertheless argues that the trial court should have stayed the entire trial court proceedings on DWR’s Return to the 2014 Writ rather than dismiss the claims over which the court lacked jurisdiction. It is axiomatic that a trial court does not abuse its discretion when it dismisses claims over which the court lacks jurisdiction. The dismissal of a claim is the normal remedy where the court lacks jurisdiction. (*Kane v. Redevelopment Agency* (1986)

179 Cal.App.3d 899, 908 [reversing and directing trial court to vacate judgment on writ and dismiss proceeding for lack of jurisdiction].) Thus, the trial court's decision to deny the stay motion and dismiss the claims was well within the trial court's discretion.

The automatic stay provision of Code of Civil Procedure section 916 does not apply here for several reasons. First, the later-enacted CEQA remedy statute creates an exception to the automatic stay. (Pub. Resources Code, § 21168.9 ["The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with [CEQA]."]; *Whittier Redevelopment Agency v. Oceanic Arts* ("Whittier") (1995) 33 Cal.App.4th 1052, 1059 [statute authorizing trial court to redetermine the amount of the deposit of probable compensation "at any time" supported exception to section 916 stay].)

Second, the automatic stay does not apply to "ancillary or collateral matters . . . even though the proceedings may render the appeal moot." (*Varian Medical Systems v. Delfino* ("Varian") (2005) 35 Cal.4th 180, 191.) The trial court's adjudication of DWR's compliance with the 2014 Writ is an "ancillary or collateral" proceeding.

The express language of section 21168.9 that the trial court "shall retain jurisdiction" (combined with other language in section 21168.9 and other provisions of CEQA) indicates the intent that CEQA remedies should be narrowly tailored and that adjudication of an agency's compliance with a writ be expeditiously adjudicated. The express language of section 21168.9, that the trial court "shall retain jurisdiction . . . until the court has determined that the public agency has complied with [CEQA]" could not have been more clear. "Shall" means "shall." (*United Prof.*

Planning v. Superior Court (1970) 9 Cal.App.3d 377, 385-86 [legislation indicates intent to avoid delays in expungement of lis pendens].)

Third, the automatic stay does not apply to the trial court's adjudication of DWR's compliance with the 2014 Writ because a determination by the trial court that DWR complied with the 2014 Writ does not deprive the Court of Appeal of its jurisdiction to decide the issues on appeal. (*Golden Gate Land Holdings v. East Bay Regional Park Dist.* (2013) 215 Cal.App.4th 353, 366-67 [agency's compliance with CEQA writ did not moot an appeal that challenged the legality of the trial court's writ].)

Fourth, Central Delta's argument that the trial court was required to keep the claims pending in the trial court (by issuing a stay) has irrational consequences that are inconsistent with the CEQA remedy statute (Public Resources Code, § 21168.9). Because of California's "one final judgment" rule, CEQA petitioners could effectively prevent and delay adjudication of an agency's compliance with a CEQA writ for years simply by filing a notice of appeal and then filing a new CEQA lawsuit restating claims that were on appeal. (*Griset v. Fair Political Practices Commn.* (2001) 25 Cal.4th 688, 697 [order denying petition for writ of mandate is not a final judgment if other causes of action remain pending].)

Under Central Delta's reasoning, the trial court would be required to stay the trial court proceedings on the agency's return to the writ, and delay issuance of a final judgment on the agency's compliance with the writ until after a decision of the Court of Appeal. Several years would pass before the trial court could determine whether the agency complied with the writ. At that point, the petitioners could file a new appeal (as Central Delta did here) and continue the "relentless carousel" of CEQA litigation.

Such a bizarre and irrational result cannot be reconciled with the CEQA mandate for expeditious adjudication of compliance with a CEQA writ. CEQA includes unique procedures to ensure that CEQA litigation is resolved expeditiously. Indeed, the Legislature amended CEQA on multiple occasions for that very purpose. (Pub. Resources Code, §§ 21167 [30 day statute of limitations], 21167.4, 21167.6 [expedited briefing and hearing], 21167.1 [preference over other civil actions], 21167.8 [mandatory settlement conference], 21166 [limitations on supplemental and subsequent EIRs]; 21168.9 [authorization of limited writ; trial court required to retain jurisdiction].)

In the event that a court identifies a CEQA violation, CEQA requires a court to limit a writ to “include only those mandates which are necessary to achieve compliance with [CEQA] and only those specific project activities in noncompliance with [CEQA].” (Pub. Resources Code, § 21168.9, subd. (b).) CEQA petitioners do not get multiple bites of the apple. They may not relitigate CEQA issues rejected in prior rounds of CEQA adjudication. (*Citizens for Open Gov. v. City of Lodi* (2012) 205 Cal.App.4th 296, 324-328 [second CEQA challenge to issues adjudicated in first challenge barred]; *Silverado Modjeska Recreation and Park Dist. v. County of Orange* (“*Silverado Modjeska*”) (2011) 197 Cal.App.4th 282, 297-301 [second CEQA lawsuit barred by discharge of writ in first CEQA lawsuit].)

Central Delta’s argument would have particularly diabolical and nonsensical results in cases, such as here, involving multiple CEQA lawsuits by two different petitioners. The 2014 Writ was issued in two cases – *Central Delta I* and *Rosedale Rio-Bravo Water District, et al. v. California Department of Water Resources, et al.*, Super. Ct. Kern County,

2010, No. S-1500-CV-270635 (“*Rosedale*”). No party appealed the Judgment in *Rosedale v. DWR*, and the *Rosedale* petitioners did not oppose the discharge of the 2014 Writ. Under Central Delta’s reasoning, the trial court would have been required to delay any final determination of DWR’s compliance with the 2014 Writ in both *Central Delta I* and *Rosedale* -- despite the fact that the *Rosedale* parties did not appeal the trial court’s judgment and did not object to the discharge of the 2014 Writ. This makes no sense. It is plainly contrary to the intent of the CEQA remedy statute (Public Resources Code section 21168.9) which requires expeditious adjudication of agency compliance with CEQA writs.

The Monterey Amendment litigation has been pending for 23 years. If ever there was a case that demands a prompt conclusion to the litigation, this is it!

V. SUBSTANTIAL EVIDENCE SUPPORTS THE 2016 EIR’S ANALYSIS OF THE KERN WATER BANK’S IMPACT ON CROP CONVERSION.

Central Delta challenges the technical findings and determinations by DWR regarding the impacts of the Kern Water Bank on farmers converting from annual to orchard crops. As will be shown in the following sections, Central Delta’s argument is based on misstatements of the evidence in the administrative record on this issue, and gross mischaracterizations of the 2016 EIR’s crop conversion analysis. For that reason alone the argument should be rejected. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 540 [party challenging EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking].)

