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**SAN JOAQUIN TRIBUTARIES AUTHORITY
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*Exempt from filing fee per Gov. Code §6103
Public Agency Exception*

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**SOUTH SAN JOAQUIN IRRIGATION
DISTRICT**

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

SAN JOAQUIN TRIBUTARIES
AUTHORITY, a Joint Powers Authority;
OAKDALE IRRIGATION DISTRICT, a
public entity; SOUTH SAN JOAQUIN
IRRIGATION DISTRICT, a public entity,

Plaintiffs and Petitioners,

vs.

CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD, and
DOES 1 through 100, inclusive,

Defendants and Respondents.

) CASE NO.:

)
) PETITION FOR WRIT OF MANDAMUS
) (CCP §§ 1094.5 AND/OR 1085); AND
) VERIFIED COMPLAINT FOR
) DECLARATORY AND INJUNCTIVE
) RELIEF (CCP § 1060)

1. Plaintiffs and Petitioners the San Joaquin Tributaries Authority (“SJTA”), Oakdale
Irrigation District (“OID”), and South San Joaquin Irrigation District (“SSJID”) (collectively

1 “Petitioners”), respectfully petition this Court for a writ of mandate pursuant to Code of Civil
2 Procedure section 1094.5 and 1085, and bring this declaratory and injunctive relief against
3 Defendant and Respondent the State Water Resources Control Board (“State Water Board”) and
4 Does 1 through 100 pursuant to section 1060.

5 **INTRODUCTION**

6 2. This action is brought to challenge the State Water Board’s unlawful issuance of the
7 Curtailment Notice (“Curtilment Notice”), which (a) states the State Water Board has determined
8 there is not sufficient water to support diversions for pre-1914 water right holders with a right dated
9 1903 or later (“Curtailed Water Right Holders”), (b) directs Curtailed Water Right Holders to
10 immediately stop diverting water, (c) directs Curtailed Water Right Holders not to resume
11 diversions, even if hydrologic conditions change, until being notified by the State Water Board that
12 diversions can resume, and (d) warns that violation of the directive to stop diverting water will be
13 subject to administrative penalty of \$1,000 per day and \$2,500 per acre-foot diverted.

14 3. Petitioners now must choose between (a) continuing to divert water at the risk of
15 incurring significant fines, or (b) stop diverting water at the risk of losing permanent crops and
16 property rights.

17 4. The Curtailment Notice constitutes a final decision made by the State Water Board,
18 communicated through a letter signed by the Executive Director. Neither the Executive Director,
19 nor the State Water Board, has the authority to issue the Curtailment Notice to pre-1914 water right
20 holders.

21 5. The Curtailment Notice is an adjudicative action because it weighs Petitioners’ pre-
22 1914 water rights against other competing claims to divert water and determines Petitioners must
23 cease diverting water in favor of more senior claims to divert water. The Curtailment Notice takes
24 Petitioners’ rights to divert water, which are property rights. The Curtailment Notice was issued
25 without notice, hearing, or other required provisions of due process protections.

26
27 6. The Curtailment Notice is contrary to law and not supported by findings or evidence.
28

7. Unless invalidated and/or enjoined, the Curtailment Notice will unlawfully injure the water rights and impair the operations of Petitioners.

8. Petitioners need judicial resolution of the issues presented to this Court so they may continue to exercise their water rights without continued threat of regulatory enforcement and substantial penalties.

PARTIES

PETITIONERS

9. SJTA is a California Joint Powers Authority, duly organized and existing in accordance with the provisions of Sections 6500 et seq. of the California Government Code. The SJTA consists of public agencies, including OID and SSJID, as well as other irrigation districts that are authorized by the laws of the State of California to administer water supplies and to appear and represent their landowners in matters relating to water resources.

10. OID and SSJID are each California irrigation districts formed and existing pursuant to the provisions of the California Irrigation District Law. (Water Code, § 20500 et seq.)

11. OID is a local public agency of the State of California organized in 1909, includes 72,345 acres and maintains over 330 miles of laterals and pipelines, 110 miles of drains, 40 miles of main canals, 22 deep well pumps and 43 reclamation pumps. OID diverts, stores, and recaptures water from the Stanislaus River based on several water rights, including pre-1914 water rights. OID and the SSJID jointly own and operate three storage reservoirs and have storage rights in the federally owned New Melones Reservoir.

12. SSJID was established in 1909, pursuant to Division 11 of the California Water Code to provide a reliable and economical source of irrigation water for the agricultural areas surrounding Escalon, Ripon, and Manteca. SSJID also provides domestic water service to South San Joaquin County. SSJID holds pre-1914 water rights which allow it to divert and store water from the Stanislaus River; SSJID and OID jointly own and operate three storage reservoirs and have storage rights in the federally owned New Melones Reservoir.

13. OID and SSJID jointly hold several pre-1914 water rights to divert water from the Stanislaus River and its tributary streams. These pre-1914 water rights were substantiated “In the

1 matter of the determination of the rights, based on prior appropriation, of the various claimants of the
2 waters of the Stanislaus River and its Tributaries in California,” in 1929.

3 14. The SJTA member agencies divert water pursuant to valid pre-1914 water rights from
4 the Stanislaus, Tuolumne, and Merced Rivers. Each member is vitally interested in the Curtailment
5 Notice as it affects their ability and right to divert and deliver water.

6 **RESPONDENTS**

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

11 16. Petitioners are not aware of the true names and capacities of the respondents sued as
12 Does 1 through 100, inclusive, and therefore sue these respondents by such fictitious names. Each of
13 these fictitiously named respondents is responsible in some manner for the activities alleged in this
14 Petition. Petitioners will amend this Petition to add the true names of the fictitiously named
15 respondents once they are discovered.

