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SAN JOAQUIN TRIBUTARIES AUTHORITY

*Exempt from filing fee per Gov. Code § 6103
Public Agency Exception*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF FRESNO**

13 SAN JOAQUIN TRIBUTARIES AUTHORITY,
14
15 Petitioner/Plaintiff,
16 v.
17 CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD and DOES 1-10, inclusive,
18 Respondents/Defendants.

Case No.:

**SAN JOAQUIN TRIBUTARIES
AUTHORITY’S PETITION FOR WRIT
OF MANDATE AND VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

19 1. Petitioner San Joaquin Tributaries Authority (“SJTA”) respectfully petitions this
20 Court for a writ of mandate pursuant to Code of Civil Procedure section 1094.5 and 1085, directing
21 the Respondent State Water Resources Control Board (“State Water Board”) to vacate and set
22 aside its adoption of Resolution No. 2021-0028 and the Emergency Curtailment and Reporting
23 Regulation for the Sacramento-San Joaquin Delta Watershed (“Curtailment Regulation”), and
24 further seeks a judgment declaring the State Water Board’s adoption of the Curtailment
25 Regulation, and any orders issued pursuant to thereto, void and invalid.

26 **INTRODUCTION**

27 2. The SJTA challenges the State Water Board’s adoption of the Curtailment
28 Regulation, which authorizes the Deputy Director of the Division of Water Rights (“Deputy

1 Director”) to, among other things, issue orders requiring water right holders to immediately cease
2 diverting water (“Curtailment Orders”) for an entire year or until the Deputy Director suspends the
3 Curtailment Orders.

4 3. The State Water Board’s adoption of the Curtailment Regulation was unlawful for
5 multiple reasons:

6 a. The State Water Board does not have the authority to curtail pre-1914 water
7 rights;

8 b. The Curtailment Regulation violates the due process clauses of the
9 constitutions of the United States and California because it does not require the Board or its
10 Deputy Director to provide notice and/or a hearing before depriving water right holders of
11 their right to divert water and put it to beneficial use via Curtailment Order;

12 c. The Curtailment Regulation is an unlawful adjudicatory action conducted
13 without a hearing because it determines the validity of numerous unverified water right
14 claims in the legal Delta, it determines the relative priority of water rights across multiple
15 subwatersheds within the Sacramento-San-Joaquin Delta watershed, and it unlawfully takes
16 property rights without due process or just compensation;

17 d. The Curtailment Regulation violates the rules of water right priority by
18 excepting certain beneficial uses by junior water right holders from curtailment.

19 4. Unless invalidated and/or enjoined, the Curtailment Regulation will unlawfully
20 injure the water rights and impair the operations of the SJTA member agencies.

21 5. The SJTA needs judicial resolution of the issues presented to this Court so its
22 member agencies may continue to exercise their water rights without continued threat of regulatory
23 enforcement and substantial penalties.

24 **PARTIES**

25 **PETITIONERS**

26 6. The SJTA is a California Joint Powers Authority, duly organized and existing in
27 accordance with the provisions of Sections 6500 et seq. of the California Government Code. The
28 Joint Powers Agreement provides the SJTA the authority to sue on behalf of its member agencies,

1 consistent with Government Code section 6508.

2 7. The SJTA is comprised of the Modesto Irrigation District (“MID”), Oakdale
3 Irrigation District (“OID”), South San Joaquin Irrigation District (“SSJID”), Turlock Irrigation
4 District (“TID”), and the City and County of San Francisco, acting by and through the
5 San Francisco Public Utilities Commission (“SFPUC”).

6 8. MID is, and at all times herein mentioned was, a California irrigation district
7 organized and operating pursuant to Division 11, commencing with section 20500, of the
8 California Water Code. MID holds pre-1914 and senior post-1914 water rights to divert water
9 from the Tuolumne River in trust for its constituents.

10 9. OID is, and at all times herein mentioned was, a California irrigation district
11 organized and operating pursuant to Division 11, commencing with section 20500, of the
12 California Water Code. OID holds pre-1914 and senior post-1914 water rights to divert water from
13 the Stanislaus River in trust for its constituents.

14 10. SSJID is, and at all times herein mentioned was, a California irrigation district
15 organized and operating pursuant to Division 11, commencing with section 20500, of the
16 California Water Code. SSJID holds pre-1914 and senior post-1914 water rights to divert water
17 from the Stanislaus River in trust for its constituents.

18 11. TID is, and at all times herein mentioned was, a California irrigation district
19 organized and operating pursuant to Division 11, commencing with section 20500, of the
20 California Water Code. TID holds pre-1914 and senior post-1914 water rights to divert water from
21 the Tuolumne River in trust for its constituents.

22 12. San Francisco is a municipal corporation and charter city under the Constitution of
23 the State of California. The SFPUC is the department of San Francisco with jurisdiction over San
24 Francisco’s water, wastewater, and energy facilities. The SFPUC manages the Hetch Hetchy
25 Regional Water System (“RWS”), which is comprised of numerous facilities that provide water
26 directly from the Tuolumne River to 2.7 million people throughout the Bay Area.

27 13. The SJTA member agencies hold pre-1914 and senior post-1914 water rights on the
28 Stanislaus and Tuolumne Rivers.

1 14. The SJTA member agencies hold the water rights in trust to serve their respective
2 landowner constituents who have no other recourse to challenge the Curtailment Regulation.

3 **RESPONDENTS**

4 15. Respondent/Defendant State Water Board is a public agency of the State of
5 California, duly created by the California Legislature pursuant to the provisions of Article 3,
6 Chapter 2, Division 1 (Sections 74, et seq.) of the Water Code and consists of five members
7 appointed by the Governor of the State of California.

8 16. Petitioner is not aware of the true names and capacities of the respondents sued as
9 Does 1 through 10, inclusive, and therefore sue these respondents by such fictitious names. Each of
10 these fictitiously named respondents is responsible in some manner for the activities alleged in this
11 Petition. Petitioners will amend this Petition to add the true names of the fictitiously named
12 respondents once they are discovered.

13 **JURISDICTION AND VENUE**

14 17. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code
15 of Civil Procedure sections 1085, 1094.5, and 1060.

16 18. Venue properly lies in Fresno County under the Code of Civil Procedure section
17 401, which provides that an action or proceeding may be commenced in any county of the State in
18 which the Attorney General has an office whenever venue would be proper in Sacramento County.
19 Because venue would be proper in Sacramento County due to the State Water Board's residence in
20 that county (Code Civ. Proc., § 395; Wat. Code, § 181), and because the Attorney General has an
21 office in Fresno County, venue properly lies in Fresno County pursuant to Code of Civil Procedure
22 section 401.

23 **STANDING**

24 19. The SJTA has standing because it has the authority to represent and sue on behalf of
25 its members and the water rights held by its member agencies are subject to the Curtailment
26 Regulation.

27 20. The Curtailment Regulation unlawfully provides the Deputy Director which the
28 authority to issue Curtailment Orders. The Deputy Director issued Curtailment Orders to SJTA

1 members on August 20, 2021, which directed these members to immediately stop diverting water.

2 21. In addition, the SJTA and its members have standing because the SJTA members
3 hold water rights in trust for their constituent users and rights of the constituents are bound up with
4 the duties of the SJTA members agencies under the Water Code. (*Central Delta Water Agency v.*
5 *State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621.)

6 22. The Curtailment Regulation is a direct and proximate cause of injuries to the SJTA,
7 its member agencies, and their respective end users or constituents. The Court may redress these
8 injuries by directing the State Water Board to set aside its adoption of Resolution 2021-0028 and
9 the Curtailment Regulation and by declaring the Curtailment Regulation and Curtailment Orders
10 issued pursuant thereto to be unlawful and beyond the jurisdiction of the State Water Board.

11 23. The SJTA also has public interest standing as an agency whose members are
12 interested in ensuring the State Water Board acts within its jurisdiction and does not adopt
13 regulations which are outside its authority. (*Citizens for Amending Proposition L v. City of*
14 *Pomona* (2018) 28 Cal.App.5th 1159.)

15 24. Neither Petitioner, its members, nor their constituents have a plain, speedy or
16 adequate remedy in the ordinary course of law.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 25. Petitioners have exhausted all administrative remedies.

19 26. The adoption of the Curtailment Regulation is a final action of the State Water
20 Board. A final action of the State Water Board is immediately reviewable by this Court. (Water
21 Code, § 1126(b).)

22 **LEGAL STANDARD**

23 27. When reviewing an administrative action that is legislative in nature, a court “must
24 proceed in ordinary mandamus” under Code of Civil Procedure Section 1085. (*Patterson v.*
25 *Central Coast Regional Com.* (1976) 58 Cal.App.3^d 833, 840.) A trial court “reviews an
26 administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the
27 agency’s action was [1] arbitrary, capricious, or entirely lacking in evidentiary support,
28 [2] contrary to established public policy, [3] unlawful, [4] procedurally unfair, or [5] whether the

1 agency failed to follow the procedure and give the notices the law requires.” (*Vallejo Police*
2 *Officers Assn. v. City of Vallejo* (2017) 15 Cal.App.5th 601, 611; *See California Water Impact*
3 *Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1483; *Am. Canyon Fire*
4 *Prot. Dist. v. County of Napa* (1983) 141 Cal.App.3d 100, 106; *Lewin v. St. Joseph Hospital*
5 (1978) 82 Cal.App.3d 368, 386.) A court “exercises independent judgment in determining whether
6 the agency action was consistent with applicable law.” (*Neighbors in Support of Appropriate Land*
7 *Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1004 [internal quotations and citations
8 omitted].)

