

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 KELLEY M. TABER (SBN 184348)  
CASEY A. SHORROCK (SBN 328414)  
3 500 Capitol Mall, Suite 1000  
Sacramento, CA 95814  
4 Telephone: (916) 446-7979  
Facsimile: (916) 446-8199  
5 ktaber@somachlaw.com  
cshorrock@somachlaw.com

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6 Attorneys for Petitioner and Plaintiff  
7 CONAWAY PRESERVATION GROUP, LLC

8  
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF YOLO

11  
12 CONAWAY PRESERVATION GROUP, LLC,

13 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF WATER  
RESOURCES; CALIFORNIA WATER  
16 COMMISSION; and DOES 1 through 50,  
inclusive,

17 Respondents and Defendants.  
18

19 UNITED STATES BUREAU OF  
RECLAMATION; and DOES 51 through 100,  
20 inclusive,

21 Real Parties in Interest.  
22

CASE NO. CV2024-3069

California Environmental Quality Act (CEQA)  
Case

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
INJUNCTIVE RELIEF**

(Code of Civ. Proc., §§ 526, 527, 1085, 1094.5;  
Pub. Resources Code, §§ 21168, 21168.5;  
Wat. Code, § 85000 *et seq.*)

[Verified Pursuant to Code of Civ. Proc., § 446]

23 CONAWAY PRESERVATION GROUP, LLC (Conaway) petitions this Court for a writ  
24 of mandate directed to the California Department of Water Resources (DWR) and the California  
25 Water Commission (Commission) under Code of Civil Procedure sections 1085 and/or 1094.5,  
26 and further requests injunctive relief, and alleges as follows.  
27  
28

**INTRODUCTION**

1  
2           1.       Conaway brings this petition for a writ of mandate and complaint for injunctive  
3 relief to challenge actions taken and requirements disregarded by DWR and the Commission  
4 when implementing the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project, also  
5 known as the Big Notch Project (Project), in violation of the California Environmental Quality  
6 Act (CEQA), Public Resources Code section 21000 *et seq.*, and the Sacramento-San Joaquin  
7 Delta Reform Act (Delta Reform Act), Water Code section 85000 *et seq.*

8           2.       The Project, which is jointly funded by DWR and the U.S. Bureau of Reclamation  
9 (Reclamation), is a large-scale floodplain and habitat restoration effort intended to improve fish  
10 passage and expand rearing habitat for juvenile fisheries in the Yolo Bypass and lower  
11 Sacramento River basin. The Project would dramatically increase the duration and volume of  
12 flooding in the Yolo Bypass.

13           3.       DWR and Reclamation prepared a joint environmental impact report (EIR)/  
14 environmental impact statement (EIS) for the Project between 2013 and 2019, ultimately  
15 approving a project, as described by DWR in the EIR/EIS as having a maximum design capacity  
16 of 6,000 cubic feet per second (cfs) and that when operating would be able to flow water and  
17 associated sediment and debris through the Yolo Bypass only from November 1 through  
18 March 15. Conaway participated in the public review process, submitting comments on both the  
19 Draft and Final EIR/EIS.

20           4.       Thereafter, Conaway and other Yolo Bypass stakeholders learned that DWR had  
21 made changes to the Project that significantly differed from the approved version, with increased  
22 flow capacity from 6,000 cfs to 12,000 cfs, increased duration of flooding, and that eliminated at  
23 least one cutoff wall that was originally included to protect levees, among other significant  
24 Project changes.

25           5.       DWR proceeded to seek flowage easements from numerous Yolo Bypass  
26 landowners, including Conaway, which were unlimited in scope, broadly encompassing rights  
27 that exceed those required for the approved Project, for undefined future use. DWR sought, and  
28 the Commission adopted, resolutions of necessity (RONs) purporting to authorize DWR to

1 condemn the flowage easements, and thereafter filed approximately 45 eminent domain actions,  
2 in which it is now expressly seeking 12,000 cfs flows from late-fall to late-spring.

3 6. In 2023, Conaway and other stakeholders learned that DWR had begun  
4 constructing the changed Project without having performed adequate CEQA review for the  
5 changes. These changes to the Project will dramatically increase Project impacts to Conaway  
6 Ranch and the environment by significantly increasing the temporal and physical scope of  
7 inundation of property within the Yolo Bypass properties, including land covered by conservation  
8 easements held by the California Waterfowl Association and U.S. Fish and Wildlife Service, and  
9 threatening the integrity of levees. The changes will also increase the already-significant  
10 environmental impacts identified in the Final EIR/EIS and cause new impacts that have not yet  
11 been identified. Moreover, recent evidence published by the U.S. Department of the Interior, Fish  
12 and Wildlife Service (USFWS), demonstrates that even 6,000 cfs flows through the Yolo Bypass  
13 will exceed the scope of impacts described in the Final EIR/EIS and will require additional  
14 mitigation.

15 7. Despite its significant changes to the Project and new evidence of increased  
16 impacts, DWR did not perform adequate additional environmental review, in violation of CEQA.

17 8. DWR also failed to submit a consistency determination to the Delta Stewardship  
18 Council (DSC) demonstrating that the changes made to the Project as a “covered action” subject  
19 to the Delta Plan are consistent with the Delta Plan’s policies and coequal goals, in violation of  
20 the Delta Reform Act.

