

1 correspondingly elevated that salmon can no longer survive in them. In particular, Conservation
2 Groups petition this Court under Water Code section 13330 and Code of Civil Procedure (“C.C.P.”)
3 section 1094.5 to set aside the State Water Board’s approval on October 3, 2017 of the combined 2014
4 and 2016 California Integrated Reports purportedly pursuant to sections 303(d) and 305(b) of the Clean
5 Water Act, 33 U.S.C. §§ 1313(d) and 1315(b), because that Report omits dozens of waterways for
6 which competent and authoritative data establishes their impairment for salmon and other beneficial
7 uses, thus triggering the State Water Board’s duty under the Clean Water Act and Water Code section
8 13370 et seq. and their implementing regulations to take measures to restore their impaired water
9 quality and degraded fish habitat.

10 **I. INTRODUCTION**

11 1. Congress adopted the Clean Water Act (“CWA”) “to restore and maintain the chemical,
12 physical and biological integrity of the Nation’s waters.” (33 U.S.C. § 1251(a).) Under CWA section
13 303(d) (33 U.S.C. § 1313(d)), California is required to report to the U.S. Environmental Protection
14 Agency (“EPA”) on the quality of the waters of the United States within California’s boundaries every
15 two years. Known as the “section 303(d) list,” this report identifies water bodies not meeting federal
16 water quality standards and the specific water quality parameters that are not being met. (40 C.F.R. §
17 130.7(d).) In California, the State Water Board has elected to combine the section 303(d) list with a
18 report of the water quality conditions of the state’s surface waters prepared under CWA section 305(b)
19 (33 U.S.C. § 1315(b)) into a single report known as the “California Integrated Report” or “Integrated
20 Report” that is to be submitted every two years.

21 2. The purpose of the reports required under CWA sections 303(d) and 305(b) is to achieve the
22 CWA’s overall goal of achieving water quality standards and maintaining beneficial uses of California’s
23 waters, such as its fisheries. These reports provide critical linkage between water quality standards and
24 their enforcement. Under the CWA, waters designated “impaired” under section 303(d) are subject to a
25 host of statutory and regulatory requirements intended to rectify the impairment and restore the beneficial
26 use. When a state identifies a water quality-limited segment, it is required to “establish a priority ranking
27 for such waters, taking into account the severity of the pollution and the uses to be made of such waters.”
28 (CWA § 303(d)(1)(A).) Pursuant to the CWA’s parallel water quality reporting requirements in section

1 305(b), states must prepare and submit to EPA reports describing the water quality of all navigable waters
2 and an analysis of the extent to which those waters provide for the protection of fish and wildlife and for
3 recreational activities in and on the water. (CWA § 305(b)(1)(A)-(B); 40 CFR § 130.8(b)(1).)

4 3. In September 2004 the State Water Board adopted a “Water Quality Control Policy” to guide
5 preparation of its CWA section 303(d) list. As that Policy explains, “CWA section 303(d) requires states
6 to identify waters that do not meet, or are not expected to meet by the next listing cycle, applicable water
7 quality standards after the application of certain technology-based controls and schedule such waters for
8 development of Total Maximum Daily Loads (TMDLs) [40 [C.F.R.] 130.7(c) and (d)]. The states are
9 required to assemble and evaluate all existing and readily available water quality-related data and
10 information to develop the list [40 C.F.R. 130.7(b)(5)] and to provide documentation for listing or not
11 listing a state’s waters [40 C.F.R. 130.7(b)(6)].” (*Id.* at p. 1.) Commonly known as the State Water
12 Board’s “Listing Policy,” “this Policy provides guidance for interpreting data and information as they are
13 compared for beneficial uses, existing numeric and narrative and water quality objectives, and anti-
14 degradation considerations.” (*Id.*)

15 4. Pursuant to this statutory and regulatory regime, on October 3, 2017 the State Water Board
16 belatedly adopted the California Integrated Reports that were due in 2014 and 2016 for submission as a
17 single document to EPA– three years late. The combined 2014 and 2016 California Integrated Reports
18 (hereafter, “Integrated Report”), however, fail to designate dozens of waterways as impaired as required
19 under the CWA and the California Water Code despite overwhelming evidence that they no longer
20 provide suitable habitat for salmon and other fishes due to elevated temperatures and harmful levels of
21 pyrethroid pesticides. Coupled with the ongoing ecological collapse of the Bay-Delta and its tributary
22 rivers, the State Water Board’s failure to designate these waterways as impaired and take action to restore
23 their water quality threatens to drive another nail in the coffin of Bay-Delta’s sport and commercial
24 fisheries, and the ecosystems that support them.