9 28. When the State Water Board allocates or adjudicates water rights, it performs an
10 adjudicatory function. (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d
11 82, 113.) When reviewing an administrative action that is adjudicatory in nature, “the court must
12 proceed under Code of Civil Procedure section 1094.5 . . .” (*Patterson, supra*, 58 Cal.App.3d at
13 840.) “The inquiry in such a case shall extend to the questions whether the [agency] has proceeded
14 without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any
15 prejudicial abuse of discretion.” (Code Civ. Proc., § 1094.5[b].) “Abuse of discretion is
16 established if the [agency] has not proceeded in the manner required by law, the order or decision
17 is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ.
18 Proc., § 1094.5[b].) If an agency’s adjudicatory decision “substantially affects a fundamental
19 vested right, [then] the trial court must exercise its independent judgment on the evidence and find
20 an abuse of discretion if the findings are not support by the weight of the evidence.” (*Patterson,*
21 *supra*, 58 Cal.App.3d at 840, citing Code Civ. Proc. § 1094.5[c].) Water rights are fundamental
22 and vested property rights. (*Fort Mojave Indian Tribe v. Department of Health Services* (1995)
23 38 Cal.App.4th 1574, 1591; *See Arizona v. California* (1963) 373 U.S. 546, 555 [under the law of
24 prior appropriation, “the one who first appropriates water and puts it to beneficial use thereby
25 acquires a vested right to continue to divert and use that quantity of water against all claimants
26 junior to him [or her] in point of time”].)

27 29. Where an agency “in two capacities is simultaneously disposing of two legally
28 required functions with but one decision, review of that determination must be by the more

1 stringent standard.” (*Mountain Defense League v. Board of Supervisors* (1977) 65 Cal.App.3d 723,
2 729.) Where uncertainty exists, the “prudent course” is to treat the act as adjudicative and apply the
3 stricter standard. (*L&M Prof'l Consultants v. Ferreira* (1983) 146 Cal.App.3d 1038, 1054.)

4 30. In adopting Resolution 2021-0028, the Curtailment Regulation, and Curtailment
5 Orders, the State Water Board adjudicated the water rights of the SJTA member agencies and all
6 water right holders in the Delta watershed. Therefore, the standard for adjudication of a
7 fundamental vested right must apply and the court must exercise its independent judgment on the
8 evidence and find an abuse of discretion if the findings are not support by the weight of the
9 evidence.

10 **FACTUAL AND LEGAL ALLEGATIONS**

11 **Duties and Jurisdiction of the State Water Board**

12 31. The State Water Board is a state agency responsible for the orderly administration
13 of water resources and permitting of post-1914 appropriative water rights. (Water Code, § 174.)

14 32. As a state agency, the State Water Board’s deliberations and determinations are
15 subject to the requirements of the Bagley-Keene Act (Govt. Code, § 11120) and Water Code
16 section 183.

17 33. The State Water Board has exclusive jurisdiction to issue post-1914 appropriative
18 permits and licenses. (Water Code, §§1201-1202.)

19 34. The State Water Board does not have jurisdiction to issue permits for riparian or
20 pre-1914 appropriative water rights.

21 35. Only the courts have jurisdiction over disputes between and among pre-1914 and
22 riparian water right holders.

23 36. The State Water Board does not have the authority or jurisdiction to administer,
24 oversee, or regulate riparian and pre-1914 water rights or the diversion of water pursuant thereto.

25 **State Water Board Granted a Temporary Urgency Change Petition to Junior Water Right** 26 **Holders in June 2021**

27 37. The Department of Water Resources (“DWR”) operates the State Water Project
28 (“SWP”) and the United States Bureau of Reclamation (“USBR”) operates the Central Valley

1 Project (“CVP”); together the SWP and CVP are referred to as the “Projects.” The Projects are
2 junior water right holders that built infrastructure and applied to the State Water Board for post-
3 1914 water rights. In order to build the infrastructure and receive the required water right permits
4 from the State Water Board, the Projects acknowledged their junior water right holder status and
5 agreed the operation of the Projects would not adversely impact the senior water right holders or
6 fish and wildlife species.

7 38. After adopting the 1995 Water Quality Control Plan for the Sacramento-
8 San Joaquin Bay Delta Estuary, the State Water Board held a water right hearing and adopted State
9 Water Board Decision 1641 (D-1641), which assigned DWR and USBR full responsibility for
10 releasing flows to meet water quality objectives designed to protect fish and wildlife and
11 agricultural beneficial uses in the Delta. Through D-1641, the State Water Board conditioned the
12 water rights of DWR and USBR on meeting flow requirements. Thus, DWR and USBR cannot
13 divert water for the Projects unless and until all D-1641 requirements are satisfied and no other
14 water right holder has any obligation to release or bypass to meet D-1641 requirements.

15 39. On May 17, 2021, DWR and USBR submitted a temporary urgency change petition
16 (“TUCP”) to the State Water Board seeking temporary relief from some of their D-1641 flow
17 requirements.

18 40. On June 1, 2021, the State Water Board issued an “Order Conditionally Approving
19 a Petition for Temporary Urgency Changes to License and Permit Terms and Conditions Requiring
20 Compliance with Delta Water Quality Objectives in Response to Drought Conditions” which
21 approved the projects TUCP and allowed the Projects relief from releasing or bypassing flows to
22 meet water quality objectives and demands in the Delta. (A true and correct copy of the Order is
23 attached hereto as Exhibit (“Ex.”) 1.)

24 **The Governor Issued a Drought Proclamation and the State Water Board Sent Notices of**
25 **Water Unavailability to Water Right Holders Based on a Deficient Methodology**

26 41. On May 10, 2021, the Governor issued a Proclamation of a State of Emergency for
27 41 counties, including those counties where SJTA member agencies divert water and operate
28 several dams and reservoirs. (A true and correct copy is attached hereto as Ex. 2.)

1 42. On June 15, 2021, the State Water Board sent Notices of Water Unavailability to all
2 4,300 post-1914 appropriative water right holders in the Sacramento-San Joaquin Delta (“Delta”)
3 watershed informing those right holders that based upon estimates of water supply and demand
4 included in a Water Unavailability Methodology for the Delta Watershed developed by State
5 Water Board staff, the State Water Board determined there was not sufficient water supply to
6 support their diversions. (A true and correct copy is attached hereto as Ex. 3.)

7 43. On June 15, 2021, the State Water Board also warned approximately 2,300 water
8 users with pre-1914 water rights that dry conditions could impact their ability to divert water. (A
9 true and correct copy of the June 15, 2021 Notices of Water Unavailability are attached hereto as
10 Ex. 4.) However, at that time, the water unavailability Methodology expressly did not analyze or
11 address any pre-1914 appropriative rights or riparian rights.

12 **The State Water Board’s Development of Methodology**

13 44. The State Water Board developed the water unavailability Methodology based on
14 the previous 2014-2015 drought water unavailability estimates. The State Water Board determined
15 this approach was deficient in State Water Resources Control Board Order WR 2016-0015. (A
16 true and correct copy of Order WR 2016-0015 is attached hereto as Ex. 5.)

17 45. On May 12, 2021, the State Water Board released its first draft of the water
18 unavailability Methodology for a 14-day review and comment period (“May 12 Methodology”).
19 (A true and correct copy of the May 12 draft is attached hereto as Ex. 6.) The SJTA provided
20 comment noting many of the deficiencies in the May 12 Methodology and informing the State
21 Water Board that the May 12 Methodology did not provide a sufficient basis for curtailment. (A
22 true and correct copy of the SJTA’s comments is attached hereto as Ex. 7.)

23 46. On May 21, 2021, the State Water Board presented the May 12 Methodology at a
24 public workshop. During the workshop, stakeholders were allowed three (3) minutes to comment
25 on the May 12 Methodology.

26 47. The SJTA provided comment, as did other stakeholders, noting the May 12
27 Methodology included significant deficiencies and many legal determinations that were made by
28 the State Water Board without providing stakeholders sufficient due process.

1 48. On June 15, 2021, and again on July 23, 2021, the State Water Board issued revised
2 versions of the Methodology. (True and correct copies of which are attached hereto as Exs. 3 and
3 8 respectively.) The version of the Methodology released on July 23, 2021 (hereinafter referred to
4 as “Methodology”), was the first version to purportedly address pre-1914 appropriative water
5 rights. However, none of the revisions in the July 23rd version addressed the foundational
6 deficiencies identified in several stakeholder comments, including comments from the SJTA.
7 Instead, the State Water Board’s response to comments regarding foundational deficiencies was
8 that it did not have the time or resources to address them.

9 49. The State Water Board and staff have repeatedly acknowledged the Methodology
10 was not based on data sufficient to support curtailments.

11 50. Despite the acknowledgment of deficient data, the State Water Board asserted the
12 Methodology could be used because it represents the “best available data.” However, best
13 available data is not the threshold or standard for determining water right priorities or curtailing
14 water rights.

15 51. At no time during the development of the Methodology did the State Water Board
16 provide stakeholders with the ability to test the Methodology by challenging State Water Board
17 staff who developed it, by presenting evidence or experts of their own, or by otherwise testing the
18 Methodology and its assumptions in a hearing or other forum that would ensure protection of due
19 process rights.

20 52. The July 23, 2021 version of the Methodology was incorporated into the
21 Curtailment Regulation by reference. (Cal. Code of Regs, § 876.1(d)(7).)