### 21 **PARTIES AND STANDING**

22 9. Conaway is a limited liability company formed and operated pursuant to California  
23 law. Conaway owns Conaway Ranch, comprising more than 17,000 contiguous acres of active  
24 farmland, open space, and wildlife habitat along the Sacramento River in Yolo County.  
25 Agricultural uses primarily consist of rice cultivation. Conaway’s productive farmlands play an  
26 important role in the local economy as a source of revenue and labor, as well as habitat for  
27 waterfowl and other special-status species, and recreational opportunities associated with wildlife  
28 resources. Thousands of acres of Conaway Ranch are protected by conservation easements. The

1 Project as approved in 2019 would result in the inundation of a significant portion of Conaway  
2 Ranch, in turn resulting in a substantial reduction in agricultural productivity. The Project as  
3 changed by DWR (with no public notice and without complying with CEQA), and as further  
4 authorized by the Commission, will dramatically increase this inundation and, accordingly,  
5 increase the extent, duration, and severity of Project impacts to habitat, special-status species,  
6 waterfowl, recreational resources, and agricultural resources within the Yolo Bypass, including  
7 Conaway Ranch, as well as impacts to and associated with hazards, hydrology, cultural and tribal  
8 cultural resources, geology and soils, cumulative impacts, and growth inducement. Ironically,  
9 flowing 12,000 cfs through the Bypass, according to the Final EIR/EIS, would result in  
10 significant and unavoidable impacts to salmonids, the intended *beneficiaries* of the Project, along  
11 with numerous other significant and unavoidable impacts not identified in the Final EIR/EIS for  
12 the approved Project.

13 10. Conaway also brings this action as a private attorney general pursuant to Code of  
14 Civil Procedure section 1021.5 and any other applicable legal theory to enforce important public  
15 rights affecting the public interest.

16 11. Conaway has standing to raise its CEQA claims because it has a public interest in  
17 DWR's failure to comply with CEQA prior to approving the changed Project. Moreover,  
18 Conaway has a direct and beneficial interest in DWR complying with CEQA, including by  
19 mitigating the direct and indirect effects of the changed Project to Conaway Ranch and its  
20 agricultural, habitat and special-status species, and wildlife and recreational resources, and the  
21 larger Yolo Bypass, by increasing the extent, duration, and severity of inundation of Conaway's  
22 property and decreasing protections to levee integrity and farmland resulting from the elimination  
23 of cut off walls.

24 12. Respondent/Defendant DWR is a public agency of the state of California formed  
25 to manage the State's water resources. DWR is the lead agency for the Project pursuant to  
26 CEQA.

27 13. Respondent/Defendant Commission, DWR's governing body, is a board of nine  
28 members appointed by California's Governor and confirmed by the California Senate that advises

1 DWR and takes statutory actions. On February 21, 2023, the Commission issued a Notice of  
2 Intent (NOI) to adopt a RON authorizing the taking of a flowage easement over portions of the  
3 Conaway Ranch. On March 15, 2023, the Commission, following a presentation by DWR that  
4 identified the project that was the subject of its requested RON as being “Alternative 1–East Side  
5 Gated Notch Operation Period: November 1–March 15,” approved DWR’s exercise of eminent  
6 domain to acquire an unlimited flowage easement over Conaway’s property, not only for the  
7 Project, but also for unspecified “future use,” with evidence in the record of DWR’s intent to flow  
8 up to 12,000 cfs, post-March 15.

9 14. Real Party in Interest Reclamation is a federal agency of the United States.  
10 Reclamation is the lead federal agency for the Project pursuant to the National Environmental  
11 Protection Act (42 U.S.C. § 4321 *et seq.*) (NEPA). Reclamation adopted a Record of Decision  
12 for the EIS and Project on September 19, 2019, pursuant to NEPA requirements.

13 15. Conaway does not know the true names and identities of DOES 1 through 100,  
14 inclusive, and therefore alleges said unnamed parties by fictitious names. Conaway will seek  
15 leave of Court, as may be necessary, to amend this Petition to include the true names and  
16 capacities of Respondents/Defendants and/or Real Parties in Interest DOES 1 through 100 when  
17 the same have been ascertained.

### 18 JURISDICTION AND VENUE

19 16. This Court has jurisdiction over the matters raised in this Petition and Complaint  
20 pursuant to Code of Civil Procedure sections 526, 527, 1085, and 1094.5, and Public Resources  
21 Code section 21000 *et seq.*, including Public Resources Code sections 21167, 21168,  
22 and 21168.5.

23 17. Venue is proper in Yolo County Superior Court pursuant to Code of Civil  
24 Procedure sections 392 and 393, subdivision (b) because the Project is located in Yolo County  
25 and its impacts will occur primarily within the County’s boundaries.

### 26 NOTICE OF CEQA SUIT AND NOTICE TO THE ATTORNEY GENERAL

27 18. On November 21, 2024, Conaway served a notice of intent to file this action on  
28 DWR, the Commission, and on Reclamation, pursuant to Public Resources Code section 21167.5.

