

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael B. Jackson SBN 053808 429 Main Street, Suite D P.O. Box 207 Quincy, CA 95971 TELEPHONE NO.: (530) 283-1007 FAX NO.: (530) 283-4999 ATTORNEY FOR (Name): C-WIN, CSPA, and AquaAlliance		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS 790 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse		
CASE NAME: C-WIN et al. v. California State Water Resources Control Board and Department of Water Resources		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER:  JUDGE:  DEPT.:

*Items 1-6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)  <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)  <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)  <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)  <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)  <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)  <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)  <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)  <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)  <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): 6
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 2, 2010

Michael B. Jackson (TYPE OR PRINT NAME)

*Michael B. Jackson*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Calif. State Water Resources Control Board, and  
Department of Water Resources

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

California Water Impact Network, California Sportfishing Protection  
Alliance, and AquAlliance

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Sacramento Superior Court  
790 9th Street  
Sacramento, Calif. 95814

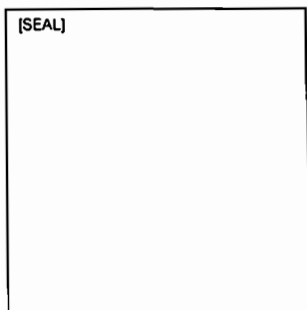
CASE NUMBER:  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Michael B. Jackson, 429 Main St. / P. O. Box 207, Quincy, Calif. 95971 530-283-1007

DATE: Sept. 2, 2010  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): SWRCB and DWR  
 under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify): Government Agencies
4.  by personal delivery on (date):

1 Michael B. Jackson (SBN 053808)  
MICHAEL B. JACKSON, Attorney at Law  
2 429 West Main Street, Suite D  
3 P.O. Box 207  
Quincy, California 95971  
4 Tel. (530) 283-1007  
Fax (530) 283-4999  
5 mjatty@sbcglobal.net

6 Attorney for Petitioners

7  
8  
9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11  
12 California Water Impact Network, a non-  
profit Corporation, California Sportfishing)  
13 Protection Alliance, a non-profit Corporation,  
and AquAlliance, a public benefit)  
14 Corporation, )  
15 )  
Petitioners, )  
16 vs. )  
17 The California State Water Resources Control  
Board, The California Department of Water  
18 Resources, and DOES 1-100, )  
19 )  
Respondents )  
20 )

Case No.: \_\_\_\_\_

**VERIFIED PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE AND  
DELCARATORY AND INJUNCTIVE  
RELIEF**

**(Code of Civ. Proc. §§ 526, 1060, 1094.5)**

1 INTRODUCTION

2 1. Petitioners California Water Impact Network (hereinafter "C-WIN"), the  
3 California Sportfishing Protection Alliance (hereinafter "CSPA"), and AquAlliance (collectively  
4 "Petitioners"), by and through their counsel, hereby bring this action challenging two approvals  
5 by Respondents State Water Resources Control Board (hereinafter "Board" or "SWRCB"), WR  
6 Order 2010-0002, modifying WR Order 2006-0006 on January 5, 2010, and Resolution 2010-  
7 0040, approved on August 4, 2010. On information and belief, Petitioners allege that the State  
8 Water Resources Control Board have failed to enforce permit and licensing conditions on the  
9 California Department of Water Resources (hereinafter "DWR"), causing extensive damage to  
10 the Bay-Delta estuary and the fish and wildlife that live therein. Further, Plaintiffs allege that

11 2. Pursuant to the California Water Code, the SWRCB has a duty to protect the  
12 waterways of California by the imposition and enforcement of certain requirements to permits  
13 and licenses that regulate water quality in the State. Petitioners allege that two recent SWRCB  
14 decisions that failed to consider effects to fish and wildlife constitute evidence of the Board's  
15 continual failure to enforce the Public Trust, Article X, Section Two of the California  
16 Constitution, Porter-Cologne Act, 1995 Water Quality Control Plan narrative standard for  
17 salmon, and Decision 1641 which has led to the continuing and ongoing degradation of fish and  
18 wildlife.

19 3. Petitioners seek a writ of administrative mandate to vacate and set aside  
20 Respondent Board's August 4, 2010 Resolution 2010-0040 which failed to issue protective  
21 temperature objectives for the benefit of fish and wildlife. Petitioners additionally seek a writ of  
22 administrative mandate to vacate and set aside Respondent SWRCB's WR Order 2010-0002,  
23 which modified the Cease and Desist Order in WR Order 2006-0006 that required Defendant  
24 DWR to comply with interior Delta salinity standards. Petitioners further seek declaratory and  
25 injunctive relief that Defendant SWRCB has failed to enforce, and Defendant DWR has failed to  
26 comply with state law regarding the present operation of Defendant DWR's Banks pumping  
27 facility in the Bay-Delta.

