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13 **SAN JOAQUIN TRIBUTARIES**  
14 **AUTHORITY, a Joint Powers Authority**

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

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SACRAMENTO**

17 SAN JOAQUIN TRIBUTARIES )  
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15 v.  
16 CALIFORNIA STATE WATER  
17 RESOURCES CONTROL BOARD, and  
18 DOES 1 through 100, inclusive,  
19 Respondents/Defendants.

CASE NO.:  
SAN JOAQUIN TRIBUTARIES  
AUTHORITY'S VERIFIED PETITION FOR  
WRIT OF MANDATE AND COMPLAINT  
FOR DECLARATORY RELIEF

BY FAX

1. Petitioner, San Joaquin Tributaries Authority ("SJTA"), files this verified Petition for a Writ of Mandate and Complaint for Declaratory Relief seeking: (1) a writ of mandate under Code of Civil Procedure section 1085 directing the Respondent State Water Resources Control Board ("Board" or "State Water Board") to vacate and set aside its adoption of amendments to the Water Quality Control Plan for Ocean Waters of California and the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California to establish a state wetland definition and procedures for discharges of dredge or fill material to waters of the state

FILED  
Superior Court Of California,  
Sacramento  
05/01/2019  
hportalanza  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2019-80003133

1 (“Procedures”); (2) a writ of mandate under Code of Civil Procedure <sup>1</sup> section 1085 directing the  
2 State Water Board to comply with the Porter-Cologne Water Quality Control Act, the Clean Water  
3 Act, and the California Administrative Procedure Act; and (3) a judicial declaration under Code of  
4 Civil Procedure section 1060 declaring that the Procedures, as adopted by the State Water Board,  
5 are void, invalid, and unenforceable.

## 6 **I. INTRODUCTION**

7 2. In California, the discharge of dredge or fill material to waters of the state is  
8 regulated by the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C., § 1251 *et*  
9 *seq.*) (widely known as the “Clean Water Act”) and the Porter-Cologne Water Quality Control Act.  
10 (Wat. Code, Division 7, § 13000 *et seq.*)<sup>2</sup> (“Porter-Cologne Act”).)

11 3. The Clean Water Act’s provisions are limited to regulating “navigable waters,”  
12 which are defined as “waters of the United States, including the territorial seas.” (33 U.S.C., §  
13 1362 (7).) Under section 404 of the Clean Water Act, discharges of dredge or fill material into  
14 “navigable waters” are regulated through a permitting process administered by the Army Corps of  
15 Engineers. (33 U.S.C., §§ 1311(a), 1344.)

16 4. When applying for a federal permit under the section 404 program, applicants must  
17 also obtain a state water quality certification from the State Water Board or one of its nine  
18 Regional Water Quality Control Boards under section 401 of the Clean Water Act. (See, e.g., 33  
19 U.S.C., § 1341.) Section 401 certifications authorize states to review and approve, condition, or  
20 deny proposed federal permits or licenses that will result in a discharge of dredge or fill material to  
21 waters of the United States within the state’s borders. (See *id.*)

22 5. Accordingly, to lawfully discharge dredge or fill material into waters of the United  
23 States, an applicant must obtain a section 404 permit from the Army Corps of Engineers and a  
24 state water quality section 401 certification from the State Water Board (or one of the nine  
25 Regional Water Quality Control Boards).

26 ///

27 <sup>1</sup> Unless otherwise specified, all references to the “Code of Civil Procedure” or “Code of Civ. Proc.” shall refer to the  
28 California Code of Civil Procedure.

<sup>2</sup> Unless otherwise specified, all references to the “Wat. Code” or “Water Code” shall refer to the California Water  
Code.

1           6.       The Porter-Cologne Act is California’s principal water quality law. (Wat. Code, §  
2 13000 *et seq.*) Under the Porter-Cologne Act, primary responsibility for the coordination and  
3 control of water quality belongs to the State Water Board and nine Regional Water Quality Control  
4 Boards. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th  
5 1032, 1037, citing Wat. Code, § 13001.)