1 These notices and the accompanying proofs of service are attached hereto as Exhibits 1, 2, and 3,  
2 respectively.

3 19. Pursuant to Code of Civil Procedure section 388 and Public Resources Code  
4 section 21167.7, Conaway will provide the California Attorney General a copy of this Petition.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 20. DWR did not provide an opportunity for public comment before authorizing, and  
7 in some instances implementing, the physical changes to the Project briefly described herein, nor  
8 did it provide advance notice that it was contemplating and/or implementing those changes.  
9 Conaway therefore did not have an opportunity to formally object to the changed Project.

10 21. However, upon learning of some or all of the Project changes, Conaway attempted  
11 to work with DWR to resolve any known issues related to these Project changes. Beginning in  
12 2022, Conaway submitted written objections to DWR's proposed acquisition of flowage  
13 easements to accommodate a dramatically expanded project, and between September of 2023 and  
14 October 2024 engaged in a series of discussions intended to advise DWR of the significant  
15 environmental and economic impacts that would result from the expanded flowage easement and  
16 Project changes.

17 22. Conaway also participated in the public CEQA process for the original Project to  
18 the maximum extent possible. Conaway submitted extensive comments on the Draft EIR/EIS and  
19 Final EIR/EIS on February 14, 2018, and July 10, 2019, respectively. Conaway's comments  
20 primarily raised concerns regarding the Draft and Final EIR/EIS analysis of farming and crop  
21 impacts and impacts to recreation, special-status species, and migratory birds.

22 23. Conaway has fully exhausted its administrative remedies, to the extent such  
23 remedies existed and are legally necessary here. Conaway has no plain, speedy, or adequate  
24 remedy unless this Court grants the requested relief.

25 **STATUTE OF LIMITATIONS**

26 24. On July 19, 2019, DWR filed a Notice of Determination (NOD) following its  
27 approval of the original 6,000 cfs Project, with cutoff walls and a final inundation date of  
28 March 15, and certification of the Final EIR/EIS.

1           25.     On or about March 11, 2022, DWR filed a notice of exemption (NOE) for  
2     “Easement Acquisitions for Potential Future Adaptive Management” for the Project, stating that  
3     the Project would “only be modified to utilize [adaptive management flowage easements] after  
4     future completion” of environmental review, and then describing “adaptive management flowage  
5     easements [that] would allow for Project operations to increase flows up to 12,000 cfs,” which  
6     could eventually occur in some areas in the Yolo Bypass “post-March 15.”

7           26.     On March 15, 2023, the Commission, with knowledge of the NOE, adopted the  
8     RON approving DWR’s exercise of eminent domain to take a flowage easement over property  
9     owned by Conaway and other Yolo Bypass landowners for the Project and undefined future use,  
10    without express limitation as to flow rate or duration of flow.

11          27.     On May 31, 2023, DWR filed a Complaint in Eminent Domain against Conaway  
12    in Yolo County Superior Court to condemn a flowage easement over Conaway Ranch for flows  
13    of 12,000 cfs, “from late-fall to late-spring.”

14          28.     In and about August 2023, Conaway learned that DWR had commenced  
15    construction of the Project without at least one of the approved levee cut-off walls and in a  
16    manner allowing inundation flows up to 12,000 cfs.

17          29.     Thus, after certifying the EIR, DWR unlawfully changed the Project in a way that  
18    would result in new and substantially more severe significant impacts without first performing  
19    requisite environmental review under CEQA.

20          30.     CEQA’s statute of limitations, which generally begins to run upon the lead  
21    agency’s filing of an NOD or NOE, does not bar litigation challenging a public agency’s  
22    compliance with CEQA for project changes that are made, approved, and/or implemented after a  
23    valid initial notice is filed but without having filed any subsequent notice for the changes.

24          31.     Instead, CEQA imposes a 180-day statute of limitations on legal action from the  
25    date upon which petitioner knew or should have known that an agency approved or made changes  
26    to an approved project, and the date upon which an agency committed itself to those changes in a  
27    manner that would authorize the physical changes.

28

1           32.     On or about September 8, 2023, Conaway and DWR executed an agreement to toll  
2 the statute of limitations for filing any and all CEQA claims related to this matter in order to  
3 engage in discussions in an effort to settle disputes. The agreement was amended seven times to  
4 extend the tolling period as the parties continued discussions, resulting in the last day to timely  
5 file a petition being November 25, 2024.

6           33.     Conaway has timely filed this lawsuit prior to November 25, 2024.

7           34.     DWR's violation of the Delta Reform Act is ongoing until resolved and thus this  
8 petition is timely filed within any applicable statute of limitations.

9                           **ELECTION TO PREPARE ADMINISTRATIVE RECORD**

10          35.     Conaway elects to prepare the administrative record in this action pursuant to  
11 Public Resources Code section 21167.6, subdivision (b)(2).

12                           **FACTS AND GENERAL ALLEGATIONS**

13          36.     The Project is located within the lower Sacramento River Basin, including the  
14 Yolo Bypass, within Sacramento, Solano, Sutter, and Yolo Counties, and partially within the  
15 legal Delta.

16          37.     On July 19, 2019, DWR filed an NOD, certifying the Final EIR for the Project,  
17 and approved the original Project.

18          38.     The Project DWR approved was included in the Final EIR/EIS as Alternative 1,  
19 East Side Gated Notch. Alternative 1 allowed flows up to 6,000 cfs between November 1 and  
20 March 15.