22 53. The State Board revised the July 23, 2021 version of the Methodology on
23 August 20, 2021. (A true and correct copy of the August 20 version is attached hereto as Ex. 9.)

24 **Methodology’s Inadequate and Improper Analysis of Supply**

25 54. Prior to adopting the Curtailment Regulation or issuing the curtailment orders, the
26 State Water Board failed to hold a hearing on the issue of water demand or the potential need for
27 curtailment.

28 55. The Methodology’s analysis of supply is improper and inadequate.

1 56. The Methodology does not properly account for return flows in its determination of
2 supply.

3 57. The Methodology does not properly account for accretions in its determination of
4 supply.

5 58. The Methodology excludes natural flows that contribute water supply to the Delta
6 watershed because the State Water Board staff determined the flows were not significant or
7 minimal. This exclusion decreases supply and unlawfully increases the likelihood and extent of
8 curtailment.

9 59. The Methodology does not use actual stream gauge data or other real time supply
10 data. Instead, the Methodology relies on DWR's California Cooperative Snow Surveys
11 Bulletin 120 Water Supply Forecast ("B-120") which contains monthly full natural flow forecasts.
12 The B-120 tool was found to be highly inaccurate in forecasting supply for the beginning months
13 of 2021.

14 60. The Methodology uses a different tool to estimate supply in smaller compared to
15 larger stream systems. (Ex. 8, pp. 19-20.)

16 **Methodology's Inadequate and Improper Analysis of Demand**

17 61. Prior to adopting the Curtailment Regulation or issuing the curtailment orders, the
18 State Water Board failed to hold a hearing on the issue of water demand or the potential need for
19 curtailment.

20 62. The Methodology's analysis of demand is improper and inadequate.

21 63. The Methodology relies on demand data from 2018. This data is several years old
22 and does not represent the demand in 2021. The reported 2018 demand fails to consider the
23 significantly dry hydrology and resulting conservation efforts of most water right holders in 2021.

24 64. The Methodology relies on monthly data from 2018; demand during 2018 was
25 reported on a monthly basis, after the year was over. (Ex. 8, p. 35.)

26 65. The Methodology relies on demand that was reported in 2018. In 2018, there was
27 significant non-compliance with measurement requirements. (Ex. 8, p. 35.) This means that
28 demand reported in 2018 was largely based on estimates of water used and not supported or

1 validated by actual measurement, readings, or other verified data.

2 66. The Methodology did not review 2018 reported demand for accuracy. (Ex. 8,
3 p. 42.)

4 67. The Methodology included demand from non-consumptive uses. The State Water
5 Board staff conducted an initial quality control process to remove non-consumptive demand but
6 was not able to review and remove all non-consumptive uses from the demand estimates. (Ex. 8,
7 p. 38.) The inclusion of non-consumptive uses increases or inflates water demand and results in
8 unlawful and unsupported curtailment.

9 68. The Methodology improperly apportions Delta demands. The Methodology makes
10 the legal determination that diverters with points of diversion in the Legal Delta have access to
11 supplies from both the Sacramento and San Joaquin watersheds. Based on this determination or
12 assumption, the Methodology prorates the claimed senior demand within the Legal Delta to the
13 Sacramento and San Joaquin watersheds based on monthly proportion of supply, rather than
14 determining which points of diversion are connected to respective supplies.

15 69. The Methodology fails to properly apportion demand. For water rights or claims
16 with points of diversion in more than one subwatershed, the Methodology attributes demand to
17 each watershed by the number of points of diversion rather than the quantity of demand. For
18 example, if a water right or claim included three points of diversion in three separate
19 subwatersheds, the Methodology assumes the demand at each point of diversion is one-third of the
20 total demand. For large water rights with multiple points of diversion, this approach results in
21 skewed demand and the unlawful curtailment of valid water right holders.

22 70. The Methodology's demand estimate assumes all claims to divert water provided in
23 2018 Statements of Diversion and Use submitted to the State Water Board are valid. The State
24 Board did not verify these claims or otherwise provide a hearing or other mechanism to evaluate
25 whether the claims were supported or not. This assumption increases senior demand and results in
26 unlawful curtailment.

27 71. Claims to divert water recorded in Statements of Diversion and Use do not amount
28 to valid water rights. Statements of Diversion and Use specifically contain the following disclaimer

1 “A Statement shall not establish or constitute evidence of a water right.” (A true and correct copy
2 is attached hereto as Ex. 10.) Rather, Statements of Diversion and Use simply reflect the filing
3 party’s claim to lawfully divert water. The Statement of Diversion and Use does not require the
4 disclosure or attachment of any information that supports or otherwise verifies the rights claimed
5 therein.

6 72. Accordingly, any estimate of water demand based upon claims set forth in
7 Statements of Diversion and Use, without verification of the claims therein, would overestimate
8 demand and cannot serve as a proper basis upon which legal water users are curtailed from
9 diverting water pursuant to verified water rights.

10 73. Many Statements of Diversion and Use submitted by claimants in 2018 claim both
11 pre-1914 and riparian rights. The Methodology treats any such Statement of Diversion and Use as
12 riparian demand. This approach and assumption underlying the approach is not supported by
13 findings in the State Board’s summary report or appendices supporting the Methodology. The
14 August 20, 2021 Methodology summary report recognizes that this allows claimants that claim
15 both riparian and pre-1914 water rights to continue diverting under the more senior riparian right
16 for longer than they would otherwise be allowed to divert. This treatment of assuming diversion
17 may continue under the most senior of rights results in the in unlawful curtailment of verified
18 senior appropriative water right holders.

19 74. The Methodology assumes that all riparian rights are senior to appropriative rights.
20 Although riparian rights holders are generally the most senior water right holders in the system,
21 there are exceptions to this general rule. For example, riparian rights do not attach to lands held by
22 the government until such land has been transferred to private ownership; in these cases, the date
23 of priority for the riparian right is the date of transfer to private ownership. The Methodology
24 failed to consider that riparian water right holders may be junior in priority to some pre-1914 water
25 right holders due to patent dates, resulting in unlawful curtailment.

26 75. Riparian water rights may also be prescribed by appropriative water users upstream.

27 76. The Methodology failed to consider that some riparian water rights have been
28 extinguished or limited by prescription, resulting in unlawful curtailment.

1 77. For these reasons, the Methodology did not properly allocate the demand from
2 claimed senior water users in the Delta and results in unlawful curtailment of water right holders.

3 **Other Deficiencies of the Methodology**

4 78. The Methodology does not address or otherwise curtail riparian water right holders.
5 The Methodology “can be used to evaluated general quantities of water that may be unavailable for
6 riparian claimants and when riparian claimants should implement measures to address those
7 shortages.” (Ex. 8, p. 52.) However, the Methodology “does not yet fully evaluate how that
8 sharing should occur.” Therefore, the Methodology does not provide guidance, method, or
9 information upon which the State Water Board could lawfully curtail riparian water right holders.

10 79. The Methodology fails to include a date, metric or otherwise explain how it will
11 suspend curtailment based on changes to hydrology or supply.

12 **The State Board’s Unlawful Process for Releasing and Adopting the Curtailment Regulation**

13 80. The State Water Board staff released an initial draft of the Curtailment Regulation
14 for public review and comment at approximately 5:22 pm on Friday July 23, 2021. In the same
15 document, the State Water Board notified all pre-1914 water rights holders in the San Joaquin
16 River watershed, including all SJTA member agencies, that it had determined water was
17 unavailable for diversion under their respective priorities of right. The State Water Board’s
18 determination was based upon a revised Methodology that was not made public until that day and
19 which addressed pre-1914 water rights for the first time.

20 81. On Tuesday, July 27, 2021, the State Water Board held a public workshop on the
21 proposed Curtailment Regulation where it provided stakeholders just three (3) minutes to provide
22 comments and suggested revisions.

23 82. The SJTA appeared at that workshop and, during the limited time afforded to it,
24 commented that the proposed Curtailment Regulation was in excess of the State Water Board’s
25 authority, violated the due process of the SJTA member agencies, and unlawfully authorized
26 Curtailment Orders base on a deficient and unlawful Methodology.

27 83. The State Water Board provided less than three business days for stakeholders to
28 provide written comments on the draft Curtailment Regulation, setting a deadline of Thursday,

1 July 29, 2021.

2 84. On July 29, 2021, the SJTA provided written comments, again objecting to the
3 Curtailment Regulation as exceeding State Water Board authority and violating the due process
4 rights of its members, identifying deficiencies in the Methodology, objecting to the public health
5 and safety exemption, and proposing a sunset date to end any Curtailment Orders prior to
6 anticipated hydrologic events in the fall and winter to avoid further depleting reservoir storage.

7 85. At approximately 7:15 pm on Friday, July 30, 2021, the State Water Board released
8 a revised draft Curtailment Regulation that included substantive changes from the draft released on
9 July 23, 2021.

10 86. The State Water Board did not provide an additional comment period on the July 30
11 revised draft.

12 87. On Tuesday, August 3, 2021, the State Water Board held a public meeting in which
13 it considered the adoption of the July 30 version of the Curtailment Regulation. The State Water
14 Board provided stakeholders and interested parties five (5) minutes to provide comments and
15 objections to the Curtailment Regulation. The SJTA attended the meeting and provided comments,
16 again objecting to the adoption of the Curtailment Regulation. After the comment period, the State
17 Water Board staff made several substantive revisions to the July 30 version of the Curtailment
18 Regulation. The State Water Board adopted the revised version of the Curtailment Regulation at
19 that meeting, without providing any further public comment or review of the changes made during
20 the August 3, 2021 meeting. (A true and correct copy of Curtailment Regulation is attached hereto
21 as Ex. 11.)