25 5. The largest and most productive estuary system on the west coast of North and South
26 America – the Sacramento-San Joaquin River Delta – is collapsing for two principal reasons.
27 First, the Central Valley Project and the State Water Project have diverted too
28 much of the Delta’s fresh water flows. Second, agricultural diverters have discharged and

1 ASSOCIATIONS (“PCFFA”) is a non-profit, tax-exempt corporation which represents a coalition of
2 more than 14 separate fishermen’s organizations in California, Oregon, and Washington with a combined
3 membership of approximately 750 fishing men and women. Each of its members depends on the ocean’s
4 fisheries – including many species of anadromous fish that use the Sacramento and San Joaquin Rivers
5 and Bay-Delta as juveniles when migrating out to sea and again as adults when returning to spawn – for
6 their livelihood. The interests of PCFFA and its members in healthy fisheries in the Bay-Delta and
7 Sacramento and San Joaquin Rivers have been, are being, and unless the relief requested herein is
8 granted, will continue to be adversely affected and injured by the State Water Board’s failure to
9 (1) designate as “impaired” waterways that no longer provide adequate habitat for salmon and
10 (2) thereafter take action to eliminate their impairment as required by the CWA and the California Water
11 Code. Enforcement of this statutory duty will help restore and preserve water quality, directly
12 benefitting the fisheries upon which PCFFA’s members rely.

13 10. Petitioner and plaintiff THE INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a
14 non-profit public benefit corporation headquartered in San Francisco, California. Since 1993, IFR has
15 been carrying out the fishery research and conservation needs of working fishing men and women.
16 IFR works on conservation projects and policy issues at the regional, national and international levels.
17 The interests of IFR and its members have been, are being, and unless the relief requested herein is
18 granted, will continue to be adversely affected and injured by the State Water Board’s failure to (1)
19 designate as “impaired” waterways that no longer provide adequate habitat for salmon and other fishes
20 and (2) thereafter take action to eliminate their impairment as required by the CWA and the California
21 Water Code. Enforcement of this statutory duty will help restore and preserve water quality, directly
22 benefitting the fisheries which IFR’s members work to protect and restore.

23 11. Petitioner and plaintiff NORTH COAST RIVERS ALLIANCE (“petitioner”) is a non-profit
24 unincorporated association whose members reside, work, or recreate in the coastal and inland watersheds
25 of Northern California, including the Sacramento-San Joaquin River Delta and its tributary watersheds.
26 NCRA was formed for the purpose of protecting the rivers of California’s northern and central coast,
27 including the Sacramento and San Joaquin Rivers and their watersheds, from the adverse effects of
28 excessive water diversions, ill-planned urban development, harmful resource extraction, pollution

1 including the application of toxic pesticides, and other forms of environmental degradation. NCRA's
2 members use and enjoy the Sacramento and San Joaquin Rivers, their Delta and watersheds, and their fish
3 and wildlife for recreational, aesthetic, scientific study, and spiritual purposes. They are vitally concerned
4 that the State Water Board discharge its duties under the CWA and the Water Code to designate impaired
5 waterways and restore their water quality as required to repopulate and protect their fish and wildlife
6 including their imperiled salmon. NCRA and its members accordingly seek this Court's writ of mandate,
7 and injunctive and declaratory relief, enforcing the State Water Board's duties under the CWA and the
8 Water Code to restore and protect fish and wildlife habitat in the Sacramento and San Joaquin rivers, the
9 Bay-Delta, and their tributaries.

10 12. Petitioner and plaintiff SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,
11 INC. ("SFCBOA") has been protecting the rich seafood fisheries off the coast of San Francisco since
12 1913. SFCBOA's members operate small, family owned fishing boats that catch Dungeness crab, wild
13 California king salmon, herring, and many other fish species that live in the cold waters of the Pacific
14 Ocean. Its members are also actively involved in community education and fishing resource advocacy
15 to ensure that the rich heritage of commercial fishing for Bay Area residents will survive for future
16 generations. The interests of SFCBOA and its members have been, are being, and unless the relief
17 requested herein is granted, will continue to be adversely affected and injured by the State Water Board's
18 failure to discharge its duties under the CWA and California Water Code as alleged herein. Enforcement
19 of these laws will help restore and preserve water quality, directly benefitting the fisheries upon which
20 SFCBOA's members rely.

