

SOMACH SIMMONS & DUNN  
A Professional Corporation

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 DANIEL KELLY, ESQ. (SBN 215051)  
AARON FERGUSON, ESQ (SBN 271427)  
3 500 Capitol Mall, Suite 1000  
Sacramento, California 95814-2403  
4 Telephone: (916) 446-7979  
Facsimile: (916) 446-8199

5 Attorneys for Petitioner/Plaintiff BYRON-  
6 BETHANY IRRIGATION DISTRICT

**EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103**

**FILED**  
JUN 26 2015

STEPHEN J. MERINO, CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

By: M. Merino

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF CONTRA COSTA

10 BYRON-BETHANY IRRIGATION DISTRICT;

Case No. *N15-0967*

11 Petitioner/Plaintiff,

PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND DAMAGES

12 vs.

13 CALIFORNIA STATE WATER RESOURCES  
14 CONTROL BOARD; THOMAS HOWARD as  
EXECUTIVE DIRECTOR OF THE STATE  
15 WATER RESOURCES CONTROL BOARD;  
MICHAEL GEORGE, as DELTA  
16 WATERMASTER; and DOES 1 THROUGH  
10,000, INCLUSIVE

17 Respondents/Defendants.

18  
19 **INTRODUCTION**

20 1. Petitioner and Plaintiff, Byron-Bethany Irrigation District (Petitioner/Plaintiff or  
21 BBID), petitions this Court to issue of a Writ of Mandate pursuant to Code of Civil Procedure  
22 sections 1085 and/or 1094.5, and submits this complaint for declaratory and injunctive relief and  
23 damages against Respondents/Defendants the California State Water Resources Control Board  
24 (SWRCB); Thomas Howard, the SWRCB's Executive Director (Executive Director); Michael  
25 George, the Delta Watermaster (Watermaster); and Does 1 through 10,000.

26 2. BBID requests that this Court issue a Writ of Mandate pursuant to Code of Civil  
27 Procedure sections 1085 and/or 1094.5 setting aside the June 12, 2015 notice curtailing BBID's  
28 water diversions as unlawfully injuring BBID's pre-1914 appropriative water right and being

1 otherwise unlawful, enjoin Respondents/Defendants from enforcing the same, and issue a  
2 declaration of BBID's rights relative to Respondents'/Defendants' actions and failure to provide  
3 BBID with due process with respect to the curtailment of its vested pre-1914 water right and a  
4 declaration that Respondents'/Defendants' process for implementing the curtailments at issue  
5 herein and purported exceptions thereto are contrary to law.

### 6 BACKGROUND

7 3. BBID holds a pre-1914 appropriative water right to divert and beneficially use  
8 water from watercourses in the California Delta. The priority date for BBID's appropriative  
9 water right is 1914.

10 4. On or about June 12, 2015, the Executive Director sent a letter to BBID  
11 purporting to curtail BBID's pre-1914 appropriative water right and certain other pre-1914  
12 appropriative water rights with a priority date of 1903 and later throughout the entire Sacramento  
13 and San Joaquin River watersheds, including the California Delta. The June 12, 2015 letter was  
14 styled as a "NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE  
15 CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO-SAN  
16 JOAQUIN WATERSHEDS AND DELTA WITH A PRE-1914 APPROPRIATIVE CLAIM  
17 COMMENCING DURING OR AFTER 1903" (Notice). (A true and correct copy of the Notice  
18 is attached hereto as Exhibit A.)

19 5. The Notice directs BBID to "immediately stop diverting" under its "pre-1914  
20 water right[]" and further demands that BBID complete an online Curtailment Certification Form  
21 certifying that BBID has ceased all diversions under its pre-1914 right.

22 6. The Notice also provides that any further diversion of water under BBID's pre-  
23 1914 appropriative water right subjects BBID to potential significant administrative fines, cease  
24 and desist orders, or prosecution in court as set forth as follows:

25 Those who are found to be diverting water beyond what is legally available to  
26 them may be subject to administrative penalties, cease and desist orders, or  
27 prosecution in court. If the State Water Board finds following an adjudicative  
28 proceeding that a person or entity has diverted or used water water [sic]  
unlawfully, the State Water Board may assess penalties of \$1,000 per day of

1 violation and \$2,500 for each acre-foot diverted or used in excess of a valid water  
2 right. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board  
3 issues a Cease and Desist Order against an unauthorized diversion, violation of  
4 any such order can result in a fine of \$10,000 per day. (See Water Code, §§ 1831,  
5 1845.)

6 7. The Notice was not issued pursuant to any hearing or proceeding before the  
7 SWRCB. BBID was not provided an opportunity to test any evidence or information relied upon  
8 by the SWRCB or the Executive Director, and was not provided an opportunity to present the  
9 SWRCB with evidence regarding the availability of water diverted pursuant to BBID's pre-1914  
10 appropriative water right.

11 8. While the SWRCB has, since the Notice was issued, attempted to clarify and  
12 downplay the import of the Notice, the Notice has not been withdrawn nor have the threats  
13 contained therein been retracted.

14 9. In attempting to "clarify" the Notice, the SWRCB has threatened BBID and other  
15 lawful diverters that they are each obligated to completely and independently assess the entire  
16 Sacramento – San Joaquin River watershed water supply system on a daily basis, including an  
17 analysis of those who may lay claim to water within that system, and independently determine  
18 whether there is *any* water available for each diverter at each diverter's point of diversion.

19 10. The SWRCB's articulation of this burden stands the State's water right system on  
20 its head. Generally, water right holders are able to divert water when present at their point of  
21 diversion, absent notification from the SWRCB that an individual diverter has been curtailed. In  
22 the event another water user has a valid claim to the water being diverted, that water user would  
23 complain of injury and the matter would be resolved informally or through a quasi-judicial or  
24 judicial proceeding.

25 11. Prior to "curtailing" post-1914 water rights in the Sacramento-San Joaquin River  
26 watershed, the SWRCB had published information that there was little or no water available to  
27 satisfy post-1914 demands. Notwithstanding that determination, the SWRCB did not  
28 immediately send out curtailment notices to those post-1914 water right holders. Instead, those  
post-1914 water right holders continued to divert water – even though, according to the SWRCB,

1 there was no water available under their post-1914 water rights.

2 12. BBID is informed and believes that none of those post-1914 water right holders  
3 was required, by the SWRCB, to conduct an independent evaluation of the water supply  
4 available to each diverter.

5 13. While it appears that there was insufficient water available to satisfy post-1914  
6 water rights in the Sacramento-San Joaquin River watersheds and the SWRCB delayed issuance  
7 of post-1914 curtailments, the SWRCB has not accused any post-1914 water right holder of  
8 unlawfully diverting water based on unavailability during that intervening time, nor has the  
9 SWRCB required any post-1914 water right holder to prove water was available to that  
10 particular water right holder.