**PARTIES**

1  
2           4.       Petitioner C-WIN is a California non-profit public benefit organization with its  
3 principal place of business in Santa Barbara, California. C-WIN's organization purpose is the  
4 protection and restoration of fish and wildlife resources, scenery, water quality, recreational  
5 opportunities, agricultural uses, and other natural environmental resources and uses of the rivers  
6 and streams of California, including the Bay-Delta, its watershed and its underlying groundwater  
7 resources. Members of the C-WIN reside in, use, and enjoy the Bay-Delta and inhabit and use its  
8 watershed. They use the rivers of the Central Valley and the Bay-Delta for nature study,  
9 recreation, and aesthetic enjoyment. Harm to the pelagic and anadromous fishery in the Bay-  
10 Delta and its watershed harms the California Water Impact Network and its members by  
11 threatening impairment of their use and enjoyment of these species and their habitat.

12           5.       Petitioner CSPA is a California non-profit public benefit organization with its  
13 principal place of business in Stockton, California. CSPA's organization purpose is the  
14 protection, preservation, and enhancement of fisheries and associated aquatic and riparian  
15 ecosystems of California's waterways, including Central Valley rivers leading into the Bay-  
16 Delta. This mission is implemented through active participation in water rights and water quality  
17 processes, education and organization of the fishing community, restoration efforts, and vigorous  
18 enforcement of environmental laws enacted to protect fisheries, habitat and water quality.  
19 Members of CSPA reside along the Central Valley watershed and in the Bay-Delta where they  
20 view, enjoy, and routinely use the Delta ecosystem for boating, fishing, and wildlife viewing.  
21 Petitioner's members derive significant and ongoing use and enjoyment from the aesthetic,  
22 recreational, and conservation benefits of the Bay-Delta ecosystem. Harm to the Bay-Delta  
23 fisheries has had, and continues to have, a substantial negative impact on Petitioners'  
24 organizational members use and enjoyment of the Bay-Delta.

25           6.       Petitioner AquAlliance is a California public benefit corporation organized to  
26 protect Northern California's waters to sustain family farms, recreation opportunities, vernal  
27 pools, creeks, rivers, and the Bay-Delta estuary. Currently, AquAlliance is a fiscally sponsored  
28 project of the Rose Foundation. Members and officers of AquAlliance are being effected by the

1 over-pumping of the Bay-Delta and by the over-appropriation of water for excess water delivery  
2 south of the Bay-Delta. Mismanagement of water resources in the Bay-Delta deplete local lakes,  
3 and harm salmonids that travel through the lakes and streams used and enjoyed by AquAlliance  
4 members.

5 7. Defendant SWRCB performs both adjudicatory and regulatory functions of the  
6 state in allocating water rights and ensuring water quality pursuant to the California Water Code.  
7 The Board has broad authority to carry out these functions, including the authority to hold  
8 hearings and conduct investigations in any part of the state necessary to carry out the powers  
9 vested in it. It also may require a state or local agency to investigate or report on technical  
10 factors, or comply with waste discharge requirements involved in water quality control. The  
11 Board may subject water rights to terms and conditions the board finds necessary to carry out a  
12 water quality control plan, and a water quality control plan may require changes to water rights,  
13 and it may reserve its jurisdiction to enforce these terms and conditions over time. The Board  
14 may hold an adjudicative proceeding to consider any changes to water rights to implement the  
15 plan.

16 8. Defendant DWR is a state agency responsible for the State of California's  
17 management and regulation of water usage. DWR operates the State Water Project ("SWP"),  
18 including the Oroville Reservoir and dam, the Clifton Court Forebay, the John E. Skinner Delta  
19 Fish Protective Facility, and the Harvey O. Banks Pumping Plant.

20 9. The true names and capacities of Defendants sued in the Petition under the  
21 fictitious names of DOES 1 through 100, inclusive, are unknown to Petitioners who therefore sue  
22 such Defendants by such fictitious names.

23 10. Whenever reference is made in this complaint to any act of Defendants, such  
24 allegation shall mean that each Defendant acted individually and jointly with the other  
25 Defendants named in that cause of action.

26 11. At all relevant times, each of the Defendants has acted as an agent, representative,  
27 or employee of each of the other Defendants and has acted within the course and scope of said  
28 agency or representation or employment with respect to the causes of action in this complaint.