21 13. Petitioners exhausted their administrative remedies by submitting comments to the State
22 Water Board objecting to its proposed adoption of the Integrated Report on July 10, 2017 and
23 appearing before the State Water Board on October 3, 2017 and on other occasions.

24 14. Respondent and defendant CALIFORNIA STATE WATER RESOURCES CONTROL
25 BOARD ("State Water Board") is a state agency charged with responsibility to determine water rights,
26 manage water quality, and assure safe and reliable drinking water. (California Water Code § 174 et
27 seq.) The State Water Board is also responsible for carrying out the requirements of sections 303(d)
28 and 305(b) of the CWA. (33 U.S.C. §§ 1313(d), 1315(b); 40 C.F.R. §§ 130.7, 130.8.) Purportedly

1 pursuant to its duties under sections 303(d) and 305(b) of the CWA, on October 3, 2017 the State
2 Water Board adopted a Resolution approving the California Integrated Report, which belatedly
3 combined the Integrated Reports due but not filed for 2014 and 2016. In adopting the Integrated
4 Report, the State Water Board failed to proceed in the manner required by law in the respects alleged
5 herein.

6 15. The true names and capacities of respondents DOES 1-100, inclusive, are unknown to
7 petitioners who therefore sue such respondents by fictitious names pursuant to C.C.P. section 474.
8 Petitioners are informed and believe, and based on such information and belief allege, that the
9 fictitiously named respondents are state or local officials or agencies who are responsible, in whole or
10 in part, for the approval and implementation of the Integrated Report. Petitioners will, with leave of
11 Court if necessary, amend this Verified Petition if and when the true names and capacities of said Doe
12 respondents have been ascertained.

13 16. The State Water Board did not identify any real parties in interest in its Resolution
14 adopting the Integrated Report, and petitioners are not otherwise aware that any specific real parties in
15 interest exist. The true names and capacities of real parties in interest DOES 101-200, inclusive, are
16 unknown to petitioners who therefore such real parties in interest by fictitious names pursuant to
17 C.C.P. section 474. Petitioners are informed and believe, and based on such information and belief
18 allege, that the fictitiously named real parties in interest have a direct interest in approval of the
19 Project. Petitioners will, with leave of Court if necessary, amend this Verified Petition if and when
20 the true names and capacities of said Doe real parties in interest have been ascertained.

21 17. Plaintiffs have no plain, speedy, or adequate remedy at law. Their injuries are fairly
22 tracable to the State Water Board's inaction and actions as alleged herein. These injuries are actual,
23 concrete, and imminent and cannot be adequately remedied by money damages. Accordingly,
24 petitioners seek injunctive and declaratory relief from this Court to rectify the State Water Board's
25 unlawful acts and omissions as alleged herein.

26 18. Petitioners are entitled to declaratory relief under C.C.P. section 1060 because an actual
27 controversy exists between petitioners and the State Water Board. Petitioners contend that the State
28 Water Board has acted in violation of applicable laws and must therefore vacate and set aside its

1 approval of the Project. Petitioners are informed and believe that the State Water Board disputes this
2 contention. A judicial resolution of this controversy is therefore necessary and appropriate.

3 19. Petitioners are also entitled to injunctive relief under C.C.P. section 526 because the State
4 Water Board's approval of the Integrated Report threatens irreparable environmental harm. Unless
5 enjoined, the State Water Board will implement the Integrated Report despite its lack of compliance
6 with applicable laws, causing undue and unnecessary environmental degradation. Petitioners would
7 thereby suffer irreparable harm due to the State Water Board's failure to take the required steps to
8 adequately protect the environment. Injunctive relief is thus warranted under C.C.P. section 525 et
9 seq. to prevent irreparable harm to the environment.

10 III. VENUE AND JURISDICTION

11 20. This Court has jurisdiction over this proceeding pursuant to C.C.P. sections 526
12 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), and 1094.5 (administrative
13 mandate); Water Code section 13330; and article VI, section 10 of the California Constitution.

