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8 SANTA BARBARA CHANNELKEEPER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN FRANCISCO  
11 SAN FRANCISCO DIVISION

12 SANTA BARBARA CHANNELKEEPER, a )  
13 California non-profit corporation, )

14 Petitioner, )

15 v. )

16 STATE WATER RESOURCES CONTROL )  
17 BOARD, a California State Agency; CITY OF )  
18 BUENAVENTURA, a California municipal )  
19 corporation, )

20 Respondents. )

Case No. CPF-14-513875

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY RELIEF AND VERIFIED  
PETITION FOR WRIT OF MANDATE**

Code of Civil Procedure §§ 1060, 1085, 1086;  
California Constitution, Article X, § 2;  
Water Code § 275

1 **I. Introduction**

2 1. Santa Barbara Channelkeeper (Channelkeeper, SBCK, or Petitioner) hereby seeks from  
3 this Court a Declaratory Judgment pursuant to California Code of Civil Procedure section 1060  
4 declaring that the City of Buenaventura’s (Ventura or City) use of Reach 4 of the Ventura River (River)  
5 from April through October is unreasonable in violation of Article X, section 2 of the California  
6 Constitution.

7 2. Channelkeeper also petitions this Court for a Writ of Mandate pursuant to California  
8 Code of Civil Procedure section 1085:

9 a. Compelling the State Water Resources Control State Board (State Board or SWRCB)  
10 to perform its mandatory duties to prevent unreasonable use of the State’s waters by conducting an  
11 analysis of Ventura’s pumping and diversion of water from Reach 4 of the River based on existing  
12 conditions in the River, which have changed since Ventura began its use of the River, and to consider  
13 impacts to public trust resources resulting from Ventura’s use of Reach 4, as required by Article X,  
14 section 2 of the California Constitution and section 275 of the Water Code,

15 b. Compelling the State Board to perform its mandatory duties to consider impacts to  
16 public trust resources by conducting an analysis of Ventura’s pumping and diversion of water from  
17 Reach 4 of the River based on existing conditions in the River, which have changed since Ventura began  
18 its use of the River, as required by the Public Trust Doctrine; and/or

19 c. Enjoining the State Board from further abuse of discretion in failing to conduct an  
20 analysis of the reasonableness of Ventura’s use of the River and in failing to conduct an analysis of the  
21 impacts to public trust resources resulting from Ventura’s use of the River, as required by Article X,  
22 section 2 of the California Constitution, section 275 of the Water Code, and the Public Trust Doctrine.

23 **II. The Parties**

24 **A. Santa Barbara Channelkeeper**

25 3. Channelkeeper is a non-profit public benefit corporation organized under the laws of the  
26 State of California and headquartered in Santa Barbara, California.

27 4. Channelkeeper’s office is located at 714 Bond Avenue, Santa Barbara, California 93103.

28 5. Channelkeeper’s mission is to protect and restore the Santa Barbara Channel and its

1 tributaries for the benefit of its ecosystems and the surrounding human communities. Channelkeeper  
2 accomplishes its mission through science-based advocacy, education, field work, and enforcement of  
3 environmental laws. Because the Ventura River is one of the largest rivers that empties into the Santa  
4 Barbara Channel, it is a major focus of SBCK's work.

5         6.         SBCK has served as a lead advocate, community organizer, educator, scientist, and  
6 monitor in the Ventura River watershed for 18 years. Via the "Ventura River Stream Team" citizen  
7 water quality monitoring program, Channelkeeper has trained and engaged 650 volunteers and collected  
8 17 years of scientifically sound data characterizing water quality in the Ventura River and its tributaries.  
9 This data has been used extensively by various agencies to guide their pollution prevention and clean-up  
10 programs. In addition to this monitoring effort, SBCK has also served as the lead environmental  
11 advocate on a variety of priority issues throughout the watershed for many years. Channelkeeper and its  
12 members have surveyed nearly every mile of the Ventura River and its major tributaries, identifying and  
13 mapping water quality and habitat impairments. Channelkeeper served as the primary (and in many  
14 cases sole) stakeholder representing environmental interests in critical and technically complex  
15 environmental regulatory processes such as the Total Maximum Daily Loads (TMDL) for the Ventura  
16 River's impairments.

