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16 BANTA-CARBONA IRRIGATION DISTRICT  
17 PATTERSON IRRIGATION DISTRICT  
18 WEST STANISLAUS IRRIGATION DISTRICT

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 IN AND FOR THE COUNTY OF SACRAMENTO

21 BANTA-CARBONA IRRIGATION )  
22 DISTRICT; PATTERSON IRRIGATION )  
23 DISTRICT; and WEST STANISLAUS )  
24 IRRIGATION DISTRICT, )

25 Petitioners,

26 vs.

27 CALIFORNIA STATE WATER )  
28 RESOURCES CONTROL BOARD; ERIK )  
ERKDAHL, DEPUTY DIRECTOR OF )  
CALIFORNIA STATE WATER )  
RESOURCES CONTROL BOARD; and )  
DOES 1 THROUGH 100, INCLUSIVE, )

29 Respondents. )  
30 )  
31 )  
32 )

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

**PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE, WRIT  
OF MANDATE, COMPLAINT FOR  
DECLARATORY and INJUNCTIVE  
RELIEF**

Date Filed: \_\_\_\_\_

Department: \_\_\_\_\_

Judge: \_\_\_\_\_

Trial Date: \_\_\_\_\_

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**OVERVIEW**

1. Petitioners are three water districts with senior appropriative rights to divert and use water from the Sacramento-San Joaquin Delta Watershed (“Delta”). On August 20, 2021, the State Water Resources Control Board (“Water Board”) curtailed, or otherwise conditioned Petitioners’ water rights, in a manner contrary to law, without factual basis and in violation of Petitioners’ due process rights.

**PARTIES**

2. Petitioner BANTA-CARBONA IRRIGATION DISTRICT (“BCID”) is, and at all times mentioned herein was, a California irrigation district formed under Division 11 of the Water Code. BCID includes 14,600 acres of irrigated farmland in San Joaquin County. The primary crops grown in BCID include walnuts, almonds, apricots, alfalfa, tomatoes, and beans. Over 50% of the acreage in BCID is devoted to permanent crops.

3. BCID holds pre-1914 and post-1914 appropriative water rights to divert water from the San Joaquin River, downstream of Vernalis. BCID delivers the water it diverts pursuant to its rights to landowners who use it for irrigation. Landowners in BCID generally do not have groundwater wells and rely exclusively on the surface water available from the district to irrigate their crops.

4. PATTERSON IRRIGATION DISTRICT (“PID”) is, and at all times mentioned herein was, a California irrigation district formed under Division 11 of the Water Code. PID includes 12,600 acres of irrigated farmland in San Joaquin County. The primary crops grown in PID include almonds, walnuts, apricots, tomatoes, beans and grains. Over 61% of the acreage in PID is comprised of permanent crops.

5. PID holds a pre-1914 appropriative right to divert water from the San Joaquin River. PID delivers the water it diverts pursuant to this right to landowners who use it for irrigation. PID owns some wells that can produce modest amounts of water, and there are a total of 56 active wells in the district; however, groundwater sources cannot provide more than a fraction of the district demand.

6. WEST STANISLAUS IRRIGATION DISTRICT (“West Stan”) is, and at all times

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1 mentioned herein was, a California irrigation district formed under Division 11 of the Water  
2 Code. West Stan includes 21,676 acres of irrigated farmland in Stanislaus and San Joaquin  
3 Counties as well as the unincorporated communities of Westley, Grayson and Vernalis. The  
4 primary crops grown in West Stan include almonds, walnuts, apricots, cherries, olives and  
5 tomatoes. Over 77% of the land in West Stan is comprised of permanent crops.

6 7. West Stan holds a 1920 appropriative right to divert water from the San Joaquin River  
7 and the Tuolumne River. West Stan delivers the water it diverts to landowners who use it for  
8 irrigation. Landowners in West Stan generally do not have groundwater wells and rely  
9 exclusively on the surface water available from the district to irrigate their crops.

10 8. A map showing the general geographic boundaries of BCID, PID and West Stan is  
11 attached hereto as **EXHIBIT F** for the Court's convenience.

12 9. Respondent/Defendant WATER BOARD is a public agency of the State of California  
13 created by the Legislature pursuant to Water Code section 174 *et. seq* and is governed by a board  
14 of five members appointed by the Governor. At all relevant times the Water Board is charged by  
15 law with the faithful performance of all statutory duties arising under the California Water Code  
16 and is limited by both statute and by the United States and California Constitutions.