16 **JURISDICTION AND VENUE**

17 17. This Court has jurisdiction over the matters alleged in this Complaint pursuant to
18 Code of Civil Procedure section 525, 526, 1060, 1085, and 1094.5.

19 18. Venue properly lies in Stanislaus County under the Code of Civil Procedure sections
20 392 and 393(b) because Petitioners are challenging an action which impacts their property in
21 Stanislaus County and impairs their business in Stanislaus County.

22 **STANDING**

23 19. OID and SSJID have standing because the Curtailment Notice invades their
24 respective legally protected rights to divert water and put it to beneficial use. The Curtailment
25 Notice directs the Districts to immediately stop diverting water, which is the direct and proximate
26 cause of the injury. The Court may redress these injuries by enjoining the State Water Board from
27 issuing the Curtailment Notice due to its unlawful nature and declaring the Curtailment Notice is
28 unlawful and beyond the jurisdiction of the State Water Board.

1 20. SJTA has standing because its member agencies were subject to the Curtailment
2 Notice, which invades their respective legally protected rights to divert water and put it to beneficial
3 use. The Curtailment Notice and its direction to immediately stop diverting water is the direct and
4 proximate cause of the injury. The Court may redress these injuries by issuing the Curtailment
5 Notice due to its unlawful nature and declaring the Curtailment Notice is unlawful and beyond the
6 jurisdiction of the State Water Board.

7 21. Petitioners do not have a plain, speedy or adequate remedy in the ordinary course of
8 law.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 22. Petitioners have exhausted all administrative remedies.

11 23. The Curtailment Notice is a final action of the State Water Board. A final action of
12 the State Water Board is immediately reviewable by this Court. (Water Code, § 1126(b).)

13 24. To the extent this Court determines the Curtailment Notice is not a final action of the
14 State Water Board, but an act taken by the Executive Director through delegated authority,
15 Petitioners have still satisfied exhaustion requirements. Water Code section 1126 requires that any
16 action taken pursuant to delegated authority must be reviewed by the State Water Board through a
17 Petition for Reconsideration. However, the requirement for filing a Petition for Reconsideration is
18 negated when the pursuit of an administrative remedy would result in irreparable harm. (*People ex*
19 *rel. DuFauchard v. U.S. Fin Mgmt., Inc.* (2009) 169 Cal.App. 4th 1502, 1512; *Bockover v. Perko*
20 (1994) 28 Cal.App.4th 479, 486.) The State Water Board is not required to review a petition for
21 reconsideration. If the State Water Board chooses to review a petition for reconsideration, it must do
22 so within 90 days of receipt. After review, there is no time limit in which the State Water Board
23 must act. The lack of required or expeditious review will cause Petitioners irreparable harm by
24 exposing Petitioners to significant enforcement fees or otherwise cutting off their right to lawfully
25 divert and supply water.

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27 **LEGAL STANDARD**

1 25. The Curtailment Notice is a final adjudicative decision action taken by the State
2 Water Board.

3 26. When challenging a final adjudicatory action taken by the State Water Board, the trial
4 court's inquiry shall extend to whether: (a) the State Water Board proceeded without, or in excess of
5 jurisdiction; (b) there was a fair trial; and (c) there was any prejudicial abuse of discretion.

6 27. Abuse of discretion is established if the State Water Board has not proceeded in the
7 manner required by law, the order or decision is not supported by the findings, or the findings are not
8 supported by the evidence.

9 **FACTUAL AND LEGAL ALLEGATIONS**

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

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

13 29. As a state agency, the State Water Board's deliberations and determinations are
14 subject to the requirements of the Bagley-Keene Act and Water Code section 183.

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

17 31. The State Water Board shares concurrent jurisdiction with the courts to hear disputes
18 among and between post-1914 appropriative water right holders.

19 32. The State Water Board does not issue riparian or pre-1914 appropriative water rights.

20 33. Only the courts have jurisdiction over disputes between and among pre-1914 and
21 riparian water right holders. The State Water Board has never been the arbiter of disputes amongst
22 and between pre-1914 and riparian water right holders.

23 34. 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 **Curtailment Process**

26 35. On January 17, 2014, the State Water Board issued a notice warning stakeholders that
27 if dry conditions persisted, it planned to curtail the diversion of water. Specifically, the notice
28 stated: "State Water Board will notify water right holders in critically dry watersheds of the

1 requirement to limit or stop diversions of water under their water right, based on their priority.” (A
2 true and correct copy attached hereto as Exhibit 1.)

3 36. On May 2, 2014, the senior water right holders comprising approximately 90 percent
4 of the senior water rights in the San Joaquin River Basin filed a letter with the State Water Board
5 stating that they had undertaken drought measures and that there was not a need for State Water
6 Board intervention, and requesting the State Water Board decline to take any curtailment action in
7 the San Joaquin River watershed. (A true and correct copy attached hereto as Exhibit 2.)

8 37. The State Water Board did not grant the request made by the San Joaquin River
9 watershed stakeholders.

10 38. In 2014, the State Water Board adopted curtailment regulations for post-1914 water
11 right holders.

12 39. The State Water Board and State Water Board staff indicated the 2014 curtailment
13 action was necessary to protect senior water right holders. However, it was unclear which parties, if
14 any, were receiving protection.

15 40. Throughout the process of proposing and adopting the curtailment regulations, there
16 was no indication that the State Water Board had received, or was responding to, complaints from
17 senior water users in the San Joaquin River watershed who were in need of protection.

18 41. In an effort to decipher the State Water Board’s motivation in curtailing post-1914
19 water right holders, and in an attempt to uncover the complaints, if any, from senior water right
20 holders purportedly in need of protection, the San Joaquin River watershed stakeholders submitted a
21 Public Records Act request to the State Water Board to obtain information regarding complaints
22 filed by senior water right holders on the lower San Joaquin River watershed.

23 42. The responses to the request revealed that no senior water right holder had filed a
24 complaint against any diversion of water in the San Joaquin River watershed.