6           7.       The Porter-Cologne Act requires every person discharging or proposing to  
7 discharge “waste” that could affect the quality of “waters of the state” to file a waste discharge  
8 report with the applicable Regional Water Quality Control Board. (*California Building Industry*  
9 *Assn. v. State Water Resources Control Bd.*, *supra*, 4 Cal.5th at fn. 2, citing Wat. Code, § 13260  
10 (a)(1).) Thereafter, the regional board then “prescribe[s] requirements as to the nature” of the  
11 discharge. (*Id.*, at fn. 2, citing Wat. Code, § 13263 (a).) “The regional board’s prescription of  
12 requirements is, in essence, a permit to discharge waste into state waters subject to conditions set  
13 by the regional water board.” (*Id.*, at fn. 2, citing *Building Industry Assn. of San Diego County v.*  
14 *State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875.)

15           8.       The Porter-Cologne Act’s waste discharge requirements and reporting provisions  
16 apply to discharges of waste to “waters of the state.” (Wat. Code, §§ 13260 (a); see, e.g., Wat.  
17 Code, § 13263.) “Waters of the state” is defined as “any surface water or groundwater, including  
18 saline waters, within the boundaries of the state.” (Wat. Code, § 13050 (e).)

19           9.       Against this backdrop, on April 2, 2019, the State Water Board adopted a  
20 Resolution which, among other things, amended the Water Quality Control Plan for Ocean Waters  
21 of California and the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and  
22 Estuaries of California to establish a state wetland definition and procedures for discharges of  
23 dredge or fill material to waters of the state (“Procedures”). As of April 30, 2019, the Board had  
24 not made the final version of the Resolution publicly available.

25           10.      The Procedures contain four components: (1) a state wetland definition, (2) a  
26 framework for determining if a wetland that meets the wetland definition is a water of the state, (3)  
27 wetland delineation procedures, and (4) procedures for application submittal, and the review and  
28 approval of water quality certifications, waste discharge requirements, and waivers of waste  
discharge requirements for dredge or fill activities.

1           11.    The State Water Board (and Regional Water Quality Control Boards) plan to  
2 implement the Procedures under their authority to set waste discharge requirements and issue  
3 Clean Water Act section 401 certifications. How a discharger must comply with the Procedures  
4 depends on whether the discharge occurs in water that qualifies as a water of the United States, a  
5 water of the state, or both.

6           12.    By virtue of its expansive definition, waters of the state is more inclusive (i.e.,  
7 regulates/covers more water features) than waters of the United States. Waters of the state consist  
8 of: (1) all waters of the United States and (2) non-federal waters that qualify as “waters of the  
9 state” but do not meet the definition of “waters of the United States.” (See Wat. Code, § 13050  
10 (e).)

11           13.    For discharges of dredge or fill material into waters of the state that are also waters  
12 of the United States, an applicant must complete the Clean Water Act section 404 permitting  
13 process with the Army Corps of Engineers and obtain a section 401 water quality certification  
14 from the State Water Board (or one of the nine Regional Water Quality Control Boards). For  
15 discharges of dredge or fill material into these waters, the Board will implement the Procedures by  
16 conditioning section 401 water quality certifications on compliance with the Procedures.

17           14.    Alternatively, for discharges of dredge or fill material into waters of the state that  
18 are not also waters of the United States, the State Water Board will implement the Procedures  
19 through its authority to set waste discharge requirements.

20           15.    For the following reasons, the Board’s adoption of the Procedures was unlawful and  
21 must be set aside:

22           a.    The Procedures exceed the State Water Board’s authority under Water Code section  
23 13170 because the Board’s authority to adopt statewide water quality control plans  
24 extends only to waters for which water quality standards are required under the  
25 Clean Water Act, not all waters of the state.

26           b.    The Porter-Cologne Act grants the State Water Board the authority to regulate the  
27 discharge of “waste” that may affect the quality of waters of the state. (Wat. Code,  
28 §§ 13260-13263.) Because Porter-Cologne’s definition of “waste” does not include  
discharges of dredge or fill material, the State Water Board lacks the authority to

1 regulate the discharge of dredge and fill material under its authority to set waste  
2 discharge requirements.