17 10. Respondent/Defendant Erik Ekdahl is sued in his official capacity as the Deputy Director  
18 of the Water Board ("Deputy Director"). The Regulation at issue in this case delegates to the  
19 Deputy Director certain powers and duties.

20 11. Petitioners do not know the true names or capacities, whether individual, corporate, or  
21 otherwise, of those Respondents/Defendants and Real Parties in Interest/Defendants sued herein  
22 as Does I through 100. Petitioners are informed and believe and thereon allege said  
23 Respondents/Defendants and Real Parties in Interest/Defendants are in some manner responsible  
24 for the adoption of, imposition of, or administration of those laws and regulations of which  
25 Petitioners complain herein. Petitioners will amend this Petition to set forth the true names and  
26 capacities of the fictitiously named Respondents/Defendants and Real Parties in  
27 Interest/Defendants when such information has been ascertained.

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1                    **THE WATER BOARD’S WATER UNAVAILABILITY METHODOLOGY**

2                    12. On May 21, 2021 the Water Board held an “informal stakeholder workshop” on a  
3 proposed methodology for determining water unavailability in the Sacramento and San Joaquin  
4 River Delta Watershed (referred to as Water Unavailability Methodology for the Delta  
5 Watershed or “**Methodology**”). The Notice for the workshop stated that “the methodology is  
6 focused on evaluating water unavailability for post-1914 appropriative users during the dry  
7 season,” but that “[t]he methodology could also be modified to evaluate water unavailability for  
8 pre-1914 appropriative and riparian water right claimants.”

9                    13. On June 15, 2021, the Deputy Director sent to Petitioners “Notices of Water  
10 Unavailability for Post-1914 Water Right Holders and Warning of Impending Water Unavailable  
11 for pre-1914 and riparian claimants in the Sacramento-San Joaquin Delta”. (“**June Notice**”  
12 attached as **EXHIBIT A**). The June Notice indicated that the “State Water Board is using its  
13 Water Unavailability Methodology for the Delta Watershed to identify which water rights in the  
14 Delta watershed face insufficient supplies for diversion”. The June Notice warned of “impending  
15 water unavailability for pre-1914 and riparian claimants” in the Delta, but made no mention of  
16 how or if the Methodology was being used to determine water availability for pre-1914 water  
17 right claimants.

18                    **THE WATER BOARD’S EMERGENCY REGULATION**

19                    14. On July 20, 2021 Water Board staff issued a “Notice of Staff Workshop on Proposed  
20 Emergency Curtailment and Reporting Regulation for the Sacramento-San Joaquin Delta  
21 Watershed” to be held on July 27, 2021.

22                    15. On July 23, 2021, the Deputy Director sent notice to water right holders that Water Board  
23 staff was proposing an emergency regulation that, if adopted and approved, may affect the ability  
24 of water right holders in the Delta to divert water (“**July Notice**” attached as **EXHIBIT B**). The  
25 July Notice included information on how to participate in public discussion and provide  
26 comments regarding the proposed emergency regulation. The July Notice also stated:

27                    “the State Water Board has determined, based on the best information available to the Board,  
28 that water supply is currently insufficient to support lawful diversion of any water under

1 some pre-1914 appropriative water right claims and similarly insufficient to support full  
2 diversions by some riparian claims in the Delta watershed.”

3 16. Finally, the July Notice informed Petitioners that the Water Board would hold a public  
4 workshop to “receive public input” on the proposed emergency regulation. There was no  
5 opportunity identified at this “workshop” for testimony or cross-examination.

6 17. The July Notice stated that the conclusions that the Water Board was “using its updated  
7 Water Unavailability Methodology for the Delta Watershed (“**Methodology**”) to identify which  
8 water rights in the Delta watershed face insufficient supplies to support diversion.”

9 18. On July 27, 2021, staff held a workshop on the Regulations. At the hearing staff reviewed  
10 the Methodology, and indicated that the Methodology had been updated on June 15, 2021 and  
11 June 23, 2021. There was no opportunity at this “workshop” for testimony or cross-examination.