21          39.     Alternative 1 also included a 3,150-foot long and 30-foot deep subsurface cutoff  
22 wall, cutting through an existing clay blanket layer, to prevent levee underseepage and protect  
23 farmland, along with other critical components protecting levees and farmland.

24          40.     In or about November 2020, DWR submitted a Delta Plan Consistency  
25 Certification to DSC for the approved Project, supported by a record containing the Final EIR/EIS  
26 and the Delta Plan Consistency Determination: Yolo Bypass Salmonid Habitat Restoration and  
27 Fish Passage Project, Detailed Analysis (Consistency Determination).  
28



1           41.     In the Consistency Determination, DWR acknowledges that the Project is a  
2 “covered action” subject to the Delta Plan because easement flows from the Project will  
3 physically move across and impact portions of the Yolo Bypass that are within the legal Delta.  
4 As a result, under the Delta Reform Act, DWR must demonstrate that the Project is consistent  
5 with the Delta Plan’s policies and coequal goals.

6           42.     DWR’s Consistency Determination then includes a detailed analysis with multiple  
7 appendices purportedly explaining the Project’s consistency with individual Delta Plan policies.  
8 The analysis in the Certification relied primarily on the Final EIR/EIS and a definition of the  
9 Project that allows flows of up to 6,000 cfs only.

10          43.     DSC noticed and published DWR’s Consistency Certification, including the  
11 Consistency Determination, on December 10, 2020, for public review; the Certification was not  
12 appealed.

13          44.     DWR has not submitted a new or revised/updated consistency certification  
14 reflecting changes to the Project that allows for 12,000 cfs flows through portions of the Yolo  
15 Bypass that are within the legal Delta.

16          45.     On February 24, 2022, DWR filed a NOD for, and published, an addendum to the  
17 Final EIR/EIS. The addendum analyzed the impacts of construction timeline changes, but again  
18 described the Project as allowing a maximum of approximately 6,000 cfs of flows. It did not  
19 contemplate changes to the Project’s capacity or operations.

20          46.     On or about March 11, 2022, DWR filed a notice of exemption (NOE) for “Yolo  
21 Bypass Salmonid Habitat Restoration and Fish Passage Project - Flowage Easement Acquisitions  
22 for Potential Future Adaptive Management.”

23          47.     The NOE purportedly was filed pursuant to Public Resources Code  
24 section 21080.28, which provides a CEQA exemption for transfers of interest in land by public  
25 agencies for limited specified purposes, expressly excluding the restoration of natural conditions,  
26 including plant and animal habitats, only if the environmental review that CEQA would otherwise  
27 require is undertaken “before any project approval that would authorize physical changes being  
28 made to that land.”

1           48.     The NOE described the potential for easements that would, if operated, “allow for  
2 project operations to increase flows up to 12,000 cfs from November 1 through March 15  
3 annually,” and “post-March 15” in some areas of the Yolo Bypass, which would significantly  
4 increase the scope of Project inundation.

5           49.     Critically, the NOE stated that the activity was exempt because “operations will  
6 only be modified to utilize [adaptive management flowage easements] after future completion of  
7 any environmental review” required by CEQA.

8           50.     During the winter of 2022-2023, DWR filed dozens of complaints in eminent  
9 domain to implement the Project, each of which described the Project to have a maximum flow  
10 capacity of 6,000 cfs and a period of inundation from November 1 through March 15. This was  
11 consistent with the Final EIR/EIS.

12           51.     DWR provided a staff report for the Commission’s February 15, 2023, meeting  
13 (Staff Report) in support of DWR’s request for a RON authorizing acquisition of an expanded  
14 flowage easement over Conaway Ranch for purposes of implementing the Project. The Staff  
15 Report identified that the Conaway property, which was the subject of the requested RON, was  
16 “identified through hydrodynamic modeling that was included in the EIS/EIR Appendices.”  
17 Because the EIS/EIR did not model a project that would flow 12,000 cfs through “late-spring,”  
18 the Commission was deprived of information essential to an informed decision whether the public  
19 interest and necessity required condemnation of the flowage easement sought by DWR, and the  
20 RON necessarily could not have lawfully authorized the easement that DWR now seeks to  
21 condemn.

22           52.     On February 21, 2023, the Commission sent Conaway an NOI to adopt the RON.  
23 On March 8, 2023, Conaway submitted extensive objections to the adoption of the RON, raising,  
24 among other objections, that the intended authorization of condemnation for undefined future use  
25 beyond the parameters of the approved Project would have adverse environmental effects that had  
26 not been studied.

27           53.     At its March 15, 2023, meeting, the Commission on behalf of DWR, adopted the  
28 RON, No. 2023-07, declaring that certain real property, or an interest in that property, is

1 necessary to enhance floodplain fish rearing and fish passage purposes. Adoption of a RON  
2 necessarily requires compliance with CEQA. Yet, neither the Commission nor DWR conducted  
3 any environmental review under CEQA of the broader use purported to be authorized by the  
4 RON, to facilitate an expanded project being designed and implemented to allow for 12,000 cfs  
5 flow through the Yolo Bypass through late-spring.

6 54. To the extent the Commission may have relied on DWR's 2022 NOE, such  
7 reliance was flawed and unlawful for multiple reasons, including, but not limited to, the Project  
8 described in the RON was inadequately described, the Project does not qualify for the claimed  
9 exemption, and the NOE is invalid.