25 43. In 2014, the State Water Board also considered adopting a regulation that would have
26 curtailed pre-1914 water right holders, but declined to do so.

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1 44. On January 23, 2015, the State Water Board issued a Notice of Surface Water
2 Shortage and Potential for Curtailment, the purpose of which was “to advise all water right holders
3 that if hydrologic conditions do not significantly improve in the next several months, the State Water
4 Board will once again begin notifying water right holders in critically dry watersheds of the
5 requirement to limit or stop diversions of water under their water right, based on their priority.” (A
6 true and correct copy attached hereto as Exhibit 3.)

7 45. On April 2, 2015, the State Water Board released a letter regarding expected
8 curtailment and warned: “If dry conditions persist through the spring, it is anticipated that all holders
9 of post-1914 and many holders of pre-1914 water rights in certain watersheds will receive
10 curtailment notices.” (A true and correct copy attached hereto as Exhibit 4.)

11 46. On April 9, 2015, the senior water right holders comprising approximately 90 percent
12 of the senior water rights in the San Joaquin River Basin and South Delta filed a letter with the State
13 Water Board stating that they had undertaken drought measures, that there was not a need for State
14 Water Board intervention, and requested the State Water Board decline to take any curtailment
15 action in the San Joaquin River watershed. (A true and correct copy attached hereto as Exhibit 5.)

16 47. On April 23, 2015, the State Water Board issued a Notice which stated the State
17 Water Board determined the existing water supply in the San Joaquin River was insufficient to meet
18 the needs of all water right holders. In this notice, the State Water Board directed all post-1914
19 water right holders in the San Joaquin River watershed to immediately stop diverting pursuant to
20 their post-1914 water rights. (A true and correct copy attached hereto as Exhibit 6.)

21 48. On May 20, 2015, the State Water Board held a workshop, at which State Water
22 Board staff presented supply and demand data with regard to curtailment. (A true and correct copy
23 attached hereto as Exhibit 7.) After the staff presentation, the State Water Board heard public
24 comment. The item was an informational and the State Water Board did not take any action.

25 49. During the May 20, 2015 workshop, Kathy Mrowka, Enforcement Coordinator for
26 the Division of Water Rights, reported that as of May 20, 2015, the “success ratio” for compliance
27 with the post-1914 curtailment is “really poor”. Ms. Mrowka stated that only 20 percent of the post-
28 1914 appropriators in the San Joaquin River watershed had ceased diversions in compliance with the

1 curtailment requirement, and only 29 percent of the post-1914 appropriators in the Sacramento River
2 watershed had complied. (See: http://www.waterboards.ca.gov/board_info/video.shtml.)

3 **State Water Board's Issuance of Pre-1914 Curtailment Notice**

4 50. On June 12, 2015, the Executive Director issued the Curtailment Notice, which states
5 the State Water Board determined there is insufficient water in the system to allow the Curtailed
6 Water Users to continue diverting water under pre-1914 claims in and after 1903. (A true and
7 correct copy attached hereto as Exhibit 8.)

8 51. The Curtailment Notice directs the Curtailed Water Right Holders to immediately
9 stop diverting water.

10 52. Those who do not immediately curtail diversion are subject to administrative
11 penalties of \$1,000 per day and \$2,500 per acre foot of water. For a 200 acre farm that applies 3
12 acre feet per crop acre, the fine would be over \$1.5 million dollars for a 20-day violation.

13 53. With the Curtailment Notice, the State Water Board provided a distribution list
14 showing all the parties to which the State Water Board sent the Curtailment Notice ("Distribution
15 List"). (A true and correct copy attached hereto as Exhibit 9.)

16 54. Several water right holders with pre-1914 water rights dated 1903 or later were not
17 included in the Distribution List. The State Water Board did not provide explanation regarding the
18 process by which it developed the Distribution List.

19 55. The Curtailment Notice requires the Curtailed Water Right Holders complete a
20 curtailment certification form, in which they confirm they are no longer diverting water pursuant to
21 the curtailed pre-1914 water right, within 7 days of receiving the Curtailment Notice.

22 56. The Curtailment Notice does not contain an end or termination date. Rather, the
23 Curtailment Notice states that despite changes in hydrologic conditions, water right holders should
24 not resume diversion before first being notified by the State Water Board that water has become
25 legally available for diversion and curtailment is lifted.

26 57. Along with the Curtailment Notice, the State Water Board provided a supply and
27 demand analysis graph ("Supply/Demand Graph"). (A true and correct copy of the Supply/Demand
28 Graph is attached hereto as Exhibit 10.)

1 58. The State Water Board also released a one page summary document titled
2 “Additional Information for Supply/Demand Graphs” (“Additional Supply/Demand Data”). (A true
3 and correct copy attached hereto as Exhibit 11.) The Additional Supply/Demand Data does not
4 disclose the State Water Board methodology, approach, or other data supporting the Curtailment
5 Notice. Rather, the Additional Supply/Demand Data explains that the State Water Board assumed
6 all demand that claimed both riparian and pre-1914 rights were treated as riparian. In addition, the
7 Additional Supply/Demand Data explains the State Water Board allocated downstream demand
8 based on percent of inflow. Neither the support for this approach nor the data in support for the
9 approach were provided.

10 59. State Water Board did provide Petitioners with the opportunity to request an
11 evidentiary hearing or any other opportunity to receive, review, or test evidence prior to the
12 issuance of the Curtailment Notice.

13 60. The State Water Board did not adopt findings in support of the Curtailment Notice.

14 61. The State Water Board did not explain how it determined that water supply to be
15 insufficient to meet the demands of Curtailed Water Right Holders.

16 62. The State Water Board does not identify any senior water right holder alleging injury
17 from Petitioners’ diversions.