12 19. On August 3, 2021 the Water Board adopted the Regulation at a regular board meeting at  
13 which it did not hold a public hearing or take evidence or testimony, nor allow cross-  
14 examination.

15 20. On August 3, 2021 the Water Board adopted Resolution 2021-0028 (Attached as  
16 **EXHIBIT C**) To Adopt an Emergency Curtailment and Reporting Regulation for the  
17 Sacramento-San Joaquin Delta (Delta) Watershed (“**Regulation**”).

18 21. The Office of Administrative Law (OAL) approved the Regulation on August 19, 2021.

19 22. The Regulation as approved by OAL, along with the then current Methodology, is  
20 attached hereto as **EXHIBIT D**.

21 23. Section 876.1(h) of the Regulation states: “All curtailment orders issued under this  
22 section shall be subject to reconsideration under article 2 (commencing with section 1122) of  
23 chapter 4 of part 1 of division 2 of the California Water Code”.

#### 24 **THE AUGUST 20, 2021 CURTAILMENT ORDERS**

25 24. On August 20, 2021, the Deputy Director, acting pursuant to the Regulation, adopted  
26 Orders Imposing Water Right Curtailment and Reporting Requirement in the Sacramento-San  
27 Joaquin Delta Watershed (“**Delta**”) (“**2021 Curtailment**” or “**Curtailment Orders**”). The  
28 Curtailment Orders send to Petitioners, copies of which are attached hereto as **EXHIBITS E-1,**

1 E-2 and E-3, directed the following water right holders to immediately cease diversion:

- 2 ○ all post-1914 appropriative water rights in the Delta watershed (including the
- 3 Sacramento River and San Joaquin River watersheds and the Legal Delta);
- 4 ○ all pre-1914 appropriative water right claims in the San Joaquin River watershed;
- 5 ○ all pre-1914 appropriative water right claims in the Sacramento River watershed and
- 6 in the Legal Delta with a priority date of 1883 or later; and
- 7 ○ Some pre-1914 appropriative water right claims on specific tributaries to the
- 8 Sacramento River with a priority date earlier than 1883.

9 25. The Curtailment Orders reference a revised Methodology posted to the Water Board  
10 website which stated that this version of the methodology includes updates “to address water  
11 unavailability for more senior water right claimants, including pre-1914 appropriative and  
12 riparian claimants.” Methodology at p. 5.

13 26. The revised Methodology also appears to rely on a new Technical Appendix D entitled  
14 Assessment of Water Availability Issues within the legal Delta. (also dated August  
15 20, 2021); which can be found at:

16 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/drought\\_tools\\_meth](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_tools_methods/delta_method.html)  
17 [ods/delta\\_method.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_tools_methods/delta_method.html), and which describes the Water Board staff’s view of how water  
18 availability in the Delta channels should be determined for purposes of curtailments.

19 27. Neither Technical Appendix D, nor its contents or rationale, were shared with Petitioners,  
20 the Water Board members or other stakeholders in any public forum prior to the Deputy  
21 Director’s Curtailment Orders. Yet, the Deputy Director appears to rely on the rationale  
22 described in Technical Appendix D to exclude tens of thousands of acre-feet of water available  
23 in the Delta channels from the water availability Methodology.

24 28. The Curtailment Orders apply to BCID, PID and West Stan as appropriative water right  
25 holders in either the San Joaquin River watershed and/or the Legal Delta.

26 29. The Curtailment Orders require Petitioners to submit under penalty of perjury an online  
27 Compliance Certification Form, and warned Petitioners that “diversion or use in violation of  
28 curtailment, is subject to enforcement action, including the imposition of any applicable

1 penalties,” including fines of \$1,500 to per day of violation and \$2,500 for each acre-foot  
2 diverted or used.”

3 30. The Curtailment Orders do not contain a specific finding that there is or is not water  
4 available for diversion under Petitioners’ specific water rights at Petitioners’ specific points of  
5 diversion.

6 **STANDING, EXHAUSTION, AND RIPENESS**

7 31. Water Code section 1126 provides that all orders adopted by the Water Board are  
8 reviewable by the California courts. Code of Civil Procedure section 1094.5 (administrative  
9 mandamus) governs judicial proceedings under Water Code section 1126.

10 32. On August 31, 2021, each Petitioner filed a Petition for Reconsideration of the Water  
11 Board’s action to adopt the Regulation.