11 14. At the same time the SWRCB has threatened BBID with enforcement unless  
12 BBID can demonstrate there is sufficient water available to BBID at BBID's point of diversion,  
13 the SWRCB, through its Executive Director and/or the Watermaster, has authorized or  
14 sanctioned the continued use of water by certain riparian water right claimants *whether or not*  
15 *there is any water available to them*. The SWRCB has also authorized the continued diversion  
16 and use of water under more junior rights, allowing diversions to storage for up to 30 days,  
17 without consequence.

18 15. The Notice and the SWRCB's later pronouncements create a *dilemma*. BBID  
19 can either 1) disregard the Notice and continue to divert under its pre-1914 appropriative water  
20 right in order to prevent the catastrophic economic injury and significant threats to public health  
21 and safety that would ensue as a result of ceasing water diversion and deliveries, and face  
22 enforcement proceedings and the threat of extreme monetary penalties that could exceed  
23 BBID's ability to pay; or, 2) cease diverting under its pre-1914 appropriative water right,  
24 leaving communities within BBID without a source of drinking water, water for fire protection  
25 and basic human health and sanitation needs, and resulting in landowners losing crops, the  
26 closing of agricultural businesses, and the significant loss of jobs that will follow from the  
27 cessation of farming within BBID. With either option, the economic toll on landowners within  
28 BBID will be catastrophic. Losses suffered as a result of the curtailment of BBID's water rights

1 will exceed \$65 million in crop losses and result in the loss of over 500 jobs. Long-term  
2 damages will greatly exceed these immediate losses.

3 16. As such, BBID requires a judicial resolution of the issues presented herein so  
4 that it can freely exercise its vested pre-1914 appropriative water right without Respondents’/  
5 Defendants’ continued threats of regulatory and prosecutorial action and substantial civil  
6 penalties.

7 **PARTIES**

8 17. Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT is, and at all  
9 times mentioned herein was, a public agency, a California Irrigation District, formed and  
10 operating pursuant to division 11 of the Water Code sections 20500 et seq. BBID includes lands  
11 within Contra Costa County, Alameda County, and San Joaquin County. BBID’s purposes  
12 include the provision of water to lands within the District for any beneficial use, to construct the  
13 necessary works for the diversion and use of water for those beneficial uses, and to commence  
14 and maintain any action and proceeding to carry out its purposes or protect its interests. For the  
15 purposes of the Notice and challenge herein, BBID diverts water pursuant to its pre-1914  
16 appropriative water right and delivers that water for many beneficial uses.

17 18. Respondent/Defendant CALIFORNIA STATE WATER RESOURCES  
18 CONTROL BOARD is a public agency of the State of California created by the Legislature in  
19 1967 to exercise the adjudicatory and regulatory functions of the state in the field of water  
20 resources. The SWRCB is governed by a board of five members appointed by the Governor of  
21 the State of California. The SWRCB, at all times relevant herein, is charged by law with the  
22 faithful performance of all statutory duties arising under the California Water Code and with  
23 faithfully carrying out the duties and obligations arising under the California Constitution, and is  
24 limited by both the California and United States Constitutions.

25 19. Respondent/Defendant THOMAS HOWARD is the Executive Director of the  
26 SWRCB and is responsible for certain of the conduct complained of herein.

27 20. Respondent/Defendant MICHAEL GEORGE is the Delta Watermaster appointed  
28 by the SWRCB and is considered the “Special Master” for the Delta. By statute, the

1 Watermaster's authority is limited to diversions in the Delta, and for the monitoring and  
2 enforcement of the SWRCB's orders, and license and permit terms, and conditions that apply to  
3 water rights authorizing the diversion of water from the Delta. The Watermaster is responsible  
4 for certain of the conduct complained of herein.

5 21. Petitioner/Plaintiff does not know the true names and identities of  
6 Respondents/Defendants DOES One through Ten Thousand and, therefore, allege said unnamed  
7 parties by fictitious names. Petitioner/Plaintiff will seek leave of Court, as may be necessary, to  
8 amend this Petition and Complaint to include the true names and capacities of  
9 Respondents/Defendants DOES One through Ten Thousand when the same have been  
10 ascertained.

### 11 JURISDICTION AND VENUE

12 22. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
13 sections 525, 526, 527, 1060, 1085, 1094.5, 187, and 863.

14 23. Venue is proper in this Court pursuant to Code of Civil Procedure sections  
15 392(a)(1) and 393(b) in that BBID has property, which lies in Contra Costa County and  
16 Respondents'/Defendants' actions impact BBID's property and adversely impact the residential  
17 communities and landowners within BBID's boundaries. Absent alternative supplies,  
18 Respondents'/Defendants' purported curtailment of BBID's pre-1914 appropriative water right  
19 would result in the cessation of water deliveries to the approximately twelve thousand (12,000)  
20 residents of the community of Mountain House, depriving the community of water desperately  
21 needed for human health and sanitation needs, fire protection, and other uses, and would result in  
22 thousands of acres of land lying fallow, the destruction of thousands of acres of annual and  
23 permanent crops, and causing significant unemployment for agricultural workers who will lose  
24 their jobs as a result of the lack of water for agricultural uses within BBID.

### 25 STANDING

26 24. BBID's pre-1914 appropriative water right was purportedly curtailed by the  
27 Notice and BBID is therefore directly and materially injured by the Notice. The Notice was  
28 directed to BBID and BBID is under direct threat of enforcement for failure to comply with the

1 mandates contained in the Notice. BBID therefore has standing to challenge the Notice.  
2 Moreover, the other activities alleged herein adversely affect BBID in that they either materially  
3 affect the availability of water under BBID's pre-1914 appropriative water right and/or fail to  
4 comply with the California law of water rights, thereby injuring BBID.

5 25. BBID was not required to exhaust any administrative remedies prior to filing this  
6 action as to the Notice or any other action alleged herein. (See Wat. Code, § 1126(b).) The  
7 Notice was not issued pursuant to any hearing or noticed meeting by the SWRCB and the  
8 Executive Director was not delegated the authority of the SWRCB to issue any purported  
9 curtailments to pre-1914 water right holders. The actions of the Watermaster and/or the  
10 Executive Director with respect to riparian water rights was not undertaken pursuant to any  
11 delegated authority as the only authority for the purported "voluntary curtailment" scheme exists  
12 only as it relates to curtailments of post-1914 water rights. Moreover, the only purported  
13 authority for the "voluntary curtailment" scheme is contained in an emergency regulation that  
14 expired by operation of law prior to the agreements complained of herein. Nevertheless, BBID  
15 has filed a Petition for Reconsideration with the SWRCB in the event that the Court determines  
16 that the Executive Director issued the Notice under authority delegated by the SWRCB.

17 **GENERAL ALLEGATIONS**

18 **BBID's Pre-1914 Water Right and Diversion**

19 26. BBID holds a vested pre-1914 appropriative water right to divert water from  
20 watercourses within the California Delta. BBID's water right has a priority date of at least 1914.  
21 BBID diverts and delivers water pursuant to its pre-1914 appropriative water right for reasonable  
22 and beneficial uses within BBID and, on occasion, makes water diverted under its pre-1914  
23 appropriative water right available for use on lands outside the District. BBID's pre-1914  
24 appropriative water right is documented in the Statement of Water Diversion and Use Number  
25 S021256 filed with the SWRCB.