10 55. On May 31, 2023, DWR filed its complaint in eminent domain against Conaway  
11 in Yolo County Superior Court to condemn a flowage easement over Conaway Ranch for flows  
12 of 12,000 cfs, "from late-fall to late-spring." The easement described in the complaint is different  
13 from (more extensive in terms of flood duration and impact) the Project described in the  
14 Final EIR/EIS and the flowage easement described in DWR's February 2023 Staff Report.

15 56. In June 2023, DWR began filing amended complaints in eminent domain actions  
16 likewise describing the Project as allowing flows up to 12,000 cfs "from late-fall to late-spring."

17 57. In a June 15, 2023, meeting with Reclamation District 1600, DWR confirmed that  
18 it would construct the Project to accommodate 12,000 cfs flows, and also confirmed that it had  
19 eliminated cutoff walls from the Project design.

20 58. DWR then began Project construction in accordance with these significant changes  
21 without performing the requisite environmental review under CEQA or providing mitigation for  
22 the impacts of these changes.

23 59. On September 8, 2023, Conaway and DWR executed an agreement to toll the  
24 statute of limitations for filing any CEQA claims related to this matter in order to engage in  
25 discussions in an effort to settle disputes. The agreement was amended seven times.

26 60. After construction of the changed Project had begun, on February 27, 2024, DWR  
27 filed a NOD for, and published, the "Addendum #2 to the Yolo Bypass Salmonid Habitat  
28 Restoration and Fish Passage Project Final Environmental Impact Report."

1           61.     Addendum #2 acknowledged that the changed Project will have the capacity to  
2 pass flows up to 12,000 cfs and that DWR had excluded two cutoff walls that were a part of the  
3 original Project, as well as the exclusion of a previously approved agricultural road crossing  
4 bridge, an under-channel siphon with emergency overflow, and channel improvements intended to  
5 protect levees and farmland.

6           62.     In July 2024, USFWS, Region 8, published a Draft Environmental Assessment  
7 (EA) pursuant to NEPA for Issuance of Special Use Permit for the Operation of The Big Notch  
8 Project at The Steve Thompson North Central Wildlife Management Area, in which USFWS  
9 relied on, and attached thereto as part of the EA, a July 18, 2024, report from Ducks Unlimited  
10 entitled *Yolo Bypass USFWS Easements Impact Analysis from the Big Notch Project* (Ducks  
11 Unlimited Easement Impact Analysis). The Draft EA also relied on and incorporated the  
12 Final EIR/EIS and included several additional attachments.

13           63.     The Ducks Unlimited Easement Impact Analysis included as part of the Draft EA  
14 assessed environmental impacts associated with 6,000 cfs flooding easements within the Yolo  
15 Bypass, i.e., easements in line with the scope of the originally approved Project but not the  
16 changed Project. Ducks Unlimited concluded, after extensive analysis, that additional Project  
17 improvements, which were not included in the Final EIR/EIS, are required to mitigate the adverse  
18 environmental effects of just 6,000 cfs flows through the Yolo Bypass, specifically impacts  
19 associated with inadequate drainage and roadway access during flooding.

20           64.     On August 30, 2024, Conaway submitted comments on the Draft EA to USFWS  
21 explaining why the EA violated NEPA because, in part, neither the EA nor the Final EIR/EIS  
22 considered these additional Project improvements that Ducks Unlimited explained were necessary  
23 to mitigate the impacts of 6,000 cfs flows through the Yolo Bypass, nor did the EA consider that  
24 the Project would release 12,000 cfs into the Yolo Bypass.

25           65.     Conaway continued to engage in discussions with DWR regarding these  
26 significant Project changes in an ongoing effort to resolve disputes.

27  
28

**INADEQUATE REMEDY AT LAW – STAY AND INJUNCTION**

1  
2 66. Under Code of Civil Procedure sections 526, 1085 and 1094.5, and Public  
3 Resources Code sections 21168 and 21168.5, the Court may stay or enjoin operation of any  
4 administrative decision or order involved in this proceeding.

5 67. DWR and the Commission each issued approvals for the Project and DWR has  
6 begun implementing the Project despite the violations of CEQA and the Delta Reform Act that  
7 are associated with those actions as described herein.

8 68. Accordingly, there is a real threat that DWR will continue to implement the  
9 Project despite inadequate environmental review of the Project, including as it has been changed,  
10 and its new and substantially more severe significant impacts. Conaway has no plain, speedy, or  
11 adequate remedy at law for the irreparable harm that would result from DWR’s actions. A stay or  
12 preliminary or permanent injunction is necessary to restrain DWR from taking additional actions  
13 to implement the Project and Project changes until it has complied with CEQA

14 69. A stay or injunction of DWR’s actions relating to the Project would not be against  
15 the public interest because DWR and the Commission are required to conduct adequate  
16 environmental review under CEQA, and because operation of the Project and Project changes,  
17 and reliance on the RON, would have significant impacts on the environment, and because DWR  
18 will not be harmed by a stay or injunction

19 **FIRST CAUSE OF ACTION**  
20 **(Violation of CEQA—Substantial Project Changes**  
21 **Require Adequate Subsequent Environmental Review)**

22 70. Conaway alleges and incorporates by reference the allegations contained in the  
23 foregoing paragraphs as though fully set forth herein.