- 3 c. Government Code<sup>3</sup> section 11353 mandates that when adopting water quality  
4 control plan amendments, the State Water Board must also comply with applicable  
5 requirements of the Federal Water Pollution Control Act. One such requirement is  
6 that final rules and regulations adopted by the State Water Board be distributed to  
7 the public thirty (30) days prior to adoption. The Board failed to meet this  
8 requirement because it published the final version of the Procedures four (4) days  
9 prior to adopting the Procedures.
- 10 d. Under the Porter-Cologne Act, a water quality control plan must include: (1) the  
11 identification of beneficial uses to be protected by the plan; (2) a set of objectives  
12 that ensure the reasonable protection of those beneficial uses; and (3) a program of  
13 implementation for achieving those objectives. (Wat. Code, § 13050(j).) Despite  
14 labeling the Procedures as water quality control plan amendments, the Procedures  
15 are actually policy guidance for which the Board is attempting to provide regulatory  
16 authority. The Procedures do not include any of the mandatory components of a  
17 water quality control plan (i.e., designation of beneficial uses, setting of water  
18 quality objectives or establishment of a program of implementation). Because the  
19 Procedures do not contain the necessary components of a water quality control plan  
20 and the Board has not explained how the Procedures will otherwise serve as proper  
21 amendments to a water quality control plan, the Procedures constitute unlawful  
22 water quality control plan amendments.

## 23 **II. PARTIES**

### 24 **A. Petitioner/Plaintiff San Joaquin Tributaries Authority**

25 16. Petitioner/Plaintiff SJTA is a California Joint Powers Authority, duly organized and  
26 existing in accordance with the provisions of section 6500 *et seq.* of the California Government  
27 Code. The SJTA is a separate legal entity from its member agencies, and is authorized by its

28 <sup>3</sup> Unless otherwise specified, all references to the “Government Code” or “Gov. Code” herein shall refer to the California Government Code.

1 member agencies to sue and be sued in its own name. (Gov. Code, § 6508.)

2 17. The SJTA member agencies are political subdivisions of the State of California  
3 which include: (a) the Modesto Irrigation District, Oakdale Irrigation District, and South San  
4 Joaquin Irrigation District, each of which is a California Irrigation District formed and existing  
5 pursuant to the provisions of the Irrigation District Law (Wat. Code, § 20500 *et seq.*); and (b) the  
6 City and County of San Francisco, a municipal corporation and charter city under the Constitution  
7 of the State of California, acting by and through its San Francisco Public Utilities Commission.

8 **B. Respondent/Defendant State Water Resources Control Board**

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

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

18 **III. STANDING**

19 20. Petitioner/Plaintiff has standing to assert the actions and claims raised in this  
20 Petition/Complaint.

21 21. The SJTA is a joint powers authority whose members have a common interest in  
22 protecting their landowners' and/or customers' ability to economically engage in agricultural  
23 activities.

24 22. The SJTA members have a common interest in the State Water Board's full  
25 compliance with the Porter-Cologne Act, Administrative Procedure Act, and applicable Clean  
26 Water Act provisions.

27 23. The Procedures create a new statewide mandatory permitting program applicable to  
28 all waters of the state. Additionally, by adopting a state wetland definition that designates specified

1 wetland features as waters of the state, the State Water Board will regulate lands under the  
2 Procedures that are not currently regulated by the federal government (i.e., under the Clean Water  
3 Act) as wetlands.

4 24. By regulating previously unregulated wetland features as waters of the state—and  
5 thus subject to the Procedures’ permitting requirements—the Procedures set new regulatory  
6 requirements that stand to impact farmers’ and ranchers’ agricultural activities by mandating  
7 compliance with new and costly water quality regulations.

8 25. Although the Procedures contain exclusions for certain agricultural operations and  
9 features (e.g., activities exempt from federal regulation under Clean Water Act section 404(f) and  
10 prior converted cropland), the applicability of the Procedures’ exclusions is commonly a  
11 discretionary decision by State Water Board and/or regional board staff. In this context,  
12 discretionary decisions will lead to inconsistent application and uncertainty within the regulated  
13 community over whether an exclusion will apply.