18 63. Prior to issuing the Curtailment Notice, the State Water Board did not conduct a case-
19 by-case investigation to determine whether any senior water right holder had, in fact, been
20 substantially injured by Petitioners’ diversions.

21 **State Water Board’s Inadequate and Improper Analysis of Supply**

22 64. Prior to issuing the Curtailment Notice, the State Water Board failed to hold a hearing
23 on the issue of water supply or the potential need for a curtailment of pre-1914 water rights.
24 Furthermore, in issuing the Curtailment Notice, the State Water Board did not adopt any findings or
25 produce any evidence to support its estimate of the water supply.

26 65. Accordingly, it is difficult to reliably or accurately determine the data and process by
27 which the State Water Board estimated water supply. The State Water Board’s analysis of supply
28 appears to be improper and grossly inadequate.

1 66. Although not clear, it appears the State Water Board did not properly take into
2 account return flows in its determination of supply.

3 67. Although not clear, it appears the State Water Board did not properly take into
4 account accretions in its determination of supply.

5 68. Although not clear, it appears the State Water Board improperly and inaccurately
6 estimated supply by using numbers calculated by the Department of Water Resources, rather than
7 estimating supply based on actual measured inflow.

8 **State Water Board's Inadequate and Improper Analysis of Demand**

9 69. Prior to issuing the Curtailment Notice, the State Water Board failed to hold a hearing
10 on the issue of water demand or the potential need for a curtailment of pre-1914 water rights.
11 Furthermore, in issuing the Curtailment Notice, the State Water Board did not adopt any findings or
12 produce any evidence to support its estimate of water demand. Accordingly, it is difficult to reliably
13 or accurately determine the data and process by which the State Water Board estimated water
14 demand. The State Water Board's analysis of demand appears to be improper and grossly
15 inadequate.

16 70. In an email dated March 24, 2015, from the Delta Watermaster to Delta water
17 diverters, the Delta Watermaster acknowledged that the State Water Board does not have adequate
18 information or data to properly estimate Delta demand. (A true and correct copy attached hereto as
19 Exhibit 12.)

20 71. Although not clear, it appears the State Water Board attempted to estimate demand by
21 assuming that all claims to divert water made in the most recent submission of Statements of
22 Diversion and Use were valid, without otherwise verifying those claims.

23 72. Claims to divert water recorded in Statements of Diversion and Use do not amount to
24 valid water rights. Rather, Statements of Diversion and Use simply reflect the claim to lawfully
25 divert water. The Statement of Diversion and Use does not require the disclosure or attachment of
26 any information that supports or otherwise verifies the rights claimed therein.

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1 73. Accordingly, any estimate of water demand based upon claims set forth in Statements
2 of Diversion and Use, without verification of the claims therein, would vastly overestimate demand
3 and would serve as an improper basis for issuing a curtailment of water rights.

4 74. In its Additional Information for Supply/Demand Graphs document, the State Water
5 Board explains that it treats Statements of Diversion and Use that claim both pre-1914 and riparian
6 rights as riparian rights. (A true and correct copy attached hereto as Exhibit 11.) This approach
7 and assumption underlying the approach is not supported. In addition, the assumption that all rights
8 are riparian vastly over-estimates demand.

9 75. Further, the State Water Board issued a Clarification Notice of Curtailment for
10 Sacramento-San Joaquin Delta Diverters Claiming Both Pre-1914 and Riparian Water Right on
11 June 16, 2015. (A true and correct copy attached hereto as Exhibit 13.) This Notice states clearly
12 that the State Water Board “assigned” all of the Delta demands reported under both riparian and
13 pre-1914 claims as riparian demand for prioritization purposes. The Notice does not provide
14 explanation or other support for such assignment.

15 76. Insofar as the State Water Board issued a curtailment to pre-1914 water right holders
16 and not riparian water right holders on the basis that riparian water right holders are senior to all
17 pre-1914 water right holders, the State Water Board improperly generalized the seniority of these
18 water rights, resulting in the curtailment of certain pre-1914 water rights that are senior to certain
19 riparian rights.

20 77. Although riparian rights holders are generally the most senior water right holders in
21 the system, there are exceptions to this general rule.

22 78. Riparian rights do not attach to lands held by the government until such land has been
23 transferred to private ownership; in these cases, the date of priority for the riparian right is the date
24 of transfer to private ownership. The State Water Board’s demand analysis failed to consider that
25 riparian water right holders may be junior in priority to some pre-1914 water right holders due to
26 patent dates.

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1 79. Riparian water rights may also be prescribed by appropriative water users upstream.
2 The State Water Board's demand analysis failed to consider that some riparian water rights have
3 been extinguished or limited by prescription.

4 80. In the Additional Information for Supply/Demand Graphs document, State Water
5 Board explains that it estimated Legal Delta demand in proportion to the San Joaquin River
6 contribution to total Sacramento/San Joaquin inflow into the Delta. (A true and correct copy
7 attached hereto as Exhibit 11.)

8 81. It is not clear how the State Water Board defines the reach of the Sacramento and
9 San Joaquin River systems. For this reason, it is not clear whether the estimated inflow and/or
10 whether it included contribution from the upper San Joaquin River watershed, contribution from the
11 Consumes River, the Feather River, or other watersheds not always included in the Sacramento or
12 San Joaquin River systems.

13 82. On May 22, 2015, the State Water Board approved the "Voluntary Cutback Program
14 for Delta Riparian Water Rights" in which the State Water Board agreed not to take curtailment
15 action against Delta diverters if they agreed by June 1, 2015, to reduce diversions by 25 percent. (A
16 true and correct copy attached hereto as Exhibit 14.)

17 83. It is unclear whether the State Water Board has calculated the savings from this
18 Voluntary Cutback Program or whether these water savings were taken into account when
19 evaluating demand in reference to the Curtailment Notice.