24 71. CEQA requires lead agencies to consider whether changes made to a project after  
25 certifying an EIR require a subsequent EIR. The lead agency must prepare a subsequent EIR  
26 prior to approving and/or implementing the changes if those changes would substantially increase  
27 the severity of or cause new significant environmental impacts.  
28

1           72.     The Final EIR/EIS did not analyze the impacts of Project operations with  
2 12,000 cfs flow capacity and expanded flooding dates, removal of cutoff walls, or removal of the  
3 other critical Project components intended to protect levees and farmland.

4           73.     DWR then approved and committed to significant Project changes, including to  
5 the physical and temporal scope of flooding and removal of the cutoff walls and other critical  
6 Project components, without performing adequate environmental review under CEQA, and  
7 without adopting feasible mitigation for the new or increased significant impacts, adopting new  
8 findings of fact, and a statement of overriding considerations for new significant and unavoidable  
9 impacts, as CEQA requires.

10          74.     DWR began implementing these changes without having performed adequate  
11 CEQA review.

12          75.     The modified Project will result in a substantially severe increase in significant  
13 impacts identified in the Final EIR/EIS and new significant and unavoidable impacts, including,  
14 but not limited to, impacts to and associated with agricultural resources, hazards, hydrology,  
15 biological resources, cultural and tribal cultural resources, geology and soils, recreation,  
16 cumulative impacts, and growth inducement.

17          76.     DWR was required to, but did not, prepare and certify a subsequent EIR  
18 addressing modifications to the Project and adopting feasible mitigation for the new or increased  
19 impacts prior to approval and implementation of the physical changes, and likewise failed to  
20 adopt new findings of fact, and a statement of overriding considerations for new significant and  
21 unavoidable impacts.

22          77.     DWR has therefore failed to comply with CEQA and prejudicially abused its  
23 discretion.

24                                    **SECOND CAUSE OF ACTION**  
25                                    **(Violation of CEQA—Invalid Exemption for Easement Acquisitions)**

26          78.     Conaway alleges and incorporates by reference the allegations contained in the  
27 foregoing paragraphs as though fully set forth herein.  
28

1 79. The NOE is materially defective for reasons including, but not limited to, the fact  
2 that no known approval exists upon which the NOE can be filed and that the NOE improperly  
3 describes the Project and the action that DWR and the Commission purported to exempt from  
4 CEQA review.

5 80. Further, the “Flowage Easement Acquisitions for Potential Future Adaptive  
6 Management” are outside the scope of the statutory exemption from CEQA review claimed in the  
7 NOE—Public Resources Code section 21080.28, subdivision (a)(1)(B)—upon which DWR and  
8 the Commission purportedly relied. This exemption does not apply, and neither DWR nor the  
9 Commission claimed any other exemption.

10 81. DWR and the Commission have therefore failed to comply with CEQA and  
11 prejudicially abused its discretion.

12 **THIRD CAUSE OF ACTION**  
13 **(Violation of CEQA—Untimely, Improper, and Inadequate Addendum #2)**

14 82. Conaway alleges and incorporates by reference the allegations contained in the  
15 foregoing paragraphs as though fully set forth herein.

16 83. The NOD for Addendum #2 is materially defective because it omits a required  
17 element, among other reasons.

18 84. Addendum #2 is untimely because it was prepared and approved after operational  
19 and physical changes to the Project were authorized and construction had begun.

20 85. Addendum #2 is improper because the Project changes adopted and implemented  
21 by DWR trigger the need for a subsequent EIR—an addendum is not enough.

22 86. Addendum #2 is inadequate because it failed to meet CEQA’s informational  
23 requirement and precludes meaningful and informed decisionmaking because, among other  
24 things, it: wrongly depicted the Project as consisting of only 6,000 cfs when in fact it is being  
25 constructed to convey, with easements sought for, 12,000 cfs; incorrectly reported critical details  
26 in the certified EIR; inaccurately described the purportedly exempt actions that were the subject  
27 of the NOE; falsely represented DWR’s intentions and actions in regard to the easement  
28

1 acquisitions; and generally misrepresented the scope and magnitude of the action being  
2 implemented.

3 87. As a result, the environmental analysis in Addendum #2 is inadequate and  
4 inaccurate and lacks substantial evidence demonstrating that the action being implemented would  
5 not result in any new significant or substantially more severe impacts.

6 88. DWR has therefore failed to comply with CEQA and prejudicially abused its  
7 discretion.

8 **FOURTH CAUSE OF ACTION**  
9 **(Violation of CEQA—Impermissible Piecemealing)**

10 89. Conaway alleges and incorporates by reference the allegations contained in the  
11 foregoing paragraphs as though fully set forth herein.

12 90. DWR has failed to environmentally analyze and disclose, as required by CEQA,  
13 critical components of the Project, including but not limited to the 12,000 cfs “from late-fall to  
14 late-spring” flooding easements that it now seeks to obtain through legal condemnation actions  
15 against several landowners in the Yolo Bypass, which result in the significant increase in Project  
16 scope and environmental impacts, and which constitute the “whole of the action” that CEQA  
17 requires be comprehensively reviewed as part of the Project but which DWR impermissibly  
18 attempts to piecemeal.