14 21. Venue is proper in this Court pursuant to C.C.P. sections 393 (actions against public
15 officers) and 395 (actions generally) because the State Water Board's offices are located in
16 Sacramento.

17 22. Pursuant to C.C.P. section 388, petitioners are serving the California Attorney General
18 with a copy of this Verified Petition and Complaint.

19 IV. THE STATE WATER BOARD FAILED TO DESIGNATE TEMPERATURE- 20 IMPAIRED WATERS.

21 23. The State of California's inland waters are managed by nine regional water quality control
22 boards. (California Water Code §§ 13200, 13225(a).) The rivers of the Central Valley, including the
23 Sacramento and San Joaquin Rivers, are located within Region 5. The Region 5 Regional Board
24 ("Regional Board") in its Staff Report dated September 2016 identified 189 new water body evaluations
25 for temperature, and confirmed that excessive temperatures were found in 39 of these water bodies. Yet
26 the State Water Board *only designated one of these 39 impaired water segments as impaired due to*
27 *excessive temperature in the Integrated Report.*

28 24. The Regional Board and the State Water Board attempted to excuse this omission by

1 claiming that the surface grab samples revealing excessive temperatures were not representative of
2 temperature conditions throughout these water bodies. Consequently they ignored virtually all of these
3 elevated temperatures. However, when EPA reviewed the underlying lines of evidence, it concluded to
4 the contrary that “there are many water bodies that are well mixed lotic systems where a surface grab
5 sample showing exceedances of temperature thresholds *would still be representative of most of the water*
6 *column* and suggest a temperature *impairment for the water body as a whole.*” (EPA letter dated
7 November 3, 2016 to Central Valley Regional Water Board, at p. 1.) EPA explained that its criticism was
8 supported by overwhelming documentary evidence. For example, it pointed out that “[t]here are several
9 water bodies, such as segments of the Sacramento River that have substantial data collected under the
10 Irrigated Lands Regulatory Program indicating impairment,” and that “[a]dditionally, for many of these
11 water bodies continuous monitoring stations with existing data published by [the California] Department
12 of Water Resources in publicly available databases (e.g., California Data Exchange Center (“CDEC”) . . .
13 and the California Water Data Library . . . are available to *confirm impairments initially identified by the*
14 *already analyzed grab sample data.*” (*Id.* at p. 1 (emphasis added).)

15 25. EPA also pointed out, correctly, that “the thresholds selected in the [Regional Board’s] Staff
16 Report for this [section 303(d)] listing cycle, 21°C and 24°C for rainbow trout and steelhead respectively,
17 are *much warmer* than the temperatures recommended in EPA’s *2003 Region 10 Guidance for Pacific*
18 *Northwest State and Tribal Temperature Water Quality Standards.*” (*Id.* (emphasis added).) This means
19 that river segments with temperatures too high to support salmonid survival were omitted from the list of
20 impaired waterways. As EPA explained, the Regional Board – and the State Water Board thereafter –
21 failed to identify numerous river segments as temperature impaired *even though existing numeric*
22 *temperature criteria are clearly exceeded for these river segments*, many of which are salmon spawning
23 and rearing waterways. Tables III-IV and III-IVA in the Sacramento and San Joaquin River Basin Plan
24 for example, identify specific objectives for Deer Creek and the Sacramento River – major salmon
25 spawning waterways – that were ignored by the Regional Board in its section 303(d) list – and
26 subsequently by the State Water Board in its Integrated Report. (*Id.* at p. 2.)

27 26. The State Water Board improperly failed to list other impaired waterbodies, despite ample
28 evidence of their impairment. For example, 20 of 31 samples collected on the Sacramento River

1 segment from Knights Landing to the Delta by the Rice Commission exceeded the water quality objective
2 for temperature. These 31 samples were collected between April 27, 2007 and July 22, 2008. Likewise,
3 the only sample collected within this segment for the Surface Water Ambient Monitoring Program also
4 exceeded the water quality objective for temperature. That sample was collected May 18, 2009. Even
5 though the majority of samples exceeded the water quality objective for temperature, the State Water
6 Board declined to list this segment as temperature-impaired. In so deciding, the State Water Board
7 uncritically adopted the Regional Board’s claim that the sample did not “capture the spatial variability of
8 temperatures experienced by aquatic life,” without attempting to confirm the evidence showing that the
9 segment exceeds the water quality objective through other readily available data, including the
10 Department of Water Resources’ water monitoring data. The State Board made similarly erroneous
11 temperature impairment determinations for approximately two dozen other water bodies that had been
12 sampled over 25 separate times, and for more than 60 waterbodies that had been sampled 25 or less times.