20 84. For these reasons, it appears the State Water Board did not properly allocate the
21 demand from claimed senior water users in the Delta.

22 **Drought Relief for Water Quality Requirements**

23 85. The Department of Water Resources (DWR) and the United States Bureau of
24 Reclamation (USBR) divert water pursuant to post-1914 appropriative water rights. These rights
25 are junior to water diverted pursuant to pre-1914 water rights.

26 86. State Water Board Decision 1641 (D-1641) was adopted in 1999 to implement the
27 1996 amendments to the water quality control plan. Based on the D-1641 requirements, the State
28 Water Board amended the water right permits held by the DWR and USBR by making the exercise

1 of such permits conditional upon meeting certain flow and water quality agreements downstream of
2 their facilities.

3 87. USBR's water right permits, which enable it to divert water from the Stanislaus River
4 at New Melones, were conditioned upon meeting certain minimum flows measured at Vernalis.
5 Releasing water from New Melones Reservoir is the only way the USBR can meet Vernalis flow
6 requirements with its own facilities.

7 88. On January 23, 2015, DWR and USBR submitted a temporary urgency change
8 petition (TUCP) to the State Water Board, requesting relief from water quality requirements in D-
9 1641. In the San Joaquin River basin, the USBR requested the minimum monthly flow levels at
10 Vernalis be reduced from 1,140 to 500 cubic feet per second (cfs). This reduction would allow
11 USBR to bypass less water or release less water from New Melones.

12 89. The Executive Director of the State Water Board temporarily approved the TUCP via
13 email on January 30, 2015.

14 90. On February 3, 2015, the Executive Director issued an Order approving the TUCP in
15 part and denying the TUCP in part. This revised approval confirmed approval of the Vernalis
16 requirement, which was reduced at 500 cfs.

17 91. On March 24, 2015, DWR and USBR requested further modification of the TUCP.
18 This modification sought to reduce pulse flow requirements at Vernalis from 3,110 to 710 cfs and
19 further reduce Vernalis flow requirements to 300 cfs after the pulse flow period through May and
20 200 cfs in June.

21 92. The Executive Director approved the USBR's request to revise the terms of the
22 TUCP.

23 93. The approved TUCP changes the terms of junior water right permits held by DWR
24 and USBR. These changes allow the USBR at New Melones to bypass less water and/or release
25 less stored water to meet downstream water quality requirements.

26 94. The Curtailment Notice requires water right holders that are senior to the USBR to
27 bypass water during the same period of time USBR is relieved from bypassing or releasing water.

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1 **Protection of Water Quality Releases**

2 95. It is unclear whether the State Water Board is using the Curtailment Notice to protect
3 stored water released to meet water quality objectives.

4 96. Appropriative water right holders may lawfully divert stored water released to meet
5 water quality objectives after the water has passed the point of compliance.

6 97. After water quality releases reach the point of compliance, releases are not protected
7 from appropriative diversion unless specifically provided such protection through Water Code
8 1707.

9 98. The Central Valley Project (CVP) has the right to re-divert Sacramento River water at
10 Jones Pumping Plant; the CVP does not have a right to divert San Joaquin River water at Jones
11 Pumping Plant when the Delta is not in excess conditions.

12 **Rules of Delegated Authority**

13 99. State Water Resources Control Board Resolution No. 2012-0061 delegates authority
14 to the Executive Director.

15 100. The Executive Director is prohibited from acting outside the authority expressly
16 delegated by Resolution No. 2012-0061.

17 101. Delegated authority serves to promote efficiency in implementing routine agency
18 activities. Delegated authority cannot be used to abdicate the State Water Board's responsibility to
19 evaluate and make decisions regarding the most significant policy issues and adjudicative matters
20 as a state agency.

21 102. The Executive Director's delegated authority to issue decisions or orders is limited to
22 matters that are routine in nature, non-controversial, and consistent with State Water Board policy.

23 103. The Executive Director's authority to amend, modify, rescind or revoke any permit or
24 license is limited to when the State Water Board is found to have a ministerial duty to do so in a
25 published opinion of a state appellate court; the Executive Director is not authorized to take action
26 on a permit or license outside this narrow ministerial delegation.

27 104. The Curtailment Notice is a final action taken by the State Water Board. The
28 Curtailment Notice cannot be considered an action taken by the Executive Director through

1 delegated authority because the action is outside the delegated authority of the Executive Director,
2 as it seeks to amend, modify, rescind or revoke a water right and it is not routine, non-controversial
3 or ministerial in nature.

4 **CLAIMS FOR RELIEF**

5 **FIRST CAUSE OF ACTION**

6 **(The Curtailment Notice is in Excess of the State Water Board's Jurisdiction)**

7 105. Petitioners hereby reallege and incorporate 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.

10 106. The State Water Board does not have jurisdiction over the administration or
11 regulation of pre-1914 water rights.

12 107. The State Water Board's authority over pre-1914 water rights is limited to
13 investigating and determining whether a diversion claimed pursuant to a pre-1914 right is valid, or
14 whether the diversion of water is unlawful. (*Young v. State Water Resources Control Bd.* (2013)
15 219 Cal.App.4th 397, 404.) This authority does not provide the State Water Board with the power
16 to regulate the diversion of water under pre-1914 rights.

17 108. The Curtailment Notice amounts to a regulation of pre-1914 water rights. For this
18 reason, it is an unlawful action that is beyond the authority of the State Water Board.

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

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21 **SECOND CAUSE OF ACTION**

22 **(The Curtailment Notice Violates Due Process Rights of Water Right Holders)**

23 109. Petitioners hereby reallege and incorporate 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.

26 110. The right to divert water is a property right.

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

112. The Curtailment Notice directs Petitioners to immediately stop diverting water under their respective pre-1914 water rights. This direction limits, abrogates, extinguishes or otherwise restricts Petitioners from exercising their respective water rights.

