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ERICA BAKER COURT  
By: \_\_\_\_\_

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

NORTH COAST RIVERS ALLIANCE, and FRANK  
EGGER,

Petitioners/Plaintiffs,

v.

RANDELL IWASAKI, Director of California Department  
of Transportation, BIJAN SARTIPI, District Director of  
California Department of Transportation, CALIFORNIA  
DEPARTMENT OF TRANSPORTATION, and DOES  
I-XX,

Respondents,

NORTH MARIN WATER DISTRICT, MARIN  
MUNICIPAL WATER DISTRICT, and DOES XXI-L,  
inclusive,

Real Parties in Interest.

Civ. No.

109 09470860

VERIFIED PETITION FOR  
WRIT OF MANDATE AND  
COMPLAINT

CEQA CASE – Requires  
Notice of Assignment to Judge  
for all purposes under Local  
Rule 3.300(c)

Petitioners/Plaintiffs NORTH COAST RIVERS ALLIANCE and FRANK EGGER  
(collectively “petitioners”) hereby petition the Court for a writ of mandate against respondents  
RANDELL IWASAKI, BIJAN SARTIPI, and the CALIFORNIA DEPARTMENT OF  
TRANSPORTATION, and by this Verified Petition allege as follows:

INTRODUCTION

1. Petitioners bring this action to challenge the legality of the actions of respondents  
RANDELL IWASAKI, BIJAN SARTIPI, and the CALIFORNIA DEPARTMENT OF

1 TRANSPORTATION (collectively, "Caltrans" or "respondents") in certifying the Final  
2 Environmental Impact Report/Final Environmental Impact Statement ("EIR") for the Marin-  
3 Sonoma Narrows (MSN) HOV Widening Project ("project"), approving the project and making all  
4 related findings. The project is a joint project by Caltrans, District 4, and the Federal Highway  
5 Administration.

#### 6 VENUE AND JURISDICTION

7 2. This Verified Petition for Writ of Mandate is authorized by Code of Civil  
8 Procedure sections 526, 1060 and 1085 *et seq.* and Public Resources Code sections 21168 and  
9 21168.5.

10 3. Pursuant to Code of Civil Procedure section 401(1), this Court has venue over this  
11 action because the Attorney General of California has an office in this county.

12 4. Pursuant to Code of Civil Procedure section 388, petitioners are serving the  
13 California Attorney General with a copy of this Verified Petition and Complaint, and consistent  
14 with Public Resources Code section 21167.5, petitioners have served Caltrans with notice of this  
15 suit.

#### 16 PARTIES

17 5. Petitioner NORTH COAST RIVERS ALLIANCE ("NCRA") is a non-profit  
18 unincorporated association whose members reside, work, or recreate in Marin and Sonoma  
19 Counties. NCRA was formed for the purpose of protecting the rivers of California's North Coast  
20 and San Francisco Bay and their watersheds from the adverse effects of excessive water diversions,  
21 ill-planned urban development, harmful resource extraction, pollution, and other forms of  
22 degradation. Its members use and enjoy the rivers and watersheds of California's North Coast and  
23 San Francisco Bay for recreational, aesthetic, scientific study, and related non-consumptive uses.  
24 NCRA has urged Caltrans to disapprove the project and to prepare an adequate EIR thereon. The  
25 interests of NCRA and its members have been, are being, and unless the relief requested herein is  
26 granted, will be adversely affected and injured by Caltrans' approval of the project and failure to  
27 adopt an adequate EIR, and by the project's consequent unexamined and inadequately mitigated  
28 impacts on air quality, global warming, local water supplies, and other environment resources.

1           6.       Petitioner FRANK EGGER is a resident of Fairfax in Marin County who uses the  
2 land, water and other environmental resources of Marin and Sonoma Counties. Petitioner Egger  
3 objected to and will be adversely affected by Caltrans' approval of the project and failure to adopt  
4 an adequate EIR, and will be harmed by the project's consequent unexamined and inadequately  
5 mitigated impacts on air quality, global warming, local water supplies, and other environment  
6 resources.

7           7.       Respondent RANDELL IWASAKI serves as the Director of the California  
8 Department of Transportation. He is sued in his official capacity.

9           8.       Respondent BIJAN SARTIPI serves as the District Director for District 4 of the  
10 California Department of Transportation. Respondent Sartipi approved the EIR for Caltrans on or  
11 about July 16, 2009, and the project on or about July 23, 2009. He is sued in his official capacity.

12           9.       Respondent CALIFORNIA DEPARTMENT OF TRANSPORTATION  
13 ("Caltrans") is the state agency charged with responsibility for constructing, maintaining and  
14 managing the State's highways. Caltrans is the lead agency responsible for carrying out the  
15 project, and published and certified its EIR. Caltrans filed its Notice of Determination for the  
16 project under CEQA on July 27, 2009.