13 27. The State Water Board’s omission of these and many other waterways from its list of
14 impaired water segments also stems from its failure to employ appropriate temperature standards.
15 According to the Central Valley Basin Plan, 56°F (13.3°C) is the numeric objective for the Sacramento
16 River between Keswick Dam and Hamilton City. But in direct defiance of this clear water quality
17 standard, the State Water Board’s Integrated Report and section 303(d) list imbedded therein is based on
18 a line of evidence for this segment that erroneously utilizes a 21°C threshold for salmonid protection –
19 *nearly 8°C (14°F) too high*. As a consequence, significant segments of the Sacramento River and its
20 tributaries that are essential for spawning and rearing of chinook salmon are excluded from the Integrated
21 Report’s section 303(d) list even though these river segments currently have excessive temperatures for
22 salmon spawning and rearing, rendering them “impaired” as a matter of law under the CWA.

23 **V. THE INTEGRATED REPORT IGNORES READILY AVAILABLE**
24 **CONTINUOUS MONITORING DATA IN THE DELTA.**

25 28. The Integrated Report ignores other reliable and available data that reveal impairment due to
26 excessive temperature, salinity and other pollutants. For example, EPA was particularly critical of the
27 Regional Board’s “inconsistent assessments for dissolved oxygen and salinity” as required to be
28 measured under the 2006 Bay-Delta Plan despite the fact that “there is an abundance of publicly available

1 data *identifying broader impairments.*” (*Id.* at p. 2 (emphasis added).) As EPA noted, “[t]hese data
2 should be assessed and incorporated into the final Staff Report.” (*Id.*) EPA pointed out that the Regional
3 Board’s “omission of continuous monitoring information is particularly notable in the Delta where 24
4 continuous monitoring stations are identified in Table 7 of the 2006 Bay-Delta Plan as stations to assess
5 compliance with water quality objectives,” yet this information is “not assessed for this Integrated
6 Report.” (*Id.*) The omission of this critical information has, according to EPA, “resulted in illogical
7 [waterway] listing decisions [by the Regional Board] such as the listing of the Stockton Deep Water Ship
8 Channel for temperatures unsuitable to support migration of cold water species, but none of the
9 surrounding waters are listed as impaired.” (*Id.* (emphasis added).) The State Water Board failed to heed
10 EPA’s expert advise, and repeated these errors in the Integrated Report.

11 29. These glaring omissions from the State Water Board’s Integrated Report violate the CWA.
12 Under the CWA,

13 “[i]n developing Section 303(d) lists, states are required to assemble and evaluate all
14 existing and readily available water quality-related data and information, including, at a
15 minimum, consideration of existing and readily available water quality-related data and
16 information about the following categories of waters: (1) waters identified as partially
17 meeting or not meeting designated uses, or as threatened, in the state’s most recent CWA
18 section 305(b) report; (2) waters for which dilution calculations or predictive modeling
19 indicate non-attainment of applicable standards; (3) waters for which water quality
20 problems have been reported by governmental agencies, members of the public, or
21 academic institutions; and (4) waters identified as impaired or threatened in any CWA
22 Section 319 non-point assessment submitted to EPA.”

19 (*Id.* at p. 2, n. 1, citing 40 C.F.R. § 130.7(b)(5).) The State Water Board failed to discharge these CWA
20 duties when it approved its Integrated Report.

21 **VI. THE INTEGRATED REPORT IGNORES THE 2006 BAY-DELTA PLAN’S**
22 **SALMON-DOUBLING OBJECTIVE.**

23 30. Table 3 of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San
24 Joaquin Delta Estuary (“2006 Bay-Delta Plan”) reiterates the salmon-doubling water quality objective set
25 forth in the 1995 Bay-Delta Plan, as follows:

26 Water quality conditions shall be maintained, together with other measures in the
27 watershed, sufficient to achieve a doubling of natural production of chinook salmon from
28 the average production of 1967-1991, consistent with the provisions of State and federal
law.

