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PURSUANT TO GOV. CODE § 6103

FILED

JUN - 4 2015

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO

BY \_\_\_\_\_ DEPUTY

Attorneys for Petitioner and Plaintiff  
CITY OR RIVERSIDE, a California charter city and  
municipal corporation

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO

15CECG01769  
WRITMAN  
Petition - Writ of Mandate  
1549154



CITY OF RIVERSIDE, a municipal  
corporation,  
  
Petitioner/Plaintiff,  
  
v.  
  
STATE WATER RESOURCES CONTROL  
BOARD, a governmental body; and  
DOES 1 through 100, inclusive,  
  
Respondent/Defendant.

Case No. 15CECG 01769

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

[Code Civ. Proc., §§ 1060, 1085, and  
1094.5; Gov. Code § 11350]

[Deemed Verified Pursuant to Code of  
Civ. Proc., § 446]

Petitioner and Plaintiff CITY OF RIVERSIDE alleges as follows:

INTRODUCTION

1. Petitioner and Plaintiff City of Riverside (the "City" or "Riverside") is, and at all relevant times was, a charter city organized and existing under and by virtue of the laws of the State of California, located within the County of Riverside, California.
2. Respondent and Defendant State Water Resources Control Board ("Water Board") is a department of the State of California. Riverside is informed and believes, and on that basis alleges, that the State Board is charged with executing the laws of the State of

CITY ATTORNEY'S OFFICE  
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VIA FAX

ORIGINAL

1 California, including Executive Orders issued by the State Governor. Riverside is further  
2 informed and believes that the State Board is authorized and may be required by law to hold  
3 public hearings, and may act in a quasi-legislative capacity and in a quasi-judicial capacity.

4 3. Riverside has owned and operated a water utility providing its residents with  
5 potable and non-potable water since 1913.

6 4. Riverside currently imports no water from Northern California, and is wholly  
7 dependent upon local groundwater to serve the needs of its customers. In fact, Riverside is  
8 "Water Independent," has at least a four year supply of water in its groundwater basins, its  
9 groundwater basins are naturally recharged, and Riverside has no plans to import water to serve  
10 the needs of its customers.

11 5. Riverside has invested a significant amount of money and time to be water  
12 independent. Since 1913, Riverside acquired seven private water companies - mainly serving  
13 agricultural customers - who had significant rights to extract groundwater from local basins.  
14 The principal reason for acquiring four of those water companies was to assure that the water  
15 rights of those companies would be available for domestic, commercial and industrial purposes  
16 when those service areas converted from agricultural to urban use. Riverside has also acquired  
17 shares in other private water companies, all of whom have similar groundwater extraction rights.

18 6. In 2008, to further increase its local water supplies and to definitively eliminate  
19 Riverside's need for imported water, Riverside constructed the John W. North Water Treatment  
20 Plant. The John W. North Water Treatment Plant and associated projects cost over \$100m, with  
21 \$12.8m funded by Proposition 50 funds from the State of California (Proposition 50 was  
22 approved by voters in November 2002 for funds to construct water-related infrastructure that  
23 reduces Southern California's consumption of imported water.) The John W. North Water  
24 Treatment Plant began treating water from former irrigation wells on September 4, 2008; since  
25 May 2008, the City has not imported any water from either the Colorado River or from the State  
26 Water Project.

27 7. California has experienced a severe drought over the past four years. However,  
28 Riverside primarily sources its water from an adjudicated groundwater basin, which is

1 replenished naturally through precipitation. The water levels in that basin have remained stable  
2 over the past four years and are anticipated to remain stable. Basin water supplies are carefully  
3 monitored and the basin hydrology is well-understood. The basin is operated to maintain water  
4 levels between a minimum level and a maximum level to prevent local flooding. Riverside has  
5 at least a four-year supply of water in the basin. As a result of the unique adjudication, which  
6 cannot be simply revised, any water that Riverside does not extract will sit in the basin, and  
7 cannot be extracted or used by others.