1 12. At all relevant times, each Defendant has committed the acts, caused others to  
2 commit the acts, or permitted others to commit the acts referred to in this complaint and has  
3 made, caused, or permitted others to ignore the legal obligations referred to in this complaint.

4 **JURISDICTION AND VENUE**

5 13. Pursuant to Public Resources Code §§ 21168 and 21168.5, and Code of Civil  
6 Procedure section 1094.5, this Court has jurisdiction to hear this matter.

7 14. Venue is appropriate in this judicial district in accordance with Code of Civil  
8 Procedure §§ 401 and 393.

9 **STATEMENT OF FACTS**

10 15. Current permitting and licensing decisions of the SWRCB are causing extensive  
11 and irreparable damage to the Bay-Delta estuary and the public trust resources therein.

12 16. The Bay-Delta is the largest estuary on the west coast of the Americas, and serves  
13 as one of California’s most environmentally important and economically valuable ecosystems.  
14 Millions of Californians depend upon the Bay-Delta Estuary as one of the sources of their  
15 drinking water. Still more use the Bay-Delta as a recreational resource, making it a major  
16 recreation and tourist destination. Of the Delta’s approximate 738,000 acres, roughly two-thirds  
17 support agriculture. More than 500,000 acres of the Delta currently are in agricultural  
18 production.

19 17. The Bay-Delta serves not only agricultural interests, but is home to approximately  
20 750 plant and animal species, including 130 species of fish. The Delta serves as an important  
21 fishery habitat; it supports an estimated twenty-five percent of all warm water and anadromous  
22 sport-fishing species, and eighty percent of California’s entire commercial fishery habitat.

23 18. An extraordinary variety of wildlife, including many species found nowhere else,  
24 live in the Bay-Delta. Many other species depend upon the Bay-Delta for migratory corridor  
25 habitat, and several commercial and sport fisheries depend upon the Bay-Delta for their  
26 continued existence. The Delta also provides critical habitat for a number of species that are  
27 protected by the Endangered Species Act (“ESA”), including the Sacramento winter-run  
28 Chinook salmon, Central Valley spring-run Chinook salmon (*Onchorhynchus tshawytscha*),

1 Central Valley steelhead (*Onchorhynchus mykiss*), and Delta smelt (*Hypomesus transpacificus*,  
2 collectively, the “Listed-Species”).

3 19. Since 1993, the National Marine Fisheries Service (“NMFS”) has listed the  
4 several fish in the Bay-Delta as “threatened” or “endangered,” including the Sacramento River  
5 winter-run Chinook salmon and the Central Valley spring-run Chinook salmon. NMFS has also  
6 officially listed the Bay-Delta as critical habitat for the aforementioned threatened and  
7 endangered fish. As such, the Bay-Delta Estuary is one of California’s most threatened  
8 ecosystems. Violations of water quality standards are chronic, and the SWRCB designated the  
9 Delta’s channels, the Sacramento and San Joaquin Rivers, and areas throughout the Bay as  
10 water-quality-limited water bodies.

11 20. Many of the Bay-Delta’s fish are threatened with extinction, and in the last three  
12 years populations of several previously healthy species are suffering catastrophic declines. Other  
13 species, including plankton and other food organisms that underpin the Bay-Delta’s entire food  
14 chain, are in similarly poor health.

15 21. The collapse of the California salmon run has triggered severe fishing restrictions  
16 that have resulted in the near-complete closure of commercial and recreational salmon fishing in  
17 California for the 2008, 2009, and 2010 fishing seasons. The number of Chinook, or King  
18 salmon returning from the Pacific Ocean to spawn in the Sacramento River and its tributaries  
19 dropped 67 percent from a poor year earlier. Restoration of California’s anadromous fish  
20 populations is mandated by the Salmon, Steelhead, and Anadromous Fisheries Program Act of  
21 1988 which states that it is the policy of the State to significantly increase the natural production  
22 of salmon and steelhead by the end of the 20th century.

23 22. Under California law, the SWRCB has an affirmative duty to take the public trust  
24 into account in the planning and allocation of water resources, and to protect public trust uses  
25 whenever feasible. The SWRCB is also charged with complying with California Constitution  
26 Article X, Section 2, which requires that any right to the use or divert water from any natural  
27 stream or water in the State shall be reasonable.

28



1           23.     The SWRCB has adopted several orders that, if enforced, would be protective of  
2 fish and wildlife in the Bay-Delta estuary. As required by the Porter Cologne Act, the Board  
3 adopted the 1995 Water Quality Control Plan which included a Narrative Standard for Fish and  
4 Wildlife (hereinafter “the narrative standard”). This narrative standard requires that water flow,  
5 water quality, and appropriate temperature conditions are sufficient to achieve a doubling of  
6 natural production of Chinook salmon from the average production of 1967-1991.