1 (*Id.*)

2 31. The salmon-doubling standard of the 2006 Bay-Delta Plan constitutes a water quality
3 standard under the CWA with which the State Water Board section 303(d) list must be consistent. Yet
4 both the Regional Board’s list of impaired waterways and the State Water Board’s Integrated Report
5 make no effort to implement this water quality objective. As a consequence, the Integrated Report
6 conflicts with the 2006 Bay-Delta Plan, and the Central Valley’s beleaguered populations of chinook
7 salmon will continue their rapid decline, leading potentially to their extinction.

8 **VII. THE STATE WATER BOARD IGNORED MONITORING DATA**
9 **COLLECTED BY THE CALIFORNIA DEPARTMENT OF FISH AND**
10 **WILDLIFE FOR SAN JOAQUIN RIVER RESTORATION.**

11 32. Since 2008, numerous state and federal agencies have been engaged in a comprehensive
12 effort to restore the San Joaquin River. As a result of these efforts, the upper restoration reaches have had
13 temperature data collected for at least 8 years by the California Department of Fish and Wildlife
14 (“CDFW”). According to EPA, these data show impairment of the upper San Joaquin River for salmonid
15 reintroduction, and should be utilized in the Integrated Report as required by the CWA. (*Id.* at p. 3.)
16 Instead, the State Water Board ignored these data when it approved its Integrated Report.

17 **VIII. THE INTEGRATED REPORT FAILS TO PROPERLY ACCOUNT FOR**
18 **THE DISCHARGE OF PYRETHROID PESTICIDES, AND LIST**
19 **WATERWAYS THAT ARE IMPAIRED BY THEM.**

20 33. CDFW is California’s Trustee Agency for fish and wildlife resources, and has jurisdiction
21 over and possesses specific expertise in the conservation, protection, and management of fish, wildlife,
22 native plants, and habitat necessary for biologically sustainable populations of those species. (Fish and
23 Game Code §§ 711.7(a), 1802.) CDFW has long recognized that “[t]he San Francisco Bay/Sacramento-
24 San Joaquin River Estuary (Delta) is in a state of ecological crisis, with many native fish species
25 populations at all time low abundances.” (Letter from CDFW, ECD/Water Branch, to Central Valley
26 Regional Board, dated March 24, 2017, at p. 1.) “In recent years, the poor water quality conditions in the
27 Delta and Sacramento and San Joaquin River watersheds, exacerbated by drought, have brought fish
28 species listed under the protection of the state or federal Endangered Species Acts to levels *near*
extinction or extirpation.” (*Id.* (emphasis added).)

34. Based on overwhelming data and careful review in numerous recent studies, CDFW has

1 inputs of pyrethroid-contaminated sediments.” (*Id.*) The State Water Board ignored CDFW’s expert
2 recommendation. Consequently, the Integrated Report fails to list numerous waterways as impaired by
3 pyrethroids, despite overwhelming evidence of impairment of many of them.

4 37. CDFW’s criticism of the Regional Board’s and the State Water Board’s collective failure to
5 include the entirety of pathways by which pyrethroid pesticides harm fishes and their prey has been
6 echoed and amplified in the leading studies on this issue conducted by University of California, Berkeley
7 Professor Donald P. Weston. Professor Weston is widely considered California’s premier expert on
8 pyrethroid toxicology, having worked almost exclusively in this field since 2003, and on other related
9 compounds with similar chemical properties for 20 years before that. Professor Weston has long
10 recognized the widespread and pernicious impact of pyrethroid contamination of California’s waterways.
11 As Dr. Weston pointed out in his comments to the Regional Board dated March 24, 2017, “[p]yrethroid
12 contamination, and its associated toxicity, is so pervasive that it exists in nearly all urban run-off and a
13 substantial fraction of agricultural and POTW discharges.” (*Id.* at p. 1.) Yet, notwithstanding the
14 massive adverse impact of pyrethroid discharges on ecological health in the Delta and its tributary rivers,
15 in evaluating impairment of waterways, the Regional Board and the State Water Board have chosen to
16 “regulate only what they view as the bioavailable fraction,” *excluding approximately 90 percent of the*
17 *harmful pyrethroids present in these waterways.* (*Id.*)