113. Prior to issuing the Curtailment Notice, the State Water Board did not provide Curtailed Water Right Holders a hearing or other requisite due process protections through which water right holders could test the veracity of the information and methods used to support curtailment.

114. In addition, prior to issuing the Curtailment Notice, the State Water Board failed to conduct a case-by-case investigation or analysis of Petitioners' diversions and whether these diversions were injuring a senior water right holder.

WHEREFORE, Petitioners pray for relief as set forth below.

THIRD CAUSE OF ACTION

(The Curtailment Notice Violates the Rules of Water Right Priority)

115. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

116. Water right priority has long been the central principle of California water law. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1243.)

117. Under the rules of water right priority, junior water users must cease all diversions before any senior water right can be curtailed.

118. The Curtailment Notice violates the rules of priority by curtailing senior water users before junior water right holders.

119. The Curtailment Notice violates the rules of priority by curtailing senior water right users before stopping unauthorized or unlawful diversions of water.

120. The Curtailment Notice violates the rules of priority by curtailing senior water right holders before ensuring curtailed junior water users are complying with curtailment orders.

121. The Curtailment Notice violates the rules of priority by curtailing senior water right holders during the same period junior water users were provided relief from meeting water quality objectives.

WHEREFORE, Petitioners pray for relief as set forth below.

FOURTH CAUSE OF ACTION

**(The Curtailment Notice is Arbitrary, Capricious,
and Not Supported by Substantial Evidence)**

122. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

123. The Curtailment Notice is a final decision made by the State Water Board.

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

125. The Curtailment Notice is arbitrary and capricious because the State Water Board did not make findings that support its determinations.

126. The Curtailment Notice is arbitrary and capricious because it is overly broad and curtails individual water users based on general information about basin conditions, rather than specific analysis related to the conditions specific to individual water users and individual diversions.

127. The Curtailment Notice is arbitrary and capricious because the State Water Board did not disclose the information it relied upon to determine supply and demand analyses.

128. The Curtailment Notice is arbitrary and capricious because the State Water Board does not have adequate information regarding supply and demand to support curtailment.

129. The Curtailment Notice is arbitrary and capricious because the State Water Board's demand analysis was based on claims to hold water rights, rather than the right to divert water.

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130. The Curtailment Notice is arbitrary and capricious because the State Water Board did properly not account for accretions and return flows in estimating supply.

131. The Curtailment Notice is arbitrary and capricious because it assumes all water right claims that include both pre-1914 and riparian rights are only riparian diversions.

132. The Curtailment Notice is arbitrary and capricious because the State Water Board's demand analysis failed to consider whether riparian water right holders have had their water rights prescribed by junior water right holders.

133. The Curtailment Notice is arbitrary and capricious because the State Water Board's demand analysis failed to consider whether riparian water right holders are junior in priority to some pre-1914 water right holders.

134. The Curtailment Notice is arbitrary and capricious because the State Water Board did not support its method, formula, or other approach for allocating downstream senior demand to upstream junior water users.

135. The Curtailment Notice is arbitrary and capricious because it does not curtail all diverters that divert water pursuant to a pre-1914 water right that is dated as 1903 or later.

136. The Curtailment Notice is arbitrary and capricious because the State Water Board did not lawfully allocate the downstream Delta demand to the upstream tributary water right holders.

137. The Curtailment Notice is arbitrary and capricious because the State Water Board did not clearly provide a date or other mechanism whereby regulated parties are able to determine the criteria for when and under what circumstances curtailment will be lifted.

WHEREFORE, Petitioners pray for relief as set forth below.

FIFTH CAUSE OF ACTION

(Unconstitutional Taking of Property)

138. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

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139. The Fifth and Fourteenth Amendments prohibit the State Water Board from taking private property without just compensation. (*Allegretti & Company v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1270; citing *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 536-537.)

140. Two types of regulatory action are per se takings. First, where the government requires an owner to suffer a permanent physical invasion of his or her property—however minor—it must provide just compensation. (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419.) Second, compensation is required “where regulation denies all economically beneficial or productive use of land.” (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015.)

141. The Curtailment Notice requires Curtailed Water Right Holders immediately stop diverting water. The right to divert water pursuant to pre-1914 water rights is a property right. The State Water Board is a state agency which, through its Curtailment Notice, is depriving Petitioners of all economic and beneficial use of their respective rights to divert water. Despite taking Petitioners’ property rights, the State Water Board has not compensated Petitioners for the taking.

WHEREFORE, Petitioners pray for relief as set forth below.

SIXTH CAUSE OF ACTION

(Curtilment Notice Will Result in an Unreasonable Use of Water)

142. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

143. Article 10, Section 2 of the California Constitution provides, in part, “that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.”

144. The Curtailment Notice issued to pre-1914 water right holders on the San Joaquin River will cause a waste and unreasonable use of water in violation of Article 10, Section 2 of the California Constitution.

1 145. The current diversion of water from the San Joaquin River directly downstream of the
2 Grasslands Bypass project removes water with high salinity and salt content from the San Joaquin
3 River.

4 146. The Curtailment Notice requires several pre-1914 water right holders on the San
5 Joaquin River to immediately stop diverting water. The curtailment of diversions that remove
6 highly salty water from the area directly downstream of the Grasslands Bypass project will cause an
7 increase in salinity levels further downstream on the San Joaquin River.

8 147. The USBR is currently required to release water from New Melones Reservoir in
9 order to achieve salinity levels of not more than 1.0 electrical conductivity (EC) levels at Vernalis.

10 148. With the curtailment of pre-1914 water rights on the mainstem of the San Joaquin
11 River causing an increase in salinity levels, additional releases from the New Melones Reservoir
12 will be required in order to meet EC requirements at Vernalis.

13 149. The purpose of the EC requirement at Vernalis is to protect water diverted and put it
14 to beneficial use by Delta agriculture.