7           24.     Consistent with the Clean Water Act, the Porter-Cologne Act directs the nine  
8 regional water quality control boards to ensure that their basin plans (1) designate one or more  
9 “beneficial uses” for a particular water body and (2) to specify “water quality objectives”  
10 necessary to “ensure the reasonable protection of beneficial uses and the prevention of nuisance.”  
11 Water Code § 13421.

12           25.     After water quality standards are established, Water Code § 13263 requires  
13 regional boards to prescribe waste discharge requirements for all persons discharging waste into  
14 inland surface waters enclosed bays and estuaries within their jurisdiction. The Board has  
15 consistently assigned DWR responsibility for meeting salinity objectives in the Bay-Delta.

16           26.     Decision 1641 (hereinafter “D-1641”) (adopted December 29, 1999) implemented  
17 flow objectives for the Bay-Delta Estuary, as a part of the Board’s implementation of the 1995  
18 Bay-Delta Water Quality Control Plan. D-1641 imposed a series of restrictions on the use of  
19 export pumps to protect fish and wildlife and assigned responsibilities to the persons or entities  
20 holding water rights permits to meet specific flow objectives to protect fish and wildlife. One  
21 such responsibility was that flow objectives must be met at four different monitoring stations, in  
22 the Bay-Delta.

23           27.     In approving D-1641, the SWRCB found that export pumping, as conditioned,  
24 would not unreasonably affect or substantially injure any legal user of water, and would not  
25 unreasonably affect fish, wildlife, or other instream beneficial uses of water.

26           28.     Despite these requirements, the SWRCB has failed to enforce its own Basin Plan  
27 standards, leading to the dramatic decline in the health and viability of the Bay-Delta estuary and  
28 the public trust recourses therein. In September, 1999 the National Marine Fisheries Service

1 listed the Central Valley spring-run Chinook salmon as a threatened species, with a population of  
2 only 500.

3 29. Defendant DWR, with the tacit approval of the SWRCB, has increased its water  
4 exports by 53% percent since 2000. This increase is in excess of the average 2.1 million acre-feet  
5 exported during the 1990s. Meanwhile, Delta fish populations of salmon, striped bass, Delta  
6 smelt, and other listed and unlisted species collapsed, despite runoff reaching 173 per cent of  
7 normal in 2006.

8 30. DWR exports water that it considers excess or surplus under Article 21 of the  
9 amended State Water Project contracts. This water is largely used to further development, water  
10 banking, and water transfers. Yet despite this recent and dramatic decline in the health of the  
11 Bay-Delta estuary, DWR has continued to export increasing amounts of water, causing some  
12 substantial fish declines between the years of 2000 and 2010.

13 31. In 2008, 2009, and 2010 the populations of various California salmon runs have  
14 dramatically declined, resulting in the complete closure of commercial and sport-fishing salmon  
15 fishing in California for the 2008 and 2009 fishing seasons, and a substantial reduction in fishing  
16 in 2010. The number of Chinook, or King salmon returning from the Pacific Ocean to spawn in  
17 the Sacramento River and its tributaries this fall dropped 67 percent from a year earlier.

18 32. Every scientific study done in the last decade (CalFed ROD, IEP Science  
19 Reviews, OCAP Biological Opinions on Delta smelt and listed salmonids) has found that exports  
20 from the Bay-Delta are largely to blame for the current fish and wildlife declines in the Delta.

21 33. Because of increased project export pumping since 2000, the fish protection  
22 conditions of D-1641 are not protective of the Bay-Delta fisheries and that lack of protection has  
23 resulted in a serious decline in the health of those fisheries and in their habitat. Increased SWP  
24 pumping necessarily decreases instream flows, thereby increasing the concentration of  
25 pesticides, herbicides, and other toxins in the Bay-Delta waterways. Increased export pumping  
26 by the SWP since 2000 has significantly impacted survival of juvenile Chinook salmon  
27 emigrating through the Delta, particularly in the November through June period.

28

1           34. Numerous scientific studies, including the SWRCB recent report to the State  
2 Legislature, indicate that increased flows from the SWP in the spring would serve to protect  
3 marine wildlife habitat and the threatened water ecosystem. Increased flows in the San Joaquin  
4 River correlate to increased numbers of adult fall-run Chinook salmon. Spring flow coincides  
5 with the spawning season of a number of estuarine species, such as delta smelt, Sacramento  
6 splittail, Green sturgeon, and striped bass.