18 38. Consequently, the State Water Board’s Integrated Report ignores 90 percent of the
19 pyrethroids present in California waterways. Although the Staff Report underlying the State Water
20 Board’s Integrated Report confusingly states that “the use of whole water concentrations” – rather than
21 only the “dissolved concentration” of the pyrethroids – “is also valid,” it does not appear that the State
22 Water Board’s staff has made any effort to correct the Regional Board’s exclusion of 90 percent of the
23 harmful pyrethroids from its list of impaired waterways. (*Id.* at p. 7.) As Professor Weston pointed out in
24 his recent letter to the Regional Board, “*despite overwhelming scientific evidence to the contrary*, the
25 [Regional Board] staff report assumes biological uptake from particle-bound pyrethroids to be zero, or at
26 least negligible, and therefore in no need of regulatory control.” (Professor Weston’s March 24, 2017
27 letter to the Central Valley Regional Board at p. 2 (emphasis added).) But the Regional Board’s
28 “[c]haracterization of the particle-bound fraction as non-bioavailable, as done in the staff report, is

1 indefensible.” (*Id.*) Excluding particle-bound pyrethroids from regulation based on the premise that they
2 are not bioavailable “is not an accurate characterization for countless filter-feeding and deposit-feeding
3 aquatic species,” which ingest pyrethroids in sediments. (*Id.* at p. 3.)

4 39. The Regional Board’s – and now, the State Water Board’s – “exclusion of particle-bound
5 pyrethroids from regulatory limits is likely to be of greatest significance with respect to agricultural
6 discharges, since they often have the highest suspended sediment loads.” (*Id.*) This scientifically
7 unsound approach not only ignores the obvious, well-documented impact upon filter-feeding and deposit-
8 feeding aquatic species on which higher-trophic level fishes such as salmonids feed, it wrongfully
9 “provides a disincentive for growers to control release of suspended sediments.” (*Id.*) As Professor
10 Weston explained, “[t]he potential to manipulate suspended sediment so as to avoid a pyrethroid
11 exceedance is akin to simply diluting to meet a treatment standard; neither should be acceptable practice
12 to avoid regulatory limits.” (*Id.*)

13 40. In summary, the Regional Board’s – and now, the State Water Board’s – refusal to recognize
14 waterway impairment by the 90 percent of pyrethroid contamination that is not dissolved, has no basis in
15 science. (*Id.* at p. 4.) To the contrary, as Dr. Weston pointedly observes, this is a “head-in-the-sand”
16 approach:

17 “1) never before used anywhere in the world, 2) that disregards 90% of the pollutant, 3)
18 that incorporates numerical values that have never been shown to be generally applicable
19 or field-verified, and 4) that is not scheduled to be re-assessed by the Board for 15 years
....”

20 (*Id.*) As CDFW and Professor Weston have concluded, pyrethroid poisoning of the Central Valley’s
21 waterways is a significant cause of the ongoing ecological collapse of the Delta and its tributary rivers.
22 The State Water Board’s decision to ignore the impact of 90 percent of the pyrethroids that are not
23 “dissolved” is contrary to the requirements of the Clean Water Act, and therefore an abuse of discretion.

24 **IX. THE STATE WATER BOARD’S INTEGRATED REPORT IS BASED ON**
25 **CONFUSED AND CONFUSING ANALYSES.**

26 41. The State Water Board’s Integrated Report is based on confused and confusing analyses. Its
27 underlying Staff Report contains several passages that are confusing to the lay reader, and may betray
28 logical errors. For example, when discussing Staff’s “Indicator Bacteria Assessment Approach,” the Staff

1 Report states that Staff would not update an analysis that was outdated because it used EPA’s 1986
2 Ambient Water Quality Criteria for Bacteria, rather than EPA’s 2012 criteria that are now available and
3 should be used instead. (Staff Report at p. 8.) Utilizing 30-year old water quality criteria instead of
4 current criteria does not reflect the best science available, and deviates from EPA’s adopted protocol.
5 This should be rectified.

6 42. Second, in discussing “Toxicity Assessments,” the Staff Report states that it “determined, for
7 303(d) assessment purposes, only the SL [i.e., “Significantly Lower”] code should be used to determine
8 whether a sample is considered to have a toxic effect and thereby an exceedance.” (Staff Report at p. 9.)
9 It is not clear why toxicity data associated with the “Significantly Greater” result code was not likewise
10 considered in determining whether there is “an exceedance.” (*Id.*) Staff claimed it has addressed this
11 deficiency with the following explanation:

12 The SG code is applied to an ambient sample that is significantly different than the control
13 sample (using a t-test statistical comparison), but it is also of greater similarity to the
14 control sample. The ambient sample is significantly difference from the control but the
15 response within the ambient sample is more similar to that of the control sample response.
16 Therefore, the ambient sample is not an exceedance because it is more similar to the
17 control sample.