22 **The Adopted Curtailment Regulation is Unlawful**

23 88. The Curtailment Regulation authorizes the Deputy Director to issue Curtailment
24 Orders to water right holders when he determines there is not sufficient water available to support
25 the diversion under a diverter's priority of right. (Cal. Code of Regs, § 876.1)

26 89. The Curtailment Regulation allows the Deputy Director to rely on the Methodology
27 when making the determination of when water is no longer available for a specific diversion. (Cal.
28 Code of Regs., tit. 23, § 876.1(d).)

1 90. The Curtailment Regulation allows the Deputy Director to issue Curtailment Orders
2 that require the water right holder to immediately stop diverting water. Those who do not
3 immediately curtail diversion are considered to be in violation of the Curtailment Order and subject
4 to administrative penalties.

5 91. After receiving a Curtailment Order and a determination that water is no longer
6 available for diversion, a water right holder has the option to submit a petition for reconsideration.
7 However, the Curtailment Order remains in place while any such petition is pending and water
8 right holders who file a petition for reconsideration and continue to divert water are exposed to the
9 accrual of fines during the period the petition for reconsideration is pending. (Cal. Code of Regs.,
10 tit. 23, § 876.1(h).)

11 92. The Curtailment Regulation does not apply to non-consumptive uses, defined as
12 hydropower diversions, diversions to instream uses for fish and wildlife, other diversions that do
13 not decrease downstream flows, and diversions in the Legal Delta that irrigate lands entirely below
14 sea level. (Cal. Code of Regs., tit. 23, § 878.)

15 93. The Curtailment Regulation also exempts the diversion of water for minimum
16 health and safety purposes of no more than 55 gallons per person per day, regardless of the water
17 right priority upon which the diversion is based. To the extent minimum health and safety requires
18 more than 55 gallon per person per day, the water right holder must submit a petition for more
19 diversion for Deputy Director approval. (Cal. Code of Regs., tit. 23, § 878.1(b)(2).) While the
20 petition requesting more than 55 gallons per person per day is being prepared and/or pending, the
21 diverter may continue to divert water exempted from curtailment. (Cal. Code of Regs., tit. 23,
22 § 878.1(e).)

23 94. The Curtailment Regulation authorizes the Deputy Director to issue Curtailment
24 Orders that require water right holders in receipt of a Curtailment Order to submit a certification
25 under penalty of perjury that (a) they will regularly review the State Water Board webpage to
26 understand when curtailments are required or suspended; and (b) they will cease diversions when
27 ordered. (Cal. Code of Regs., tit. 23, § 897(d)(1).)

28 95. The Curtailment Regulation authorizes the Deputy Director to require water right

1 holders that divert more than 1,000 acre feet to report prior direct diversions or diversions to
2 storage and demand projections on a daily basis. In addition, in order to “inform curtailment
3 decisions” the Curtailment Regulation authorizes the Deputy Director to issue informational orders
4 requiring a water right holder to provide additional information, including (a) the basis of right;
5 (b) supporting documents or other evidence; (c) property patent dates; (d) date of initial
6 appropriation; (e) transfer data; and (f) any other information relevant to forecasting demands and
7 supplies. (Cal. Cod of Regs, tit. 23, § 879(d)(2).)

8 96. The Curtailment Regulation does not include a termination date or a hydrologic
9 metric at which point Curtailment Orders will be suspended. Rather, the Curtailment Regulation
10 will not allow water right holders in receipt of a Curtailment Order to divert water until the
11 Curtailment Order is “temporarily suspended” by the Deputy Director, when he “determines that
12 such increased water availability warrants a suspension.” (Cal. Code of Regs., tit. 23, § 876.1(g).)

13 97. The State Water Board adopted the Curtailment Regulations via Resolution
14 2021-0028, which states the Curtailment Regulations will “remain in effect for one year after filing
15 with the Secretary of State.” (A true and correct copy is attached hereto as Ex. 12, p. 5.)

16 98. The Curtailment Regulation states that the diversion of water in violation of the
17 Curtailment Regulations constitutes an unreasonable use of water pursuant to Article X, Section 2
18 of the California Constitution and a trespass under Water Code section 1052. (Cal. Cod of Regs,
19 tit. 23, § 879.2.) All violations are subject to penalties of \$1,000 per day and \$2,500 per acre feet
20 during the period of violation. (Water Code, §§§ 1052, 1055, 1846.)

21 **Protection of Stored Water**

22 99. One of the stated objectives of the Curtailment Regulation is the protection of stored
23 water, specifically that of the Projects.

24 100. Stored water is the property of the party who diverted that water to storage and is
25 not available for riparian or appropriative diversion. (*El Dorado Irrigation District v. State Water*
26 *Resources Control Bd.* (2006) 142 Cal.App.4th 937, 962.)

27 101. However, the Projects’ right to divert water to storage is conditioned upon meeting
28 downstream water quality flows. This condition requires the Projects release stored water to meet

1 certain water quality requirements at specific compliance points in and around the Delta.

2 102. The Projects object to the diversion of stored water by in-Delta diverters prior to the
3 released stored water reaching its compliance point. The in-Delta diversions require the Projects to
4 release more water to meet the water quality objectives, which reduces reservoir storage.

5 103. The issue of whether the Projects are responsible for meeting water quality
6 requirements regardless of in-Delta diversions or whether in-Delta diversions amount to unlawful
7 diversion of previously stored water is a legal and factual question that has not yet been resolved.
8 However, the Curtailment Regulation makes the determination that any in-Delta diversion of
9 previously stored Project water is an unlawful diversion. This determination was made without
10 providing the opportunity for a hearing or other due process requirements that are necessary before
11 such a determination is made.

12 104. Further, the Methodology makes incorrect and unsupported assumptions regarding
13 the protection of stored water. After water quality releases reach the point of compliance, releases
14 are not protected from appropriative diversion unless specifically provided such protection through
15 Water Code 1707.

16 105. The CVP has the right to re-divert Sacramento River water at Jones Pumping Plant;
17 the CVP does not have a right to divert San Joaquin River water at Jones Pumping Plant when the
18 Delta is not in excess conditions.

19 106. The Methodology incorrectly categorizes certain releases of stored water as
20 protected, including the CVP releases from New Melones Reservoir on the Stanislaus River. The
21 Methodology does not include these releases as water that is available for diversion, but instead
22 protects these releases as stored water that will be rediverted. This results in unlawful curtailment
23 of water right holders downstream of water quality compliance points.

24 **Curtailment Regulations Unlawfully Authorize the Deputy Director to Act Outside the Scope**
25 **of Their Authority**

26 107. The Curtailment Regulation authorizes the Deputy Director to determine water right
27 priorities amongst water users, to determine whether water is available under a diverter's priority
28 of right, and to order water right holders to stop diverting water. These actions exceed the authority

1 of the Deputy Director.

2 **Finding of Emergency**

3 108. The State Board issued a finding of emergency with the Notice of Proposed
4 Emergency Rulemaking on July 30, 2021. (A true and correct copy is attached hereto as Ex. 13.)
5 The finding states that the emergency regulation is necessary to “enable the State Water Resources
6 Control Board (State Water Board or Board) to enforce the water right priority system with respect
7 to all water right holders and claimants in a timely manner and to protect critical water storage
8 needed for minimum health and safety, salinity control in the Delta, and some ecosystem
9 protection.”

10 109. The “evidence of emergency” section of the finding of emergency discloses that
11 California has been experiencing dry conditions and these conditions have been tracked and
12 disclosed to the State Water Board beginning in April of 2021. (Ex. 13, p. 6.)

13 110. The “need for the regulation” section of the finding of emergency discloses that the
14 existing system for curtailing water right holders “will not provide for timely and effective
15 implementation of the State’s water rights system.” (Ex. 13, p.7.) The finding of emergency goes
16 on to explain that the Curtailment Regulation will “allow for more effective and enforceable
17 curtailments during the drought emergency through Curtailment Orders that are based on a
18 specified methodology or comparable tool for determining when water is unavailable under water
19 right priorities – an issue of fact frequently contested in traditional enforcement proceedings to
20 present unauthorized diversions – and by making the requirement to cease diversions in response to
21 a Curtailment Order a regulatory requirement regardless of the curtailed user’s basis of right.”
22 (Ex. 13, p. 15.)

23 **Economic Impact Statement**

24 111. The State Water Board included a deficient economic impact statement with the
25 Notice of Proposed Emergency Rulemaking on July 30, 2021. (A true and correct copy is attached
26 hereto as Ex. 14.)

27 112. The economic impact statement correctly defines costs as those incurred by local
28 agencies to respond to any requirements in the Curtailment Regulation.

1 113. The economic impact statement identifies three main costs of compliance with the
2 Curtailment Regulation, including those due to: (a) completing and submitting certification forms;
3 (b) preparing ongoing diversion reporting on a monthly basis; and (c) applying for exceptions to
4 priority-based curtailments for minimum human health and safety needs.

5 114. The economic impact statement estimates that local agencies will experience
6 between \$25.4 to 35.8 million dollars in decreased revenue as a result of “additional curtailment of
7 rights held by state or local government entities needed to allow diversions for minimum health
8 and safety uses under more junior rights to continue.” The fiscal analysis estimates the costs to
9 replace that water at \$11.2 to \$13.8 million.