19 91. DWR has therefore failed to comply with CEQA and prejudicially abused its  
20 discretion.

21 **FIFTH CAUSE OF ACTION**  
22 **(Violation of CEQA—Other New Information Requires Adequate Subsequent  
23 Environmental Review)**

24 92. Conaway alleges and incorporates by reference the allegations contained in the  
25 foregoing paragraphs as though fully set forth herein.

26 93. The 2024 Ducks Unlimited Easement Impact Analysis included as part of the  
27 USFWS Draft EA analyzing the issuance of a 5-year special use permit to DWR demonstrates  
28 that, even at 6,000 cfs, the Project will result in significant new and/or significantly more severe



1 impacts and require additional mitigation above and beyond what was contemplated in the  
2 Final EIR/EIS. DWR is aware or should have been aware, as the Project’s lead agency and as the  
3 agency seeking to acquire the special-use permit from USFWS and issuing its own discretionary  
4 approvals associated with this and potentially other related actions, of the new substantial  
5 evidence provided in this analysis.

6 94. Pursuant to CEQA, DWR must prepare a subsequent EIR examining these Project  
7 changes and these significant new and/or significantly more severe impacts, yet it has not. Due to  
8 this significant new information, the Final EIS/EIR is inadequate for use by DWR, the  
9 Commission, Reclamation, or any responsible or trustee agencies.

10 95. DWR has therefore failed to comply with CEQA and prejudicially abused its  
11 discretion.

12 **SIXTH CAUSE OF ACTION**  
13 **(Violation of Delta Reform Act)**

14 96. Conaway alleges and incorporates by reference the allegations contained in the  
15 foregoing paragraphs as though fully set forth herein.

16 97. The Delta Reform Act mandates that DWR submit a certification of consistency  
17 with the Delta Plan to DSC for every “covered action,” as defined by criteria set forth in the Delta  
18 Plan, that it approves and purports to undertake. A consistency certification must demonstrate,  
19 using best available science, that a covered action is consistent with the Delta Plan’s policies and  
20 coequal goals.

21 98. DWR acknowledges that the Project is a covered action that will impact areas  
22 within the legal Delta, and, therefore, it prepared a Delta Plan Consistency Certification for the  
23 approved Project with 6,000 cfs flows in accordance with the Delta Reform Act.

24 99. DWR, however, has not submitted a new or revised/updated consistency  
25 certification reflecting the Project’s changes and how those changes impact consistency with  
26 Delta Plan policies and coequal goals. Neither has DWR submitted a new or revised/updated  
27 determination considering the new and/or significantly more severe impacts identified in the  
28 Ducks Unlimited Easement Impact Analysis.

1           100. The changes to the Project, for example,<sup>1</sup> would conflict with Delta Plan Policy  
2 DP P2, requiring DWR to respect local land uses when siting flood facilities and infrastructure.  
3 Releasing 12,000 cfs into the Yolo Bypass through Project facilities and infrastructure, per the  
4 easements being sought by DWR, would result in *increased* conflicts with local land uses,  
5 including conflicts with agricultural and recreational uses on Yolo Bypass properties with the  
6 legal Delta. Changes to the Project would also conflict with Policies RR P3 and RR P4 requiring  
7 the protection of floodways and floodplains, specifically those within the Yolo Bypass.

8           101. As another example, per the Ducks Unlimited Easement Impact Analysis, the  
9 Project as approved, with 6,000 cfs flows, conflicts with Delta Plan Policy G P1,  
10 subdivision (b)(2), which requires the Project’s mitigation measures to incorporate all applicable  
11 and feasible Delta Plan mitigation measures. The Project, however, omits several measures that  
12 Ducks Unlimited contends are necessary to adequately reduce Project impacts and which appear  
13 required to comply with Delta Plan Mitigation Measures 5-1 to 5-5 pertaining to drainage, and  
14 ultimately Mitigation Measures 4-1 through 4-4 pertaining to biological resources, such as  
15 habitat, special-status species, and waterfowl, which would be negatively and significantly  
16 impacted by improper drainage in and around the Delta.

17           102. The approved Project also conflicts with Delta Plan Policy G P1,  
18 subdivision (b)(3), requiring the documented use of best available science, specifically in light of  
19 Ducks Unlimited’s discovery that existing Project modeling fails to account for a sizable volume  
20 of flood water, and its recommendation that accurate modeling be performed.

21           103. Notably, the Ducks Unlimited Easement Impact Analysis evaluates the Project  
22 with only 6,000 cfs flows; a Project with 12,000 cfs flows would result in far greater impacts.

23           104. Conflicts with these Delta Plan policies will result in significant adverse impacts to  
24 the Delta Plan coequal goal of protecting, restoring, and enhancing the Delta ecosystem by,  
25 among other things, increasing, without proper mitigation, impacts to agriculture, recreation,  
26 habitat, special-status species, and waterfowl—all very important for protecting, restoring, and  
27 enhancing the Delta ecosystem.

28           <sup>1</sup> The examples provided herein are nonexclusive.

1           105. DWR has an affirmative obligation to submit a new or revised/updated consistency  
2 certification reflecting the Project’s changes, and the new evidence of new and/or significantly  
3 more severe impacts identified by Ducks Unlimited, and how those changes and new evidence  
4 impact consistency with Delta Plan policies and coequal goals. DWR has not fulfilled this  
5 obligation.