7           35. The SWRCB has a duty of continuing supervision over the taking and use of  
8 appropriated water, and must allocate water resources in light of current knowledge and current  
9 needs. Since 2000, and in the face of mounting evidence that water exports are harming fish and  
10 wildlife, the Board has not reduced Defendant DWR's water rights or export permits or  
11 evaluated condition protections for fish and wildlife in the permits that would reflect changed  
12 environmental circumstances in the Bay-Delta.

13           36. The SWRCB has largely refused to act on public trust complaints against  
14 Defendant DWR for its activities at the Banks pumping plant and has rejected Plaintiffs'  
15 attempts to address the allegations contained herein through administrative proceedings.

16           37. For example, on January 5, 2010 the SWRCB modified WR Order 2006-0006 and  
17 the related Cease and Desist Order (CDO) against DWR for threatened violation of their  
18 permit/license requirements to meet the 0.7 EC standard in the interior southern Delta. Plaintiffs  
19 had strongly opposed the modification of the CDO, which had required complete compliance  
20 with the permit and license requirements by July of 2009. In its decision to modify the CDO in  
21 WR Order 2006-0006, the Board largely dismissed fish and wildlife concerns under the public  
22 trust, and failed to enforce Article X, Section 2 of the California Constitution.

23           38. On August 4, 2010 the SWRCB rejected its own staff's recommendation to list a  
24 number of Bay-Delta watershed tributary rivers as impaired because of high temperatures.  
25 Plaintiffs strongly supported Board staff's recommendations to list the San Joaquin, Merced,  
26 Stanislaus, Tuolumne and Yuba Rivers as impaired for temperature. However, in its decision, the  
27 SWRCB overruled the Central Valley Regional Water Quality Control Board recommendation to  
28 list numerous Central Valley Rivers as "impaired" for temperature exceedences, as is required by

1 the federal Clean Water Act and the California Water Code. The Board failed to provide  
2 substantial evidence in the record to support its decision.

3 39. The SWRCB has failed to require Defendant DWR to comply with the  
4 agricultural water quality standards in the Bay-Delta in WR Order WR 2010-0002, has refused to  
5 set numeric standards for temperature in the Central Valley watershed in Resolution 2010-0040,  
6 and has refused to exercise its public trust and waste and unreasonable use authority over  
7 Defendant DWR's permits in WR Order 2010-0002 and Resolution 2010-0040.

8 40. Further, the Board has not ruled on Plaintiff CWIN and CSPA's joint petition for  
9 reconsideration on WR Order WR Order 2010-0002 regarding Defendant DWR's violations of  
10 the agricultural water quality standards in the Bay-Delta, and has refused to order the  
11 temperature standards recommended to it by its own staff in an evidentiary hearing on August 3,  
12 2010. Petitioners have therefore exhausted all available administrative remedies.

13 **FIRST CAUSE OF ACTION**  
14 **Violation of the California Public Trust Doctrine**

15 41. Plaintiffs restate and reallege and incorporate all of the preceding paragraphs as if  
16 fully set forth herein.

17 42. Respondents' actions in increasing annual pumping after 2000, and the Board's  
18 failure to enforce its the public trust authority after the effects of that pumping became apparent,  
19 constitutes a prejudicial abuse of discretion, in that Respondents did not proceed in the manner  
20 required by the Public Trust law, and no substantial evidence supports the Board's failure to take  
21 action to amend DWR's permits to reduce diversion and protect the Bay-Delta estuary and its  
22 species.

23 43. Defendant Board has an affirmative duty to protect trust resources. Over the years  
24 and continuing to the present time, the Defendant Board's permitting process and failure to  
25 enforce permit requirements has caused there to be a substantial decline in the food web, in fish  
26 numbers, in water quality, and in hydrologic changes which have caused injury to the ecosystem  
27 and to members of the public, including Plaintiffs. Present ecological conditions in the Bay-Delta  
28 have contributed to the closure of the commercial and sport-fishing fishing seasons off the

1 California Coast, resulting in the near complete loss of recreational fishing opportunities for  
2 anglers.

3 44. Defendant SWRCB has failed to protect trust resources and failed to enforce  
4 restrictions on permits and licenses that would improve the habitat of fish and wildlife.

5 45. On information and belief, unless enjoined Defendants will continue to violate the  
6 Public Trust, as described above, and Plaintiffs will suffer irreparable injury for which there is no  
7 adequate remedy at law.

8 46. An actual controversy exists between Plaintiffs on the one hand and Defendants  
9 on the other regarding the degree to which the California Public Trust doctrine protects the Bay-  
10 Delta estuary and mandates Defendant Board's enforcement. Specifically, Defendant Board's  
11 lack of enforcement of the flow, temperature, and salinity conditions of Defendant DWR's water  
12 rights permits violate the Public Trust and injure Plaintiffs. As an actual controversy exists,  
13 Plaintiffs are entitled to and hereby seek a declaration that Defendant Board has violated its  
14 affirmative duty to protect the public trust.