14 26. The SJTA member agencies’ landowners and/or customers who engage in farming  
15 and ranching activities will be directly and substantially affected by the adverse economic impacts  
16 associated with complying with the Procedures’ new and costly water quality regulations.

17 27. Petitioner/Plaintiff has no plain, speedy, or adequate remedy in the course of  
18 ordinary law unless this Court grants the requested relief.

19 28. Accordingly, Petitioner/Plaintiff has standing to assert the actions and claims raised  
20 in this Petition/Complaint.

21 **IV. JURISDICTION AND VENUE**

22 29. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
23 sections 1060 and 1085.

24 30. Venue for this action is proper in Sacramento County because Code of Civil  
25 Procedure section 401, subdivision 1 provides that actions against the State of California or any  
26 agency thereof may be commenced and tried in the County of Sacramento.

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1           42.     The State Water Board developed and adopted the Procedures in part as a response  
2 to the reduction (through federal rulemaking and United States Supreme Court decisions) of waters  
3 that qualify as waters of the United States, and thus fall outside Clean Water Act jurisdiction.

4           43.     For example, as of April 23, 2019, the State Water Board’s Procedures webpage  
5 states, “[t]he State Water Board has developed the Procedures to address several important issues.  
6 There is [a] need to strengthen protection of waters of the state that are no longer protected under  
7 the Clean Water Act (CWA) due to U.S. Supreme Court decisions, since the Water Boards have  
8 historically relied on CWA protections in dredged or fill discharge permitting practices.”

9           44.     Similarly, the Procedures’ official Fact Sheet states that the Procedures are  
10 “needed” to protect waters of the State, “...at a time when the current federal administration is  
11 proposing to dramatically reduce the scope of the federal Clean Water Act jurisdiction.”

12           45.     Water Code section 13170 authorizes the State Water Board to adopt water quality  
13 control plans “...for waters for which water quality standards are required by the Federal Water  
14 Pollution Control Act and acts amendatory thereof and supplementary thereto.” (Wat. Code,  
15 § 13170.) Another name for the Federal Water Pollution Control Act is the Clean Water Act. (*Pud*  
16 *No. 1 v. Wash. Dep’t of Ecology* (1994) 511 U.S. 700, 704.)

17           46.     Although Water Code section 13170 authorizes the State Water Board to adopt  
18 statewide water quality control plans, it limits the Board’s authority to adopt water quality control  
19 plans to “...waters for which water quality standards are required by the Federal Water Pollution  
20 Control Act and acts amendatory thereof and supplementary thereto [i.e., the Clean Water Act].”  
(Wat. Code, § 13170 (emphasis added).)

21           47.     Clean Water Act section 303 addresses the establishment of water quality standards  
22 under the Clean Water Act. (33 U.S.C., § 1313.) By its own terms, section 303 applies only to  
23 “navigable waters.” (*Id.*, at (c)(2)(A) [“Whenever the State revises or adopts a new standard, such  
24 revised or new standard shall be submitted to the Administrator. Such revised or new water quality  
25 standard shall consist of the designated uses of the *navigable waters* involved and the water quality  
26 criteria for such waters based upon such uses” (emphasis added)]; see also (c)(4) [“The  
27 Administrator shall promptly prepare and publish proposed regulations setting forth a revised or  
28 new water quality standard for the *navigable waters* involved” (emphasis added)].)

1           48.     The Clean Water Act defines “navigable waters” as waters of the United States,  
2 including the territorial seas. (33 U.S.C., § 1362 (7).) Which waters qualify – and do not qualify –  
3 as “waters of the United States” is determined by federal regulations and federal court decisions.  
4 (See, e.g., *Rapanos v. United States* (2006) 547 U.S. 715, 723-729.)

5           49.     Therefore, Water Code section 13170 inherently limits State Water Board  
6 regulatory authority through statewide water quality control plans to waters that qualify as waters  
7 of the United States.