10 115. The economic impact statement concludes that the health and human safety
11 exemption included in the Curtailment Regulation decreases water available to agricultural water
12 agencies. This net decrease results from allowing water diversions to municipal and domestic
13 suppliers “that would otherwise have been curtailed” to continue, further curtailments will be
14 required from the agricultural sector.

15 **Deputy Director Issued 4,500 Curtailment Orders Based on Authority in Curtailment**
16 **Regulation**

17 116. The Deputy Director issued Curtailment Orders to 4,500 water right holders and
18 claimants on August 20, 2021. (A true and correct copy is attached hereto as Ex. 15.)

19 117. Each member of the SJTA received one or more Curtailment Orders dated
20 August 20, 2021.

21 118. Each Curtailment Order included a five-page cover letter and a five-page
22 curtailment order.

23 119. The cover letter stated the recipient was required to complete a Compliance
24 Certification Form by September 3, 2021.

25 120. The cover letter advised the recipient that he/she may submit additional information
26 to (1) correct the water right priority date for the water right or claim; or (2) inform the Board that
27 curtailment of the water right or claim is not appropriate “as demonstrated by verifiable
28 circumstances such as the right authorizes diversion from a stream system that has been

1 adjudicated and is disconnected” from the ability to “make water available to serve senior
2 downstream water rights and claims.” Such information should be provided within 14 days of
3 receiving the Curtailment Order. In response to such submittal, the Deputy Director will review
4 timely submitted information “as soon as practicable and inform the affected water right holder or
5 claimant of the determination or decision.”

6 121. The cover letter warned the recipient that a diversion of water that violates the
7 Curtailment Order may be subject to administrative fines of \$1,000 per day and \$2,500 per acre
8 foot of water diverted, cease and desist orders or prosecution in court.

9 122. The cover letter provided that the recipient may submit a petition for
10 reconsideration within 30 days to request that the State Board reconsider the Curtailment Order.

11 123. The Curtailment Order orders the recipient to immediately stop diverting water.

12 **CLAIMS FOR RELIEF**

13 **FIRST CAUSE OF ACTION**

14 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
15 **(Code of Civil Procedure § 1085, § 1094.5)**

16 **The Curtailment Regulation Violates the Rules of Water Right Priority**
17 **(Water Code § 10500) and Area of Origin Protections (Water Code § 11460)**

18 124. Petitioner hereby realleges and incorporates herein by reference the allegations
19 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
20 herein.

21 125. Water right priority is the central principle of California water law. (Water Code,
22 § 10500; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1243.)

23 126. Under the rules of water right priority, a senior appropriator is entitled to fulfill all
24 of its needs before a junior appropriator is entitled to any use of water.

25 127. The Curtailment Regulation violates the rules of priority by adopting a
26 Methodology that curtails senior water right holders before junior water right holders.

27 128. The Curtailment Regulation violates the rules of priority by creating certain
28 exemptions from curtailment, allowing for curtailments against senior water right holders while
junior water right holders are permitted to continuing diverting for exempted uses.

1 129. The Curtailment Regulation violates the rules of priority by adopting a
2 Methodology that curtails senior water right users before stopping the unauthorized or unlawful
3 diversions of water.

4 130. The Curtailment Regulation violates the rules of priority by allowing the Deputy
5 Director to curtail senior water right holders during the same period the State Water Board
6 provided relief to junior water right holders from meeting flow requirements water quality
7 objectives.

8 131. Water Code section 11460 prohibits the Projects from depriving either “directly or
9 indirectly of the prior right to all of the water reasonably required to adequately supply the
10 beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.”
11 Section 11460 has been interpreted to provide water right holders in the area of origin priority to
12 divert natural flow over and above the Projects ability to divert water for export out of the
13 watershed. (*Fresno v. California* (1963) 372 U.S. 627; *El Dorado Irrigation District v. State*
14 *Water Resources Control Bd.* (2006) 142, Cal.App.4th 937, 974.)

15 132. The Curtailment Regulation violates section 11460 by requiring senior water right
16 holders in the area of origin to curtail the diversion of natural flow while, at the same time,
17 providing relief to the Projects on their requirements to bypass or release water to meet D-1641
18 water quality objectives. The Projects water rights require the release of water to meet salinity and
19 beneficial use requirements in the Delta. Providing relief from this permit provision while also
20 curtailing area of origin seniors violates the protections of section 11460.

21 **SECOND CAUSE OF ACTION**

22 **Writ of Mandate – The State Water Board’s Adoption of the Curtailment Regulation was**
23 **Arbitrary, Capricious and/or Entirely Lacking in Evidentiary Support**
(Code of Civil Procedure § 1085)

24 133. Petitioner hereby realleges and incorporates herein by reference the allegations
25 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
26 herein.

27 134. The Curtailment Regulation incorporates by reference the Methodology for the
28 Delta Watershed. (Cal. Code of Regs., tit. 23, § 876.1.)

1 135. The Deputy Director is required to consider, among other things, the Methodology
2 when determining whether water is unavailable under a water right holder or claimant's priority of
3 right, and whether to order curtailment of water diversions under specific water rights.

4 136. The Methodology in the Curtailment Regulation includes numerous assumptions
5 and final decisions by the State Water Board that are arbitrary, capricious, and/or entirely lacking
6 in evidentiary support, including (1) the determination of relative priorities of water rights and
7 claims throughout the Delta watershed, including those held by SJTA member agencies, (2) the
8 validity of numerous unverified appropriative and riparian water right claims in the legal Delta,
9 and the priorities associated with those claims, (3) the stream and/or watershed connectivity
10 between certain points in the legal Delta and certain diversion points upstream thereof, including
11 the diversion points of the SJTA member agencies, (4) the validity and accuracy of the water
12 supply forecasts and demand projections, and (5) various other decisions necessary to determine
13 availability of water and priority amongst water right holders throughout the Delta watershed.

14 137. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
15 lacking in evidentiary support because the assumptions in the Methodology are not supported by
16 the evidence and are overly broad and based on general information about basin conditions, rather
17 than specific analysis and evidence related to current conditions, individual water users and/or
18 individual diversions.

19 138. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
20 lacking in evidentiary support because the assumptions in the Methodology regarding available
21 supply and demand are not supported by any evidence and are insufficient to support curtailment.

22 139. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
23 lacking in evidentiary support because the Methodology is based on unverified claims, rather than
24 verified rights to divert water.

25 140. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
26 lacking in evidentiary support because the Methodology fails to properly account for accretions
27 and return flows in estimating supply.

28 141. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely

1 lacking in evidentiary support because the Methodology assumes, without evidence, that all joint
2 water right claims to both pre-1914 appropriative rights and riparian rights are, in fact, riparian in
3 nature and senior to all other appropriative rights.

4 142. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
5 lacking in evidentiary support because the Methodology failed to provide evidence to support its
6 presumption that riparian water rights have not been prescribed by junior water right holders.

7 143. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
8 lacking in evidentiary support because the Methodology failed to consider whether riparian water
9 right holders are junior in priority to some pre-1914 water right holders.

10 144. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
11 lacking in evidentiary support because the Methodology's approach for allocating downstream
12 senior demand to upstream junior water users is not supported by evidence.

13 145. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
14 lacking in evidentiary support because the State Water Board did not consider impacts to
15 curtailment on replenishing storage and refilling reservoirs.

16 146. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
17 lacking in evidentiary support because the State Water Board did not consider impacts to
18 hydropower generation.

19 147. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
20 lacking in evidentiary support because the State Water Board did not consider impacts to fish and
21 wildlife.

22 148. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
23 lacking in evidentiary support because the Methodology is contrary to law and rules of water right
24 priority.

25 149. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
26 lacking in evidentiary support because the Curtailment Regulation allows the curtailment of water
27 rights for an entire year, long beyond the period of time for which the State Water Board can
28 accurately predict hydrology, storage, water supplies, and water demands.

1 150. The adoption of the Curtailment Regulation was arbitrary, capricious, and entirely
2 lacking in evidentiary support because it fails to include a date or other metric whereby regulated
3 parties are able to determine the criteria for when and under what circumstances curtailment will
4 end or otherwise will be suspended.

5 **THIRD CAUSE OF ACTION**

6 **Writ of Mandate – Adoption the Curtailment Regulations Was Not Supported by the**
7 **Findings, and the Findings Were Not Supported by the Evidence**
8 **(Code of Civil Procedure § 1094.5)**

9 151. Petitioners hereby realleges and incorporates herein by reference the allegations
10 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
11 herein.

12 152. The Curtailment Regulation incorporates by reference the July 23, 2021
13 Methodology for the Delta Watershed. (Cal. Code of Regs., tit. 23, § 876.1.)

14 153. The Deputy Director is required to consider, among other things, the Methodology
15 when determining whether water is unavailable under a water right holder or claimant’s priority of
16 right, and whether to order curtailment of water diversions under specific water rights.

17 154. The Methodology in the Curtailment Regulation includes numerous assumptions
18 that constitute final adjudicatory decisions by the State Water Board, including (1) the relative
19 priorities of water rights and claims throughout the Delta watershed, including those held by SJTA
20 member agencies, (2) the validity of numerous unverified appropriative and riparian water right
21 claims in the legal Delta, and the priorities associated with those claims, (3) the stream and/or
22 watershed connectivity between certain points in the legal Delta and certain diversion points
23 upstream thereof, including the diversion points of the SJTA member agencies, and (4) other
24 decisions necessary to determine priority amongst water right holders throughout the Delta
25 watershed.

26 155. The State Water Board abused its discretion in adopting the Curtailment Regulation
27 because did not make any explicit findings supporting the assumptions and adjudicatory decisions
28 embedded in the Methodology.