Substantial evidence supports DWR's findings and determinations. A court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." (*Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 573-574.) Thus, it matters not that Central Delta disagrees with DWR's analysis.

A. The 2016 EIR Disclosed and Evaluated Crop Conversions in the KWB Service Area After the Monterey Amendments.

Contrary to Central Delta's claim, the 2016 EIR includes an extensive analysis of the potential contribution of the KWB (and other water banking projects) to decisions by farmers to convert from annual to orchard crops and the potential environmental impacts of such conversions.

Like the 2010 EIR, the Draft 2016 EIR disclosed the trend (pre-dating the Monterey Amendments and the transfer of the KWB lands) of farmers converting from annual to orchard crops. (RAR 746-749.)

As shown in Table 7.6-5 [RAR 747] there was a relatively small increase in agricultural acreage in Kern County . . . between 1996 and 2014, but the cropping patterns within the County changed substantially. The acreage of nut crops increased by 206 percent and almonds accounted for more than 65 percent of the total nut crops in 2014. Combined acres of seed crops, field crops, and vegetable crops all decreased during the same time period.

(RAR 753.)

B. The 2016 EIR Compared Crop Conversion in the KWB Service Area to Other Areas of Kern County and the San Joaquin Valley.

After documenting the continuing trend of farmers' conversion to orchard crops, the 2016 EIR compared the rate of conversion in the Kern Water Bank service area, in Kern County, and in other areas of the San Joaquin Valley. (RAR 744-749.) The 2016 EIR documented that the crop-type conversion in the KWB service area was consistent with county-wide and state-wide conversion trends. (RAR 752-753; 2304, Figures 4-1a, 4-1b, 4-2a, 4-2b; see also 32312 [“By 2015, KWB service area acreage was used by farmers primarily for almond and pistachio crops, mirroring the statewide shift in agricultural commodities to orchard crops.”].)

The 2016 EIR described the changes in crop types in both Kern County and the Kern Water Bank service area from 1995 to 2015. (RAR 746-748, Tables 7.6-5, 7.6-6.) Nuts, citrus and fruit crops increased in both Kern County and the KWB service area during that 20-year period. (*Ibid.*) While some orchard crops, such as citrus and fruits, experienced a greater percentage change in the Kern Water Bank service area, nuts increased by a lesser percentage in the service area in comparison to the increase of nuts in Kern County generally. (*Ibid.*)

The 2016 EIR referred to another analysis that compared the increase in almond production (which was the focus of Central Delta's comments) in the KWB service area to increases in almond production in Kern County generally and in other counties in the San Joaquin Valley. While almond production increased in all areas, it increased at a lesser rate in the Kern Water Bank service area than in Kern County generally or in other areas of the San Joaquin Valley.

Table 5-2. Acreage in Almond Production

County	1995	2014	% Change
Fresno	20,173	118,789	489%
Kern	22,186	157,599	610%
Madera	18,093	87,626	384%
Merced	33,416	104,308	212%
Stanislaus	31,674	112,624	256%
KWB Service Area	20,213	60,299	198%

(RAR 32313, Table 5-2.)

The 2016 EIR then evaluated the factors contributing to the increase in orchard crops in the KWB service area and in the San Joaquin Valley, including: (i) the increase in commodity prices for orchard crops; (ii) the state policy to increase agricultural efficiency (which increases production costs and requires farmers to grow crops with higher value); and (iii) the increase in yield per acre for orchard crops made possible by more efficient irrigation systems. (RAR 60-65.)

The 2016 EIR also disclosed that increased groundwater pumping has smoothed the agricultural water supply for orchard crops. (RAR 65.) The 2016 EIR disclosed that, like groundwater pumping, the Kern Water Bank provides farmers participating in the Bank with a supplemental back-up supply for use principally during droughts. The Kern Water Bank is only one of multiple sources of water to KWB participants, including the

State Water Project (Table A¹³ and Art. 21), Central Valley Project, and the Kern River. (RAR 549, Table 7.1-4; 953; 2302-2304; 32305.) Consistent with the practices of water districts across the state, the Water Bank participants also participate in water transfers and exchanges to provide additional water management flexibility. (RAR 953.)

The 2016 EIR concluded that the KWB did not have a significant impact on crop conversion. (RAR 333-334.) There is substantial evidence supporting DWR's findings including: (i) the trend from row crops to orchard crops is not only a local shift in Kern County, but a regional shift throughout the San Joaquin Valley that pre-dated the Monterey Amendments; (ii) the documentation that the conversion is directly related to the commodity price of orchard crops; and (iii) the fact that the state policy to increase agricultural irrigation efficiency requires farmers to use a more expensive irrigation system which, in turn, requires farmers to plant higher value orchard crops. (RAR 59,-65; 76-77; 992-1013.) Central Delta ignores the above evidence.

Central Delta nevertheless argues that the evaluation of "hardened demand" impacts is inadequate because some portions of the KWBA service area have limited groundwater. (AOB at 38.) As discussed above, the 2010 EIR disclosed evidence of the trend of conversion from annual to permanent crops (pre-dating the Monterey Amendments), even in areas

¹³ The maximum amount of SWP water that the State agreed to make available for delivery to a contractor during the year. The State and SWP contractors also use Table A amounts to serve as a basis for allocation of some SWP costs among the contractors. (AR 11108.) Table A lists quantities of water which are used as the basis for allocating costs for the storage and development of the SWP water supply.

lacking groundwater on the west side of Kern County (e.g., Belridge Water Storage District; Berrenda Mesa Water District). (RAR 3113, Table 7.6-3.) The 2010 EIR documented that farmers on the west side of the San Joaquin Valley converted to orchard crops in response to the same market forces (commodity prices, state water policy, Delta environmental regulations, water costs) driving crop conversion throughout the San Joaquin Valley. (RAR 2303-2308.) Thus, any suggestion that there was no substantial evidence supporting DWR’s finding, as Central Delta claims (AOB at p. 40.), is a mischaracterization of the record.

Substantial evidence also supports DWR’s finding (in the 2010 EIR and again in the 2016 EIR) that the trend of conversions from annual to orchard crops pre-dated the Monterey Amendments and the transfer of the KWB to KWBA. And it supports DWR’s conclusion that the Monterey Amendments did not cause farmers to decide to convert to orchard crops. Indeed, a report by U. C. Davis (cited by Central Delta in the trial court) supports DWR’s finding that a major shift to orchard crops in the San Joaquin Valley began decades before the Monterey Amendments. (RAR 2468 [“by 1970 the major areas of almond production had moved to the San Joaquin Valley”].)