8           50.     Despite Water Code section 13170’s limitation, the Procedures adopted by the State  
9 Water Board apply to discharges of dredge and fill material to all waters of the state, which include  
10 (1) all waters of the United States and (2) non-federal waters that qualify as “waters of the state”  
11 but do not qualify as “waters of the United States.”

12           51.     Water Code section 13170’s express terms limit the Board’s authority to adopt  
13 statewide water quality control plans, the mechanism by which the Board adopted the Procedures,  
14 to waters for which water quality standards are required by the Clean Water Act—waters of the  
15 United States.

16           52.     The Board’s primary reason for adopting the Procedures is to regulate waters of the  
17 state that are no longer covered by the Clean Water Act (i.e., no longer waters of the United  
18 States).

19           53.     If a water feature is not covered by the Clean Water Act—in other words, it is not a  
20 water of the United States—that water feature is not a water for which water quality standards are  
21 required under the Clean Water Act.

22           54.     The Clean Water Act only requires water quality standards for waters covered by  
23 the Clean Water Act.

24           55.     If a water falls outside the scope of the Clean Water Act’s jurisdiction (i.e., it is no  
25 longer a water of the United States), it is not a water for which water quality standards are required  
26 by the Clean Water Act.

27           56.     To the extent the Procedures regulate waters of the state not covered by the Clean  
28 Water Act (i.e., waters of the state that are not waters of the United States) through a statewide  
water quality control plan, the Board has exceeded its authority under Water Code section 13170

1 because these waters are not waters for which water quality standards are required under the Clean  
2 Water Act.

3 57. Because the State Water Board’s action was unlawful, this Court should issue a writ  
4 of mandate directing the State Water Board to set aside its adoption of the Procedures.

5 **SECOND CAUSE OF ACTION**

6 **Writ of Mandate – Adoption of the Procedures was Unlawful**  
7 **(Code of Civil Procedure § 1085)**

8 **Exceedance of the Board’s Authority to Regulate “Waste” under the Porter-Cologne Act**

9  
10 58. The SJTA realleges and reincorporates, as though fully set forth herein, each and  
11 every allegation in paragraphs 1 through 57 of this Petition/Complaint.

12 59. Under the Porter-Cologne Act, the State Water Board may regulate discharges of  
13 “waste” that may affect the quality of waters of the state. (Wat. Code, §§ 13260, 13263.)

14 60. “Waste” under Porter-Cologne, “...includes sewage and any and all other waste  
15 substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or  
16 animal origin, or from any producing, manufacturing, or processing operation, including waste  
17 placed within containers of whatever nature prior to, and for purposes of, disposal.” (Wat. Code, §  
18 13050 (j).)

19 61. The Porter-Cologne Act’s definition of waste does not include the discharge of  
20 dredge or fill material.

21 62. To the extent that the State Water Board implements the Procedures under its waste  
22 discharge requirement authority, the Board has exceeded its authority under Porter-Cologne  
23 because dredge and fill material are not included in the Act’s definition of waste.

24 63. Because the State Water Board’s action was unlawful, this Court should issue a writ  
25 of mandate directing the State Water Board to set aside its adoption of the Procedures.

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**THIRD CAUSE OF ACTION**

**Writ of Mandate – Adoption of the Procedures was Unlawful  
(Code of Civil Procedure § 1085)**

**Violation of Code of California Government Code Section 11353**

64. The SJTA realleges and reincorporates, as though fully set forth herein, each and every allegation in paragraphs 1 through 63 of this Petition/Complaint.

65. California’s Administrative Procedures Act (“APA”) establishes rulemaking procedures and standards for state agencies in California. (Gov. Code, § 11340 *et seq.*)

66. Under the APA, a “regulation” includes rules or standards of general application that implement, interpret, or make specific the law enforced or administered by the agency adopting the regulation. (Gov. Code, § 11342.600.)

67. Significant portions of the Procedures meet the definition of a “regulation.”

68. Government Code section 11353 outlines specific APA requirements to which the State Water Board must adhere to when adopting water quality control plans or policies that constitute regulations. (See, e.g., Gov. Code, § 11353.)