156. The State Water Board abused its discretion in adopting the Curtailment Regulation

1 because the implicit findings embedded in the assumptions and adjudicatory decisions within the
2 Methodology are not supported by the evidence and are overly broad and based on general
3 information about basin conditions, rather than specific analysis related to individual water users
4 and individual diversions.

5 157. The State Water Board abused its discretion in adopting the Curtailment Regulation
6 because the implicit findings in the Methodology regarding available supply and demand are not
7 supported by the evidence and are insufficient to support curtailment.

8 158. The State Water Board abused its discretion in adopting the Curtailment Regulation
9 because the Methodology is based on claims to hold water rights, rather than the right to divert
10 water.

11 159. The State Water Board abused its discretion in adopting the Curtailment Regulation
12 because the Methodology fails to properly account for accretions and return flows in estimating
13 supply.

14 160. The State Water Board abused its discretion in adopting the Curtailment Regulation
15 because the Methodology determines, without evidence, that all joint water right claims to
16 pre-1914 appropriative rights and riparian rights are riparian in nature and senior to all other
17 appropriative rights.

18 161. The State Water Board abused its discretion in adopting the Curtailment Regulation
19 because the Methodology failed to consider whether riparian water right holders have had their
20 water rights prescribed by junior water right holders.

21 162. The State Water Board abused its discretion in adopting the Curtailment Regulation
22 because the Methodology failed to consider whether riparian water right holders are junior in
23 priority to some pre-1914 water right holders.

24 163. The State Water Board abused its discretion in adopting the Curtailment Regulation
25 because the Methodology's approach for allocating downstream senior demand to upstream junior
26 water users is not supported by evidence.

27 164. The State Water Board abused its discretion in adopting the Curtailment Regulation
28 because it did not consider impacts to curtailment on replenishing storage and refilling reservoirs.

1 165. The State Water Board abused its discretion in adopting the Curtailment Regulation
2 because it did not consider impacts to hydropower generation.

3 166. The State Water Board abused its discretion in adopting the Curtailment Regulation
4 because it did not consider impacts to fish and wildlife.

5 167. The State Water Board abused its discretion in adopting the Curtailment Regulation
6 because the Methodology is contrary to law and rules of water right priority.

7 168. The State Water Board abused its discretion in adopting the Curtailment Regulation
8 because it allows the curtailment of water rights for an entire year, long beyond the period of time
9 for which the State Water Board can accurately predict hydrology, storage, water supplies, and
10 water demands.

11 169. The State Water Board abused its discretion in adopting the Curtailment Regulation
12 because it fails to include a date or other metric whereby regulated parties are able to determine the
13 criteria for when and under what circumstances curtailment will end or otherwise will be
14 suspended

15 **FOURTH CAUSE OF ACTION**

16 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
17 **(Code of Civil Procedure § 1085, § 1094.5)**

18 **The Curtailment Regulation Exceeds the State Water Board’s Authority**
19 **Regarding Pre-1914 Water Rights**

20 170. Petitioner hereby realleges and incorporates herein by reference the allegations
21 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
22 herein.

23 171. The State Water Board does not have authority to curtail pre-1914 water rights
24 based on purported unavailability of water.

25 172. The State Water Board’s authority over pre-1914 water rights is limited to
26 investigating and determining whether a diversion claimed pursuant to a pre-1914 right is valid.
27 (*Young v. State Water Resources Control Bd.* (2013) 219 Cal.App.4th 397, 404.) This authority
28 does not provide the State Water Board with the power to regulate or curtail the lawful diversion of
water under pre-1914 rights.

1 173. In response to the State Water Board's Curtailment actions in 2015, recipients of the
2 curtailment notices, including the SJTA, challenged the ability of the State Water Board to curtail
3 pre-1914 and riparian water right holders. The Superior Court in the County of Santa Clara found
4 the State Water Board did not have the authority to regulate pre-1914 and riparian rights. (A true
5 and correct copy is attached hereto as Ex. 16.)

6 174. Nothing in the Governor's drought proclamation provided the State Water Board
7 with further or expanded authority to regulate pre-1914 and riparian rights.

8 175. The Curtailment Regulation authorizes the Deputy Director to issue Curtailment
9 Orders to pre-1914 water right holders on the basis that water is unavailable under their priority of
10 right. For this reason, the Curtailment Regulation and subsequent Curtailment Orders are unlawful
11 and exceed the authority of the State Water Board.

12 **FIFTH CAUSE OF ACTION**

13 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
14 **(Code of Civil Procedure § 1085, § 1094.5)**

15 **The Curtailment Regulation Violates Due Process Rights of Water Right Holders**

16 176. Petitioner hereby realleges and incorporates herein by reference the allegations
17 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
18 herein.

19 177. The right to divert water is a property right.

20 178. The State Water Board must provide appropriate due process protections and
21 procedures before taking an action that limits, abrogates, extinguishes, or otherwise restricts a
22 water right holders' property right.

23 179. The Curtailment Regulation authorizes the Deputy Director to issue Curtailment
24 Orders that direct SJTA member agencies and other water right holders to immediately stop
25 diverting water under their respective water rights. This direction limits, abrogates, extinguishes
26 or otherwise restricts SJTA member agencies and other water right holders from exercising their
27 respective water rights.

28 180. Prior to adopting the Curtailment Regulation, the State Water Board did not provide

1 the SJTA members or other water right holders a hearing or other requisite due process protections
2 through which water right holders could test the veracity of the information, assumptions and/or
3 methods used to support any determinations that water is unavailable under their particular priority
4 of right.

5 181. The Curtailment Regulation does not require the Deputy Director to provide the
6 SJTA members or water right holders a hearing or other requisite due process protections through
7 which water right holders could test the veracity of the information, assumptions and/or methods
8 used to support determinations that water is unavailable under their particular priority of right.

9 182. Prior to adopting the Curtailment Regulation or issuing Curtailment Orders, the
10 State Water Board failed to hold a hearing or otherwise conduct a case-by-case investigation or
11 analysis of whether specific diversions by SJTA member agencies constituted a trespass against
12 senior water right holders.

13 183. Prior to adopting the Curtailment Regulation or issuing Curtailment Orders, the
14 State Water Board failed to hold a hearing or otherwise provide due process to the SJTA member
15 agencies and other water right holders before determining the relative priorities of all water right
16 holders throughout the Delta watershed.

17 184. In response to the State Water Board's curtailment notices issued in 2015,
18 stakeholders, including the SJTA, challenged the failure of the State Water Board to provide water
19 right holders with due process prior to issuing curtailment notices. The Superior Court in the
20 County of Santa Clara found the State Water Board process violated due process because
21 curtailment notices were issued prior to providing water right holders the opportunity for a hearing
22 to cross examine witnesses and test the evidence the State Board relied upon to determine water
23 was no longer available for diversion under the specific water right. However, the State Water
24 Board used that same unlawful process here – implementing a deficient Methodology without
25 providing an opportunity to be heard. For this reason, the Curtailment Regulation and resulting
26 Curtailment Orders violate the due process rights of water right holders.

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
3 **(Code of Civil Procedure § 1085, § 1094.5)**

4 **The Curtailment Regulation Amounts to an Unlawful Taking**

5 185. Petitioner hereby realleges and incorporates herein by reference the allegations
6 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
7 herein.

8 186. The Curtailment Regulations deprive the SJTA member agencies of valuable
9 property rights without just compensation as required by the California and United States
10 Constitutions.

11 187. A takings claims is justified and ripe here because the Curtailment Regulation was a
12 final decision by the State Water Board against the SJTA member agencies.

13 188. The Curtailment Regulations and subsequent Curtailment Orders order the SJTA
14 member agencies to stop diverting water to ensure there is sufficient supply to provide for public
15 health and safety needs. The State Board’s economic impact analysis acknowledges that the public
16 and health exception increases curtailment to agricultural water users for the purpose of providing
17 water for public use. The economic impact analysis estimates this taking from agricultural water
18 users for the public use of public health and safety to be approximately \$11 million dollars in lost
19 water sale revenue, but did not estimate other takings costs, including loss of capital, crop yield, or
20 land use.

21 189. Thus, through these actions, the State Water Board has taken the SJTA member
22 agencies’ property and reallocated that property for a public use. Despite this taking of the SJTA
23 member agencies’ property rights for a public use, the State Water Board has failed to pay just
24 compensation in violation of Article I, Section 19 of the California Constitution which provides,
25 “[p]rivate property may be taken or damaged for public use only when just compensation . . . has
26 first been paid to or into the court for the owner.”

27 190. As a direct and proximate result of the Curtailment Regulation, the SJTA member
28 agencies and the landowners within their respective districts have been damaged in an amount as

1 yet unascertained, equal to the just compensation due to them under the Fifth Amendment,
2 including interest thereon at a rate to be established by this Court. The SJTA will seek leave of
3 Court to amend this petition/complaint to conform to proof of such damages.

4 **SEVENTH CAUSE OF ACTION**

5 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
6 **(Code of Civil Procedure § 1085, § 1094.5)**

7 **The Curtailment Notice Amounts to an Unauthorized Amendment**
8 **to the Water Quality Control Plan**

9 191. Petitioner hereby realleges and incorporates herein by reference the allegations
10 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
11 herein.

12 192. The State Water Board adopted the Water Quality Control Plan for the Sacramento
13 San Joaquin San Francisco Bay Delta Estuary (“Bay Delta Plan”) in 1978.

14 193. The State Water Board is required to review and amend the Bay Delta Plan every
15 three years.