Although the 2016 EIR concluded that the conversion from annual crops to orchard crops in the KWB service area was consistent with the trend in Kern County and in other areas of the San Joaquin Valley not served by the KWB, the 2016 EIR *did not stop there*.¹⁴ The 2016 EIR

¹⁴ But see, *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 876 [CEQA did not require water agency to account for changes to river that agency did not authorize].

went on to evaluate the potential environmental impacts of decisions by farmers in the KWB service area to convert their land from annual to orchard crops -- *regardless of whether those decisions are part of the documented long-term trend or are related to Kern Water Bank operations*. Central Delta utterly ignores this evidence.

C. The 2016 EIR Evaluated the Environmental Impacts of Crop Conversion.

The 2016 EIR discussed the potential indirect and cumulative impacts of crop conversion related to the KWB and other water banking projects. (RAR 753-754; 2303-2308; 2319-2320; 992-1013.) This included, but was not limited to, an analysis of the impacts on groundwater (both quality and groundwater levels), terrestrial species, visual resources, agricultural resources, air pollution emissions, soil erosion, land use patterns, noise, cultural and paleontological resources, traffic, and environmental justice. (RAR 76-77; 992-1013.) For example, the 2016 EIR documented that the predominant crop in 1995 was cotton while the predominant crops in 2015 were almonds and pistachios. (RAR 32312, Figure 5-2.) Pistachio, citrus and grape production dust emissions are significantly less than that of cotton and almonds. (RAR 32311.) The 2016 EIR documented that, while cotton generates more dust during land preparation activities, almonds generate more during harvest. (*Ibid.*) Central Delta ignores all of this substantial evidence.

Central Delta's claim that the 2016 EIR ignored the impact of the improved water reliability provided to farmers by the KWB (AOB at p. 41) is patently false. The 2016 EIR disclosed that the improved water reliability provided by the KWB contributed to the trend of farmers converting from annual to orchard crops:

KWB activities increased water supply reliability which has potentially resulted in changes from irrigated crops or annual field crops on land that could be fallowed in dry/critically dry years to permanent crops like orchards and vines that require a dedicated water supply.

(RAR 753.)

Substantial evidence supports DWR's finding that while the KWB increased the water supply reliability in the KWB service area, the environmental impacts of the KWB on conversions from annual to orchard crops was less than significant. CEQA requires nothing more. (*Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 584 [statement by police department was substantial evidence supporting city's finding that downtown basketball arena would not have significant impact on demand for police services].) Central Delta's arguments should be rejected because they are improper mischaracterizations of the record. In any event, there is substantial evidence to support these conclusions in the EIR.

D. Central Delta's "West Side" Groundwater Argument Is Barred by the CEQA Exhaustion Doctrine.

The record contradicts Central Delta's claim that the 2016 EIR did not evaluate the conversion from annual crops to orchard crops in areas with limited groundwater. (RAR 753; 3113, Table 7.6-3) Central Delta's "west side" groundwater argument is also barred because it failed to raise this issue during the administrative proceedings. (Pub. Resources Code, § 21177, subd. (a); *Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 250, citing *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909 ("*Porterville*").) The petitioner's comment must

“fairly apprise” the agency of the purported defect in the EIR. (*Planning and Conservation League v. Castaic Lake Water Agency*, *supra*, 180 Cal.App.4th at p. 251, citing *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1750.) The grounds of alleged CEQA noncompliance must have been presented to DWR such that it had a fair opportunity to evaluate and respond to these alleged grounds of noncompliance. (*Porterville*, *supra*, 157 Cal.App.4th at p. 910.) Failure to exhaust is a jurisdictional defect. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 615.)

Central Delta did not claim during the administrative proceedings that further analysis was required to attempt to determine if portions of the KWB service area with limited groundwater would have experienced crop conversion in the absence of the Kern Water Bank. The claim is barred.

VI. CENTRAL DELTA MAY NOT RELITIGATE ITS ARTICLE 21 “NO PROJECT” CLAIM BECAUSE THE CLAIM IS BEYOND THE SCOPE OF THE WRIT AND IS ON APPEAL IN *CENTRAL DELTA I*.

In *Central Delta I*, Central Delta argued that DWR was required to analyze a *fifth* no project alternative to the Monterey Amendments that included little or no delivery of Article 21 water for urban uses, orchard crops, or *even for protection against future droughts*. The trial court rejected the argument. (*CD I* AA 33:8236.) Central Delta appealed this aspect of the Judgment in *Central Delta I*. The trial court in *Central Delta III* concluded that (1) the Article 21 “no project” issue was excluded from the 2014 Writ, and (2) because the Article 21 no project issue was on appeal, the trial court did not have jurisdiction to consider the argument a

second time. (CFS AA10:1942-1943 [trial court Ruling Oct. 2, 2017 at p. 11].) Central Delta now attempts a third bite of this particular apple.

A. The 2014 Writ Limited the Scope of the 2016 EIR to the Single Error Identified in the Court’s CEQA Decision.

The trial court could not have been more clear that the 2014 Writ limited the scope of DWR’s obligations to the evaluation of the impacts of the Kern Water Bank addressed in the Court’s CEQA ruling, and that the court *expressly excluded from the scope of the 2014 Writ* all other issues “*that were raised or could have been raised*,” in the prior CEQA litigation.

The 2014 Writ states:

3. DWR shall revise the Monterey Plus EIR’ Project Description to include the development, use and operation of the Kern Water Bank as a water banking and recovery project, and revise the Monterey Plus EIR as necessary to correct the CEQA error with respect to the analysis of the potential impacts associated with the transfer, development, use and operation of the Kern Water Bank as *identified in the Court’s Rulings on Submitted Matters (March 5, 2014)*

¶¶

8. [] Only those portions of the revised Monterey Plus EIR that are new or changed shall be subject to challenge under CEQA by petitioners or other interested parties. No other challenges that were raised or could have been raised with regard to the Monterey Plus EIR may be raised in any challenge to the revised Monterey Plus EIR.

(CD 1 AA37:9207-9208, emphasis added 2014 Writ at pp. 3-4.)

The lone CEQA error identified in the Court’s March 2014 CEQA rulings (and re-stated in the Court’s October 2014 CEQA Remedy Ruling) was limited to the “potential impacts of the Project associated with the anticipated use and operation of the Kern Water Bank, particularly as to potential groundwater and water quality impacts.” (*CD 1* AA33:8250 [Ruling on Submitted Matter, March 5, 2014 at p. 27].) Thus, the trial court in *Central Delta III* correctly decided that the Article 21 “no project” alternative argument was beyond the scope of the 2014 Writ.