69. Amongst these requirements, Government Code section 11353 mandates that when adopting water quality control plan amendments, the State Water Board must also comply with applicable requirements of the Federal Water Pollution Control Act (i.e., the Clean Water Act). (Gov. Code, § 11353 (b)(7).)

70. Amongst the applicable requirements of the Clean Water Act are requirements governing the minimum public participation and notice procedures to which the State Water Board must adhere to when adopting water quality control plan amendments. (40 C.F.R., § 25.1 (a); see also 40 C.F.R., § 25.2(a)(1) [activities covered under the public participation and notice regulations include state rulemaking under the Clean Water Act].)

71. Applicable here, the Clean Water Act regulations provide that any final rules and regulations adopted by the State Water Board be distributed to the public in accordance with Code of Federal Regulations (“C.F.R.”) title 40, subsection 25.4 (c). (40 C.F.R., § 25.10 (a).)

72. In relevant part, 40 C.F.R. subsection 25.4 (c) provides that the public should be notified of agency action within not less than thirty (30) days in advance of agency action.

1           73.     The final version of the Procedures was not distributed to the public thirty (30) days  
2 in advance of the State Water Board’s adoption of the Procedures.

3           74.     The State Water Board adopted the Procedures on April 2, 2019.

4           75.     On March 22, 2019, the State Water Board released the purportedly “final” version  
5 of the Procedures—eleven (11) days before the Board was scheduled to adopt the Procedures.

6           76.     Thereafter, on March 29, 2019, the Board released a “Change Sheet” containing  
7 new sections and amendments to the Procedures. This Change Sheet was distributed four (4) days  
8 before the Board adopted the Procedures on April 2, 2019.

9           77.     The Clean Water Act’s public notification and participation requirements exist so  
10 the public has the opportunity to understand official programs and proposed actions. (40 C.F.R., §  
11 25.3 (c)(1).) The requirements also exist to ensure that government agencies are responsive to the  
12 public’s concerns and do not make any significant decisions without consulting the public. (*Id.*, at  
13 (c)(2)-(3).)

14           78.     The State Water Board failed to comply with the Clean Water Act’s public  
15 notification requirements by releasing the final version of the Procedures four (4) days before it  
16 adopted the Procedures, instead of the required thirty (30) day minimum. (40 C.F.R., §§ 25.10 (a),  
17 25.4 (c).)

18           79.     Additionally, by releasing the Procedures four (4) days before adopting the  
19 Procedures, the Board engaged in significant decision making without consulting the public due to  
20 the public’s lack of a meaningful opportunity to digest and comprehend the truly final version of  
21 the Procedures.

22           80.     By failing to adhere to applicable requirements of the Clean Water Act, the State  
23 Water Board’s April 2, 2019 adoption of the Procedures violated Government Code section 11353  
24 (b)(7). Because the State Water Board’s action was unlawful, this Court should issue a writ of  
25 mandate directing the State Water Board to set aside its adoption of the Procedures.

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**FOURTH CAUSE OF ACTION**

**Writ of Mandate – Adoption of the Procedures was Unlawful  
(Code of Civil Procedure § 1085)**

**Unlawful Water Quality Control Plan Amendments**

81. The SJTA realleges and reincorporates, as though fully set forth herein, each and every allegation in paragraphs 1 through 80 of this Petition/Complaint.

82. The Porter-Cologne Act requires the State Water Board to adopt water quality control plans to protect the waters of the state for the many beneficial uses to which those waters are put, including domestic use, municipal supply, agricultural production, and the preservation of fish and wildlife resources. (Wat. Code, § 13000 *et seq.*)

83. Each water quality control plan must: (1) identify “beneficial uses” that will be protected by the plan, (2) establish “objectives” that provide a reasonable level of protection for those beneficial uses, and (3) create a “program of implementation” needed to achieve those objectives. (Wat. Code, §§ 13050(j), 13241, 13242.)