15 150. The release of stored water from New Melones cannot be diverted or put to beneficial
16 use by riparian water right holders.

17 151. To the extent they are curtailed, pre-1914 water right holders in the Delta will not be
18 able to divert or put stored water released from New Melones to beneficial use.

19 152. For these reasons, the protected beneficial use, Delta agriculture, will not benefit or
20 otherwise be protected from the EC requirement or the water released to meet with requirement.

21 153. Given the inability to put the water to beneficial use by the protected beneficial use,
22 the release of stored water to dilute increased salinity caused by the Curtailment Notice amounts to
23 an unreasonable use of water.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **(The Curtailment Notice Amounts to an Unauthorized Amendment**
3 **to the Water Quality Control Plan)**

4 154. Petitioners hereby reallege and incorporate herein by reference the allegations
5 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
6 herein.

7 155. The State Water Board adopted the Water Quality Control Plan for the Sacramento
8 San Joaquin San Francisco Bay Delta Estuary ("Bay Delta Plan") in 1978.

9 156. The State Water Board is required to review and amend the Bay Delta Plan every
10 three years.

11 157. The process to amend the plan is quasi-legislative, requires specific planning process,
12 and must be supported by appropriate environmental analysis.

13 158. The State Water Board amended the Bay Delta Plan in 1996.

14 159. In order to implement the requirements in the Bay Delta Plan, the State Water Board
15 adopted D-1641.

16 160. D-1641 amended the junior water rights of DWR and USBR to require the release of
17 water from February through June to meet water quality requirements.

18 161. The State Water Board approved the TUCP, which relieved DWR and USBR from
19 some of the water quality requirements, including the USBR's requirement to meet certain
20 minimum flows specified in D-1641 to be measured at Vernalis.

21 162. The Curtailment Notice requires senior water right holders to stop diverting water.
22 This action is intended to increase the flow of water past Vernalis, which is the compliance point
23 for D-1641 flows.

24 163. The relief from USBR's requirement to release or bypass flows to meet water flows at
25 Vernalis at the same time senior water right holders are curtailed results in the equivalent of
26 amending the water quality control plan and reallocating responsibility for meeting water quality
27 requirements at Vernalis.

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1 164. This reallocation and amendment of the water quality control plan violates the legal
2 requirements for notice, hearing, and environmental review and analysis of the amendment.

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

4 **EIGHTH CAUSE OF ACTION**

5 **(Violation of the Bagley-Keene Open Meeting Act)**

6 165. Petitioners hereby reallege and incorporate herein by reference the allegations
7 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
8 herein.

9 166. The Bagley-Keene Open Meeting Act requires that all meetings of a state body,
10 whether in person, by teleconference, or any other means, shall be open and public.

11 167. Government Code section 11125 requires that a notice at least 10 days prior to all
12 meetings of a state body shall be made available to the public, and said notice shall include a
13 specific agenda with a brief description of the items to be transacted or discussed in open and
14 closed session, as well as a citation to the specific statutory authority under which a closed session
15 is to be held.

16 168. The Curtailment Notice is a state action taken by the State Water Board.

17 169. The Curtailment Notice is null and void because the State Water Board failed to
18 notice a public meeting, hold a meeting open to the public, or assert a specific statutory right to
19 hold a closed session in violation of Government Code sections 11123 and 11125.

20 170. The Curtailment Notice is null and void because even if the State Water Board held a
21 valid meeting to approve said Curtailment Notice, it failed to provide any notice at least 10 days
22 prior to the meeting in violation of Government Code section 11125.

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

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1 **NINTH CAUSE OF ACTION**

2 **(Writ of Mandate – Code of Civil Procedure 1085)**

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4 171. Petitioners hereby reallege and incorporate herein by reference the allegations
5 contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth
6 herein.

7 172. A court may issue a writ of mandate to any administrative agency that is unlawfully
8 depriving a party of the use and enjoyment of a right to which the party is entitled. (Code of Civ.
9 Proc., § 1085.)

10 173. To the extent this Court finds the Curtailment Notice is not a final action of the State
11 Water Board, Petitioners request this Court issue a writ of mandate preventing the State Water
12 Board from unlawfully depriving Petitioners from their right to divert water pursuant to California
13 Code of Civil Procedure section 1085.

14 174. As noted above, the Curtailment Notice requires Petitioners stop diverting water. The
15 diversion of water is a property right protected by Code of Civil Procedure section 1085. The
16 Curtailment Notice was issued without a hearing and in violation of Petitioners' basic due process
17 rights.

18 175. A writ of mandate pursuant to section 1085 must be issued in all cases in which there
19 is not a plain, speedy or adequate remedy in the ordinary course of law. (Code of Civ. Proc., §
20 1085.)

21 176. Petitioners lack a plain, speedy, or adequate remedy in the ordinary course of law
22 because Petitioners are faced with immediate curtailment or risk of substantial administrative
23 penalty accrual.

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

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TENTH CAUSE OF ACTION

(The Delegation of Authority to the Executive Director is Unlawful)

177. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

178. To the extent the Curtailment Notice delegates any authority to the Executive Director, such delegation is unlawful.

179. The Executive Director is an employee of the State Water Board. (Water Code, § 186(a).)

180. The State Water Board delegated specific and limited authority to the Executive Director by adopting Resolution No. 2012-0061. These tasks delegated to the Executive Director constitute discretionary acts, as opposed to ministerial or administrative acts.

181. No statute, or other command by the Legislature, grants the power to the Executive Director to perform these tasks delegated to it by the State Water Board.

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

WHEREFORE, Petitioners pray for relief as set forth below.

ELEVENTH CAUSE OF ACTION

(Declaratory Relief – Code of Civil Procedure section 1060)

183. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

184. There is an actual controversy regarding whether the Curtailment Notice is outside or in excess of the State Water Board's jurisdiction.