6           106. DWR has therefore failed to comply with the Delta Reform Act and prejudicially  
7 abused its discretion.

8                                   **PRAYER FOR RELIEF**

9           WHEREFORE, Conaway prays for judgment as set forth below:

10          1. For a writ of mandate or peremptory writ directing DWR to:

11                   a. Cease and desist from any other efforts to plan, design, permit, build,  
12 operate, or otherwise implement the Project in a manner inconsistent with the initial  
13 Project approvals, including but not limited to compliance with the approved maximum  
14 design flow of 6,000 cfs, through the annual operational end date of March 15, and the  
15 inclusion of all Project cutoff walls and other critical flood-related components as  
16 contemplated in the Final EIR/EIS, without first fully complying with the requirements of  
17 CEQA and the Delta Reform Act;

18                   b. Refrain from granting any further approvals for the Project, or acquiring  
19 any property as described and contemplated in the complaint in eminent domain against  
20 Conaway unless and until DWR and the Commission have fully complied with the  
21 requirements of CEQA;

22                   c. Submit a new or revised/updated consistency certification to DSC that  
23 reflects the changes to the Project and the new evidence of new and/or significantly more  
24 severe impacts; and,

25          2. For a writ of mandate or peremptory writ directing the Commission to rescind its  
26 March 15, 2023, Resolution of Necessity to Acquire Certain Real Property or Interest in Real  
27 Property by Eminent Domain for the Project, Resolution No. 2023-07; and,

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3. For a temporary stay and preliminary and permanent injunctive relief prohibiting DWR from constructing and operating the Project in any manner inconsistent with the Project as approved on July 19, 2019, until it has fully complied with the requirements of CEQA and the Delta Reform Act; and,

4. For fees and costs in this action, including reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and any other applicable provisions of law or in the Court's discretion; and,

5. For such other relief as the Court deems just and proper.

DATED: November 22, 2024

SOMACH SIMMONS & DUNN  
A Professional Corporation

By   
KELLEY M. TABER  
CASEY A. SHORROCK  
Attorneys for Petitioner and Plaintiff CONAWAY  
PRESERVATION GROUP, LLC

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**VERIFICATION**

I, Kyriakos Tsakopoulos, am the President at Conaway Preservation Group, LLC and am authorized to execute this Verification on Petitioners' behalf as an officer of the corporation, pursuant to section 446 of the California Code of Civil Procedure.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive Relief directed to Respondents California Department of Water Resources and the California Water Commission regarding the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project, also known as the Big Notch Project and know its contents. The facts alleged in the above Petition are true of my own knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true.

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

Executed this 22 day of November 2024, at Sacramento, California.

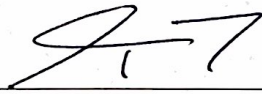
  
\_\_\_\_\_  
Kyriakos Tsakopoulos

EXHIBIT 1

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years, and not a party to the foregoing action.

On November 21, 2024, I served the following document(s):

**NOTICE OF INTENT TO FILE CEQA LAWSUIT**  
*Conaway Preservation Group, LLC*

XXX (by mail) on the persons listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

XXX (electronically) **As a courtesy**, I also served the above listed document(s) on the persons listed below by electronically transmitting a true copy to the electronic mailing addresses as set forth below.

Karla Nemeth, Director  
Ann Carroll, General Counsel  
California Department of Water Resources  
715 P Street  
Sacramento, CA 95814  
[Karla.nemeth@water.ca.gov](mailto:Karla.nemeth@water.ca.gov)  
[Ann.carroll@water.ca.gov](mailto:Ann.carroll@water.ca.gov)

Karla Nemeth, Director  
Ann Carroll, General Counsel  
California Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-0001

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2024, in Sacramento, California.



---

Crystal Rivera

EXHIBIT 2

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years, and not a party to the foregoing action.

On November 21, 2024, I served the following document(s):

**NOTICE OF INTENT TO FILE CEQA LAWSUIT**  
*Conaway Preservation Group, LLC*

XXX (by mail) on the persons listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

XXX (electronically) **As a courtesy**, I also served the above listed document(s) on the persons listed below by electronically transmitting a true copy to the electronic mailing addresses as set forth below.

Matthew Swanson, Chair  
California Water Commission  
P.O. Box 942836  
Sacramento, CA 94236-0001  
[Matthew.Swanson@cwca.gov](mailto:Matthew.Swanson@cwca.gov)  
[cwc@water.ca.gov](mailto:cwc@water.ca.gov)

California Water Commission  
P.O. Box 942836  
Sacramento, CA 94236-0001

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2024, in Sacramento, California.



---

Crystal Rivera

EXHIBIT 3

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years, and not a party to the foregoing action.

On November 21, 2024, I served the following document(s):

**NOTICE OF INTENT TO FILE CEQA LAWSUIT**  
*Conaway Preservation Group, LLC*

**BY MAIL** on the persons/entities listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

Karl Stock, Regional Director  
California-Great Basin Regional Office  
U.S. Bureau of Reclamation  
Federal Office Building  
2800 Cottage Way  
Sacramento CA 95825-1898  
[kstock@usbr.gov](mailto:kstock@usbr.gov)

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2024, in Sacramento, California.



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Crystal Rivera