26 27. BBID also has a contract with the United States Bureau of Reclamation (USBR)  
27 for the use of Central Valley Project (CVP) water on a portion of the lands within BBID. For  
28 2015, BBID has received a zero (0) percent allocation under that contract and, therefore, is

1 receiving *no* CVP water under its contract with the USBR.

2 28. BBID currently diverts water under its pre-1914 appropriative water right at a  
3 point of diversion that is located on the State Water Project (SWP) intake channel (Intake  
4 Channel), in Contra Costa County.

5 29. The SWP was authorized in 1960 by the California Water Resources  
6 Development Bond Act, commonly known as the Burns-Porter Act (Wat. Code, § 12930 et seq.).  
7 That Act provided for the issuance of \$1,750,000,000 in general obligation bonds to be repaid  
8 from SWP revenue. As part of the construction of the SWP, the California Department of Water  
9 Resources (DWR) constructed the California Aqueduct, Clifton Court Forebay, and the Harvey  
10 O. Banks Pumping Plant (Banks Pumping Plant). Clifton Court Forebay is operated as a  
11 regulating reservoir and serves as the beginning of the California Aqueduct. Clifton Court  
12 Forebay is connected to Banks Pumping Plant by the SWP Intake Channel. Water flows from  
13 Clifton Court Forebay down the Intake Channel to Banks Pumping Plant, where it is lifted and  
14 turned into the California Aqueduct.

15 30. When the SWP was constructed, BBID's point of diversion in the Delta was  
16 located on Italian Slough. When Clifton Court Forebay and its related facilities were  
17 constructed, DWR destroyed BBID's intake facilities at its original point of diversion. By  
18 Agreement between DWR and BBID, dated May 4, 1964, DWR destroyed a portion of the  
19 BBID's main lateral and provided funds to BBID to construct two new diversion facilities on the  
20 Intake Channel, between Clifton Court Forebay and Banks Pumping Plant.

21 31. As part of the relocation of BBID's diversion facilities to the Intake Channel,  
22 DWR consented to the permanent and perpetual use by BBID, without cost, of DWR's facilities  
23 and of that portion of DWR's right of way required for the construction, maintenance, and  
24 operation of BBID's pumping facilities.

25 32. BBID's point of diversion is in a unique location in that there is always water  
26 available at BBID's diversion facilities, not only due to its location in the Delta, but also because  
27 it is located on the Intake Channel. The presence of water at BBID's diversion facilities is  
28 influenced by DWR's operation of Clifton Court Forebay and its related facilities.



1           33.     Prior to the construction of the SWP, and prior to the construction of the federal  
2 CVP, in each and every year since the early 1900s, BBID diverted and beneficially used water  
3 from the watercourses in the Delta for agricultural and other purposes. Even during the driest  
4 years in California's history, the 1929-1934 drought, BBID was able to divert and deliver for  
5 beneficial use water from the Delta for agricultural uses.

6           34.     BBID is currently the sole source of water and the only entity that supplies water  
7 to the community of Mountain House, a community of approximately 12,000 people with  
8 elementary schools and a high school. The fire protection system (hydrants) within Mountain  
9 House is also accessed by Cal Fire for fighting wildfire in the Altamont Pass region. BBID  
10 provides water to Mountain House under BBID's pre-1914 appropriative water right.

11           35.     BBID provides water to the Mariposa Energy Project for air quality and other  
12 purposes and provides water for fire fighting purposes at the Contra Costa Airport. BBID is the  
13 sole source of water supply for these uses.

14           36.     For the 2015 agricultural season, BBID is the sole source of water supply for  
15 more than 6,300 acres of agricultural crops, as follows: 636 acres of walnuts, 11 acres of olives,  
16 38 acres of nursery, 1,200 acres of grapes, 387 acres of fruit trees, 10 acres of figs, 463 acres of  
17 cherries, 789 acres of almonds, 100 acres of mixed vegetables, 326 acres of bell peppers, 275  
18 acres of tomatoes, 414 acres of sweet corn, 5 acres of strawberries, 837 acres of Sudan, 703 acres  
19 of alfalfa, 39 acres of clover, and 86 acres of pasture.

20           37.     Those water users receiving their water supply from BBID have implemented  
21 state of the art conservation measures and operations within BBID and are therefore extremely  
22 efficient. Most agricultural water is applied via the use of drip tape and/or micro sprinklers.  
23 Water use within Mountain House is also efficient, as Mountain House is a relatively new  
24 community constructed using state of the art water conservation methods. Current average per-  
25 capita water use within Mountain House is approximately 97 gallons per day.

26     **Curtailments and Effects Therefrom**

27           38.     On June 12, 2015, the SWRCB, through its Executive Director Thomas Howard,  
28 issued the Notice purporting to curtail BBID's pre-1914 appropriative water right.

1           39.     The Notice, among other things, purports to direct BBID “to immediately stop  
2 diverting water,” and further mandates that BBID complete an “online Curtailment Certification  
3 Form” confirming BBID’s “cessation of diversion under [its] specific pre-1914 claim of right.”

4           40.     On June 22, 2015, BBID became aware of pleadings filed by the Attorney  
5 General’s Office on behalf of the SWRCB in San Joaquin County Superior Court in the case of  
6 *Banta-Carbona Irrigation District v. California State Water Resources Control Board, et al.*,  
7 San Joaquin County Superior Court Case No. 39-2015-00326421. The case involves Banta-  
8 Carbona Irrigation District’s challenge to the Notice. In response to Banta-Carbona’s Request  
9 for a Temporary Restraining Order or Stay of the Notice, the SWRCB filed an Opposition.

10          41.     In the Opposition, the SWRCB changed course from the Notice’s clear directive  
11 that BBID must stop diverting water. In the Opposition, the SWRCB represents that the Notice  
12 “is not directed at [any particular diverter]” and that the Notice does not subject a diverter to  
13 fines or penalties for failure to comply. Not only do the SWRCB’s statements in the Opposition  
14 conflict with the Notice, but they are also inconsistent with the SWRCB’s representations to the  
15 public. In a press release dated June 12, 2015, the SWRCB acknowledged that the Notice being  
16 sent to water right holders directing them to stop diverting water “affected” senior water rights.

17          42.     Upon review of the Opposition, BBID submitted a letter to SWRCB Executive  
18 Director Tom Howard dated June 23, 2015 indicating that BBID construes the Notice as  
19 explained by the SWRCB to the Court – i.e., that it is not an actual curtailment of BBID’s water  
20 right and is solely informational.

21          43.     The SWRCB subsequently clarified that the Notice was, in fact informational, but  
22 threatened that unless BBID could demonstrate that water was actually available under BBID’s  
23 priority of right at BBID’s point of diversion, BBID would be subject to the SWRCB’s  
24 significant enforcement authority.