B. The 2010 EIR Evaluated Central Delta’s Article 21 Claim. The 2016 EIR Once Again Responded to Central Delta’s Article 21 Claim.

The 2010 EIR evaluated *four* “no project” alternatives. In its comments on the 2007 Draft EIR, Central Delta nevertheless claimed that CEQA required DWR to evaluate a *fifth* no project alternative that assumed combination of invocation of Article 18(b) [permanent shortage] *and* no delivery of Article 21 water for urban uses, orchard crops, or *even for protection against future droughts*.

The 2010 EIR discussed the express language and intent behind Article 21, including subdivision (g)(1), in detail. (RAR 5445-5466.) The 2010 EIR documented that Article 21(g)(1) water applied to “scheduled surplus” water, and that DWR had not delivered scheduled surplus water since 1986. (RAR 5300-5301). The only Article 21 water delivered since 1986 is intermittent and unpredictable water that cannot be relied upon. (RAR 5303.) The 2010 EIR also documented that prior to the Monterey Amendments Article 21 water has always been storable and usable for direct beneficial use – including for urban uses and orchard crops. (RAR 5452).

Prohibiting the banking of water in wet years for beneficial use in drought years is contrary to many years of State Water Project management history (pre-dating the Monterey Amendments), and is in fundamental conflict with state water and environmental policies. The practical implications of Central Delta’s contractual interpretation of Article 21(g) are breathtaking. In Central Delta’s view, DWR is prohibited from banking the historic volumes of water made available as a result of the extraordinary precipitation in the winter of 2016-2017, and allowing the use of the banked water for recognized beneficial urban and agricultural uses during future droughts.

Nevertheless, DWR also included analyses of Central Delta’s “Combined Article 18(b)/Article 21 no project” alternative -- the invocation of Article 18(b) with limited or no Article 21 water deliveries – in the 2010 EIR however implausible this “no project” alternative may be.¹⁵ (RAR 5303-5308.) The trial court in *Central Delta I* concluded that DWR’s analysis of Central Delta’s Article 21(g) “no project” scenario

¹⁵ If the Court entertains Central Delta’s previously rejected Article 21 “no project” argument, then the Kern Water Bank Parties contend, for the reasons argued below, that invocation of Article 21(g)(1) to prevent storage of surplus water in groundwater banks is not plausible, in light of the no-project alternative including a state-owned water bank on the Kern Fan Element property (RAR 5529; RAR 5541-5542, Table 11-23) and other non-Monterey water banks such as the Semitropic Groundwater Bank (RAR 5036; RAR 5117; RAR 5517) designed to store surplus SWP water. (See also RAR 2316 [“It is good water management to store both Table A and Article 21 water for conjunctive use. [DWR] would consider storing SWP delivered water in the ground during wet years and using it during dry years as sound water management policy and would not call forth the Article 21(g)(1) restriction.”].)

complied with CEQA. (*CD I AA33:8245 Ruling on Submitted Matter*, March 5, 204 at p. 22].)

Central Delta repeated the same argument in comments on the Draft 2016 EIR. Once again, DWR addressed the Central Delta comments regarding the Article 21 “no project” alternative. The 2016 EIR referred to the extensive discussion of Article 21 in the 2010 EIR. (RAR 2316.) DWR concluded that its prior discussion did not need to be revisited, and concluded:

The Draft REIR does not provide any new information that would show that development of any economy in the KWB participants’ service areas is dependent upon the sustained delivery of surplus water.

(RAR 2316.)

C. The *Central Delta I* Trial Court Rejected Central Delta’s Article 21 Argument. Central Delta Does Not Get Another Bite of the Apple in *Central Delta III*.

In its CEQA Ruling in *Central Delta I*, the trial court rejected Central Delta’s Article 21(g) “no project” claim:

[T]he court finds that the omission of [the Article 21(g) no project alternative] did not preclude informed decision-making and informed public participation because, in response to comments, DWR developed an analysis of the effects of operating the SWP with Article 18(b) invoked and with limited or no Article 21 water delivered to SWP contractors. (See AR 2:520-25.) This analysis provides additional information to the public and to decision-makers on the effects of not delivery water to SWP contractors that would otherwise be available under Article 21.

(*CD I AA33:8245 [Ruling on Submitted Matter*, March 5, 2014 at p. 22].)

Having lost the issue at trial (and having appealed the Court's decision), Central Delta does not get another bite at the apple here. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1517-1518 [where writ was limited to analysis of cumulative effects, seismic safety claims were outside the scope of the writ and were barred].)

VII. SUBSTANTIAL EVIDENCE SUPPORTS DWR'S COMPLIANCE WITH THE 2014 WRIT. THE TRIAL COURT HAS BROAD DISCRETION TO FASHION AN APPROPRIATE REMEDY.

The narrow issue in *this* appeal is whether DWR complied with the 2014 Writ. The trial court properly concluded that “DWR has done precisely what the 2014 Writ required.” (*CFS AA10:1942* [Ruling on Submitted Matter at p. 11].) Central Delta claims that the remedy specified in the 2014 Writ violated CEQA. Central Delta's argument is a transparent attempt to retry (for a third time) its argument that the trial courts do not have discretion to specify the form of a CEQA remedy. Public Resources Code section 21168.9 (and a long line of CEQA cases) provides that trial courts have broad discretion to fashion an appropriate remedy, including leaving prior project approvals in place.

A. DWR Precisely Followed the 2014 Writ's Direction.

The 2014 Writ required DWR to “make a new determination regarding whether to continue the use and operation of the Kern Water Bank by [Kern Water Bank Authority].” (*CD 1 AA37:9207* [DWR RJN, Exh. A, p. 3].) DWR did precisely what the 2014 Writ required. On September 20, 2016, the Director of DWR made the following decision:

After considering the Final Revised EIR, including all issues raised during preparation of the Revised EIR, and in conjunction with making findings under CEQA Guidelines section 15091, I direct DWR to carry out the proposed project by continuing the use and operation of the [Kern Water Bank] by the [Kern Water Bank Authority].”

(RAR 11.)

The trial court in *Central Delta III* concluded that “DWR has done precisely what the 2014 Writ required by determining “to carry out the proposed project by continuing the use and operation of the [Kern Water Bank] by [the Kern Water Bank Authority]. Thus, the court rejects [Central Delta’s] argument that it was not a valid project ‘approval’.” (CFS AA11:1942 [Ruling on Submitted Matter at p. 11].)

Central Delta now repeats its argument it made in the *Central Delta I* appeal (that CEQA does not allow an agency to decide whether to continue to carry out a project.) The CEQA Guidelines expressly give the lead agency discretion as to how it will approve or carry out a project. (CEQA Guidelines, § 15092, subd. (a) [“After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether **or how** to approve or carry out a project”, emphasis added].) The lead agency has broad discretion to decide how to frame the agency approval. (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 506 [“No particular form of approval is required.”].) Here, DWR framed its approval using the precise language of the 2014 Writ.