12 33. On August 31, 2021, each Petitioner filed a Petition for Reconsideration of the Deputy  
13 Director’s action issuing the 2021 Curtailment Orders.

14 34. The Water Board has discretion to order reconsideration in response to a Petition for  
15 Reconsideration. Thus, filing a Petition for Reconsideration does not guarantee Petitioners an  
16 opportunity to be heard. Water Code Section 1122 provides:

17 The board **may** order a reconsideration of all or part of a decision or order on the board’s  
18 own motion or on the filing of a petition of any interested person or entity. The petition  
19 shall be filed not later than 30 days from the date the board adopts a decision or order.  
20 The authority of the board to order a reconsideration on its own motion shall expire 30  
21 days after it has adopted a decision or order. The board shall order or deny  
22 reconsideration on a petition therefor not later than 90 days from the date the board  
23 adopts the decision or order. [Emphasis added]

24 35. The Curtailment Orders were a materially adverse Water Board decision against  
25 Petitioners. In order to comply with the potential exhaustion requirements of Water Code Section  
26 1126, should they apply here, Petitioners filed the Petitions for Reconsideration described above.  
27 The Petitions for Reconsideration were filed on the basis of comity. Petitioners neither  
28 acknowledge nor concede that the Water Board has authority to regulate pre-1914 water rights in

1 the manner exercised by the Curtailment Orders. Notwithstanding, Petitioners are not required to  
2 exhaust any administrative remedies prior to filing this action as to any pre-1914 appropriative  
3 right curtailed because:

4 a. The challenged action purports to be an action taken by the Water Board, for  
5 which no exhaustion is required (Wat. Code, § 1126(b)); or,

6 b. Assuming this Court finds the exhaustion of remedies requirement generally  
7 applies here, the requirement should be waived because pursuing an administrative remedy  
8 results in irreparable harm. (See *People ex rel. DuFauchard v. U.S. Fin. Mgmt., Inc.* (2009) 169  
9 Cal. App. 4th 1502, 1512; *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) Compliance  
10 with the requirement to exhaust administrative remedies requires Petitioners to file a petition for  
11 reconsideration with the Water Board. The Water Board has ninety (90) days before it decides  
12 whether to hear the matter, and then has no deadline to issue a decision. (Wat. Code, § 1122.)  
13 Waiting indefinitely for a decision causes Petitioners irreparable harm in either a lack of water  
14 for dying crops, or exposure to and compounding of significant monetary penalty liability.

15 36. Petitioners, and voters, taxpayers, residents and property owners of Petitioners, have a  
16 direct and beneficial interest in the Water Board's compliance with all applicable laws  
17 concerning protected property rights, and will be directly, substantially and adversely  
18 economically affected by the Curtailment Orders.

19 37. Petitioners have standing to bring this action as its protected property right in the form of  
20 a water right and the interest of its voters, taxpayers, residents and property owners will be  
21 adversely and significantly harmed by the Curtailment Orders.

22 38. Petitioners do not have a plain, speedy, or adequate remedy in the ordinary course of law.

23  
24 **FIRST CAUSE OF ACTION - CCP Section 1094.5**  
25 **LACK OF FAIR TRIAL, FAILURE TO PROCEED IN MANNER REQUIRED**  
26 **BY LAW, VIOLATION OF DUE PROCESS**

27 39. Petitioners incorporate all prior paragraphs herein.

28 40. The Curtailment Orders curtailed or otherwise unlawfully conditioned Petitioners' water  
rights.



1 41. Petitioners' appropriative water rights are property rights.

2 42. Property rights cannot be taken without due process of law.

3 43. Due process requires a fair hearing, including notice and opportunity to be heard prior to  
4 a curtailment or taking of property rights.

5 44. The Deputy Director's decision to issue the Curtailment Orders was made internally and  
6 Petitioners were not given notice and opportunity to be heard prior to the curtailment of their  
7 water rights.

8 45. In order to determine that no water was available for diverting at Petitioners' points of  
9 diversion under Petitioners' water rights, the Water Board is required by law to make specific  
10 legal and factual determinations to support each Curtailment Order.