25          44.     The SWRCB imposed no such requirement on post-1914 water right holders and  
26 withheld curtailment notices to post-1914 water right holders until long after the SWRCB had  
27 determined there was insufficient water available to satisfy those rights. The SWRCB has also  
28 waived its enforcement authority as to certain riparian water right claimants even though there is

1 likely insufficient water available to meet the claimed riparian demand.

2 45. Despite BBID's letter, a controversy still remains between BBID and the SWRCB  
3 on this issue because of the SWRCB's conflicting representations regarding the legal import of  
4 the Notice. Moreover, because the SWRCB has predetermined that there is no water available to  
5 satisfy BBID's pre-1914 appropriative water right, BBID would not get a fair hearing before the  
6 SWRCB in an enforcement proceeding.

7 46. A curtailment of BBID's pre-1914 appropriative water right, in the absence of  
8 alternative water supplies, will result in the loss of over 500 jobs in the Byron area. These job  
9 losses will result from the immediate closure of packing sheds and the shut down of agricultural  
10 activities within BBID. Additional job losses will occur as the impacts ripple throughout the  
11 region.

12 47. A curtailment of BBID's pre-1914 appropriative water right will result in the loss  
13 of more than \$65 million in crops.

14 48. These significant and severe consequences demand that the SWRCB use accurate  
15 information and adhere to the water right priority system and not shift the burden to BBID to  
16 demonstrate water is actually available to BBID any time it seeks to divert water under its  
17 appropriative water right.

18  
19 **FIRST CAUSE OF ACTION**  
**(Declaratory Relief / Writ of Mandate - SWRCB Lacks**  
20 **Jurisdiction to Issue the Notice)**

21 49. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
22 in paragraphs 1 through 48, as though fully set forth herein.

23 50. The SWRCB is statutorily charged with the orderly administration of water rights  
24 issued pursuant to the California Water Code.

25 51. The SWRCB does not have statutory authority to regulate pre-1914 water rights.  
26 Instead, the SWRCB's activities with regard to pre-1914 and riparian water rights are based upon  
27 the SWRCB's application of article X, section 2 of the California Constitution. In this regard,  
28 the SWRCB does not regulate pre-1914 appropriative or riparian water rights, but instead

1 enforces the constitutional prohibitions on waste and unreasonable use as it relates to water  
2 diverted under pre-1914 and riparian rights. The SWRCB is also authorized, in the exercise of  
3 its enforcement authority, to determine whether a valid pre-1914 appropriative or riparian water  
4 right exists.

5 52. The Notice does not purport to identify any of BBID's uses as a waste or  
6 unreasonable use under article X, section 2. The Notice does not allege that BBID does not  
7 possess a valid pre-1914 appropriative water right. Instead, the Notice purports to command  
8 BBID to cease diversions without citation to authority for curtailing pre-1914 appropriative  
9 water rights.

10 53. By attempting to command that BBID cease exercising its pre-1914 water right  
11 through the Notice, the SWRCB is attempting to "regulate" pre-1914 appropriative water rights  
12 in excess of its jurisdiction.

13 54. The Notice mandates that pre-1914 water right holders cease their respective  
14 diversions of water or be faced with enforcement actions, civil penalties, and/or prosecution in  
15 court if such diversions continue.

16 55. The SWRCB's attempt to regulate BBID's pre-1914 water right is beyond the  
17 scope of the SWRCB's legal and jurisdictional authority.

18 56. The SWRCB's later pronouncements regarding the import of the Notice and the  
19 shifting of the burden on BBID to demonstrate the availability of water on a daily basis is  
20 contrary to law. Moreover, the SWRCB's threat of enforcement in light of its public statement  
21 that no water is available to BBID ensures BBID will not receive a fair hearing before the  
22 SWRCB.

23 57. As a result of the Notice curtailing BBID's water right, the threats articulated by  
24 the SWRCB, and the attempt to shift the burden of proof to demonstrate water availability on  
25 BBID, an actual controversy has arisen and now exists between Petitioner/Plaintiff and  
26 Respondents/Defendants regarding the scope of SWRCB's jurisdiction to issue the Notice and  
27 later pronouncements regarding BBID's right to divert water under its pre-1914 appropriative  
28 water right. As alleged herein, the Notice substantially injures BBID and landowners within

1 BBID.

2 58. BBID desires a declaration of its rights with respect to the SWRCB's purported  
3 curtailment of BBID's pre-1914 appropriative water right and requests that this Court issue a  
4 declaration that the SWRCB acted in excess of its jurisdiction in issuing the Notice.

5 59. Such a declaration is necessary and appropriate at this time in order to avoid the  
6 unlawful curtailment of BBID's pre-1914 appropriative water right, which would adversely  
7 impact BBID's vested and protected property right therein.

8 60. Because the SWRCB acted in excess of its jurisdiction in issuing the Notice,  
9 Petitioner/Plaintiff requests that this Court issue a Writ of Mandate to the SWRCB commanding  
10 the SWRCB to rescind the Notice issued to BBID and enjoin the SWRCB from taking any  
11 enforcement action against BBID as threatened in the Notice.

12 **SECOND CAUSE OF ACTION**  
13 **(Declaratory Relief / Writ of Mandate - Executive Director Lacks**  
14 **Authority or Jurisdiction to Issue Notice)**

15 61. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
16 in paragraphs 1 through 60, as though fully set forth herein.

17 62. The Executive Director issued the Notice.

18 63. The Executive Director does not have the authority to curtail pre-1914  
19 appropriative water rights.

20 64. The SWRCB has not delegated authority to the Executive Director to issue  
21 notices of curtailment, such as the Notice.

22 65. The Executive Director's attempt to regulate BBID's pre-1914 appropriative  
23 water right is beyond the scope of the SWRCB and the Executive Director's legal and  
24 jurisdictional authority.

25 66. As a result of the Notice curtailing BBID's water right, an actual controversy has  
26 arisen and now exists between Petitioner/Plaintiff and Respondent/Defendant Executive Director  
27 regarding the scope of the SWRCB and the Executive Director's jurisdiction to issue the Notice.  
28 As alleged herein, the Notice substantially injures BBID and landowners within BBID.

1 67. BBID desires a declaration of its rights with respect to the Executive Director's  
2 purported curtailment of BBID's pre-1914 appropriative water right and requests that this Court  
3 issue a declaration that the Executive Director acted in excess of his jurisdiction in issuing the  
4 Notice.

5 68. Such a declaration is necessary and appropriate at this time in order to avoid the  
6 unlawful curtailment of BBID's pre-1914 appropriative water right, which would adversely  
7 impact BBID's vested and protected property right therein.

8 69. Because the Executive Director acted in excess of his jurisdiction in issuing the  
9 Notice, Petitioner/Plaintiff requests that this Court issue a Writ to the SWRCB and the Executive  
10 Director mandating the SWRCB to rescind the Notice issued to BBID and enjoin the SWRCB  
11 from taking any enforcement action against BBID as threatened in the Notice.