17         7.         Thus, the interests of SBCK and its members have been, are being, and will continue to  
18 be adversely affected by the ongoing controversy between SBCK and Ventura and the State Board's  
19 failure to comply with the requirements of Constitution, the Water Code, and the Public Trust Doctrine  
20 described herein. The relief sought herein will redress the harms to SBCK caused by SBCK's  
21 controversy with Ventura and the State Board's failures to act. Continuing commission of the omissions  
22 alleged herein will irreparably harm SBCK's members, for which harm they have no plain, speedy or  
23 adequate remedy at law.

24         **B.   The State Board**

25         8.         The State Board is now, and at all times mentioned in this complaint and petition has  
26 been, a state agency under the laws of the State of California. *See* Water Code § 174 *et seq.*

27         9.         The State Board is directly responsible for carrying out the Constitutional and statutory  
28 mandates to prevent the unreasonable use of California's waters. *See* Water Code §§ 174, 179, 275, and

1 1050.

2 10. The State Board is directly responsible for administering public trust resources on behalf  
3 of the people of the State. *See* Water Code § 1120.

4 **C. The City of Ventura**

5 11. Ventura is now, and at all times mentioned in this complaint and petition has been, a  
6 municipal corporation situated in the County of Ventura of the State of California. *See* Ventura Mun.  
7 Code § 100.

8 12. In 2011, Ventura formed a new city department, Ventura Water, which is responsible for  
9 managing Ventura’s water supply, stormwater, and wastewater.

10 13. Ventura is obligated to make only reasonable and beneficial use of the waters of the  
11 State. *See* Cal. Const., art. X, § 2.

12 **III. Authenticity of Exhibits Attached**

13 14. The documents accompanying this first amended complaint and petition are true and  
14 correct copies of the original documents, and were obtained in the manner described in the Supplemental  
15 Declaration of Daniel Cooper in support of Channelkeeper’s First Amended Complaint for Declaratory  
16 Relief and Verified Petition for Writ of Mandate (Supp. Cooper Dec.), which is filed concurrently  
17 herewith. Channelkeeper has consecutively numbered accompanying documents, and the exhibit  
18 citations herein refer to those consecutive page numbers.

19 15. The documents attached to the Supplemental Cooper Declaration are incorporated herein  
20 by reference as though fully set forth in this first amended complaint and petition.

21 **IV. Jurisdiction and Venue**

22 16. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section  
23 1060.

24 17. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section  
25 1085. *Elmore v. Imperial Irrigation Dist.* (1984) 159 Cal.App.3d 185, 192-93 (“The doctrine of  
26 exhaustion of administrative remedies is inapplicable in water cases. ... The exhaustion of  
27 administrative remedies is not a prerequisite to the filing of a mandamus petition in water cases, nor  
28 does failure to exhaust preclude the court from exercising its concurrent original jurisdiction.”) (citing

1 *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 449); *see also* Supp. Cooper Dec.,  
2 Ex. A (State Board’s Scott River Brief) at 6:19-20 (“The State [] Board and the courts have concurrent  
3 jurisdiction to apply the public trust doctrine.”) (citing *National Audubon Society*, 33 Cal.3d at 449-451).

4 18. Venue is proper in this Court pursuant Code of Civil Procedure sections 395 and 401, as  
5 defendant State Board is a resident of Sacramento County and the Attorney General maintains an office  
6 in San Francisco County.

7 19. In 1998, the United States Environmental Protection Agency (EPA) approved  
8 California’s list of impaired water bodies identified pursuant to section 303(d) (303(d) List) of the  
9 Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1313(d), which first listed Reaches  
10 3 and 4 of the Ventura River as impaired for pumping and diversion. On October 11, 2011, the EPA  
11 approved the State Board’s triennial review and update to the 303(d) List, which maintained the  
12 pumping and diversion impairments for Reaches 3 and 4 of the Ventura River. On June 28, 2013, EPA  
13 approved the TMDL for algae, nutrients, and eutrophic conditions in the Ventura River (Ventura River  
14 TMDL). Under Code of Civil Procedure section 338(a), this action is properly before this Court, as it is  
15 filed not later than three years from the date EPA approved the State Board’s updated 303(d) List and/or  
16 from the date EPA approved the Ventura River TMDL, or from the State Board’s ongoing, indivisible  
17 course of conduct occurring since Reaches 3 and 4 of the Ventura River were first included on  
18 California’s 303(d) List as impaired for pumping and diversion in 1998.