11 46. Neither the Water Board nor Deputy Director have presented Petitioners with legal or  
12 factual determinations supporting the Curtailment Orders that are specific to Petitioners' rights.  
13 Petitioners were not provided with notice or the opportunity to be heard to refute test or explain  
14 the evidence relied upon by Defendants or to challenge any Water Board or staff determinations  
15 prior to the issuance of the Curtailment Orders. Nor have Petitioners been provided an  
16 opportunity to challenge the Curtailment Orders in a prompt post-deprivation hearing.

17 47. The lack of an evidentiary hearing is particularly egregious with respect to the treatment  
18 of water available in the Delta Channels and the Water Board staff's addition of Technical  
19 Appendix D to the Methodology several weeks after the public workshops on the Methodology  
20 and several weeks after the Water Board members deliberated on and voted to adopt the  
21 Emergency Regulations relying on the Methodology.

22 48. Further, because the Water Board never held an evidentiary hearing regarding the  
23 Methodology or the Emergency Regulations, there is no clearly identifiable "administrative  
24 record" for this Writ action, even though Petitioners are mandated to challenge the Water Board  
25 actions through this Writ process.

26 49. The Curtailment Orders and the referenced Status List direct Petitioners to cease  
27 diverting and warn Petitioners that any diversion in violation of the Curtailment Order is an  
28 unlawful diversion of water subject to enforcement and monetary penalties.

1 50. Failing to provide Petitioners with notice and a meaningful opportunity to be heard  
2 regarding the factual and legal basis for the Curtailment Orders concerning Petitioners' rights  
3 deprived Petitioners of due process and constitutes a failure to proceed in a manner required by  
4 law.

5 51. The Water Board and the Deputy Director abused their discretion by issuing the  
6 Curtailment Orders without proceeding in the manner required by law and without providing a  
7 fair hearing.

8 **SECOND CAUSE OF ACTION – CCP Section 1094.5 and/or CCP Section 1085**  
9 **BY PETITIONERS BANTA-CARBONA IRRIGATION DISTRICT**  
10 **AND PATTERSON IRRIGATION DISTRICT**  
11 **REGULATION AND ORDER EXCEED WATER BOARD JURISDICTION**

12 52. Petitioners incorporate all prior paragraphs herein.

13 53. Petitioners BCID and PID each hold pre-1914 appropriative water rights.

14 54. The Water Board has only limited jurisdiction over pre-1914 appropriative water rights.

15 55. Specifically, the legislature has declared all water, *except* water subject to riparian and  
16 valid pre-1914 appropriative water rights, water of the State and subject to the general authority  
17 of the Water Board (Water Code sections 1201-1202).

18 56. The Water Board adopted the Regulation pursuant to the authority granted in Water Code  
19 section 1058.5. Nothing in section 1058.5 extends the general authority of the Water Board to  
20 pre-1914 appropriative rights.

21 57. The Deputy Director and the Water Board exceeded their jurisdiction by adopting the  
22 Regulation and issuing the Curtailment Orders pursuant to the Regulation as to BCID and PID's  
23 pre-1914 appropriative rights.

24 **THIRD CAUSE OF ACTION - CCP Section 1094.5**  
25 **LACK OF FINDINGS TO SUPPORT ORDER AND LACK OF EVIDENCE TO**  
26 **SUPPORT FINDING OF WATER UNAVAILABILITY**

27 58. Petitioners incorporate all prior paragraphs herein.

28 59. Final administrative decisions are required to be supported by findings and substantial  
evidence in the record.

60. Neither the Water Board nor Deputy Director supported the Curtailment Orders with

1 legally sufficient findings or with evidence to support findings.

2 61. The Curtailment Orders curtailed Petitioners' water rights based on vague and non-  
3 specific findings of water unavailability on a watershed and subwatershed basis, relying on the  
4 flawed Methodology.

5 62. The Curtailment Orders lack specific findings by the Deputy Director that there is no  
6 water available to divert under Petitioners' priority of right at Petitioners' points of diversion.

7 63. The Methodology is fundamentally flawed because it ignores sources of water that are  
8 available to Petitioners and other prior rights on the same system, including but not limited to  
9 water available in the Delta channels (often called the Delta Pool), water available from spillage,  
10 drainage, effluent groundwater, groundwater pumped for water table control, and sewage and  
11 industrial wastes.

12 64. The Methodology is also fundamentally flawed because it does not consider the impact of  
13 the operation of the State Water Project and the Central Valley Project (collectively, Projects) on  
14 water availability, nor does it consider the legal obligation of the Projects to maintain water  
15 quality in the Delta.