8 8. Riverside truly is "Water Independent."

9 9. Now, having ignored the fact that Riverside has sufficient water to serve its  
10 customers, has at least a four year supply of naturally recharged groundwater, and imports no  
11 water, the State of California's Water Resources Control Board ("Water Board") has ordered  
12 Riverside to cut its water consumption by 24%. Through this Petition and Complaint, Riverside  
13 requests that the Court issue a writ of mandate vacating and setting aside the Water Board's  
14 Drought Emergency Water Conservation Regulations (the "Emergency Regulations").

#### 15 VENUE, JURISDICTION, AND STANDING

16 10. This Court has jurisdiction to review the State Board's actions and issue a writ of  
17 mandate and grant declaratory and/or injunctive relief, as well as all other relief sought herein,  
18 pursuant to Code of Civil Procedure sections 1060, 1085, and 1094.5; Government Code section  
19 11350; and other provisions of law.

20 11. The State Attorney General maintains an office in Fresno County. Venue in an  
21 action against the State Board is proper in any county where the State Attorney General  
22 maintains an office pursuant to Code of Civil Procedure section 401 and Government Code  
23 section 955.3.

24 12. The State Board may not abuse its discretion; it must proceed in the manner  
25 required by law; it may not act arbitrarily or capriciously; and, its actions must be based upon  
26 substantial evidence. In adopting the Emergency Regulations, the State Board abused its  
27 discretion. It acted arbitrarily and capriciously in exempting water suppliers with adequate  
28 surface water supplies, but not exempting water suppliers such as Riverside with adequate

1 groundwater supplies. The State Board's decision to exempt water suppliers with adequate  
2 surface water supplies, but not exempt water suppliers such as Riverside with adequate  
3 groundwater supplies, was not based on substantial evidence.

4 13. Riverside has no plain, speedy, or adequate remedy at law. Unless a temporary  
5 restraining order and injunction is issued, Riverside's ability to serve water to its customers will  
6 be impaired, which will cause real and economic harm to the City, its residents, and customers,  
7 despite an adequate water supply. Despite its adequate water supply, Riverside will also be  
8 subject to significant fines of up to \$10,000 per day for noncompliance with the Emergency  
9 Regulations. Riverside, its citizens, and the public will suffer irreparable harm if the Emergency  
10 Regulations are implemented.

#### 11 EXHAUSTION OF ADMINISTRATIVE REMEDIES

12 14. This action is brought under Code of Civil Procedure sections 1060, 1085, and  
13 1094.5, and Government Code section 11350. Riverside, and other agencies, organizations, or  
14 individuals, raised each of the legal deficiencies asserted in this Petition and Complaint, orally or  
15 in writing, before the State Board adopted the Emergency Regulations. Riverside has thus  
16 exhausted its administrative remedies, or Riverside was prevented from doing so by the actions  
17 or inactions of the Water Board, or was otherwise excused from doing so.

18 15. This lawsuit has been commenced within the time limits imposed by the Code of  
19 Civil Procedure, the Government Code, and the Water Code.

#### 20 THE WATER BOARD'S REGULATIONS

21 16. California is currently in the fifth year of a significant drought with severe  
22 impacts to California's water supplies and its ability to meet all of the demands for water in the  
23 State. On January 17, 2014, Governor Edmund G. Brown, Jr. declared a State of Emergency  
24 throughout the State of California due to severe drought conditions and proclaimed a Continued  
25 State of Emergency on April 25, 2014. On April 1, 2015, Governor Brown issued Executive  
26 Order B-29-15 directing the Water Board to adopt further emergency regulations "to achieve a  
27 statewide 25% reduction in potable urban water usage."