15 **SECOND CAUSE OF ACTION**  
16 **Violation of Article 10, Section 2 of the California Constitution:**  
17 **Unreasonable Method of Diversion**

18 47. Plaintiffs restate and reallege and incorporate all of the preceding paragraphs as if  
19 fully set forth herein.

20 48. Article X, Section Two of the California Constitution states that "the right to  
21 water or to the use or flow of water in or from any natural stream or water course in this State is  
22 and shall be limited to such water as shall be reasonably required for the beneficial use to be  
23 served, and such right does not and shall not extend to the waste or unreasonable use or  
24 unreasonable method of use or unreasonable method of diversion of water."

25 49. Water levels in some Delta channels are drawn by operation of the State Water  
26 Project (SWP) pumps to unacceptably low levels harming fish and riparian diverters in the  
27 process. SWP Method of Diversion from the Bay-Delta at the export pumps is unreasonable at  
28 present export levels, and has overwhelmingly contributed to the pelagic fish decline and the  
listing of several species as threatened or endangered.

1           50. Over the years and continuing to the present time, the Defendant Board's  
2 permitting process and Defendant DWR's methods of diversion caused there to be insufficient  
3 in-stream flow and Delta outflow to support the environmental needs of the estuary which has  
4 caused injury to the ecosystem and to members of the public, including Plaintiffs.

5           51. Over the years and continuing to the present time, Defendants have used an  
6 unreasonable method of diversion of water from their facilities in the Bay-Delta in violation of  
7 Article 10, Section Two of the California Constitution by continuing to increase volumes of  
8 water drawn from the Bay-Delta ecosystem, and limiting and ignoring research and information  
9 that indicated this method of diversion is causing a collapse in the Pelagic fisheries in the Bay-  
10 Delta and harm to the listed salmonids and other fish and wildlife.

11           52. On information and belief, unless enjoined Defendants will continue to violate the  
12 California Constitution, as described above.

13           53. In light of the Defendants' failure to comply with the California Constitution, and  
14 the significant likelihood of repeated violations in the future, the Defendants must be  
15 permanently enjoined from continuing to divert water from the Bay-Delta until such a time as  
16 Defendant Board has an evidentiary hearing to establish reasonable water diversions that  
17 conform to the mandates of Article X, Section Two of the California Constitution. If Defendants  
18 are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy  
19 at law.

20           54. An actual controversy exists between Plaintiffs on the one hand and Defendants  
21 on the other regarding the degree to which the Article 10, Section Two of the California  
22 Constitution protects the Bay-Delta estuary and mandates Defendant Boards's enforcement.  
23 Specifically, Plaintiffs contend and Defendant Board denies that the Board's inability or  
24 unwillingness to halt the fishery crash and/or alter the water rights permits of Defendants DWR  
25 and Bureau to correct existing problems constitutes a violation of the state constitutional  
26 mandate against unreasonable use of water or unreasonable methods of diversion, causing injury  
27 to Plaintiffs. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling  
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1 that Defendant Board has violated Article X, Section 2 of the California Constitution by  
2 dismissing Plaintiffs' complaint.

3 **THIRD CAUSE OF ACTION**  
4 **Violation of Article X, Section 2 of the California Constitution: Unreasonable Use**

5 55. Plaintiffs restate and reallege and incorporate all of the preceding paragraphs as if  
6 fully set forth herein.

7 56. Article X, Section Two of the California Constitution states that, due to the  
8 conditions prevailing in the State "the general welfare requires that the water resources of the  
9 State be put to beneficial use to the fullest extent of which they are capable, and that the waste or  
10 unreasonable use or unreasonable method of use of water be prevented, and that the conservation  
11 of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the  
12 interest of the people and for the public welfare."

13 57. Further, Article X, Section Two specifically states that "the right to water or to the  
14 use or flow of water in or from any natural stream or water course in this State is and shall be  
15 limited to such water as shall be reasonably required for the beneficial use to be served, and such  
16 right does not and shall not extend to the waste or unreasonable use or unreasonable method of  
17 use or unreasonable method of diversion of water."

18 58. SWP export pumping from the Delta for water banking and resale at the current  
19 level is an unreasonable use of the water resources of this State. Export pumping adversely  
20 effects fish and wildlife resources in the Delta, including spring-run Chinook salmon (listed as  
21 threatened under the CESA and ESA) and winter-run Chinook salmon (listed as endangered  
22 under the CESA and ESA). The adverse impacts to fish include decreases in salmon smolt  
23 survival during outmigration from changes in hydrologic patterns in the Delta (increases in net  
24 reverse flows), entrainment at the export pumps, and increased predation at the pumps.