There is no ambiguity in the 2014 Writ or in the trial court’s remedy ruling in *Central Delta I*. The trial court directed DWR to “make a new determination regarding whether to continue the use and operation of the

Kern Water Bank by [Kern Water Bank Authority].” (*CD I AA37:9207* [2014 Writ at p. 3, ¶ 4].) DWR made the precise determination required by the 2014 Writ. Indeed, Central Delta admitted in its appeal in *Central Delta I* that the Court’s remedy requires **exactly** what is stated in the 2014 Writ. (*Central Delta I AOB* at p. 77].)

B. Trial Courts Have Broad Discretion to Fashion an Appropriate CEQA Remedy.

The text of the CEQA remedy statute (and well-established case law)¹⁶ supports the trial court’s conclusions in *Central Delta I* that courts retain broad discretion to leave project approvals in effect notwithstanding the court’s finding that the agency violated CEQA. (Pub. Resources Code, § 21168.9, subd. (a)(1) [court may mandate that decision be voided “in whole or in part.”]; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 288.)

On its face, if a court identifies a CEQA violation, section 21168.9 authorizes courts to keep some, none, or all project approvals in effect notwithstanding the CEQA violation. The Legislature provided courts with three options. One is to “mandate that the determination, finding, or decision be voided by a public agency, *in whole or in part*.” (Pub. Resources Code, § 21168.9, subd. (a)(1), emphasis added.) Another is

¹⁶ *POET LLC v. Cal. Air Resources Bd.* (2013) 218 Cal.App.4th 681, 760-762; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1605; *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960-961; *San Bernardino Valley Audubon Society v. Metropolitan Water Dist. of So. Cal.* (2001) 89 Cal.App.4th 1097, 1103-1105; *Californians for Alternatives to Toxics v. Dept. of Food and Agriculture* (2005) 136 Cal.App.4th 1, 22. This case law is described in detail in the Kern Water Bank Parties’ Opening Brief in *Central Delta I* at pages 71 – 78.

simply to mandate that the lead agency take specific action to bring its decision into compliance with CEQA. (*Id.*, subd. (a)(3).) The trial court in *Central Delta I* specified a remedy authorized by subdivision (a)(3).

Several courts have concluded that the broad discretion provided to trial courts by section 21168.9 is unambiguous.

[A] reasonable, commonsense reading of section 21168.9 plainly forecloses plaintiffs' assertion that a trial court must mandate a public agency decertify the EIR and void all related project approvals in every instance where the court finds an EIR violated CEQA.

(*Golden Gate Land Holdings LLC v. East Bay Regional Park Dist.*, *supra*, 215 Cal.App.4th at p. 376.)

Once again, Central Delta claims that CEQA imposes a “default” remedy that requires invalidation of all project approvals.¹⁷ The cases relied upon by the Central Delta do not conclude that CEQA imposes a default or a “one size fits all” remedy. Rather, the cases cited by the Central Delta Appellants stand for the unremarkable proposition that, under section 21168.9 and equitable principles, a court has discretion to void agency approvals of a project where the agency did not comply with CEQA.

In *Save Tara v. City of West Hollywood* (“*Save Tara*”) (2008) 45 Cal.4th 116, cited by the Central Delta Appellants, the Supreme Court held that a city’s approval of a “conditional agreement” with a low-income housing developer constituted a project “approval” under CEQA and thus required CEQA compliance. *Save Tara* simply stands for the proposition

¹⁷ The Kern Water Bank Parties’ Opening Brief in *Central Delta I* address the “default remedy” argument at pages 78 – 80.

that an agency may not approve a project with significant effects on the environment without first complying with CEQA. Nothing in *Save Tara* addresses the trial court's discretion to fashion a remedy pursuant to section 21168.9 and the court's inherent equitable powers. The issue was simply not before the *Save Tara* court.

There is also an obvious distinction between the facts in *Save Tara* and the facts here. In *Save Tara*, the city approved the housing project without first preparing *any* CEQA document. (*Save Tara, supra*, 45 Cal.4th at pp. 123-124.) Here, an agency prepared an EIR although the court subsequently ordered preparation of a remedial EIR. In the other cases relied upon by Central Delta Appellants, the courts simply elected to exercise their discretion under section 21168.9(a)(1) to void the agencies' project approvals under the particular facts and circumstances in each case. Nothing in the cases cited by Central Delta makes improper the manner in which the trial court exercised its discretion here.

Nor does the position of the Kern Water Bank Parties conflict with the CEQA principle that a project approval should follow EIR certification. Kern Water Bank Parties do not argue that the existence of legally valid contracts precluded DWR from exercising whatever discretion it had to make a project decision after certification of the 2010 EIR. Pursuant to the Settlement Agreement, the 2003 Writ and 2003 Order, DWR retained the discretion to adopt appropriate, feasible mitigation measures applicable to the operation of the SWP and the KWB. In fact, DWR adopted multiple such mitigation measures in the 2010 EIR, and in the 2016 EIR. (AR22:10935-10960.) As just two examples, DWR adopted mitigation measures to address potential adverse impacts on other groundwater wells in the KWB area, and also adopted precedent-setting measures to reduce energy use. (RAR 579-584, 1051-1055, 1885-1894, 1983-2012, 2011-

2012.) Central Delta does not challenge the adequacy of any of the mitigation measures. The form of the remedy specified in the 2014 Writ did not render DWR's 2016 EIR a meaningless paper-pushing exercise.

CEQA requires state agencies to prepare and certify an EIR "which they propose to carry out." (Pub. Resources Code, § 21100, subd. (a).) DWR did just that with the preparation and certification of the 2016 EIR – *precisely* as directed in the 2014 Writ.

C. Since Central Delta Appealed the Court's CEQA Remedy in *Central Delta I*, the Trial Court Did Not Have Jurisdiction Over this Issue.

In *Central Delta I*, the trial court ruled against Central Delta on the issue of whether CEQA required the Court to void the approvals of the Monterey Amendments.

Because DWR was operating pursuant to the Monterey Amendment while the new EIR was being prepared, the EIR accurately described the practical result of carrying out the proposed Project as "continuing" to operate the SWP pursuant to the Monterey Amendment, and accurately described the "no project" alternative as returning to operation of the SWP in accordance with the pre-Monterey Amendment long-term water supply contracts. Therefore, DWR correctly determined that it could carry out the Project simply by deciding to continue operating under the Monterey Amendment.