12 **THIRD CAUSE OF ACTION**  
13 **(Declaratory Relief / Writ of Mandate - Violation of Article 10, Section 2**  
14 **of the California Constitution)**

15 70. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
16 in paragraphs 1 through 69, as though fully set forth herein.

17 71. Article X, section 2 of the California Constitution imposes a duty on the SWRCB  
18 to fashion remedies that ensure the reasonable and beneficial use of the state's water resources.  
19 (See Wat. Code, § 275; *City of Lodi v. East Bay Mun. Dist.* (1936) 7 Cal.2d 316, 341; *City of*  
20 *Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288.)

21 72. The Notice ignores the unique geographic location of BBID's point of diversion  
22 in the Delta, at the downstream end of the San Joaquin River and Sacramento River watersheds.

23 73. Due to its location, there is always water available for appropriation at BBID's  
24 diversion facilities on the Intake Channel, between Clifton Court Forebay and Banks Pumping  
25 Plant.

26 74. The SWRCB's failure to analyze whether BBID's geographic location in the  
27 Delta would allow it to divert water violates the directive that the SWRCB ensure that the state's  
28 water resources are beneficially used to the fullest extent of which they are capable, and  
therefore violates article X, section 2 of the California Constitution.

1           75.     An actual controversy exists as to whether the SWRCB needs to ensure, when  
2 determining whether to curtail a water right, whether the state's water resources are beneficially  
3 used to the fullest extent of which they are capable.

4           76.     Petitioner/Plaintiff therefore requests that this Court issue a declaration that the  
5 SWRCB's failure to ensure water resources are put to beneficial use to the fullest extent of which  
6 they are capable violates article X, section 2 of the California Constitution.

7           77.     Because the SWRCB and the Executive Director, in purporting to curtail BBID's  
8 pre-1914 appropriative water right, failed to ensure the state's water resources are put to  
9 beneficial use to the fullest extent of which they are capable, Petitioner/Plaintiff requests that this  
10 Court issue a writ to the SWRCB and the Executive Director mandating the SWRCB rescind the  
11 Notice issued to BBID and an injunction prohibiting the SWRCB from taking any enforcement  
12 action against BBID as threatened in the Notice.

13                                                           **FOURTH CAUSE OF ACTION**  
14                                                           **(Declaratory Relief / Writ of Mandate - Violation of Due Process)**

15           78.     Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
16 in paragraphs 1 through 77, as though fully set forth herein.

17           79.     While a water right is usufructuary in nature, once it is perfected it becomes a  
18 vested *property right*. Thus, the right to beneficially use water pursuant to a valid pre-1914  
19 appropriative water right is a real property right.

20           80.     As such, BBID's pre-1914 appropriative water right is a property right subject to  
21 procedural due process protections, including proper notice and the opportunity to be heard.

22           81.     In order to make a determination that there was no water available to BBID under  
23 its pre-1914 appropriative water right at BBID's point of diversion, the SWRCB was required to  
24 make actual and specific findings with respect to BBID's diversion and use of water. The  
25 SWRCB failed to consider the specific facts related to BBID's pre-1914 appropriative water  
26 right. To the extent that the SWRCB considered any facts or made findings, the SWRCB has  
27 failed to provide those to BBID.

28           82.     The SWRCB, in purporting to curtail BBID's pre-1914 appropriative water right

1 by issuing the Notice, failed to provide BBID an evidentiary hearing or other opportunity to  
2 challenge the Notice and its findings.

3 83. BBID is informed and believes, and based upon that information and belief,  
4 alleges that the SWRCB and/or the Executive Director made the decision to curtail BBID's pre-  
5 1914 appropriative water right outside of any public process and did not provide a notice,  
6 hearing, or administrative proceeding to BBID.

7 84. By failing to provide BBID with proper notice and a meaningful opportunity to be  
8 heard regarding the factual and legal basis for issuing the Notice curtailing BBID's pre-1914  
9 appropriative water right, the SWRCB and/or the Executive Director have deprived BBID of due  
10 process to which it is entitled, constituting a failure to proceed in the manner required by law.  
11 (Code Civ. Proc., § 1094.5(b), (f).)

12 85. The SWRCB's public statements that there is insufficient water available to BBID  
13 to divert under its pre-1914 appropriative water right ensures BBID would not get a fair hearing  
14 before the SWRCB. Moreover, the SWRCB's threat of enforcement against BBID unless BBID  
15 can demonstrate it has water available to it in excess of the needs of all other claimants to water  
16 inappropriately shifts the burden on BBID and violates BBID's due process rights.

17 86. An actual controversy exists as to whether the SWRCB needed to provide BBID  
18 with a hearing or similar evidentiary process prior to attempting to curtail BBID's pre-1914  
19 appropriative water right.

20 87. BBID therefore requests that this Court issue a declaration that the SWRCB and  
21 the Executive Director violated BBID's due process rights by failing to provide a hearing prior to  
22 curtailing BBID's pre-1914 appropriative water right.

23 88. BBID further requests that the Court issue a Writ of Mandate directing the  
24 SWRCB and/or the Executive Director to rescind the Notice and enjoining the SWRCB from  
25 enforcing the Notice unless and until the SWRCB provides BBID with the appropriate due  
26 process protections afforded by an evidentiary hearing.



1 **FIFTH CAUSE OF ACTION**  
2 **(Declaratory Relief / Writ of Mandate - Violation of the**  
3 **Priority System of Water Rights)**

4 89. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
5 in paragraphs 1 through 88, as though fully set forth herein.

6 90. Water right priorities are a fundamental principle of California water law.

7 91. In general, there are two ways to establish a priority date for a pre-1914  
8 appropriative water right. One way was known as "common law" appropriation whereby an  
9 appropriator could simply take water from a source. If an appropriator chose this method, the  
10 "priority date" was typically the date water was put to actual beneficial use. Another method,  
11 called "code appropriation," allowed an appropriator to record a notice in the county in which the  
12 diversion occurred, followed by the actual appropriation. Under the "code appropriation"  
13 method, the priority date is the date the notice was recorded. Many of the claimed pre-1914  
14 appropriative water rights that the SWRCB is "protecting" by curtailing more junior pre-1914  
15 appropriative water rights have, as claimed priority dates, dates of acquisition of the property.  
16 Claiming a priority date of the date of acquisition is not a lawful method of obtaining a pre-1914  
17 appropriative water right priority date. As such, many of the claimed rights do not present  
18 colorable claims.

19 92. Riparian water rights vest on the date a patent is issued for the riparian parcel.

20 93. If a pre-1914 appropriator records notice of appropriation or puts water to  
21 beneficial use prior to a riparian patent issuing, the appropriator is senior to the riparian water  
22 right holder. As such, accurate priority dates for pre-1914 appropriative water rights and for the  
23 issuance of patents for riparian lands is of critical importance to administering the water right  
24 priority system.