25 59. On information and belief, unless enjoined Defendants will continue to violate the  
26 California Constitution, as described above.

27 60. In light of the Defendants' failure to comply with the California Constitution, and  
28 the significant likelihood of repeated violations in the future, the Defendants must be

1 permanently enjoined from continuing to divert water from the Bay-Delta until adequate fish  
2 protection mechanisms, including appropriate screening of diversions, are developed. If  
3 Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no  
4 adequate remedy at law.

5 61. An actual controversy exists between Plaintiffs on the one hand and Defendants  
6 on the other regarding the degree to which the Article X, Section Two of the California  
7 Constitution protects the Bay-Delta estuary and mandates Defendant Board's enforcement and  
8 Defendant DWR's application of water. Specifically, Plaintiffs contend and Defendants deny  
9 that Defendant Board's lack of enforcement of the protective conditions of the water rights  
10 permits of DWR violate the Constitution and injure Plaintiffs. As an actual controversy exists,  
11 Plaintiffs are entitled to, and hereby seek, a ruling that Defendant Board has violated Article X,  
12 Section 2 of the California Constitution by failing to require DWR to take water reasonably and  
13 by a reasonable method of diversion.

14 **FOURTH CAUSE OF ACTION**  
15 **Violation of Porter-Cologne Act**

16 62. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs of  
17 this Complaint.

18 63. Respondents' actions in WR Order 2010-0002 and Resolution 2010-0040  
19 constituted a prejudicial abuse of discretion, in that Respondents did not proceed in the manner  
20 required by the Porter-Cologne Act, and substantial evidence does not support their Findings, as  
21 set forth below.

22 64. WR Order 2010-0002 fails to adequately analyze the reasonably foreseeable  
23 adverse effects of continued exceedence of the interior southern Delta salinity standards would  
24 have on fish and wildlife, water quality, and Delta agriculture in the Bay-Delta.

25 65. Resolution 2010-0040 failed to adopt recommended temperature standards that  
26 would be protective of Bay-Delta fish and wildlife.  
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1           66. Defendant DWR is routinely exceeding protective temperature objectives in the  
2 Bay-Delta and at the SWP reservoir at Lake Oroville, and routinely violates Bay-Delta salinity  
3 standards.

4           67. In light of the SWRCB's failure to enforce the Porter-Cologne Act on DWR, and  
5 the significant likelihood of repeated violations in the future, Defendant must be enjoined from  
6 continuing allow pumping at the Banks pumping facility unless and until legal standards are met.  
7 If Defendant DWR is not so enjoined, Plaintiffs will suffer irreparable injury for which there is  
8 no adequate remedy at law.

9           68. An actual controversy exists between Plaintiffs on the one hand and Defendants  
10 on the other regarding the degree to which the Porter-Cologne Act protects the Bay-Delta estuary  
11 and mandates Board enforcement. Specifically, Plaintiffs contend and Defendants deny that they  
12 are in violation of the Porter-Cologne Act. As an actual controversy exists, Plaintiffs are entitled  
13 to, and hereby seek, a ruling that Defendant SWRCB is failing to enforce the Porter-Cologne Act  
14 as required by law.

15                                   **FIFTH CAUSE OF ACTION**  
16                                   **Violation of the 1995 Water Quality Control Plan Narrative Standard**  
17                                   **for Fish and Wildlife**

18           69. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs of  
19 this Complaint.

20           70. The SWRCB has adopted a narrative standard to double the natural production of  
21 salmon from the average number of fish in the Bay-Delta between the years 1967-1991. Due to  
22 the dramatic decline in salmon populations, Defendant SWRCB has clearly failed to enforce and  
23 Defendant DWR has failed to comply with the narrative salmon doubling standard as required by  
24 law.

25           71. In light of the Defendant's failure to enforce the standard, and considering the  
26 significant likelihood of repeated violations in the future, Defendant DWR must be enjoined  
27 from export pumping at the Banks pumping plant in the Delta. If Defendant is not so enjoined,  
28 Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

1 72. An actual controversy exists between Plaintiffs on the one hand and Defendant  
2 SWRCB on the other regarding the scope of their duty to enforce the 1995 Water Quality  
3 Control Plan's narrative standard to protect fish and wildlife. Specifically, Plaintiffs contend and  
4 Defendant denies that it is required by law to enforce the standard. As an actual controversy  
5 exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendant has failed to enforce the  
6 standard as required by law.