(*CD I AA33:8236-8237* [Ruling on Submitted Matter, March 5, 2015 at pp. 12-14].)

Central Delta appealed the trial court's ruling on this issue in *Central Delta I*. It does not get another bite of the apple in *this* appeal.

VIII. CONCLUSION.

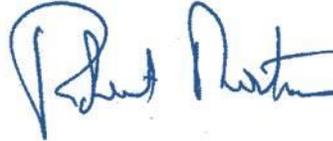
DWR complied with the trial court's explicit direction in the 2014 Writ. Substantial evidence supports DWR's evaluation of the impacts of the operation of the Kern Water Bank on decisions by farmers to convert from annual to orchard crops. The trial court properly exercised its broad discretion under CEQA to fashion an appropriate remedy for the sole and narrow error identified in *Central Delta III*.

The state's recent multi-year drought demonstrates that the ability of the state to meet the water supply needs of its residents is in material part dependent on the water management flexibility provided by the Monterey Amendments. (*CD IAA28:6849, 6856; RAR 376.*) Central Delta disagrees with the state's policy choice to facilitate the banking of water in wet years to ensure an adequate water supply in dry years. Central Delta's policy preference is contrary to many years of State Water Project management history (pre-dating the Monterey Amendments), and is in fundamental conflict with State water and environmental policies. DWR's policy choice is well within its discretion.

The practical implications of Central Delta's legal argument are breathtaking. In Central Delta's view, DWR is prohibited from allowing the banking of SWP water made available in very wet years (such as the historically wet winter of 2016-2017), and the use of the banked water for recognized beneficial urban and agricultural uses. The flexibility provided by the Monterey Amendments makes it possible for the state to minimize the social, environmental and economic impacts of multi-year droughts. DWR approved the Monterey Amendments based on substantial evidence and sound water management and conservation policy. It is not the role of the courts to second guess these policy determinations.

The Court should affirm the 2017 Judgment and bring to an end a quarter century of litigation over the Monterey Amendments.

Dated: September 19, 2018 NOSSAMAN LLP
Stephen N. Roberts
Robert D. Thornton



By: _____
Robert D. Thornton
Attorneys for Real Parties of Interest and Appellees Roll International Corporation; Roll Law Group PC; Paramount Farming Company LLC; and Westside Mutual Water Company

YOUNG WOOLDRIDGE, LLP
Steven M. Torigiani
Ernest A. Conant
Attorneys for Real Parties in Interest and Respondents Kern Water Bank Authority; Dudley Ridge Water District; Semitropic Water Storage District; Tejon-Castac Water District; and Wheeler Ridge-Maricopa Water Storage District

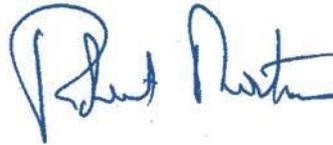
DOWNEY BRAND LLP
Steven P. Saxton
Kevin M. O'Brien
Attorneys for Real Party in Interest and Respondent Kern Water Bank Authority

ROLL LAW GROUP PC
Kristina Diaz
Attorneys for Real Parties in Interest and Respondents Roll International Corporation; Roll Group PC; Paramount Farming Company LLC; and Westside Mutual Water Company

CERTIFICATE OF COMPLIANCE

Pursuant to CRC Rule 8.204(c)(4), this brief contains 9,800 words, according to the word count feature of Microsoft Word 2010, and therefore complies with the 14,000 word limit for responding briefs.

Dated: September 19, 2018 NOSSAMAN LLP
Stephen N. Roberts
Robert D. Thornton



By: _____

Robert D. Thornton

*Attorneys for Real Parties of Interest and
Appellees Roll International Corporation; Roll
Law Group PC; Paramount Farming Company
LLC; and Westside Mutual Water Company*

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is 18101 Von Karman Avenue, Suite 1800, Irvine, CA 92612.

On September 19, 2018, I caused to be served the a true and correct copy of the **COMBINED BRIEF OF REAL PARTIES IN INTEREST AND APPELLEES KERN WATER BANK AUTHORITY; ROLL INTERNATIONAL CORPORATION; PARAMOUNT FARMING COMPANY LLC; WESTSIDE MUTUAL WATER COMPANY; DUDLEY RIDGE WATER DISTRICT; SEMITROPIC WATER STORAGE DISTRICT; TEJON-CASTAC WATER DISTRICT; AND WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT (“COMBINED BRIEF OF REAL PARTIES AND APPELLEES KERN WATER BANK AUTHORITY, et al.”)** on all parties to the within action listed through TrueFiling website as indicated on the attached **Electronic Service List – Served through TrueFiling**; and

IN ADDITION, September 19, 2018, I served a true and correct copy of the **COMBINED BRIEF OF REAL PARTIES AND APPELLEES KERN WATER BANK AUTHORITY, et al.** by electronically mailing a true and correct copy through Nossaman LLP’s electronic mail system to the email address(es) shown on the following parties who are not yet listed on the TrueFiling service list for this matter on the attached **Electronic Service List – Served through Electronic Mail**.

IN ADDITION, September 19, 2018, I served a true and correct copy thereof of the **COMBINED BRIEF OF REAL PARTIES AND APPELLEES KERN WATER BANK AUTHORITY, et al.** by First

Class Mail, placing a sealed envelope for collection by the internal mail processing center for mailing that same day with the United States Postal Service with posted fully prepaid, addressed as follows:

Honorable Timothy M. Frawley
Sacramento County Superior Court
Gordon D. Schaber County Courthouse, Dept. 29
720 9th Street
Sacramento, CA 95814

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

Executed on September 19, 2018.

Leanne M. Boucher

Leanne M. Boucher

Center for Food Safety, et al. v. Department of Water Resources
Court of Appeal, Third Appellate District No. C086215

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<p>Adam Keats Center for Food Safety 303 Sacramento Street, 2ND Floor San Francisco, CA 94111 Telephone: 415-826-2770 E-mail: akeats@centerforfoodsafety.org</p> <p>John T. Buse Aruna M. Prabhala Center for Biological Diversity 1212 Broadway, Suite 800 Oakland, CA 94612 Telephone: 510-844-7100 E-mail: jbuse@biologicaldiversity.org aprabhala@biologicaldiversity.org</p>	<p><i>Attorneys for Petitioners and Appellants Center for Food Safety; Center for Biological Diversity; California Water Information Network; California Sportfishing Protection Alliance</i></p>
<p>Eric M. Katz Supervising Deputy Attorney General Marilyn H. Levin Deputy Attorney General Office of the Attorney General 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: 213-269-6323 E-mail: Eric.Katz@dog.ca.gov Marilyn.Levin@doj.ca.gov</p> <p>Daniel M. Fuchs Deputy Attorney General 1301 I Street Sacramento, CA 94244 Telephone: 916-210-7827 E-mail: Daniel.Fuchs@doj.ca.gov</p>	<p><i>Attorneys for Respondents and Appellees California Department of Water Resources</i></p>