28 17. On April 28, 2015, the Water Board issued proposed regulations to meet the

1 Governor's directive. One such proposed regulation was set forth in Section 865(c) of Article  
2 22.5, entitled "Drought Emergency Water Conservation." This section provided in part:

3 Each urban water supplier whose source of supply does not include  
4 groundwater or water imported from outside the hydrological  
5 region in which the water supplier is located, and that has a  
6 minimum of four years' reserved supply available, may submit to  
7 the Executive Director for approval a request that, in lieu of the  
reduction that would otherwise be required . . . the urban water  
supplier shall reduce its total potable water production by 4% each  
month . . .

8 18. Concurrent with the issuance of these draft regulations, the Water Board issued a  
9 "Fact Sheet" further entitled "Notice of Proposed Emergency Regulation Implementing the 25%  
10 Conservation Standard." That Fact Sheet provided the following, on pp. 3 and 5:

11 Some suppliers may be eligible, under specific conditions, for  
12 placement into a lower 4% conservation tier.

13 \* \* \*

14 Feedback is specifically requested on whether the regulation  
15 should allow water suppliers whose supplies include groundwater  
16 to apply for inclusion the 4% reserve tier if it can be demonstrated  
that they have a minimum of 4 years of supply, do not rely upon  
imported water, and their groundwater supplies recharge naturally.

17 19. Riverside is informed and believes and thereon alleges that the reason for the  
18 inclusion of Section 865(c) was that there were certain water agencies in Northern California that  
19 are wholly served with surface water. A reduction in diversions of surface water by these  
20 agencies will not affect water supplies impacted by the state-wide drought, as the surface water  
21 will otherwise flow into the ocean.

22 20. Riverside, along with a small number of other water agencies that are wholly  
23 dependent upon local groundwater supplies, has a four year supply of water and does not import  
24 any water from outside their hydrologic region; submitted comments in support of the inclusion  
25 of groundwater on this regulation. Specifically, Riverside's written comments included these  
26 facts:

27 //

28 //

1 Since 2008, Riverside has met 100% of its annual water needs  
2 from local, well managed, adjudicated groundwater basins, and  
3 locally produced recycled water. Presently, Riverside produces  
4 water from three local groundwater basins that recharge naturally  
5 within the Santa Ana River watershed. The basins from which we  
6 produce groundwater all recharge from natural, local precipitation  
7 and in spite of the drought, the water table depth has been stable  
8 over the past several years. Our prior capital expenses along with  
9 ongoing investments in groundwater management and dry-year  
10 yield programs would become significant stranded investments  
11 under arbitrary regulations to reduce water use. Our well  
12 managed groundwater basins are capable of meeting current and  
13 future demands, for at least the next four years, because of these  
14 significant local investments.

15 21. On May 5, 2015, the Water Board conducted a public meeting, during which it  
16 accepted and considered comments on proposed regulations. Riverside attended the meeting and  
17 made oral comments on the exclusion of groundwater from the 4% conservation tier criteria,  
18 explaining that it would be needlessly harmed. After hearing public comments, the Water Board  
19 refused to include groundwater-based suppliers into the 4% tier and adopted the proposed  
20 regulations as initially proposed.

21 22. Water Board staff stated at the meeting that it "had received information that  
22 communities in the northern portion of the state are not experiencing drought conditions due to  
23 their hydrology or supply," but did not disclose to the Water Board that communities *elsewhere*  
24 in the state had submitted information that they were not experiencing drought due to adequate  
25 supplies.

26 23. Water Board staff declared at the meeting that it would simply be too difficult to  
27 include groundwater in the 4% tier, but provided no evidence why including groundwater  
28 suppliers would be any more difficult than including surface water suppliers. No other reason  
was given for listening to one class of water suppliers, but ignoring the other class of water  
suppliers.

29 24. After hearing public comments, the Water Board voted to approve the Emergency  
30 Regulations, a "proposed resolution amending and readopting drought-related emergency  
31 regulations for urban water conservation to implement Executive Order B-29-15," adopted as  
32 Resolution No. 2015-0032.