17           10.      Petitioners are unaware of the true names and capacities of respondents DOES I-  
18 XX, and sue such defendants herein by fictitious names. Petitioners are informed and believe, and  
19 based on such information and belief allege, that the fictitiously named respondents are public  
20 officials or agencies and are also responsible, in whole or in part, for the approval and  
21 implementation of the project. When the true identities and capacities of these respondents have  
22 been determined, petitioners will, with leave of the Court if necessary, amend this Petition to  
23 insert such identities and capacities.

24           11.      Real party in interest NORTH MARIN WATER DISTRICT ("NMWD") is a  
25 public agency formed pursuant to Water Code section 30000 *et seq.* that owns the North Marin  
26 Aqueduct pipeline that will be relocated due to the project. NMWD receives approximately 80%  
27 of its water supply through the pipeline. NMWD plans to substantially increase the size of the  
28 aqueduct's pipeline in conjunction with its relocation by Caltrans. NMWD has engaged in

1 negotiations with Caltrans regarding NMWD's planned expansion of the pipeline and cost-sharing  
2 arrangements to pay for the expanded facility. The expanded pipeline would enable increased  
3 water diversions from the Russian River and induce greater population growth and land use  
4 development within NMWD's service area in Marin County.

5 12. Real party in interest MARIN MUNICIPAL WATER DISTRICT ("MMWD") is a  
6 public agency formed pursuant to Water Code section 71000 *et seq.* and 72750 *et seq.* that  
7 receives a portion of its potable water supplies through the North Marin Aqueduct pipeline. On  
8 information and belief, petitioners allege that MMWD has engaged in negotiations with NMWD  
9 and Caltrans regarding their plans to relocate and expand the pipeline and potential cost-sharing  
10 arrangements to pay for the expanded facility. The expanded pipeline would enable increased  
11 water diversions from the Russian River and induce greater population growth and land use  
12 development within MMWD's service area in Marin County.

13 13. Petitioners are unaware of the true names and capacities of real parties in interest  
14 DOES XXI-L, and sue such real parties in interest herein by fictitious names. Petitioners are  
15 informed and believe, and based on such information and belief allege, that the fictitiously named  
16 real parties in interest have a direct financial or property interest in developing the project. When  
17 the true identities and capacities of these real parties in interest have been determined, petitioners  
18 will, with leave of the Court if necessary, amend this Petition to insert such identities and  
19 capacities.

#### 20 EXHAUSTION OF ADMINISTRATIVE REMEDIES

21 14. Petitioners have performed any and all conditions precedent to the filing of this  
22 petition, and participated in all phases of the administrative, legislative, and environmental review  
23 process preceding respondents' approval of the project and certification of its EIR, and thus have  
24 fully exhausted their administrative remedies prior to instituting this proceeding.

25 15. Respondents have taken final agency action approving the project and certifying its  
26 EIR. Petitioners possess no remedy to challenge these approvals other than by means of this  
27 lawsuit.  
28

## FACTUAL BACKGROUND

16. Caltrans' project proposes to widen a 16.1-mile segment of Highway 101 ("the Highway"), generally from the City of Novato, in Marin County, to the City of Petaluma, in Sonoma County. The project includes constructing High Occupancy Vehicle ("HOV") lanes in the center of the Highway, widening and realigning portions of the roadway, constructing new interchanges, frontage roads, and bikeways, and expanding drainage systems. The HOV lanes would be restricted to vehicles carrying two or more people during specific hours, usually during peak commute periods. In addition, access points for the central segment of the Highway would be modified to improve local circulation.

17. The project's stated purpose is to reduce congestion along the Highway; correct operational deficiencies presented by nonstandard horizontal and vertical curves and narrow shoulders; improve mobility for motorists who use the Highway for home-to-work trips, goods movement, tourist, and recreational purposes; and correct existing drainage and flood hazards and reduce future drainage problems. The project's effect will be to substantially increase the Highway's capacity, inducing greater vehicular use, increased fuel consumption, additional greenhouse gas ("GHG") emissions, and greater air and noise pollution.

18. At the southern end of the project boundary, the Highway is a six-lane freeway. In the central portion of the project corridor, it narrows to a four-lane expressway with multiple access points from neighboring properties. The access points along this segment are uncontrolled at-grade intersections or driveways. The Highway then transitions to a four-lane freeway at its northern end.

19. The narrowing of the Highway to an expressway, which extends for 8.1 miles, currently creates a traffic bottleneck. In addition, multiple access points in the narrow expressway section result in vehicles entering and exiting the Highway, which further impedes steady traffic flow.