Electronic Service List – Served through TrueFiling

Ernest A. Conant Steven M. Torigiani Mark R. Stamper Law Offices of Young Wooldridge, LLP 1800 30th Street, 4 TH Floor Bakersfield, CA 93301 Telephone: 661-327-9661 E-mail: econant@youngwooldridge.com storigiani@youngwooldridge.com mstamper@youngwooldridge.com	<i>Attorney for Real Parties In Interest and Respondents Dudley Ridge Water District; Kern Water Bank Authority; Semitropic Water Storage District; Tejon-Castac Water District; and Wheeler Ridge-Maricopa Water Storage District</i>
Steven P. Saxton Downey Brand 621 Capitol Mall, 18 TH Floor Sacramento, CA 95814 Telephone: 916-441-1000 E-mail: ssaxton@downeybrand.com	<i>Attorneys for Real Party In Interest and Respondent Kern Water Bank Authority</i>
Hanspeter Walter Kronick Moskovitz Tidemann & Girard 400 Capitol Mall, 27 TH Floor Sacramento, CA 95814 Telephone: 916-321-4500 E-mail: hwalter@kmtg.com	<i>Attorneys for Real Party In Interest and Respondent Kern County Water Agency</i>
David R.E. Aladjem Downey Brand LLP 621 Capitol Mall, 18 TH Floor Sacramento, CA 95814 Telephone: 916-444-1000 E-mail: daladjem@downeybrand.com	<i>Attorney for Real Parties In Interest and Respondents Alameda County Flood Control and Water Conservation District, Zone 7 and San Bernardino Valley Municipal Water District</i>

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<p>Charity B. Schiller Best, Best & Krieger LLP 3390 University Avenue, 5TH Floor Riverside, CA 92501 Telephone: 951-826-1450 E-mail: charity.schiller@bbklaw.com</p> <p>Kimberly E. Hood Best, Best & Krieger LLP 500 Capitol Mall, Suite 1700 Sacramento, CA 95814 E-mail: Kimberly.Hood@bbklaw.com</p>	<p><i>Attorneys for Real Parties In Interest and Respondents Antelope Valley-East Kern Water Agency; Castaic Lake Water Agency; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; San Geronio Pass Water Agency; and Ventura County Watershed Protection District</i></p>
<p>Amy Steinfeld, Esq. Brownstein Hyatt Farber Schreck, LLP 1020 State Street Santa Barbara, CA 93101 Telephone: 805-963-7000 E-mail: asteinfeld@bhfs.com</p>	<p><i>Attorney for Real Party In Interest and Respondent Central Coast Water Authority</i></p>
<p>Steven B. Abbott Redwine and Sherrill, LLP 1950 Market Street Riverside, CA 92501-1720 Telephone: 951-684-2520 E-mail: sabbott@redwineandsherrill.com</p>	<p><i>Attorney for Real Party In Interest and Respondent Coachella Valley Water District</i></p>
<p>Colleen J. Carlson Kings County Counsel's Office 1400 West Lacey Blvd., Bldg. No. 4 Hanford, CA 93230 Telephone: 559-582-3211 E-mail: colleen.carlson@co.kings.ca.us</p>	<p><i>Attorney for Real Party In Interest and Respondent County of Kings</i></p>
<p>Lelland P. McElhaney Brunick, McElhaney & Beckett 1839 Commerce Center West San Bernardino, CA 92408 Telephone: 909-889-8301 E-mail: lmcclhaney@bmbllawoffice.com</p>	<p><i>Attorney for Real Party in Interest and Respondent Mojave Water Agency</i></p>

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<p>W. Keith Lemieux Manual D. Serpa Olivarez Madruga Lemieux O'Neill, LLP 4165 E. Thousand Oaks Blvd., Suite 350 Westlake Village, CA 91361 Telephone: 805-495-4770 E-mail: klemieux@omlolaw.com mserpa@omlolaw.com</p>	<p><i>Attorney for Real Parties In Interest and Respondents Littlerock Creek Irrigation District</i></p>
<p>Adam C. Kear Marcia L. Scully Metropolitan Water District of Southern California 700 N. Alameda Street, 12TH Floor Los Angeles, CA 90012 Mail: P.O. Box 54153, Terminal Annex Los Angeles, CA 90054-0153 Telephone: 213-217-6057 E-mail: akear@mwdh2o.com mscully@mwdh2o.com</p>	<p><i>Attorney for Real Party In Interest and Respondent Metropolitan Water District of Southern California</i></p>
<p>Robert C. Martin Office of County Counsel County of Napa 1195 Third Street, Room 301 Napa, CA 94559 Telephone: 707-259-8443 E-mail: rob.martin@countyofnapa.org</p>	<p><i>Attorney for Real Party In Interest and Respondent Napa County Flood Control and Water Conservation District</i></p>
<p>Eric L. Dunn Aleshire & Wynder, LLP 3880 Lemon Street, Suite 520 Riverside, CA 92501 Telephone: 951-241-7338 E-mail: edunn@awattorneys.com</p> <p>Maya Mouawad Aleshire & Wynder LLP 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Telephone: 949-223-1170 E-mail: mmouawad@awattorneys.com</p>	<p><i>Attorney for Real Party In Interest and Respondent Palmdale Water District</i></p>

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<p>James Ciampa Lagerlof, Senecal, Gosney & Kruse 301 N. Lake Avenue, 10TH Floor Pasadena, CA 91101 Telephone: 626-793-9400 E-mail: jciampa@lagerlof.com</p>	<p><i>Attorney for Real Party In Interest and Respondent San Gabriel Valley Municipal Water District</i></p>
<p>Michael C. Ghizzoni, County Counsel County of Santa Barbara 105 E. Anapamu Street, Suite 201 Santa Barbara, CA 93101 Telephone: 805-568-2950 E-mail: mghizzoni@co.santa-barbara.ca.us</p>	<p><i>Attorneys for Real Party In Interest and Respondent Santa Barbara County Flood Control and Water Conservation District</i></p>
<p>Anthony T. Fulcher Assistant District Counsel Stanley T. Yamamoto Office of District Counsel Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118 Telephone: 408-265-2600 E-mail: afulcher@valleywater.org syamamoto@valleywater.org</p>	<p><i>Attorney for Real Party In Interest and Respondent Santa Clara Valley Water District</i></p>
<p>Jeanne M. Zolezzi Herum/Crabtree/Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Telephone: 209-472-7700 E-mail: jzolezzi@herumcrabtree.com</p>	<p><i>Attorney for Real Party in Interest and Respondent Solano County Water Agency</i></p>
<p>Aubrey A. Mauritsen 1102 N. Chinowth Street Visalia, CA 93291 Telephone: 559-733-5770 E-mail: amauritsen@visaliaalaw.com</p>	<p><i>Attorney for Real Parties In Interest and Respondents Tulare Lake Basin Water Storage District</i></p>