25 94. Riparian rights vest only in the smallest parcel of land contiguous to a  
26 watercourse. If riparian land is subdivided, the rights, absent express reservation, attach only to  
27 the smallest parcel of land that remains contiguous to the watercourse. Where land is severed  
28 from the watercourse and no express reservation of riparian rights is made in the conveyance  
severing the land, the riparian character of the severed land is lost forever.

1           95.     The SWRCB, in administering the water right priority system, failed to determine  
2 whether lands no longer contiguous to a watercourse nonetheless retained their riparian character  
3 through express reservation in recorded conveyances. As a result, in enforcing the water right  
4 priority system, the SWRCB is requiring pre-1914 appropriative water right holders to cease  
5 diverting to meet riparian demands without knowing whether the claimed riparian rights  
6 constituting that demand are valid.

7           96.     Riparian water right holders are entitled only to the natural flow of a watercourse.

8           97.     Appropriative water right holders are entitled to the natural flow of a watercourse  
9 and can also appropriate return and abandoned flows from other uses, such as foreign water,  
10 discharged groundwater, and discharges from wastewater treatment plants.

11          98.     A significant portion of the water available to satisfy existing rights consists of  
12 non-natural flow, of which appropriators, and not riparians, may lawfully divert.

13          99.     The SWRCB failed to consider the source of available supplies in purporting to  
14 curtail pre-1914 appropriative water rights and improperly assumed claimed riparian water right  
15 holders were entitled to any water remaining in the system.

16          100.    On April 23, 2015, the Executive Director of the SWRCB issued a notice to all  
17 post-1914 appropriative water right holders in the San Joaquin River watershed informing them  
18 that all post-1914 appropriative water rights were immediately curtailed. Additionally, on May  
19 1, 2015, the Executive Director issued a notice to all post-1914 water right holders in the  
20 Sacramento River watershed informing them that all post-1914 water rights were immediately  
21 curtailed. Both notices “excepted” all post-1914 diversions for hydroelectric generation by  
22 direct diversion. The SWRCB’s method of accounting for “direct diversions” actually allows  
23 water to be held in reservoirs for up to 30 days. The SWRCB identifies water held in this  
24 manner as “regulatory storage.” The result is that post-1914 appropriative water right holders in  
25 the San Joaquin River and Sacramento River watersheds were, and are still, authorized by the  
26 SWRCB to directly divert water for hydroelectric purposes and some or all of those diversions  
27 can be held in reservoirs for up to 30 days. Allowing junior diverters to hold water in reservoirs  
28 for up to 30 days when there is no water available to satisfy their water right contravenes the rule

1 of priority and deprives downstream senior water right holders of water to which they are  
2 lawfully entitled.

3 101. Like the notices and exceptions for post-1914 appropriative water rights in the  
4 San Joaquin River and Sacramento River watersheds, the Notice “excepts” from curtailment all  
5 pre-1914 appropriative water right diversions for hydroelectric generation by direct diversion.  
6 The SWRCB’s method of accounting for “direct diversions” actually allows water to be held in  
7 reservoirs for up to 30 days. The result is that pre-1914 appropriative water right holders in the  
8 San Joaquin River and Sacramento River watersheds, some of which may be more junior than  
9 BBID’s water right, were, and are still, authorized by the SWRCB to directly divert water for  
10 hydroelectric purposes and some or all of those diversions can be held in reservoirs for up to 30  
11 days. Allowing junior diverters to hold water in reservoirs for up to 30 days when there is no  
12 water available to satisfy their water rights contravenes the rule of priority and deprives  
13 downstream senior water right holders of water to which they are lawfully entitled.

14 102. Water being held in upstream reservoirs under the SWRCB’s “regulatory storage”  
15 rules deprives downstream seniors of water to which they are lawfully entitled.

16 103. Allowing riparian water right holders to continue to divert water that only  
17 appropriators are entitled to divert violates the priority system.

18 104. Allowing post-1914 water right holders to divert water into regulatory storage for  
19 up to 30-days while prohibiting BBID to divert under its pre-1914 appropriative water right  
20 contravenes the rule of priority.

21 105. An actual controversy exists regarding the SWRCB’s exceptions to curtailments  
22 in the Notice. The SWRCB’s failure to consider the source of water available for diversion and  
23 use and the SWRCB’s failure to require claimants to present colorable claims are inconsistent  
24 with law and the rule of priority.

25 106. Petitioner/Plaintiff therefore requests this Court issue a declaration that the  
26 SWRCB’s actions and inactions violate the rule of priority and have deprived senior water right  
27 holders of the right to water to which they are entitled.

28 107. Petitioner/Plaintiff further requests this Court issue a Writ of Mandate directing

1 the SWRCB to rescind the Notice issued to BBID.

2 **SIXTH CAUSE OF ACTION**  
3 **(Declaratory Relief / Writ of Mandate - Unlawful Physical Solution)**

4 108. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
5 in paragraphs 1 through 107, as though fully set forth herein.

6 109. In apportioning water, California law mandates that water right priorities be  
7 respected. The SWRCB cannot impose a physical solution that contravenes the priority system.

8 110. On or about May 22, 2015, the SWRCB and/or the Watermaster announced that  
9 it/they had approved a proposal from riparian water right holders in the Delta, whereby those  
10 claiming riparian water rights in the Delta would agree to voluntarily reduce their diversions by  
11 25 percent between June-September as compared to that time in 2013. In return, the SWRCB  
12 and/or the Watermaster improperly agreed not to curtail those rights beyond the 25 percent  
13 reduction voluntarily agreed to, and improperly agreed not to take enforcement actions against  
14 those who agreed to voluntarily reduce diversions. The result of this scheme is that the SWRCB  
15 and/or the Watermaster has assured a certain subclass of water right holders that they will be able  
16 to continue to divert and use water through September 2015, irrespective of whether sufficient  
17 natural flows exist to satisfy those rights.

18 111. This “voluntary curtailment” scheme fails to consider whether any natural flow  
19 will be available for claimed riparian water right holders in the Delta.

20 112. Many of the claimed riparian rights subject to this “voluntary curtailment”  
21 program do not appear to be contiguous to a water course and most, if not all, claimed riparian  
22 right holders that are no longer contiguous to a water course have not provided deeds evidencing  
23 an express reservation of riparian water rights for the severed parcels as required to sustain their  
24 respective riparian rights.

25 113. In failing to determine whether those claiming riparian water rights had colorable  
26 claims, the SWRCB and/or the Watermaster improperly failed to determine whether all  
27 participants in the “voluntary curtailment” scheme had valid riparian water rights.

28 114. The failure of the SWRCB and/or the Watermaster to determine whether claimed

1 riparian water right holders had colorable claims results in significant injuries to BBID, as those  
2 claimed riparian rights are part of the supposed “demand” that resulted in the SWRCB  
3 determining that water supplies are insufficient to satisfy BBID’s pre-1914 right.