16 65. Petitioners and others submitted comments to the Water Board which identified the flaws  
17 in the Methodology and provided information to aid the Water Board to correct the  
18 Methodology. The Water Board did not correct the Methodology prior to issuing the Curtailment  
19 Orders.

20 66. Neither the Methodology nor the Curtailment Orders contain evidence to support a  
21 finding that water is unavailable under Petitioners' priority of right at Petitioners points of  
22 diversion.

23 67. The Water Board and the Deputy Director abused their discretion by issuing Curtailment  
24 Orders that lack a sufficient water unavailability finding as to Petitioners' specific water rights,  
25 and by relying on a flawed Methodology that does not contain evidence to support a finding of  
26 water unavailability as to Petitioners.

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1 **FOURTH CAUSE OF ACTION – Govt. Code Section 11350**  
2 **DECLARATORY RELIEF FOR VIOLATION OF ADMINISTRATIVE PROCEDURE**  
3 **ACT - THE METHODOLOGY CONSTITUTES AN UNDERGROUND REGULATION**

4 68. Petitioners incorporate all prior paragraphs herein.

5 69. Government Code Section 11340.5(a) provides:

6 No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion,  
7 bulletin, manual, instruction, order, standard of general application, or other rule, which is a  
8 regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual,  
9 instruction, order, standard of general application, or other rule has been adopted as a  
10 regulation and filed with the Secretary of State pursuant to this chapter. If a rule constitutes a  
11 “regulation” within the meaning of the California Administrative Procedures Act (“APA”), it  
12 may not be adopted except in conformity with basis minimum procedural requirements.

13 70. Government Code Section 11342.600 defines a “Regulation” to mean every rule or  
14 standard adopted by a state agency to implement or make specific the law enforced or  
15 administered by it.

16 71. The Methodology is a Regulation in that it is a standard adopted by the State Board to  
17 implement water right administration for curtailment purposes during drought.

18 72. The Water Board did not comply with the APA in adopting or amending the  
19 Methodology.

20 73. The Emergency Regulation approves use of the Methodology or other data, but does not  
21 provide sufficient specificity for individual water right holders in specific locations to know  
22 whether or not their water right could be curtailed pursuant to the evolving Methodology, and  
23 under what conditions. Rather, the Regulation defers this specificity to staff level determinations  
24 behind closed doors, which could and actually have been influenced by adjustments to the  
25 Methodology occurring at the Water Board staff level after the Regulation was adopted.

26 74. Therefore, the Methodology constitutes an unlawful underground regulation and it cannot  
27 be used as the basis for the Curtailment Orders.

28 **FIFTH CAUSE OF ACTION - CCP Section 1094.5**  
**THE 2021 CURTAILMENT VIOLATED THE RULES OF PRIORITY**

75. Petitioners incorporated all prior paragraphs herein.

76. The Curtailment Orders violate California’s rule of priority – the cornerstone of  
California Water law. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4<sup>th</sup> 1224, 1243.

1 77. California's rule of priority requires that junior water right users cease all diversions  
2 before senior water rights are curtailed. *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 926.

3 78. In issuing the Curtailment Orders, the Deputy Director considered only broad categories  
4 of water user priorities, and determined water availability on a watershed wide or subwatershed  
5 wide basis using presumed inflow and assumed demands on a monthly time-step. Water Board  
6 staff did not determine actual demands for different categories of water users at the time the  
7 Curtailment Orders were issued. Staff's presumption that any diversion by juniors would injure  
8 senior water rights violated the rule of priority.

9 79. The Curtailment Orders violate California's rule of priority by (1) curtailing senior water  
10 rights before stopping unauthorized or unlawful diversions of water by junior water right holders  
11 and (2) by curtailing senior water rights during the same period that the Water Board relieved  
12 junior water users from complying with water quality objectives imposed by the Water Board.

13 80. Therefore, the Curtailment Orders are contrary to law.

14  
15 **SIXTH CAUSE OF ACTION**  
**DECLARATORY RELIEF**

16 81. Petitioners incorporate all prior paragraphs herein.

17 82. Based upon the foregoing allegations there presently exists a dispute and controversy by  
18 and between Petitioners and the Water Board regarding the legality of the Regulations, the  
19 Methodology and the Curtailment Orders.