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<p>Andrew M. Hitchings Aaron A. Ferguson Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 Telephone: 916-446-7979 E-mail: ahitchings@somachlaw.com aferguson@somachlaw.com</p>	<p><i>Attorneys for Real Party In Interest and Respondent City of Yuba City</i></p>
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Electronic Service List – Served through Electronic Mail

<p>Dante John Nomellini Nomellini Grilli & McDaniel 235 East Weber Avenue Stockton, CA 95202 Telephone: 209-465-5883 E-mail: ngmplcs@pacbell.net</p> <p>John Herrick Law Office of John Herrick 4255 Pacific Avenue Stockton, CA 95207 Telephone: 209-956-0150 E-mail: jherrlaw@aol.com</p> <p>S. Dean Ruiz Mohan, Harris, Ruiz, Wortmann, Perisho & Rubino 3439 Brookside Road, Suite 208 Stockton, CA 95219-1768 Telephone: 209-957-0660 E-mail: dean@mohanlaw.net</p>	<p><i>Attorneys for Central Delta Plaintiffs and Appellants South Delta Water Agency</i></p>
<p>Donald B. Mooney Marsha A. Burch Law Office of Donald B. Mooney 129 C Street, Suite 2 Davis, CA 95616 Telephone: 530-758-2377 E-mail: dbmooney@dcn.org E-mail: mburchlaw@gmail.com</p> <p>Michael R. Lozeau Lozeau Drury LLP 410 12TH Street, Suite 250 Oakland, CA 94607 Telephone: 510-836-4200 E-mail: michael@lozeaudrury.com</p>	<p><i>Attorneys for Central Delta Plaintiffs and Appellants California Water Impact Network; California Sportfishing Protection Alliance; Center for Biological Diversity; Carolee Krieger; and James Crenshaw</i></p>

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Electronic Service List – Served through Electronic Mail

<p>Mary U. Akens Office of the Chief Counsel California Department of Water Resources 1416 9TH Street, Suite 1104 Sacramento, CA 95814 Telephone: 916-653-1037 E-mail: Mary.Akens@water.ca.gov</p>	<p><i>Attorney for Respondents and Appellees California Department of Water Resources</i></p>
<p>Nathan Metcalf Patrick Miyaki Hanson Bridgett LLP 425 Market St., 26TH Floor San Francisco, CA 94105 Telephone: 415-777-3200 E-mail: nmetcalf@hansonbridgett.com E-mail: pmiyaki@hansonbridgett.com</p>	<p><i>Attorneys for Real Party In Interest and Respondent Alameda County Water District</i></p>
<p>Jason M. Ackermann Best, Best & Krieger LLP 3390 University Avenue, 5TH Floor Riverside, CA 92501 Telephone: 951-826-1450 E-mail: Jason.Ackerman@bbklaw.com</p> <p>Russell G. Behrens Best, Best & Krieger LLP 18101 Von Karman Avenue, Suite 1000 Irvine, CA 92612 Telephone: 949-263-2600 E-mail: Russell.Behrens@bbklaw.com</p> <p>Anthony Van Ruiten Van Ruiten Law Corporation 980 9th Street, 16th Floor Sacramento, CA 95814 Telephone: 916-449-9949 E-mail: Anthony@vanruitenlaw.com</p>	<p><i>Attorneys for Real Parties In Interest and Respondents Antelope Valley-East Kern Water Agency; Castaic Lake Water Agency; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; San Geronio Pass Water Agency; and Ventura County Watershed Protection District</i></p>

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<p>Bruce Alpert County Counsel 25 County Center Drive, Suite 210 Oroville, CA 95965-3380 Telephone: 530-538-7621 E-mail: balpert@buttecounty.net</p> <p>Roger K. Masuda David L. Hobbs Griffith & Masuda 517 E. Olive Avenue Turlock, CA 95380 E-mail: rmasuda@calwaterlaw.com E-mail: dhobbs@calwaterlaw.com</p>	<p><i>Attorneys for Real Party In Interest and Respondent County of Butte</i></p>
<p>Stephen L. Mansell Acting County Counsel County of Plumas General Manager Plumas County Flood Control and Water Conservation District 520 Main Street, Room 302 Quincy, CA 95971 Telephone: 530-283-6290 E-mail: stevemansell@countyofplumas.com</p>	<p><i>Attorney for Real Party In Interest and Respondent Plumas County Flood Control and Water Conservation District</i></p>
<p>Timothy McMulty Erica A. Stuckey Office of the County Counsel County Government Center County of San Luis Obispo 1055 Monterey Street, Room D320 San Luis Obispo, CA 93408 Telephone: 805-781-5400 E-mail: tmcnulty@co.slo.ca.us estuckey@co.slo.ca.us</p>	<p><i>Attorneys for Real Party In Interest and Respondent San Luis Obispo County Flood Control and Water Conservation District</i></p>
<p>Amber Holderness, Deputy County of Santa Barbara 105 E. Anapamu Street, Suite 201 Santa Barbara, CA 93101 Telephone: 805-568-2950 E-mail: aholderness@co.santa-barbara.ca.us</p>	<p><i>Attorney for Real Party In Interest and Respondent Santa Barbara County Flood Control and Water Conservation District</i></p>

Electronic Service List – Served through Electronic Mail

Uoxina Santos-Aguirre Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 Telephone: 916-446-7979 E-mail usantos-aguirre@somachlaw.com	<i>Attorney for Real Party In Interest and Respondent City of Yuba City</i>
Antonio Rossmann Roger B. Moore Rossmann and Moore, LLP 2014 Shattuck Avenue Berkeley, CA 94704 Telephone: (510) 548-1401 E-mail: ar@landwater.com rbm@landwater.com	<i>Attorneys for Central Delta Amicus Curiae Planning and Conservation League</i>
Gene R. McMurtrey Daniel N. Raytis McMurtrey, Hartsock & Worth 2001 22 nd Street, Suite 100 Bakersfield, CA 93301 Telephone: (661) 322-4417 E-mail: gene@mcmurtreyhartsock.com dan@mcmurtreyhartsock.com	<i>Attorneys for Plaintiffs Rosedale-Rio Bravo Water Storage District and Buena Vista Water Storage District</i>