20. The project requires the relocation of approximately 7.1 miles of NMWD's North Marin Aqueduct ("aqueduct") between Kastania Road and the City of Novato. The aqueduct has a diameter of 30 inches and conveys water from the Russian River watershed via the Sonoma

1 County Water Agency to NMWD and MMWD. In conjunction with the relocation of the  
2 aqueduct, NMWD plans to roughly double its capacity.

3 21. Caltrans prepared the EIR in conjunction with the Federal Highway Administration  
4 ostensibly pursuant to both the California Environmental Quality Act, Public Resources Code  
5 sections 21000 *et seq.* ("CEQA") and the National Environmental Policy Act, 42 U.S.C. § 4321 *et*  
6 *seq.* ("NEPA"). Caltrans distributed the Draft EIR for public review and comment from October  
7 16, 2007 to December 14, 2007.

8 22. Caltrans' District 4 Director, Bijan Sartipi, approved the EIR on Caltrans' behalf  
9 on July 16, 2009.

10 23. On July 27, 2009, Caltrans filed its Notice of Determination documenting its  
11 approval of the project, and certifying its EIR and related CEQA documents thereon, with the  
12 State Clearinghouse, which assigned the project Clearinghouse #2001042115.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **(Violation of CEQA)**

#### 15 **(Alleged by Petitioners Against All Respondents and Real Parties in Interest)**

16 24. The paragraphs set forth above are realleged and incorporated herein by reference.

17 25. Petitioners bring this First Cause of Action pursuant to Public Resources Code  
18 sections 21168 and 21168.5, on the grounds that Caltrans failed to proceed in accordance with  
19 law, and committed a prejudicial abuse of discretion, in that it approved the EIR without  
20 undertaking a full and adequate analysis of the project's potential environmental impacts as  
21 required by CEQA, and avoiding or mitigating those impacts to the extent feasible.

22 26. Caltrans is a "public agency" subject to CEQA. Pub. Res. Code § 21063.

23 27. The MSN project approved by Caltrans constitutes a "project" subject to CEQA.  
24 Pub. Res. Code § 21065(c). "Project" means the whole of an action, which has a potential for  
25 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect  
26 physical change in the environment," and refers to the "activity which is being approved and  
27 which may be subject to several discretionary approvals by government agencies" rather than to  
28 the separate governmental approvals themselves. CEQA Guidelines [14 C.C.R.] ("CEQA

Guidelines”) § 15378(a), (c).

**1. The EIR Failed to Provide a Complete Project Description.**

28. CEQA requires that an EIR provide a project description that describes the project’s characteristics and identifies any related environmental review and consultation requirements that may be imposed by law. CEQA Guidelines § 15124.

29. The EIR failed to include a complete and adequate project description because it ignores the foreseeable expansion of the aqueduct’s water transmission pipeline that will be relocated as part of the project. Consequently, the public and decisionmakers were not apprised of the full extent of the project and its foreseeable impacts, as well as alternatives to and mitigations for that aspect of the project. Caltrans thus abused its discretion in approving an EIR with an inadequate project description.

**2. The EIR Failed to Disclose and Analyze the Environmental Impacts of the Aqueduct’s Pipeline Expansion.**

30. The EIR does not address the impacts of the aqueduct’s pipeline expansion, including both growth-inducing impacts in Marin County from increased water supplies, and the upstream impacts on the Russian River and its ecosystem from increased water diversions. The EIR asserts that any pipeline expansion will be subject to separate environmental review. However, Caltrans was required to analyze the whole project in its EIR, as CEQA does not permit lead agencies to “piecemeal” a single project into two or more segments. *See* CEQA Guidelines §§ 15124 (requiring the integration of CEQA review with any other environmental review and consultation processes required for a project), 15378(a) (“‘Project’ means the whole of an action”), 15378(c) (“The term ‘project’ does not mean each separate governmental approval”). This policy ensures “that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

31. CEQA directs that “[d]irect and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-

1 term and long-term effects.” CEQA Guidelines § 15126.2(a). The EIR’s discussion must include  
2 “changes induced in population distribution, population concentration, the human use of land . . .  
3 and other aspects of the resource base such as water . . .” *Id.* CEQA specifically requires that  
4 “[t]he EIR shall also analyze any significant environmental effects the project might cause by  
5 bringing development and people into the area affected.” *Id.* CEQA imposes a duty on the  
6 agency preparing the EIR to “use its best efforts to find out and disclose all that it reasonably can”  
7 with respect to the project’s foreseeable impacts. CEQA Guidelines § 15144.