84. The Board adopted the Procedures as amendments to the Water Quality Control Plan for Ocean Waters of California and forthcoming Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

85. The Procedures consist of four components: (1) a state wetland definition, (2) a framework for determining if a wetland that meets the state wetland definition is a water of the state, (3) wetland delineation procedures, and (4) procedures for application submittal, and the review and approval of water quality certifications, waste discharge requirements, and waivers of waste discharge requirements for dredge or fill activities.

86. Despite adopting the Procedures as water quality control plan amendments, the Procedures do not designate beneficial uses, do not set water quality objectives, nor do they mention a program of implementation.

87. By not including any of the mandatory components of a water quality control plan, and not explaining how the Procedures will work as amendments to a water quality control plan, the Procedures constitute unlawful water quality control plan amendments.

1 88. The Procedures are actually State Water Board guidance and policy. The State  
2 Water Board's improper adoption of the Procedures as regulations is an unlawful attempt to give  
3 policy regulatory authority, which violates Water Code section 13000 et seq.

4 89. Because the State Water Board's action was unlawful, this Court should issue a writ  
5 of mandate directing the State Water Board to set aside its adoption of the Procedures.

6 **FIFTH CAUSE OF ACTION**

7 **Declaratory Relief under Code of Civil Procedure Section 1060**

8  
9 90. The SJTA realleges and reincorporates, as though fully set forth herein, each and  
10 every allegation in paragraphs 1 through 89 of this Petition/Complaint.

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

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

19 93. Petitioner contends that the State Water Board's adoption of the Procedures as  
20 amendments to the Water Quality Control Plan for Ocean Waters of California and the Water  
21 Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California  
22 violate, among other things, the Porter-Cologne Act, the APA, and the Clean Water Act.

23 94. The State Water Board contends that it complied with all applicable laws, rules, and  
24 regulations in adopting the Procedures.

25 95. An actual controversy exists surrounding the legality of the State Water Board's  
26 adoption of the Procedures.

27 96. A judicial determination of this controversy is necessary and appropriate at this  
28 time.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Petitioner/Plaintiff prays for judgment against Respondents as follows:

3 1. For a writ of mandate directing Respondent to vacate and set aside its adoption of  
4 amendments to the Water Quality Control Plan for Ocean Waters of California and the Water  
5 Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California to  
6 establish a state wetland definition and procedures for discharges of dredge or fill material to  
7 waters of the state;

8 2. For a writ of mandate directing Respondent to comply with the Porter-Cologne  
9 Water Quality Control Act, Administrative Procedure Act, and applicable Clean Water Act  
10 sections and regulations;

11 3. For a judgment declaring: (a) that the Respondent’s adoption of the Procedures is  
12 void and invalid; (b) that the adoption of the Procedures violated Water Code section 13170; (c)  
13 that the adoption of the Procedures exceeded the State Water Board’s authority to regulation  
14 “waste” under the Porter-Cologne Act; (d) that the adoption of the Procedures violated the APA;  
15 (e) that the adoption of the Procedures was an unlawful attempt to implement policies through the  
16 water quality control planning process; and (f) that the Procedures as adopted are unenforceable;

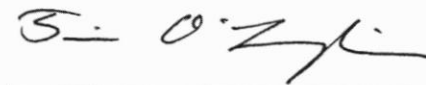
17 4. For an award of reasonable attorneys’ fees and costs; and

18 5. For such other and further relief that the Court deems just and proper.

19 Dated: May 1, 2019

**O’LAUGHLIN & PARIS LLP**

20  
21 By:



22 TIM O’LAUGHLIN (SBN 116807)  
23 VALERIE C. KINCAID (SBN 231815)  
24 TIMOTHY J. WASIEWSKI (SBN 302306)  
25 Attorneys for Petitioner/Plaintiff,  
26 SAN JOAQUIN TRIBUTARIES AUTHORITY  
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VERIFICATION

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I, STEVE KNELL, state that I am the General Manager for Oakdale Irrigation District, a member agency of Plaintiff/Petitioner San Joaquin Tributaries Authority. 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 May 1, 2019, in Oakdale, California.

By:   
STEVE KNELL, GENERAL MANAGER,  
OAKDALE IRRIGATION DISTRICT