18 Staff’s explanation is unintelligible.

19 **FIRST CAUSE OF ACTION**

20 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside Integrated Report
21 as Contrary to CWA, California Water Code, and C.C.P. § 1094.5)
22 (Alleged By All Petitioners Against All Respondents)**

23 43. The paragraphs set forth above and below are realleged and incorporated herein by reference.

24 44. The State Water Board proceeded in excess of its jurisdiction and abused its discretion in
25 purporting to approve the Integrated Report, because such approval violates the CWA, Water Code
26 section 13330 and C.C.P. section 1094.5 in the following respects, among others:

- 27 a. Such approval was not granted in accordance with the procedures required by law;
- 28 b. Such approval was not based on the findings required by law; and
- 29 c. Such approval was not based on, and was contrary to, the evidence in the record before
30 the State Water Board.

31 45. The State Water Board failed to proceed in the manner required by law in the following

1 b. The State Water Board violated the California Water Code as alleged hereinabove.

2 46. The State Water Board's actions in approving the Integrated Report without complying with
3 the procedures required by the CWA, the Water Code, and C.C.P. section 1094.5 exceeded the State
4 Water Board's jurisdiction and constitute a prejudicial abuse of discretion, and therefore are invalid and
5 must be set aside.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiffs respectfully request that the Court grant the following relief:

8 1. For interlocutory and permanent injunctive relief restraining the State Water Board from
9 taking any action to carry out the Integrated Report that could result in or fail to rectify any adverse
10 change in the physical environment pending, and following, the merits hearing in this matter;

11 2. For a peremptory writ of mandate directing the State Water Board to set aside and vacate its
12 approval of the Integrated Report;

13 3. For declaratory relief declaring the Integrated Report and its approval to be unlawful;

14 4. For a peremptory writ of mandate directing the State Water Board to suspend all activity
15 implementing the Integrated Report that could result in or fail to rectify any adverse change in the
16 physical environment until it has taken all actions necessary to bring the Integrated Report into
17 compliance with the CWA, the Water Code, and the Code of Civil Procedure;

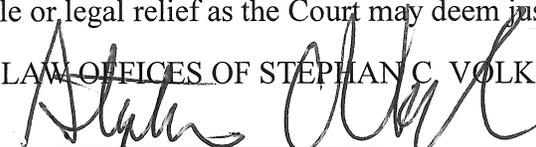
18 5. For attorneys' fees under Code of Civil Procedure section 1021.5;

19 6. For costs incurred in this action; and

20 7. For such other equitable or legal relief as the Court may deem just and proper.

21 Dated: November 2, 2017

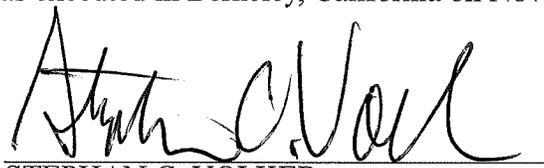
LAW OFFICES OF STEPHAN C. VOLKER

22 
23 STEPHAN C. VOLKER
24 Attorney for Petitioners and Plaintiffs
25 PACIFIC COAST FEDERATION OF FISHERMEN'S
26 ASSOCIATIONS, INSTITUTE FOR FISHERIES RESOURCES,
27 NORTH COAST RIVERS ALLIANCE, and SAN FRANCISCO
28 CRAB BOAT OWNERS ASSOCIATION

1 VERIFICATION BY COUNSEL

2 I, Stephan C. Volker, am the attorney for petitioners/plaintiffs in this action. I make this
3 verification on behalf of the petitioners/plaintiffs because such parties and their representatives are absent
4 from the county in which my office is located. I have read the foregoing Verified Petition for Writ of
5 Mandate and Complaint for Declaratory and Injunctive Relief and Attorneys' Fees and know its contents.
6 The facts therein alleged are true and correct to the best of my knowledge and belief, and are based on
7 documents within the public records underlying the State Water Board's actions and omissions herein
8 challenged.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct, and that this Verification was executed in Berkeley, California on November 2, 2017.

11 
12
13 STEPHAN C. VOLKER