1 **FIRST CAUSE OF ACTION**

2 (Petition for Writ of Mandate Pursuant to Code Civ. Proc., § 1085)

3 25. Riverside incorporates by reference paragraphs 1 through 24, above, as though set  
4 forth in full.

5 26. When acting in a regulatory or quasi-legislative capacity, an agency's decisions  
6 are subject to review under Code of Civil procedure section 1085.

7 27. Under Code of Civil Procedure section 1085, an agency's decision may not be  
8 arbitrary, capricious, or lacking in evidentiary support.

9 28. The Water Board acted arbitrarily and capriciously by exempting certain surface  
10 water suppliers from the regular conservation tiers, but not certain groundwater suppliers, among  
11 other actions.

12 29. The Water Board's decision to exempt certain surface water suppliers from the  
13 regular conservation tiers, but not certain groundwater suppliers, among other actions, was  
14 lacking in evidentiary support.

15 **SECOND CAUSE OF ACTION**

16 (Petition for Writ of Mandate Pursuant to Code Civ. Proc., § 1094.5)

17 30. Riverside incorporates by reference paragraphs 1 through 29, above, as though set  
18 forth in full.

19 31. When acting in an administrative or quasi-judicial capacity, an agency's decisions  
20 are subject to review under Code of Civil Procedure section 1094.5.

21 32. Under Code of Civil Procedure section 1094.5, an agency may not abuse its  
22 discretion. An agency abuses its discretion if it does not proceed in the manner required by law,  
23 if its decision is not supported by findings, or the findings are not supported by evidence.

24 33. The Water Board did not proceed in the manner required by law when it  
25 exempted certain surface water suppliers from the regular conservation tiers, but not certain  
26 groundwater suppliers, among other actions.

27 34. The Water Board did not base its decision(s) on findings, as required by law.

28 35. The Water Board's decision(s) findings, if they were made, were not supported by

1 evidence.

2 **THIRD CAUSE OF ACTION**

3 **(Declaratory Relief Pursuant to Code Civ. Proc. § 1060 and Gov. Code § 11350)**

4 36. Riverside hereby incorporates by this reference the allegations of Paragraphs 1  
5 through 35 as though fully set forth herein.

6 37. An actual controversy has arisen and now exists between Riverside and the Water  
7 Board.

8 38. Riverside is informed and believes, and on that basis alleges, that the Water Board  
9 disputes the contentions of Riverside.

10 39. Riverside seeks a judicial declaration and determination of its respective rights  
11 and duties.

12 **PRAYER**

13 WHEREFORE, Petitioner and Plaintiff City of Riverside prays for entry of judgment as  
14 follows:

15 **ON THE FIRST CAUSE OF ACTION**

- 16 1. For a writ of mandate pursuant to Code of Civil Procedure section 1085 directing the  
17 Water Board to rescind Resolution 2015-0032.
- 18 2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction  
19 prohibiting any actions by the Water Board against Riverside based on Resolution 2015-  
20 0032.

21 **ON THE SECOND CAUSE OF ACTION**

- 22 1. For a writ of mandate pursuant to Code of Civil Procedure section 1094.5 directing the  
23 Water Board to rescind Resolution 2015-0032.
- 24 2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction  
25 prohibiting any actions by the Water Board against Riverside based on Resolution 2015-  
26 0032.

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**ON THE THIRD CAUSE OF ACTION**

1. That this Court declare the Water Board's approval of the Resolution 2015-0032 to be in violation of the Code of Civil Procedure as set forth above.

DATED: June 3, 2015

GARY G. GEUSS, City Attorney  
KRISTI J. SMITH, Supervising Deputy City Attorney  
ANTHONY L. BEAUMON, Deputy City Attorney

By:

  
Anthony L. Beaumon,  
Attorneys for Petitioner/Plaintiff  
CITY OF RIVERSIDE

CA# L15-0162

KRISTI  
SMITH