19 **V. Regulatory Background**

20 **A. Water Rights in California**

21 20. All water within the State of California is the property of the people of the State, but the  
22 right to the use of water may be acquired by appropriation in the manner provided by law. Water Code  
23 §§ 102, 1201.

24 21. California operates under a dual system of surface water rights that recognizes both  
25 riparian rights and appropriation rights. *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 136-37  
26 (providing review of development of California water law); *see also United States v. State Water Res.*  
27 *Control Bd.* (1986) 182 Cal.App.3d 82, 101.

28 22. Riparian rights confer upon a landowner the right to divert the water flowing by the land

1 for use on the land, without regard to the priority in time. *U.S. v. SWRCB*, 182 Cal.App.3d at 101.

2 23. In times of water shortage, riparian rights are paramount to appropriation rights. *U.S. v.*  
3 *SWRCB*, 182 Cal.App.3d at 104-105.

4 24. Appropriation rights confer upon the user who actually diverts and uses water the right to  
5 do so. *U.S. v. SWRCB*, 182 Cal.App.3d at 101-102. Appropriators are not required to own land  
6 contiguous to the watercourse or make use of the diverted water on the adjacent land, but appropriation  
7 rights are subordinate to riparian rights and as between appropriators, the rule of priority is “first in time,  
8 first in right.” *Id.* at 102.

9 25. The Water Commission Act of 1913 at Water Code, Division 2, section 1000 *et seq.*  
10 establishes the regulatory framework governing appropriation rights, including permitting and licensing  
11 requirements. Appropriation rights acquired prior to enactment of the Water Commission Act (pre-1914  
12 appropriation rights) are not subject to the Act’s permit and licensing requirements. Water Code  
13 §§ 1006, 1202(b); *see also Cal. Farm Bureau Fed’n v. State Water Res. Control Bd.* (2011) 51 Cal.4th  
14 421, 428-29; *State Water Res. Control Bd. Cases* (2006) 136 Cal.App.4th 674, 741-42.

15 26. California law also recognizes the right to the use of groundwater either as an overlying  
16 user or an appropriator. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240-41.  
17 Overlying groundwater users are analogous to riparian users, i.e., overlying groundwater users have the  
18 right to use the water beneath their land by virtue of their ownership of the land and must use the water  
19 on the overlying property. *City of Barstow*, 23 Cal.4th at 1240. Groundwater appropriators are subject to  
20 the “first in time, first in right” rule of priority and their use of the appropriated groundwater is not  
21 restricted to the overlying land. *City of Barstow*, 23 Cal.4th at 1241.

22 27. In times of water shortage, overlying groundwater rights are paramount to appropriation  
23 rights, either surface water appropriations or ground water appropriations. *City of Pasadena v. City of*  
24 *Alhambra* (1949) 33 Cal.2d 908, 926.

25 28. The Water Commission Act’s permit and licensing requirements do not regulate the use  
26 of groundwater whether overlying or appropriative. *City of Pasadena*, 33 Cal.2d at 933-34.

27 29. Groundwater users in Ventura County are, however, required to report the volume of  
28 water used pursuant to an overlying or appropriation right to the State Board. Water Code §§ 4999, *et*

1 *seq.*

2 **B. Beneficial Uses of State Waters**

3 30. All waters of the State must be put to beneficial use. *See* Cal. Const., art. X, § 2; *see also*  
4 Water Code §§ 1201, 1240.