16 194. The process to amend the plan is quasi-legislative, requires specific planning
17 process, and must be supported by appropriate environmental analysis.

18 195. The State Water Board amended the Bay Delta Plan in 1996.

19 196. In order to implement the requirements in the Bay Delta Plan, the State Water
20 Board adopted Water Rights Decision D-1641.

21 197. D-1641 amended the junior water rights of DWR and USBR to require the release
22 of water from February through June to meet water quality requirements in the Delta.

23 198. The State Water Board approved the TUCP, which relieved DWR and USBR from
24 some of the water quality requirements.

25 199. The Curtailment Regulation and subsequent Curtailment Orders requires senior
26 water right holders to stop diverting water. This action will increase the flow of water to the Delta
27 and the compliance points which DWR and USBR are required to comply with certain water
28 quality requirements pursuant to D-1641.

200. The relief granted to DWR and USBR under the TUCP, allowing them to release or

1 bypass less water to the Delta, while at the same time senior water right holders are curtailed from
2 diverting, results in the equivalent of amending the water quality control plan and reallocating
3 responsibility for meeting water quality requirements.

4 201. This reallocation and amendment of the water quality control plan violates the legal
5 requirements for notice, hearing, environmental review, and analysis of the amendment.

6 **EIGHTH CAUSE OF ACTION**

7 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
8 **(Civil Code Procedure, § 1085, § 1094.5)**

9 **The Finding of Emergency is Deficient, Not Supported by the Evidence and Violates the**
10 **Requirements of the Government Code**
11 **(Violation of Government Code § 11346.1)**

12 202. Petitioner hereby realleges and incorporates herein by reference the allegations
13 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
14 herein.

15 203. Government Code section 11346.1 requires that any emergency regulation must be
16 supported by a finding of an emergency. The finding of emergency shall include a written
17 statement that contains a description of the specific facts demonstrating the existence of an
18 emergency and the need for immediate action, and demonstrating, by substantial evidence, the
19 need for the proposed regulation to effectuate the statute being implemented, interpreted, or made
20 specific and to address only the demonstrated emergency. The finding of emergency shall also
21 identify each technical, theoretical, and empirical study, report, or similar document, if any, upon
22 which the agency relies.

23 204. A finding of emergency based only upon expediency, convenience, best interest,
24 general public need, or speculation, shall not be adequate to demonstrate the existence of an
25 emergency. If the situation identified in the finding of emergency existed and was known by the
26 agency adopting the emergency regulation in sufficient time to have been addressed through
27 nonemergency regulations adopted in accordance with the provisions of Article 5 (commencing
28 with Section 11346), the finding of emergency shall include facts explaining the failure to address
the situation through nonemergency regulations. (Govt. Code, § 11346.1.)

1 205. Specifically, the finding of emergency must include (a) a clear and concise
2 summary of the existing laws and regulations related to the proposed action; (b) a description of
3 significant differences of the proposed action with existing law; (c) a policy statement explaining
4 the anticipated benefits of the proposed action; and (d) an evaluation of whether the proposed
5 regulation is inconsistent or incompatible with existing law. (Govt. Code, § 11346.5)

6 206. The State Water Board included a deficient finding of emergency with the Notice of
7 Proposed Emergency Rulemaking on July 30, 2021.

8 207. The finding of emergency is deficient because it fails to describe specific facts that
9 demonstrate the existence of an emergency. General dry conditions and low reservoir levels are not
10 facts sufficient to demonstrate an emergency status.

11 208. To demonstrate the existence of an emergency, the State Board could have included
12 an estimate of the number of people that would be deprived of water needed for public health and
13 safety and how many of those needs would be met due to the emergency regulation. No such
14 information was including in the finding of emergency.

15 209. The finding of emergency is deficient because it fails to describe the need for
16 immediate action and/or how the Curtailment Regulation will address the specific emergency.

17 210. The finding of emergency is deficient because it does not explain why the existing
18 system would not allow the State Water Board to curtail water right holders in a lawful manner.
19 In order to demonstrate there was an emergency that required the State Water Board violate due
20 process and exceed the State Water Board jurisdictional limitations, it would need to establish that
21 the existing powers and authorities could not be used to remedy the emergency. The finding of
22 emergency does not contain any information which would support this position or conclusion.

23 211. The finding of emergency adopted by the State Board is deficient and does not meet
24 the requirements of Government Code section 11346.1.

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1 **NINTH CAUSE OF ACTION**

2 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
3 **(Civil Code Procedure, § 1085, § 1094.5)**

4 **The Economic Impact Statement is Deficient and**
5 **Violates the Government Code Requirements**
6 **(Violation of Government Code 11346.3)**

7 212. Petitioner hereby realleges and incorporates herein by reference the allegations
8 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
9 herein.

10 213. Government Code section 11346 requires the State Water Board to assess the
11 potential for adverse economic impact of the Curtailment Regulation on California business
12 enterprises and individuals. (Govt. Code, § 11346.3.)

13 214. The State Water Board included a deficient economic impact statement with the
14 Notice of Proposed Emergency Rulemaking on July 30, 2021.

15 215. Government Code section 11346.3 requires the State Board to “consider the
16 proposal’s impact on business, with consideration of industries affected including the ability of
17 California businesses to compete with businesses in other states. For purposes of evaluating the
18 impact on the ability of California businesses to compete with businesses in other states, an agency
19 shall consider, but not be limited to, information supplied by interested parties.”

20 216. The economic impact statement failed to consider the ability of California
21 businesses to compete with businesses in other states. The State Board did not solicit, provide the
22 opportunity, or otherwise consider information supplied by interested parties.

23 217. The economic impact statement failed to consider other requirements of section
24 11346.3, including evaluating the creation or elimination of jobs, the creation of new businesses or
25 the elimination of existing businesses within the state, the expansion of businesses currently doing
26 business within the state, the competitive advantages or disadvantages for businesses currently
27 doing business within the state, the increase or decrease of investment in the state, and the
28 incentives for innovation in products, materials, or processes.

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1 **TENTH CAUSE OF ACTION**

2 **Adoption of the Curtailment Regulation Violates the Governor’s Drought Proclamation**

3 218. Petitioner hereby realleges and incorporates herein by reference the allegations
4 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
5 herein.

6 219. The Water Code authorizes the State Water Board to adopt emergency regulations
7 under specified circumstances. The State Water Board cannot establish an emergency regulation
8 unless it makes required findings including that the emergency regulation is “adopted in response
9 to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or
10 more consecutive below normal, dry, or critically dry years or during a period for which the
11 Governor has issued a proclamation of a state of emergency . . . based on drought conditions.”
12 (Water Code, § 1058.5 (emphasis added).)

13 220. In Resolution No. 2021-0028, the State Water Board expressly identifies the
14 Governor’s May 10, 2021, drought proclamation as the basis for the adoption of the Curtailment
15 Regulation. (Ex. 12, pp. 2-3.)

16 221. The Curtailment Regulations are in effect for a period of “one year after filing with
17 the Secretary of State.” (Ex. 12, at Res. 4.) The Governor’s emergency proclamation upon which
18 the State Water Board acted to adopt the Curtailment Regulations makes clear that the emergency
19 regulations and curtailment orders it envisioned and authorized were to occur if and only “when
20 water is not available at water right holders’ priority of right or to protect releases of stored water.”
21 (Ex. 2, at Sec. 5.) The State Water Board’s decision to adopt Curtailment Regulations with an
22 arbitrary one-year duration and in contravention of the hydrological and temporal limitations
23 included in the Governor’s emergency proclamation was arbitrary and an abuse of the State Water
24 Board’s discretion.

25 222. The Curtailment Regulations provide that curtailments shall take effect immediately
26 upon issuance of a curtailment order. (Cal. Code of Regs., tit. 23, § 876.1.) However, the
27 Curtailment Regulations provide no clear and unambiguous provisos for the suspension or
28 termination of a curtailment order, even if hydrologic conditions are such that neither the

1 Curtailment Regulations nor Curtailment Order would be contemplated or authorized by the
2 Governor’s emergency proclamation which limits such regulations and actions to “when water is
3 not available at water right holders’ priority of right or to protect releases of stored water.” (Ex. 2,
4 at Sec. 5.) Instead, the Curtailment Order may only be “suspended” for “some diverters” based
5 upon an ill-defined, subjective review and evaluation by the Deputy Director. (Cal. Code of Regs.,
6 tit. 23, § 876.1(g) [“The Deputy Director will temporarily suspend curtailments for some diverters,
7 in order of water right priority, when water availability increases or is projected to increase due to
8 precipitation and runoff events or due to reductions in demand, and the Deputy Director determines
9 that such increased water availability warrants a suspension. The Deputy Director will consider the
10 best available information, such as water supply forecasts from the California Department of Water
11 Resources and other similarly reliable sources, to determine the geographic scope and duration of
12 suspension”].) The State Water Board’s decision to adopt Curtailment Regulations that allow
13 issuance of Curtailment Orders with immediate effect, but no similarly immediate suspension or
14 revocation in contravention of the hydrological and temporal limitations embraced in the
15 Governor’s emergency proclamation was arbitrary and an abuse of the State Water Board’s
16 discretion.

17 **ELEVENTH CAUSE OF ACTION**

18 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
19 **(Civil Code Procedure, § 1085, § 1094.5)**

20 **Adoption of the Curtailment Regulation Exceed the**
21 **State Board’s Emergency Authority**
22 **(Water Code § 1058.5)**

23 223. Petitioner hereby realleges and incorporates herein by reference the allegations
24 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
25 herein.