8 32. Contrary to these CEQA mandates, the EIR’s segmented review of the project fails  
9 to address the foreseeable expansion of the aqueduct’s pipeline, including its impacts on growth  
10 induction in Marin County and water diversions in Sonoma and Mendocino counties. The EIR’s  
11 failure to disclose and analyze the environmental impacts of the aqueduct’s pipeline expansion  
12 violates CEQA Guidelines sections 15124, 15126, 15144 and 15378. Caltrans abused its  
13 discretion in approving an EIR that violates CEQA.

14 **3. The EIR Failed to Properly Disclose and Analyze the Project’s Traffic Impacts.**

15 33. CEQA mandates that an EIR must analyze each of a project’s potential  
16 environmental impacts. CEQA Guidelines §§ 15126, 15126.2. Caltrans failed to proceed in the  
17 manner required by law because the EIR failed to properly assess the project’s impacts on traffic.  
18 Its claim that the project’s traffic impacts would not be significant relies on outdated and  
19 inadequate traffic studies, fails to account for latent traffic demand that increases traffic as a result  
20 of highway expansion, and understates the project’s increase in total vehicle miles traveled  
21 (“VMT”).

22 34. CEQA mandates that an EIR must identify and make available to the public all  
23 studies on which the EIR is based. CEQA Guidelines § 15147. Contrary to this requirement, the  
24 EIR does not append or make available any of the traffic studies that its preparers used to produce  
25 the project’s VMT estimates. Caltrans’ failure to include such analyses greatly hindered informed  
26 decision-making and put the public at a severe disadvantage during the public comment and  
27 response process, in violation of CEQA.

28 **4. The EIR Failed to Properly Analyze the Project’s Greenhouse Gas Emissions.**

1           35.     CEQA requires that an EIR must analyze a project's potentially significant  
2 environmental impacts. §§ 15126, 15126.2. In 2007, the California Legislature amended CEQA  
3 to clarify that a project's greenhouse gas emissions are a potentially significant environmental  
4 impact requiring analysis under CEQA. Public Resources Code § 21083.05 (requiring the  
5 California Office of Planning and Research ("OPR") to prepare guidelines "for the mitigation of  
6 greenhouse gas emissions or the effects of greenhouse gas emissions *as required by* [CEQA],  
7 including, but not limited to, effects associated with transportation or energy consumption,"  
8 emphasis added). This legislation "confirm[s] that GHG emissions are a significant adverse effect  
9 under" CEQA. Senate Bill Analysis for SB 97 (2007).

10           36.     Prior to adoption of SB 97, the California Legislature enacted the California Global  
11 Warming Solutions Act of 2006 ("AB 32"), which requires reduction of GHG emissions within  
12 California to 1990 levels by 2020. In the previous year, in June 2005, Governor Schwarzenegger  
13 issued Executive Order S-3-05, requiring the reduction of GHG emissions to 80 percent of 1990  
14 levels by 2050. Even greater reductions in GHG emissions may be necessary in order to reduce  
15 global carbon dioxide (CO<sup>2</sup>) levels from their current concentration of 385 ppm to 350 ppm.  
16 According to leading climatologists, achievement of a 350 ppm CO<sup>2</sup> equivalent stabilization level  
17 is necessary "to preserve a planet for future generations similar to that in which civilization  
18 developed and to which life on earth is adapted . . . ." Hansen, J. et al., *Target Atmospheric CO<sup>2</sup>:  
19 Where Should Humanity Aim?* OPEN ATMOSPHERIC SCI. J. 217, 226 (2008). Aggressive  
20 reductions in CO<sup>2</sup> emissions are necessary to avoid drastic global warming impacts otherwise  
21 predicted for the end of the century, including temperature rises between 8° and 10.5° F, 90  
22 percent loss of the Sierra snowpack, 22-30 inches of sea level rise, and 4-6 times as many heat-  
23 related deaths in major urban centers. California Climate Change Center, Cayan, et al. 2007, *Our  
24 Changing Climate: Assessing the Risks to California*.

25           37.     Consistent with the Legislature's adoption of AB 32 in 2006 and SB 97 in 2007,  
26 and Governor Schwarzenegger's issuance of Executive Order S-3-05 in 2005, in January 2008 the  
27 California Air Pollution Control Officers Association ("CAPCOA"), an association of air  
28 pollution control officers representing all 35 local air quality agencies and air districts in

1 California, issued its white paper entitled "Evaluating and Addressing Greenhouse Gas Emissions  
2 From Projects Subject to the California Environmental Quality Act." In its white paper,  
3 CAPCOA recommended two thresholds deemed effective in reducing GHG emissions consistent  
4 with AB 32 and Executive Order S-3-05: either zero CO<sup>2</sup> emissions, or a 900-ton CO<sup>2</sup> equivalent  
5 threshold. *Id.* at p. 57.