185. There is an actual controversy regarding whether Petitioners' due process rights were violated by the Curtailment Notice.

186. There is an actual controversy whether the Curtailment Notice violates water right priority.

187. There is an actual controversy regarding whether the State Water Board's determination that there is "insufficient" water available Petitioners is supported by the weight of the evidence.

188. There is an actual controversy regarding whether the Curtailment Notice amounts to an unauthorized taking of Petitioners' property.

189. There is an actual controversy regarding whether the Curtailment Notice requires the unreasonable use of water.

190. There is an actual controversy regarding whether the issuance of the Curtailment Notice violates the Bagley-Keene Open Meeting Act.

191. There is an actual controversy regarding whether the Curtailment Notice amounts to an unauthorized taking of Petitioners' property.

192. There is an actual controversy regarding whether the Curtailment Notice amounts to an unauthorized amendment to the Water Quality Control Plan.

193. Pursuant to Code of Civil Procedure section 1060, Petitioners request the Court provide declaratory judgment as set forth in the PRAYER.

WHEREFORE, Petitioners pray for relief as set forth below.

TWELFTH CAUSE OF ACTION

(Code of Civil Procedure § 526, Civil Code § 3422)

194. Petitioners hereby reallege and incorporate herein by reference the allegations contained in the above paragraphs of this Petition for Writ of Mandate, as though fully set forth herein.

195. Petitioners are entitled to immediate relief in the form of rescission of the Curtailment Notice because it deprived Petitioners of procedural due process and is without legal or factual justification.

196. The Curtailment Order will require Petitioners to stop diverting water or continue to divert water at the risk of great administrative penalty.

1 197. Petitioners' operations cannot sustain the uncertainty, the lack of water reliability, or
2 exposure to huge penalty fines.

3 198. Petitioners have no other adequate remedy at law.

4 199. Petitioners request that the Court immediately and permanently enjoin the State
5 Water Board from issuing the Curtailment Notice or taking any further action without satisfying
6 due process requirements, including providing an opportunity to request an evidentiary hearing.

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 section 1094.5
11 directing the State Water Board to set aside the Curtailment Notice.
- 12 2. For preliminary and permanent injunction prohibiting the State Water Board from
13 issuing, or otherwise taking action authorized under, the Curtailment Notice;
- 14 3. For a declaration pursuant to Code of Civil Procedures section 1060, stating the
15 following:
 - 16 (a) the Curtailment Notice exceeds the State Water Board's authority and
17 jurisdiction;
 - 18 (b) the Curtailment Notice violates the due process rights of all Curtailed Water Right
19 Holders;
 - 20 (c) the Curtailment Notice violates the rule of priority;
 - 21 (d) the Curtailment Notice is arbitrary, capricious and not supported by evidence;
 - 22 (e) the Curtailment Notice constitutes an unlawful taking of property;
 - 23 (f) the Curtailment Notice will result in the unreasonable use of water;
 - 24 (g) the Curtailment Notice amounts to an unauthorized amendment to the Water
25 Quality Control Plan; and
 - 26 (h) the Curtailment Notice is null and void due to Bagley-Keene Act violations;
- 27 4. For just compensation;
- 28 5. For cost of suit;

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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.

O'LAUGHLIN & PARIS, LLP

DATED: June 19, 2015

By:



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

MASON, ROBBINS,
BROWNING & GODWIN LLP

DATED: June 19, 2015

By:

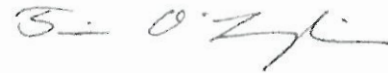


KENNETH ROBBINS, Attorneys for
Plaintiff/Petitioner SOUTH SAN
JOAQUIN IRRIGATION DISTRICT

O'LAUGHLIN & PARIS, LLP

DATED: June 19, 2015

By:

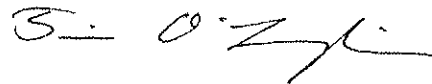


TIM O'LAUGHLIN, Attorneys for
Plaintiff/Petitioner OAKDALE
IRRIGATION DISTRICT

1
2 VERIFICATION
3

4 I, TIM O'LAUGHLIN, state that I am an attorney representing Plaintiff/Petitioner SAN
5 JOAQUIN TRIBUTARIES AUTHORITY. I have read the foregoing Petition/Complaint and have
6 personal knowledge that the matters set forth therein are true and correct, and on that basis allege
7 them to be true and correct. I make this verification in accordance with California Code of Civil
8 Procedure § 446, subdivision (a) as Plaintiff/Petitioner counsel because the Plaintiff/Petitioner is a
9 Joint Powers Authority and representatives are absent from Sacramento County, where I have my
10 office, and the facts are within my knowledge.
11

12 I declare under penalty of perjury under the laws of the State of California that the above is
13 true and correct and that this verification was executed on June 17, 2015, at Sacramento, California.
14
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16 
17

18 TIM O'LAUGHLIN, Attorney for Plaintiff/Petitioner
19 SAN JOAQUIN TRIBUTARIES AUTHORITY.
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VERIFICATION

I, STEVE KNELL, state that I am the General Manager for Plaintiff/Petitioner Oakdale Irrigation District. I have read the foregoing Petition/Complaint and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Code of Civil Procedure § 446, subdivision (a).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on June 18, 2015, at Oakdale, California.




STEVE KNELL, General Manager
OAKDALE IRRIGATION DISTRICT

VERIFICATION

I, JEFF SHIELDS, state that I am the General Manager for Plaintiff/Petitioner SOUTH SAN JOAQUIN IRRIGATION DISTRICT. I have read the foregoing Petition/Complaint and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Code of Civil Procedure § 446, subdivision (a).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on June 18, 2015, at Manteca, California.



JEFF SHIELDS, General Manager
SOUTH SAN JOAQUIN IRRIGATION DISTRICT