20 83. A judicial determination, and a declaration as to the legality of the Water Board's actions  
21 is necessary and appropriate at this time.

22 **SEVENTH CAUSE OF ACTION**  
23 **PRELIMINARY AND PERMANENT INJUNCTION OR**  
**ALTERNATIVELY STAY OF REGULATION AND ORDER**

24 84. Petitioners incorporate all prior paragraphs herein.

25 85. Petitioners face significant penalties for noncompliance with Curtailment Orders.

26 86. The failure to irrigate a permanent crop, such as walnuts, almonds or apricots, will cause  
27 not only loss of that year's crop, but also death of the orchard. Fruit and nut orchards are 20 to 40  
28 year investments that are increasingly more expensive to install. Further, re-planting an orchard

1 requires not only the redevelopment cost of the trees, but also five to seven years of waiting for  
2 the non-bearing trees to reach full production before revenue can begin to offset annual operating  
3 costs, let alone capital, costs.

4 87. As a result of the Emergency Regulations, the flawed Methodology and the Curtailment  
5 Orders, Petitioners face the following choice: (1) disregard the demand to execute the certificate  
6 and continue diverting under its right and face enforcement proceedings and threat of extreme  
7 monetary penalties that could exceed the district reserves and ability to pay, and bankrupt its  
8 landowners, or (2) refrain from diverting under its water right, resulting in landowners within the  
9 Petitioners losing their crops, businesses, ability to service their business loans, and ability to  
10 make a living. The Petitioners face this untenable choice despite the fact water is available to  
11 divert under its water rights and it has been fully deprived of an opportunity to challenge the  
12 Water Board staff's decision and/or review, confront or test the evidence relied upon by the  
13 Deputy Director to impose the Curtailment Orders.

14 88. Petitioners will be severely and permanently harmed if they are forced to comply with the  
15 Curtailment Orders.

16 89. Conversely, there was no evidence before the Water Board or the Deputy Director that  
17 the continued diversion of water by Petitioners, pursuant to Petitioners' water rights, would  
18 injure another legal user of water or the public trust, and neither the Water Board nor the  
19 Director made any such findings to support the Curtailment Orders.

20 90. Petitioners request a stay the Curtailment Orders during the pendency of this case.

21 91. Petitioners further request that this Court issue a preliminary and then permanent  
22 injunction setting aside the Regulation and the Curtailment Orders.

23 **PRAYER FOR RELIEF**

24 1. Petitioners need a judicial resolution of the issues presented to this court so that they can  
25 continue to exercise their water rights without continued threat of regulatory enforcement and  
26 substantial monetary penalties.

27 2. Petitioners respectfully petition this Court for a stay of the Regulation and Curtailment  
28 Orders, or alternatively, a preliminary and permanent injunction.

- 1 3. Petitioners further request a Writ of Mandate declaring:
- 2 a. The Regulation and Curtailment Orders exceed the Water Board's jurisdiction.
- 3 b. The Curtailment Orders were issued in a manner that deprived Petitioners of a fair
- 4 hearing and violated their due process rights.
- 5 c. The Methodology is flawed and there is no evidence to support a finding of water
- 6 unavailability for Petitioners' water rights.
- 7 d. The Regulation and Curtailment Orders improperly rely on a Methodology that is
- 8 an unlawful underground regulation.
- 9 e. The Regulation and Curtailment Orders violate the Rule of Priority.
- 10 f. The Water Board and Director abused their discretion in adopting the Regulation
- 11 and issuing the Curtailment Orders.
- 12 g. The Water Board and Deputy Director are enjoined from enforcing the
- 13 Curtailment Orders as to Petitioners.
- 14 h. The Water Board and Deputy Director are enjoined from issuing any further
- 15 curtailment orders to Petitioners pursuant to the Regulation.
- 16 4. Petitioners further request an award of fees and costs as allowed by law or in the Court's
- 17 discretion, and such other relief as the Court deems just and proper.

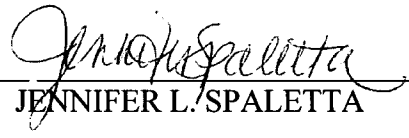
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19 Dated: September 1, 2021

Respectfully submitted,  
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