6 38. On June 17, 2008, OPR issued its technical advisory bulletin entitled "CEQA and  
7 Climate Change: Addressing Climate Change Through California Environmental Quality Act  
8 (CEQA) Review." This advisory states that "[l]ead agencies should make a good faith effort,  
9 based on available information, to calculate, model, or estimate the amount of CO<sup>2</sup> and other  
10 GHG emissions from a project, including the emissions associated with vehicular traffic, energy  
11 consumption, water usage, and construction activities." *Id.*

12 39. On March 6, 2009, the California Attorney General's Office issued its advisory  
13 notice entitled "Climate Change, the California Environmental Quality Act, and General Plan  
14 Updates: Straightforward Answers to Some Frequently Asked Questions" (rev. 3/06/09). In its  
15 advisory, the Attorney General directed that:

16 Lead agencies should make a good-faith effort, based on available information, to  
17 calculate, model, or estimate the amount of CO<sup>2</sup> and other GHG emissions from a  
project . . . .

18 Unlike more localized, ambient air pollutants which dissipate or break down over a  
19 relatively short period of time (hours, days, or weeks), GHGs accumulate in the  
20 atmosphere, persisting for decades and in some cases millennia. The  
21 overwhelming scientific consensus is that in order to avoid destructive and  
potentially catastrophic climate change, it's not enough simply to stabilize our  
annual GHG emissions. *The science tells us that we must immediately and  
substantially reduce these emissions.*

22 . . . . Putting off the problem will only increase the costs of any solution.  
23 Moreover, delay may put a solution out of reach at any price. The experts tell us  
24 that the later we put off taking real action to reduce our GHG emissions, the less  
likely we will be able to stabilize atmospheric concentrations at a level that will  
avoid dangerous climate change.

25 [Agencies should] evaluate *at least one alternative* that would ensure that the  
26 [agency] contributes to a lower carbon future.

27 *Id.*, emphasis added.

28 40. Consistent with the foregoing direction from the California Legislature, Governor

1 and Attorney General, the federal courts have recognized the urgent need to address GHG  
2 emissions. In *Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1217-1218 (9th Cir.  
3 2008), the Ninth Circuit recognized that “the impact of greenhouse gas emissions on climate  
4 change is precisely the kind of cumulative impacts analysis that NEPA (the National  
5 Environmental Policy Act) requires agencies to conduct.” The Ninth Circuit emphasized that:

6 [W]e cannot afford to ignore even modest contributions to global warming. If  
7 global warming is the result of the cumulative contributions of myriad sources, any  
8 one modest in itself, is there not a danger of losing the forest by closing our eyes to  
9 the felling of the individual trees?

10 *Id.* at 1217.

11 California courts acknowledge that the case law interpreting NEPA is “strongly  
12 persuasive” authority with regard to the meaning of CEQA. *No Oil, Inc. v. City of Los Angeles*  
13 (1974) 13 Cal.3d 68, 86, fn. 21.

14 41. Contrary to CEQA’s requirement that an EIR must address a project’s GHG  
15 emission impacts, the EIR on the MSN project fails to:

- 16 a. Adequately and correctly disclose the GHG emission impacts of the  
17 project;
- 18 b. Identify and discuss the data and studies used to generate the EIR’s GHG  
19 emission estimates;
- 20 c. Analyze the significance of the project’s GHG emissions on global  
21 warming;
- 22 d. Attempt to mitigate the project’s GHG emissions on global warming.

23 42. Instead of providing the foregoing required information, the EIR claimed that it  
24 was unable to assess the significance of the project’s impacts on global warming, and on that basis  
25 concluded that such impacts would not be significant.

26 43. In failing to conduct a proper CEQA analysis of the project’s GHG emissions,  
27 Caltrans also violated CEQA’s substantive mandate by failing to adopt feasible alternatives or  
28 mitigation measures to avoid or mitigate the significant global warming and GHG emission  
impacts this project will cause. Public Resources Code §§ 21002, 21002.1(b), 21081; CEQA

1 Guidelines §§ 15091, 15092, 15093.

2 44. The EIR's GHG emissions analysis also conflicts with the EIR's analyses of the  
3 project's air quality and traffic impacts. Because the EIR failed to provide consistent data and  
4 analysis with regard to the project's impacts on traffic, air quality, and GHG emissions, the public  
5 and public agencies were precluded from making informed comments and decisions with respect  
6 to the project.