4 115. An actual controversy exists regarding the SWRCB and/or the Watermaster’s  
5 agreement to allow riparian water right holders to divert water through September 2015,  
6 primarily whether or not sufficient natural flow exists for riparian uses and whether the SWRCB  
7 and/or the Watermaster failed to require riparian claimants to submit colorable claims  
8 demonstrating that their riparian character is consistent with the law.

9 116. Petitioner/Plaintiff therefore requests this Court issue a declaration that the  
10 SWRCB and/or the Watermaster’s actions and inactions impose an unlawful physical solution  
11 and deprive BBID and other water right holders of the right to water to which they are entitled.

12 117. Because the SWRCB’s and/or the Watermaster’s imposition of an unlawful  
13 physical solution deprives BBID and other appropriative water right holders of water to which  
14 they are otherwise entitled, Petitioner/Plaintiff further requests this Court issue a Writ of  
15 Mandate directing the SWRCB to rescind the Notice issued to BBID.

16  
17 **SEVENTH CAUSE OF ACTION**  
18 **(Declaratory Relief / Writ of Mandate - Unlawful Commitment**  
19 **Not to Exercise Enforcement Authority)**

20 118. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
21 in paragraphs 1 through 117, as though fully set forth herein.

22 119. The SWRCB has indicated its intent to initiate enforcement against BBID unless  
23 BBID can establish that there is water available to BBID under its pre-1914 appropriative water  
24 right as against all other potential claimants. At the same time, the SWRCB has authorized  
25 certain riparian water right claimants to continue to divert water through September 2015  
26 whether sufficient water exists for diversions under those claimed rights.

27 120. The SWRCB and/or the Watermaster’s “voluntary curtailment” scheme  
28 improperly commits the SWRCB and/or the Watermaster from exercising its/their enforcement  
authority against those participating in the “voluntary curtailment” scheme, while maintaining

1 the authority to exercise its enforcement authority against all other water right holders. Neither  
2 the SWRCB, the Executive Director, nor the Watermaster possesses the legal authority to  
3 prohibit or otherwise enjoin the SWRCB and/or the Watermaster from exercising its enforcement  
4 authority.

5 121. An actual controversy exists as to whether the SWRCB and/or Watermaster can  
6 commit to not exercise its enforcement authority and allow water users to divert water when no  
7 water is available for appropriation under their water rights.

8 122. Petitioner/Plaintiff therefore requests that this Court issue a declaration that the  
9 SWRCB, the Executive Director, and/or the Watermaster lack the authority to commit to forego  
10 enforcement authority and allow water users to divert when water is otherwise unavailable under  
11 their water right.

12 123. Petitioner/Plaintiff further requests that, because the SWRCB and/or the  
13 Watermaster agreed not to enforce the prohibition on the unauthorized diversion of water against  
14 certain water right holders, the Court issue a Writ of Mandate directing the SWRCB to rescind  
15 the Notice issued to BBID.

16 **EIGHTH CAUSE OF ACTION**  
17 **(Takings)**

18 124. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
19 in paragraphs 1 through 123, as though fully set forth herein.

20 125. The wrongful curtailment of BBID's pre-1914 appropriative water right deprives  
21 BBID of a valuable property right without just compensation as demanded by the California and  
22 United States Constitutions.

23 126. The improper threat of enforcement action against BBID is an attempt by the  
24 SWRCB to coerce BBID into not exercising its pre-1914 appropriative right sufficient to deprive  
25 BBID of a valuable property right without just compensation as demanded by the California and  
26 United States Constitutions.

27 127. The agreement to allow riparian water right claimants to divert water when water  
28 is unlikely to be available under the claimed right, while depriving BBID of water to which it is

1 lawfully entitled, deprives BBID of a valuable property right without just compensation, as  
2 demanded by the California and United States Constitutions.

3 128. The SWRCB and/or the Executive Director's exception to curtailments for junior  
4 hydropower uses, which results in storage of water for up to 30 days, deprives BBID of a  
5 valuable property right without just compensation as demanded by the California and United  
6 States Constitutions.

7 129. As a result of the SWRCB's and/or the Executive Director's actions and/or  
8 inactions, BBID has been harmed and will suffer damages in an amount to be determined at trial.

9  
10 **NINTH CAUSE OF ACTION**  
**(The SWRCB Failed to Comply With Governor's Order)**

11 130. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
12 in paragraphs 1 through 129, as though fully set forth herein.

13 131. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State  
14 of Emergency (Proclamation), which provided, among other things, that the SWRCB "will adopt  
15 and implement emergency regulations pursuant to Water Code section 1058.5...to require  
16 curtailment of diversions when water is not available under the diverter's priority of right."

17 132. On April 1, 2015, Governor Brown issued Executive Order B-29-15, which  
18 provides, among other things, that the orders and provisions of the April 25, 2014, Proclamation  
19 remained in full force and effect.

20 133. The Notice relies, in part, on Executive Order B-29-15, for support.

21 134. At the time that the SWRCB issued the Notice, valid emergency regulations  
22 authorizing the issuance of curtailments did not exist, as required by the April 25, 2015,  
23 Proclamation.

24 135. As a result of the SWRCB's failure to comply with the Governor's April 25,  
25 2014, Proclamation, as renewed by Executive Order B-29-15, an actual controversy has arisen  
26 and now exists between Petitioner/Plaintiff and Respondents/Defendants regarding the  
27 SWRCB's and/or the Executive Director's failure to comply with the directives in the  
28 Governor's Proclamation and Executive Order and unlawful issuance of the Notice to BBID.

1 136. BBID requests that this Court issue a declaration regarding the SWRCB's failure  
2 to comply with the Governor's Proclamation and Executive Order and resulting unauthorized  
3 and unlawful curtailment of BBID's water rights.

4 137. BBID further requests that this Court issue a Writ of Mandate directing the  
5 SWRCB to rescind the Notice issued to BBID and to comply with the directives in the  
6 Governor's Proclamation and Executive Order.

7  
8 **TENTH CAUSE OF ACTION**  
9 **(Injunctive Relief)**

10 138. Petitioner/Plaintiff alleges and incorporates by reference the allegations contained  
11 in paragraphs 1 through 137, as though fully set forth herein.

12 139. BBID is entitled to immediate relief in the form of an injunction from this Court  
13 vacating the Notice because it operates to deprive BBID of due process and was issued without  
14 legal or factual justification.

15 140. Unless and until restrained, the SWRCB's and/or Executive Director's continued  
16 actions related to the Notice will continue to injure BBID.

17 141. It is highly unlikely that pecuniary compensation could afford complete relief in  
18 this matter, and it is certain that ascertaining the amount of compensation that would afford  
19 complete relief would prove extremely difficult.

