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14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO

17 CITY OF MODESTO,

18 Petitioners,

19 v.

20 CALIFORNIA STATE WATER
21 RESOURCES CONTROL BOARD and
22 DOES 1 TO 100, INCLUSIVE,

23 Respondents.

Case No. _____

PETITION FOR WRIT OF MANDATE

(Code Civ. Proc., §§ 526, 1085, 1094.5;
Pub. Res. Code, §§ 21167, 21168 and
21168.5.)

[Deemed verified pursuant to Code Civ. Proc.,
§ 446.]

1 Petitioner City of Modesto alleges as follows:

2 1. This petition challenges the December 12, 2018 decision of respondent
3 California State Water Resources Control Board ("State Water Board") to adopt Resolution No.
4 2018-0059, by which the State Water Board adopted certain amendments ("Plan
5 Amendments") to the 2006 Water Quality Control Plan ("Bay-Delta Plan") for the San
6 Francisco Bay/Sacramento-San Joaquin Delta Estuary and to adopt the related Substitute
7 Environmental Document ("SED") for the Plan Amendments.

8 2. Petitioner City of Modesto is the 18th largest City in the State of California and
9 is home to over 210,000 people. Due to its location on the floor of the San Joaquin Valley, the
10 City has only two sources of water supply physically available to serve its customers: surface
11 water from the Tuolumne River, which runs through the City, and groundwater. If
12 implemented, the Plan Amendments will severely reduce the amount of Tuolumne River
13 surface water available for people, and they will significantly increase the strain on the latter,
14 which will already be reduced due to the implementation of the Sustainable Groundwater
15 Management Act and anticipated future drought conditions.

16 3. The Plan Amendments are adopting the Bay-Delta Plan, which the State Water
17 Board approved in 2006, pursuant to its authority under the Porter-Cologne Water Quality
18 Control Act (Water Code sections 13000, et seq.). The Bay-Delta Plan accomplishes three
19 purposes: it (a) identifies and designates the beneficial uses of water in the Bay-Delta,
20 (b) establishes water quality objectives to protect the designated beneficial uses, and
21 (c) institutes a "program of implementation" that is intended to achieve the specified water
22 quality objectives. (Water Code, §§ 13050, subd. (j); 13170.)

23 4. The Bay-Delta Plan, and the water quality objectives it established, apply to the
24 waters of the San Francisco Bay system and the legal Sacramento-San Joaquin Delta.
25 Likewise, all of the beneficial uses designated within the Bay-Delta Plan, which serve as the
26 basis for establishing the appropriate water quality objectives for the Bay-Delta, relate to uses
27 of water within the "legal Delta." The scope of the Delta is legally defined in Water Code
28 section 12220, and these waters are known as the "legal Delta." A true and correct copy of a

1 map produced by the Department of Water Resources depicting the legal Delta is attached as
2 Exhibit A.

3 5. The waters of the Merced, Tuolumne, and Stanislaus Rivers upstream of the
4 confluence of the Stanislaus with the San Joaquin River are not within the legal Delta. To the
5 extent the Bay-Delta Plan protects municipal and industrial uses of water, those uses are ones
6 that occur within the legal Delta by users such as the City of Antioch.

7 6. In 2009, the State Water Board determined it would update the Bay-Delta Plan
8 for different parts of the State in separate phases. The first phase included three of the
9 tributaries to the San Joaquin River, the Stanislaus, Tuolumne, and Merced Rivers (collectively,
10 the "Three Tributaries"). Other tributaries and an upstream reach of the San Joaquin River
11 itself were excluded.

12 7. The Bay-Delta Plan did not establish the water quality protections that apply to
13 the waters of the Three Tributaries, since these reaches of each of these streams are upstream,
14 and outside, of the legal Delta. Rather, these reaches of these streams are subject to the water
15 quality protections established in the Water Quality Control Plan for the California Regional
16 Water Quality Control Board, Central Valley Region (5th ed., May 2018) ("Central Valley
17 Basin Plan") adopted by the Central Valley Regional Water Quality Control Board and
18 approved by the State Water Board last year. The beneficial uses and the water quality
19 objectives applicable to these reaches of these streams are set forth in the Central Valley Basin
20 Plan.

21 8. Even though these reaches of Three Tributaries are outside the geographic scope
22 of the 2006 Bay-Delta Plan, the Plan Amendments seek to impose minimum flow requirements
23 within the Three Tributaries upstream of the Delta. Specifically, the Plan Amendments require
24 certain – but not all – water users in the Three Tributaries, in each month from February
25 through June, to release sufficient water so that an average of 40% of the "unimpaired flow" of
26 each river will reach the San Joaquin River at Vernalis. To meet this requirement, the targeted
27 water uses may release between 30% and 50% – that is, one half – of the unimpaired flow of
28 the stream, as long as the total amount released, when averaged, is equivalent to 40%.