7 **5. The EIR Failed to Properly Disclose and Analyze the Project's Air Quality Impacts.**

8 45. The EIR fails to properly analyze the project's potentially significant impacts on air  
9 quality, in violation of CEQA Guidelines sections 15126 and 15126.2. First, the EIR's air quality  
10 analysis repeats the traffic section's understated and unsubstantiated estimate of the project's  
11 impact on VMTs. The EIR asserts that the project will have negligible impacts – or, according to  
12 the summary, *beneficial* impacts – on air quality. Because the VMT estimates are incorrect, the  
13 entire air quality analysis including its conclusions are deeply flawed.

14 46. Second, the EIR's air quality analysis fails to quantify the impacts of the project  
15 and of the no-build alternative.

16 47. Third, the EIR fails to disclose the modeling data for criteria pollutants, including  
17 ozone precursors and particulate matter ("PM") emissions, on which it based its conclusions.  
18 Consequently, the public and decision makers could not independently assess the project's  
19 quantified impacts, but only the agency's conclusions about them.

20 48. Fourth, the EIR's conclusion that the project's increase in VMT and associated  
21 emissions would be offset by a more fuel-efficient vehicle fleet in the future ignores the project-  
22 specific impacts and instead only looks at the region's general air quality in the future. This  
23 conclusory analysis fails to identify and assess how the project's impacts could be further reduced,  
24 and how they compare with other alternatives.

25 49. Fifth, the EIR acknowledges that it did not analyze the generation of ozone or its  
26 precursors for the project specifically, and instead relies on the project's conformity with regional  
27 plans, programs, and reports that consider regional air quality issues as a basis for its conclusion  
28 that no significant air quality impacts would result. EIR at III:2-3, 3.5-99. Because of this

1 omission, the EIR does not inform the public as to what specific impacts the project would create,  
2 but only provides a prediction of what the area's future air quality conditions would be if the  
3 project is built. Thus, the project's actual impact on air quality was left unaddressed in the EIR.

4 50. Sixth, the EIR's underlying air quality assumptions and data are inconsistent.  
5 While the EIR acknowledges that an increase in total VMT will result from the project, it fails to  
6 acknowledge that consequently there will be an increase in ozone and PM emissions. Such a  
7 significant unmitigated impact merited careful review in the EIR, but was ignored.

8 **6. The EIR Failed to Consider A Reasonable Range of Alternatives.**

9 51. CEQA requires that an EIR "describe a range of reasonable alternatives to the  
10 project . . . which would feasibly attain most of the basic objectives of the project but would avoid  
11 or substantially lessen any of the significant effects of the project, and evaluate the comparative  
12 merits of the alternatives." CEQA Guidelines § 15126.6(a).

13 52. Contrary to this mandate, the EIR fails to adequately disclose, address, and  
14 consider feasible alternatives and mitigation measures. Caltrans considered two "build"  
15 alternatives, in addition to the "no build" or "no action" alternative. The first alternative – the  
16 EIR's preferred alternative – includes the construction of two fixed HOV lanes, one going in each  
17 direction, in the Highway median. The second "build" alternative proposed installation of one  
18 reversible HOV lane in the center of the Highway, which would be open to southbound traffic in  
19 the morning and northbound traffic in the evening, to accommodate the prevailing commute  
20 during weekdays. Both proposals required the Highway to be expanded to a width of 114 feet.  
21 Rather than these two wide and highly impactful alternatives, at least one narrow alternative with  
22 a smaller footprint should have been considered, in order to minimize environmental impacts.

23 53. The EIR does not address any alternatives that would not cause the environmental  
24 impacts of the proposed project but would still alleviate some of the existing traffic congestion  
25 and safety hazards, such as flood remediation and elimination of uncontrolled, at-grade access.

26 54. Because the EIR lacked a proper range of alternatives, Caltrans violated CEQA.

27 **7. The EIR Employed an Improperly Narrow Purpose and Need Statement.**

28 55. CEQA does not permit an unduly narrow purpose and need statement because an

1 “‘impermissibly truncated’ project definition severely distort[s] not only the critical project *but*  
2 *the alternatives to the project.*” *County of Inyo v City of Los Angeles* (1981) 124 Cal.App.3d 1, 9.

3 56. The EIR’s small range of alternatives is based on an inadequately narrow statement  
4 of purpose and need, which effectively excludes any alternative other than the proposed project  
5 (and a minor variation thereto). By improperly restricting its analysis of project alternatives to  
6 ones that conformed to the unnecessarily narrow project purpose, Caltrans violated CEQA.