20 142. BBID therefore respectfully requests the Court immediately and permanently  
21 enjoin the SWRCB and the Executive Director from maintaining the Notice against BBID or  
22 from taking any further action without satisfying due process requirements, including providing  
23 a fair hearing and developing an appropriate evidentiary record.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioner/Plaintiff prays for:

26 1. A writ directing the Respondents/Defendants to set aside the Notice purporting to  
27 curtail BBID's pre-1914 appropriative water right and to rescind the improper actions taken by  
28 Respondents/Defendants as alleged herein;

2. A declaration that the SWRCB's and/or the Executive Director's adoption of the

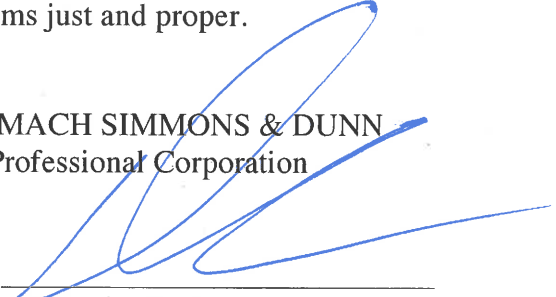


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Notice exceeds the scope of the SWRCB's authority and jurisdiction, violates the rule of priority, and is otherwise contrary to law;

3. Damages suffered as a result of the improper curtailment of BBID's pre-1914 appropriative water right, to be determined at trial;
4. Just compensation for the taking of BBID's water right;
5. Immediate and permanent injunctive relief;
6. An award of attorneys' fees and costs, as allowed by law; and
7. Such other relief as the Court deems just and proper.

SOMACH SIMMONS & DUNN  
A Professional Corporation

By: 

Dated: June 25, 2015

Daniel Kelly  
Attorneys for Petitioner/Plaintiff  
Byron-Bethany Irrigation District

# **Exhibit A**



EDMUND G. BROWN JR.  
GOVERNOR

RECEIVED

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

JUN 15 2015

State Water Resources Control Board

June 12, 2015

Byron-Bethany  
Irrigation District

BYRON-BETHANY IRRIGATION DISTRICT  
C/O RICK GILMORE, GENERAL MANAGER  
7995 BRUNS ROAD  
BYRON, CA 94514

In Regards to Claim of Right(s) [ID (password)]: S021256 (407769)

**NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO-SAN JOAQUIN WATERSHEDS AND DELTA WITH A PRE-1914 APPROPRIATIVE CLAIM COMMENCING DURING OR AFTER 1903**

On January 23, 2015 and again on April 2, 2015, the State Water Resources Control Board (State Water Board) issued a Notice of Surface Water Shortage and Potential for Curtailment due to dry conditions throughout the State. On April 1, 2015, the Governor issued an executive order, order B-29-15, continuing the state of emergency, initially enacted on January 17, 2014, due to drinking water shortages, diminished water for agriculture production, degraded habitat for fish and wildlife, increased wildfire risk and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Delta (Delta).

On April 23, 2015 and May 1, 2015, the State Water Board issued curtailment notices to all post-1914 appropriative water rights in the Sacramento and San Joaquin River watersheds, inclusive of the Delta, due to insufficient projected water supplies. Based on updated water supply projections provided by the Department of Water Resources in early May, the State Water Board is now notifying pre-1914 claims of right, with a priority date of 1903 and later for the Sacramento-San Joaquin watersheds and the Delta, that, due to ongoing drought conditions, there is insufficient water in the system to service their claims of right.

**Curtailment of Certain Pre-1914 Claims of Right Commenced During or After 1903:**

Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the existing water supply in the Sacramento-San Joaquin watersheds and Delta watersheds is insufficient to meet the needs of some pre-1914 claims of right. With this notice, the State Water Board is notifying pre-1914 appropriative claims of right with a priority date of 1903 and later within the Sacramento -San Joaquin watersheds and Delta of the need to immediately stop diverting water with the exceptions discussed below. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at your point of diversion, that water is necessary to meet more senior water right holders' needs or the water may be released previously stored water which must continue instream to serve its intended beneficial use. If precipitation occurs in the following weeks or months, you should not commence diversion before being notified by the State Water Board that water is legally available for diversion under your priority of right. Evaluations for additional curtailments of more senior rights will be made every two weeks through September.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

**Compliance Certification Required:**

Holders of pre-1914 water right claims with priority dates equal to or later than 1903 are required to document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific pre-1914 claim of right. Completion of the Form is mandatory to avoid unnecessary potential enforcement proceedings. You are required to complete the Form for each pre-1914 claim of right identified through this notice at:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/curtailment/2015curt\\_form.php](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/2015curt_form.php)

**Exceptions to Curtailment:**

If your diversion is for hydroelectric generation by direct diversion only and all water diverted is returned to the same stream system, you may continue to divert under your pre-1914 claim of right. If you continue to divert under the above circumstances, you must identify that on the Form and provide the information requested. If you have previously collected water to storage in a reservoir covered by a pre-1914 claim of right prior to this curtailment notice, you still may beneficially use that previously stored water. However, you must bypass all inflow into the reservoir at all times during the period this notice remains in effect.

**No Exception for Health and Safety:**

There is no exception to this notice for health and safety needs. However, we are aware that some water users must comply with directives issued by the Division of Drinking Water (DDW), or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. Should you continue to divert water under a claim of right subject to this notice to meet human health and safety needs, you must complete the Form identifying your health and safety needs, whether there is an applicable DDW, state or local regulation and your attempts at securing an alternate water supply. The State Water Board will carefully analyze the non-exempted continued diversions for minimum health and safety needs on a case-by-case basis.

**Potential Enforcement:**

Those who are found to be diverting water beyond what is legally available to them may be subject to administrative penalties, cease and desist orders, or prosecution in court. If the State Water Board finds following an adjudicative proceeding that a person or entity has diverted or used water water unlawfully, the State Water Board may assess penalties of \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of a valid water right. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board issues a Cease and Desist Order against an unauthorized diversion, violation of any such order can result in a fine of \$10,000 per day. (See Water Code, §§ 1831, 1845.)

The State Water Board is encouraging diverters to work together to reach local voluntary agreements that not only provide solutions that help local communities with water shortages, but also prevent injury to other legal users of water and do not cause unreasonable effects on fish and wildlife. If you have any questions, please call our Curtailment Hotline at (916) 341-5342, contact us by email at: [SWRCB-Curtailment-Certification@waterboards.ca.gov](mailto:SWRCB-Curtailment-Certification@waterboards.ca.gov), or review our drought year webpage at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/index.shtml#notices](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml#notices) The State Water Board also encourages water right holders to assist in the prevention of unlawful diversion of water and in discouraging any waste or unreasonable use of water. To assist the State Water Board, you may file a complaint at:

To Water Right Users in the  
Sacramento-San Joaquin Delta,  
Sacramento & San Joaquin River Watersheds

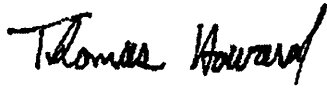
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June 12, 2015

[http://www.dtsc.ca.gov/database/CalEPA\\_Complaint/index.cfm](http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm)

We recognize the burden the drought creates, and want to assure that others do not illegally benefit from your curtailments.

Sincerely,

A handwritten signature in black ink that reads "Thomas Howard". The signature is written in a cursive style with a large, stylized 'T' and 'H'.

Thomas Howard  
Executive Director