26 224. Water Code section 1058.5 authorizes the State Water Board to adopt emergency
27 regulations “to require the curtailment of diversions when water is not available under the
28 diverter’s priority of right.”

225. Water Code section 1058.5 does not grant the State Water Board authority to

1 determine the validity of water right claims or the relative priorities of water right holders and/or
2 claimants in an emergency manner or otherwise outside the State Water Board's existing authority.
3 Nor does section 1058.5 suspend the due process rights or other property protections provided to
4 water right holders. Rather, section 1058.5 does not affect or otherwise set aside the existing
5 authorities and process through which the State Board must proceed to determine the relative
6 priorities amongst and between water right holders and claimants. (Water Code, § 2500 et seq.)
7 The stream adjudication process set forth in Water Code section 2500 requires notice,
8 investigation, a hearing and a decree of court, among other procedural safeguards.

9 226. A stream adjudication has not been held for the Delta watershed to determine the
10 validity of claims therein or the relative priorities of water right holders and/or claimants across the
11 multiple subwatersheds that comprise the Delta watershed and are covered by the Curtailment
12 Regulation and Methodology.

13 **TWELFTH CAUSE OF ACTION**

14 **Writ of Mandate – Adoption of the Curtailment Regulation was Unlawful**
15 **(Code of Civil Procedure § 1085, § 1094.5)**

16 **(The Delegation of Authority to the Deputy Director is Unlawful)**

17 227. Petitioner hereby realleges and incorporates herein by reference the allegations
18 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
19 herein.

20 228. The Deputy Director of the Division of Water Rights is an employee of the State
21 Water Board.

22 229. No statute, or other command by the Legislature, grants the power to the Deputy
23 Director to perform these tasks delegated to it by the State Water Board in the Curtailment
24 Regulation.

25 230. The State Water Board may not delegate discretionary acts to its staff or employees,
26 unless the staff or employees are specifically empowered by a command of the Legislature to
27 perform those discretionary acts.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **Adoption of the Curtailment Regulation Violates the Protections of Reservoir Operators**
3 **and Unlawfully Requires Reservoir Operators to Bypass Water**
4 **(Cal. Code of Regs., tit. 23, § 784)**

5 231. Petitioner hereby realleges and incorporates herein by reference the allegations
6 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
7 herein.

8 232. SJTA member agencies hold water permits that allow them to appropriate and store
9 water, and SJTA member agencies have, in reliance upon those permits, expended considerable
10 sums of money and time constructing and maintaining water storage facilities.

11 233. The California Code of Regulations (“CCR”) includes provisions that restrict and
12 regulate the State Water Board’s ability to compel water rights holders to release or bypass water.
13 (Cal. Code of Regs., tit. 23, § 784.) Relevant here, when “a permit has been issued and
14 construction has commenced or substantial financial commitment for construction has been
15 undertaken by the permittee, the board will not require a release or bypass of water authorized to
16 be appropriated by such permit unless the permittee agrees to such bypass or release or unless the
17 board at the time the permit was issued expressly reserved jurisdiction to require such bypass or
18 release.” (Cal. Code of Regs., tit. 23, § 784(b).)

19 234. The Curtailment Regulation and Curtailment Orders require SJTA member agencies
20 to release or bypass water after those agencies have expended substantial financial resources to
21 construct their water storage facilities. However, the SJTA has not agreed to those releases or
22 bypasses, and when the permits affected by the Curtailment Regulation and Curtailment Orders
23 were issued the State Water Board did not expressly reserve jurisdiction to require bypasses or
24 releases pursuant to 23 CCR Section 784. Thus, the Curtailment Regulation violate 23 CCR
25 section 784.

26 235. Even in those circumstances when 23 CCR section 784 allows the State Water
27 Board to require releases of water diverted and stored (e.g., Cal. Code of Regs., tit. 23, § 784(a)),
28 which circumstances are not present here, the State Board is required to hold a hearing and make
specified findings before requiring the release of water diverted and stored, neither of which

1 happened here. (Cal. Code of Regs., tit. 23, § 784(c).) Further, the “quantity of water required to
2 be released from storage shall be reduced in dry and critical years as defined by the board on a
3 basis determined by the board to be equitable after considering and balancing the effect of reduced
4 quantity upon downstream conditions and upon permittee's project” (Cal. Code of Regs., tit. 23,
5 § 784(d)), but neither the Curtailment Regulation nor Curtailment Orders, nor the State Water
6 Board, gave consideration to those requirements.

7 236. For all of these reasons, the Curtailment Regulation, the Curtailment Order and the
8 requirement that SJTA member agencies release and bypass water violate section 784.

9 **FOURTEENTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 237. Petitioner hereby realleges and incorporates herein by reference the allegations
12 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
13 herein.

14 238. Pursuant to Code of Civil Procedure section 1060, “[a]ny person . . . may ask for a
15 declaration of rights or duties, either alone or with other relief; and the court may make a binding
16 declaration of these rights or duties, whether or not further relief is or could be claimed at this
17 time.” (Code of Civ. Proc., § 1060.)

18 239. Pursuant to Government Code section 11350, “[a]ny interested person may obtain a
19 judicial declaration as to the validity of any regulation or order by bringing an action for
20 declaratory relief in the superior court in accordance with the Code of Civil Procedure.” (Gov.
21 Code, § 11350.)

22 240. Petitioner contends that the State Water Board’s adoption of the Curtailment
23 Regulation and subsequently issued Curtailment Orders violate, among other things, the limitations
24 on the State Water Board’s authority over riparian and pre-1914 appropriative water rights, SJTA
25 member agencies’ property and due process rights and the California Water Code.

26 241. The State Water Board, on the other hand, contends its adopted Curtailment
27 Regulation, issued Curtailment Orders, and future curtailment orders (or modifications to the
28 Curtailment Order) based upon the Curtailment Regulation comply with all applicable laws, rules,

1 and regulations.

2 242. An actual controversy exists surrounding the legality of the State Water Board's
3 adoption of the Curtailment Regulation, issuance of the Curtailment Orders, and future issuance or
4 modification of curtailment orders pursuant to the Curtailment Regulations.

5 243. A judicial determination of these controversies is necessary and appropriate at this
6 time.

7 WHEREFORE, Petitioners pray for relief as set forth below.

8 **PRAYER FOR RELIEF**

9 Petitioners pray for relief as follows:

10 1. A peremptory writ of mandate under Code of Civil Procedure sections 1085 and
11 1094.5 setting aside the Curtailment Regulation.

12 2. For a determination pursuant to Code of Civil Procedure sections 1085 and 1094.5
13 that:

14 (a) the Curtailment Regulation exceeds the State Water Board's authority and
15 jurisdiction;

16 (b) the Curtailment Regulation violates the due process rights of Petitioners and
17 their respective member agencies;

18 (c) the Curtailment Regulation violates the rules of priority;

19 (d) the Curtailment Regulation is arbitrary, capricious and not supported by
20 evidence;

21 (e) the Curtailment Regulation amounts to an unauthorized amendment to the
22 Water Quality Control Plan.

23 3. For a judicial declaration pursuant to the Code of Civil Procedure section 1060, that:

24 (a) the Curtailment Regulation violates Government Code section 11346.1;

25 (b) the Curtailment Regulation violates Government Code section 11346.3;

26 (c) the Curtailment Regulation violates Water Code section 1058.5;

27 (d) the Curtailment Regulation violates California Code of Regulations, title 23,
28 section 784;

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(e) the Curtailment Regulation violates the Governor’s Drought Proclamation;

4. For just compensation;

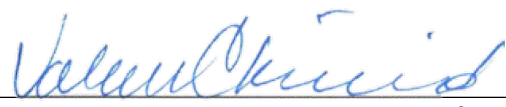
5. For cost of suit;

6. For attorney’s fees in accordance with Section 1021.5 of the California Code of Civil Procedure; and

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

DATED: September 2, 2021

O’LAUGHLIN & PARIS, LLP



VALERIE C. KINCAID, Attorneys for Petitioner/
Plaintiff SAN JOAQUIN TRIBUTARIES
AUTHORITY

1 **VERIFICATION**

2 I, VALERIE C. KINCAID, state that I am an attorney representing Petitioner/Plaintiff
3 SAN JOAQUIN TRIBUTARIES AUTHORITY. I have read the foregoing Petition for Writ of
4 Mandamus and have personal knowledge that the matters set forth therein are true and correct, and
5 on that basis allege them to be true and correct. I make this verification in accordance with
6 California Code of Civil Procedure section 446, subdivision (a) as Petitioner/Plaintiff counsel
7 because the Petitioner/Plaintiff is a Joint Powers Authority and representatives are absent from
8 Sacramento County, where I have my office and the facts are within my knowledge.
9

10 I declare under penalty of perjury under the laws of the State of California that the above is
11 true and correct and that this verification was executed on September 2, 2021 at Sacramento,
12 California.
13

14 
15 VALERIE C. KINCAID

VERIFICATION

1
2
3 I, Peter M. Rietkerk, state that I am the General Manager for Petitioner SOUTH SAN
4 JOAQUIN IRRIGATION DISTRICT. I have read the foregoing Petition for Writ of Mandamus
5 and have personal knowledge that the matters set forth therein are true and correct, and on that
6 basis allege them to be true and correct. I make this verification in accordance with California
7 Code of Civil Procedure section 446, subdivision (a).
8

9 I declare under penalty of perjury under the laws of the State of California that the above is
10 true and correct and that this verification was executed on September 1, 2021 at Ripon,
11 California.