7 **8. The EIR Failed to Properly Assess the Expanded Highway’s Growth-Inducing**  
8 **Impacts.**

9 57. CEQA Guidelines sections 15126(d) and 15126.2(d) require that an EIR “discuss  
10 the ways in which the proposed project could foster economic or population growth, or the  
11 construction of additional housing, either directly or indirectly, in the surrounding environment.”  
12 *Id.*

13 58. Contrary to this mandate, the EIR failed to support its conclusion that the project  
14 would not create growth-inducing impacts despite the Highway’s increased capacity after the  
15 project is completed. The EIR asserts that the area’s land use plans would prevent any unplanned  
16 or significant growth, but fails to consider whether those plans might be amended to  
17 accommodate growth induced by the Highway’s increased capacity. CEQA requires such an  
18 analysis. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333-1337; *Stanislaus*  
19 *Audubon Society v. County of Stanislaus* (1996) 33 Cal.App.4th 114, 158-159. The EIR also fails  
20 to disclose and discuss the modeling results and data used to support its conclusion.

21 59. The EIR does not address the growth-inducing impacts of the project’s proposed  
22 interchanges. Such interchanges create prime opportunities for development of gas stations and  
23 other road-side services. The EIR does not address these impacts.

24 60. Accordingly, the EIR’s conclusion and Caltrans’ finding that the project’s impacts  
25 on growth would be less than significant is not supported by the analysis required by CEQA nor  
26 substantial evidence, contrary to Public Resources Code section 21081.5 and CEQA Guidelines  
27 sections 15126(d) and 15126.2(d).  
28

1    **9.     The EIR Failed to Properly Assess the Growth-Inducing Impacts Attributable to the**  
2    **Aqueduct's Pipeline Expansion.**

3            61.     CEQA Guidelines sections 15126(d) and 15126.2(d) require that an EIR "discuss  
4    the ways in which the proposed project could foster economic or population growth, or the  
5    construction of additional housing, either directly or indirectly, in the surrounding environment."  
6    *Id.*

7            62.     Caltrans failed to adequately disclose and address the project's growth-inducing  
8    effects resulting from its pipeline expansion and foreseeable increase on water deliveries to Marin  
9    County. The project has great potential to encourage development and population growth due to  
10   the availability of more water to supply residential, commercial, and industrial needs.  
11   Nevertheless, the EIR determined that these impacts were less than significant, without providing  
12   the required analysis or substantial evidence to support its conclusion. Accordingly, Caltrans  
13   violated CEQA.

14   **10.    The EIR Failed to Discuss the Cumulative Impacts of the Highway Expansion.**

15            63.     CEQA Guidelines sections 15130 and 15144 require that an EIR consider and  
16   discuss a project's cumulative impacts, and section 15125(d) directs that an EIR "shall discuss any  
17   inconsistencies between the proposed project and any applicable general plans and regional  
18   plans."

19            64.     The EIR fails to address the cumulative impacts of many projects and plans in the  
20   area that will also contribute to increased traffic, air quality, and GHG impacts, such as the  
21   additional development allowed under or induced by the proposed Rohnert Park Graton  
22   Rancheria/Station Casino, the new Marin County Areawide Plan, the Final Draft Petaluma  
23   General Plan 2025, and the Final Sonoma County General Plan Update 2020. The development  
24   allowed under such projects and plans would have a significant impact both on the project's  
25   operations, and on the region's resources. Caltrans abused its discretion in approving the project  
26   without first conducting an examination of these cumulative impacts in the EIR.

1 **11. The EIR Failed to Discuss the Cumulative Impacts of the Aqueduct's Expanded**  
2 **Pipeline.**

3 65. Contrary to the requirement of CEQA Guidelines sections 15130 and 15144 that  
4 an EIR consider and discuss a project's cumulative impacts, the EIR failed to discuss the  
5 cumulative effects of the projects in Marin County where additional water deliveries due to the  
6 project could induce growth. For example, a planned desalination plant in Marin County, in  
7 combination with greater water deliveries through the pipeline, would allow for potentially  
8 explosive development that would strain environmental resources. The EIR's failure to examine  
9 these impacts was a violation of CEQA.

10 **12. The EIR's Mitigation Measures are Inadequate.**

11 66. "CEQA requires [an] agency to find, based on substantial evidence, that the  
12 mitigation measures [adopted by the agency] are 'required in, or incorporated into, the project  
13 ....' *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83  
14 Cal.App.4th 1252, 1260, quoting Public Resources Code § 21081. See CEQA Guidelines §  
15 15126.4(a)(2).

16 67. The EIR claims, and Caltrans erroneously determined, that the project's impacts on  
17 biological resources would be "less than significant" after mitigation measures are implemented.  
18 EIR at I:4-3, App. K-2. This conclusion lacks the analysis and evidentiary support required by  
19 CEQA, as many mitigation measures are uncertain and insufficiently defined, and as such are  
20 unenforceable. For example, Caltrans has not yet identified on-site conservation measures or off-  
21 site lands to be purchased to offset the project's significant impacts on wetlands. Until the EIR  
22 properly identifies enforceable mitigation measures, there is no assurance that the project's  
23 environmental impacts will not be significant. Caltrans abused its discretion in approving an EIR  
24 based on mitigation measures that were not incorporated into the project or otherwise certain and  
25 enforceable.