5 31. Several provisions of California law define beneficial uses and beneficial use categories  
6 to be applied to the State’s waters. Pursuant to these provisions categories of beneficial uses include:  
7 (1) Aquaculture, raising fish or other aquatic organisms not for release to other waters; (2) Domestic,  
8 water used by homes, resorts, or campgrounds, including water for household animals, lawns, and  
9 shrubs; (3) Fire Protection, water to extinguish fires; (4) Fish and Wildlife, enhancement of fish and  
10 wildlife resources, including raising fish or other organisms for scientific study or release to other waters  
11 of the state; (5) Frost Protection, sprinkling to protect crops from frost damage; (6) Heat Control,  
12 sprinkling to protect crops from heat; (7) Industrial Use, water needs of commerce, trade, or industry;  
13 (8) Irrigation, agricultural water needs; (9) Mining, Hydraulic, drilling and concentrator table use;  
14 (10) Municipal, city and town water supplies; (11) Power, generating hydroelectric and  
15 hydromechanical power; (12) Recreation, boating, swimming, and fishing; (13) Stock watering,  
16 Commercial livestock water needs; and (14) Water Quality Control, protecting and improving waters  
17 that are put to beneficial use. *See* Water Code §§ 100, 106, 1004, 1005.1, 1005.2, 1005.4, 1010, 1011,  
18 1011.5, 1012, 1017, 1242, 1242.5, 1243, 1243.5, and 13050(f).

19 32. Under California law, each regional board is required to formulate and adopt “water  
20 quality control plans,” commonly known as “Basin Plans,” for all hydrologic areas within their region.  
21 Water Code § 13240. A Basin Plan “consists of a designation or establishment for the waters within a  
22 specified area” of all of the following: “(1) Beneficial uses to be protected; (2) Water quality objectives;  
23 [and] (3) A program of implementation needed for achieving water quality objectives.” Water Code  
24 § 13050(j).

25 33. Water quality objectives are numeric or narrative water quality standards that must be  
26 attained or maintained in order to protect the designated beneficial uses of a water body. *See* 33 U.S.C.  
27 §§ 1312, 1313(a).

28 34. Under the Clean Water Act, when effluent limitations are insufficient to ensure

1 compliance with water quality objectives and a water body can no longer be put to its designated  
2 beneficial uses, that water body's beneficial uses are impaired and the State must place that water body  
3 on the list of impaired waters. 33 U.S.C. § 1313(d)(1). The State must also develop a TMDL for the  
4 pollutant(s) impairing the water body. 33 U.S.C. § 1313(d)(1). The State must submit its list of impaired  
5 water bodies, pollutants causing impairments, and a priority ranking including water bodies targeted for  
6 TMDL development to the EPA for review and approval every two years. 40 C.F.R. § 130.7(d).

7 35. TMDLs can be developed by the EPA or the state. 33 U.S.C. 1313(d); 40 C.F.R. § 130.7.  
8 Each TMDL must be "established at a level necessary to implement the applicable water quality  
9 standards." 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.2(i). Each TMDL must include the individual  
10 waste load allocations (WLAs) for point sources discharging into the water body, as well as load  
11 allocations for non-point sources and natural background sources. 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R.  
12 § 130.2(i). WLAs are "[t]he portion of a receiving water's loading capacity that is allocated to one of its  
13 existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent  
14 limitation." 40 C.F.R. § 130.2(h).

### 15 C. The Reasonable Use Doctrine

16 36. In addition to the requirement that all water be put to beneficial use, all water rights in  
17 California are constrained by the "rule of reasonableness," which has been preserved in the state  
18 Constitution since 1928. *See, e.g., Light v. State Water Res. Control Bd.* (2014) 2014 Cal.App.LEXIS  
19 523, at \*17 (citing Cal. Const., art. X, § 2). This constitutional requirement is "generally construed as  
20 applying a rule of reasonable use 'to all water rights enjoyed or asserted in this state, whether the same  
21 be grounded on the riparian right or the right, analogous to the riparian right, of the overlying land  
22 owner, or the percolating water right, or the appropriative right.'" *Joslin*, 67 Cal.2d at 138 (quoting  
23 *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383).