7 **SIXTH CAUSE OF ACTION**  
8 **Violation of State Board Decision 1641**

8 73. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs of  
9 this Complaint.

10 74. D-1641 implemented flow objectives for the Bay-Delta Estuary that Defendant  
11 DWR was specifically charged with meeting. Defendant DWR has repeatedly failed to meet the  
12 flow objectives in the Bay-Delta.

13 75. Defendant Board has a statutory duty to comply with its own water quality control  
14 plan, and has failed to enforce the flow objectives against Defendant DWR as set out in D-1641.

15 76. In light of the Defendants DWR's failure to comply with Decision 1641,  
16 Defendant Board's failure to enforce D-1641 as required by law, and the significant likelihood of  
17 repeated violations in the future, Defendant DWR must be permanently enjoined from  
18 continuing to export water from the Bay-Delta until such a time as they fully comply with the  
19 requirements of D-1641. If Defendant is not so enjoined, Plaintiffs will suffer irreparable injury  
20 for which there is no adequate remedy at law.

21 77. An actual controversy exists between Plaintiffs on the one hand and Defendant  
22 DWR on the other regarding the extent to which their export pumping violates the conditions of  
23 D-1641, and Defendant Board's duty to enforce D-1641 as against DWR. Specifically, Plaintiffs  
24 contend and Defendant DWR denies that they are in violation of D-1641 by their export  
25 pumping in the Bay-Delta, and that Defendant Board has failed to enforce its own order. As an  
26 actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendant  
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1 DWR is in violation of D-1641 and that Defendant Board has a duty to enforce D-1641, and has  
2 failed to do so.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows:

5 1. Declare that Defendant SWRCB has failed to enforce and Defendant DWR's  
6 operations have violated the California Public Trust in the Bay-Delta;

7 2. Declare that Defendant SWRCB has failed to enforce and Defendant DWR's  
8 operations have violated Article X, Section 2 of the California Constitution;

9 3. Declare that Defendant SWRCB has failed to enforce and Defendant DWR's  
10 operations have violated the Porter-Cologne Act in that Defendant DWR has failed to meet the  
11 required salinity objectives under the Bay-Delta Water Quality Control Plan;

12 4. Declare that Defendant SWRCB has failed to enforce and Defendants' operations  
13 have violated the 1995 Water Quality Control Plan narrative standard for salmon in that  
14 Defendants have failed to meet the required doubling of the salmon population under the 1995  
15 Water Quality Control Plan;

16 5. Declare that Defendant SWRCB has failed to enforce and Defendants' operations  
17 have violated Decision 1641 in that Defendants' have failed to meet flow objectives necessary to  
18 protect beneficial uses in the Bay-Delta;

19 6. Enjoin Defendant DWR from diverting water from the Bay-Delta until such a  
20 time as Defendant DWR's operations conform with the law;

21 7. Enjoin Defendant SWRCB from allowing operation of state water export projects  
22 until such a time that Defendant DWR come into compliance with the law;

23 8. Direct Defendants to remedy their violations of the California Public Trust,  
24 Article X, Section 2 of the California Constitution, the Porter-Cologne Act, the 1995 Water  
25 Quality Control Plan, and Decision 1641 within a reasonable time;

26 9. Retain jurisdiction over this matter until such time as Defendants have fully  
27 complied with the law;

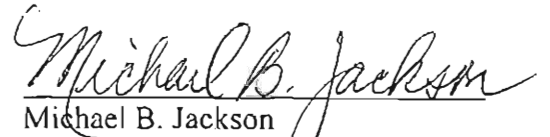
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10. Award Plaintiffs their costs of litigation pursuant to California Code of Civil Procedure § 1021.5; and

11. Grant Plaintiffs such other further relief, including injunctive relief, as the Court may deem just and proper.

Dated: September 2, 2010

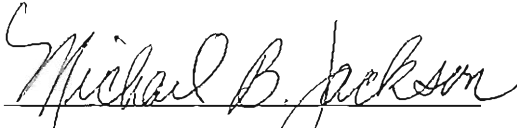
  
Michael B. Jackson  
Attorney for Plaintiffs  
C-WIN, CSPA, and AquAlliance

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VERIFICATION

I, Michael B. Jackson, am the attorney for Plaintiffs herein and am authorized to execute this on their behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and am informed and believe, and thereon allege, that the matters stated therein are true and correct. I sign this verification on behalf of Plaintiffs pursuant to Code of Civil Procedure § 446, as Plaintiffs are located outside the county in which my office is located.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on September 2, 2010 in Quincy, California.

  
Michael B. Jackson