26 **13. The EIR Violated CEQA's Requirement that It Provide Mandatory Findings of**  
27 **Significance.**

28 68. CEQA mandates that an EIR shall analyze a project's "potential to achieve short-

1 term environmental goals to the disadvantage of long-term environmental goals.” CEQA  
2 Guidelines § 15065(a)(2). Contrary to this requirement, Caltrans and its EIR fail to assess the  
3 project’s potential to achieve short-term environmental goals (reduced traffic congestion) only at  
4 the expense of long-term environmental degradation (increased traffic volumes and attendant  
5 increased GHG emissions, increased air pollution, and increased water diversions and urban  
6 growth). Therefore, Caltrans violated CEQA.

7 **14. Caltrans Violated CEQA’s Requirement that It Avoid or Mitigate the Project’s**  
8 **Significant Effects Where Feasible To Do So.**

9 69. CEQA mandates that agencies must avoid or mitigate the project’s potentially  
10 significant adverse impacts whenever it is feasible to do so. Public Resources Code §§ 21002,  
11 21002.1, and 21081; CEQA Guidelines §§ 15091, 15092, and 15093. Contrary to this  
12 requirement, Caltrans failed to identify and address the project’s potentially significant impacts,  
13 failed to consider alternatives and mitigation measures that would avoid or reduce those impacts  
14 to insignificance, and thus failed to adopt alternatives or mitigation measures that would reduce  
15 the project’s significant effects to insignificance, in violation of CEQA.

16 **NOTICE GIVEN**

17 70. On August 26, 2009, petitioners faxed and mailed notice to Caltrans, in accordance  
18 with Public Resources Code section 21167.5, informing it of petitioners’ intention to file this  
19 action immediately. Concurrently with the filing of this Verified Petition, petitioners have  
20 provided notice of the pendency of this proceeding to the California Attorney General as required  
21 by Public Resources Code section 21167.7 and Code of Civil Procedure section 388.

22 **RESPONDENTS NOT DISABLED**

23 71. At all times mentioned herein, Caltrans was able to conduct proper environmental  
24 review and analysis of the project as required by CEQA. Despite such ability, Caltrans has failed  
25 and continues to fail to perform its duty to withhold consideration and approval of the project  
26 until it has conducted proper CEQA review.

27 **IRREPARABLE HARM**

28 72. If Caltrans is not ordered to set aside its approval of the project and decertify its

1 EIR, petitioners and the public will be irreparably harmed. Petitioners have no plain, speedy, and  
2 adequate remedy in the ordinary course of law in that, unless this Court issues its writ of mandate  
3 or injunctive relief vacating Caltrans' approval of the project, decertifying its EIR, and requiring  
4 Caltrans to comply with CEQA, Caltrans' approval of the project would violate applicable law  
5 and irreparably harm the environment. No monetary damages or other legal remedy could  
6 adequately compensate petitioners for the harm to essential environmental reviews, orderly land  
7 planning processes, and environmental quality threatened by Caltrans' approval of the project.  
8 Accordingly, petitioners seek appropriate injunctive relief to prevent Caltrans from attempting to  
9 implement any part of its project approval before this action is resolved on its merits.

10 **ACTUAL CONTROVERSY**

11 73. An actual controversy exists between petitioners and Caltrans. Petitioners  
12 contend that Caltrans has acted in violation of the statutory laws as alleged hereinabove, and must  
13 therefore vacate and set aside its approvals of the EIR. Petitioners are informed and believe, and  
14 thereon allege, that the other parties dispute these contentions. A judicial resolution of this  
15 controversy is therefore necessary and appropriate.

16 **RELIEF REQUESTED**

17 WHEREFORE, Petitioners pray for judgment and further relief as follows:

- 18 1. For a peremptory writ of mandate directing respondents to set aside and vacate  
19 their approval of the project and decertify their EIR;  
20 2. For declaratory relief declaring the project's approval and the EIR to be unlawful;  
21 3. For attorneys' fees under Code of Civil Procedure section 1021.5;  
22 4. For costs incurred in this action; and  
23 5. For such other equitable or legal relief as the Court may deem just and proper.

24 Dated: August 26, 2009

Respectfully submitted,

25 LAW OFFICES OF STEPHAN C. VOLKER

26   
27 By: STEPHAN C. VOLKER

Attorney for Petitioners

28 NORTH COAST RIVERS ALLIANCE, et al.

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