24 37. Specifically, article X, section 2 of the California Constitution states:

25 It is hereby declared that because of the conditions prevailing in this State the general  
26 welfare requires that the water resources of the State be put to beneficial use to the fullest  
27 extent of which they are capable, and that **the waste or unreasonable use or**  
28 **unreasonable method of use of water be prevented**, and that the conservation of such  
waters is to be exercised with a view to the reasonable and beneficial use thereof in the  
interest of the people and for the public welfare. **The right to water or to the use or**



1 **flow of water in or from any natural stream or water course in this State is and shall**  
2 **be limited to such water as shall be reasonably required for the beneficial use to be**  
3 **served, and such right does not and shall not extend to the waste or unreasonable**  
4 **use or unreasonable method of use or unreasonable method of diversion of water.**

5 Riparian rights in a stream or water course attach to, but to no more than so much of the  
6 flow thereof as may be required or used consistently with this section, for the purposes  
7 for which such lands are, or may be made adaptable, in view of such reasonable and  
8 beneficial uses; provided, however, that nothing herein contained shall be construed as  
depriving any riparian owner of the reasonable use of water of the stream to which the  
owner's land is riparian under reasonable methods of diversion and use, or as depriving  
any appropriator of water to which the appropriator is lawfully entitled. **This section**  
**shall be self-executing**, and the Legislature may also enact laws in the furtherance of the  
policy in this section contained.

9 (emphasis added). The rule of reasonableness, i.e., the reasonable use doctrine, is the overriding  
10 principle governing the use of water in California. *See Peabody*, 2 Cal.2d at 367-68.

11 38. The constitutional mandate that unreasonable use and waste of the State's waters be  
12 prevented is also codified at sections 100, 101, and 106.5 of the Water Code.

13 39. What constitutes an unreasonable use of water is determined on a case-by-case basis  
14 depending on the totality of circumstances. *See Peabody*, 2 Cal.2d at 368; *see also Joslin*, 67 Cal.2d at  
15 139; *Imperial Irrigation Dist. v. State Water Res. Control Bd.* (1986) 186 Cal.App.3d 1160, 1165.

16 "What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a  
17 reasonable beneficial use in an area of great scarcity and great need." *Tulare Irrigation Dist. v. Lindsay-*  
18 *Strathmore Dist.* (1935) 3 Cal.2d 489, 567.

19 40. Conformity of a use, method of use, or method of diversion of water with local custom  
20 shall not be determinative of its reasonableness, but is considered as one factor to be weighed in  
21 determining the reasonableness of the use, method of use, or method of diversion within the meaning of  
22 Article X of the California Constitution. Water Code § 100.5.

23 41. "Impacts on public trust uses are a relevant consideration in determining whether a  
24 diversion is unreasonable." Supp. Cooper Dec., Ex. A (State Board's Scott River Brief) at 15:8-12.

25 42. In issuing regulations to prevent unreasonable use of a water body segment, the State  
26 Board stated: "The premise underlying the proposed Regulation is that a diversion of water that is  
27 harmful to salmonids is an unreasonable use of water if the diversion can be managed to avoid the  
28 harm." Supp. Cooper Dec., Ex. B (State Board's Notice of Preparation and Public Scoping Meeting on

1 Russian River Frost Regulation) at 26.

2 43. The reasonableness of a use of water changes over time. “What is a beneficial use at one  
3 time may, because of changed conditions, become a waste of water at a later time.” *Tulare Irrigation*  
4 *Dist.*, 3 Cal.2d at 576. Further, the reasonableness of a use of water “cannot be resolved *in vacuo*  
5 isolated from statewide considerations of transcendent importance. Paramount among these [is] the ever  
6 increasing need for the conservation of water in this state, an inescapable reality of life quite apart from  
7 its express recognition in the 1928 amendment.” *Joslin*, 67 Cal.2d at 140.

8 44. The California Supreme Court has found the unreasonableness of a specific use of water  
9 to be self-evident as a matter of law. *Light*, 2014 Cal.App.LEXIS at \*19-20 (citing *Tulare Irrigation*  
10 *Dist.*, 3 Cal.2d at 568; *Joslin*, 67 Cal.2d at 141 (holding that the use of waters to expose and carry and  
11 deposit sand, gravel, and rock was “as a matter of law unreasonable within the meaning of the  
12 constitutional amendment”)).

13 45. A water user cannot acquire a vested right to the unreasonable use of water. *See, e.g.*,  
14 *Joslin*, 67 Cal.2d at 145.

15 46. A water right holder’s water use is properly involuntarily curtailed based on the  
16 unreasonableness of the use. *See, e.g.*, *Joslin*, 67 Cal.2d at 140-41; *see also* Gray, *The Modern Era in*  
17 *California Water Law* (1994) 45 Hastings L.J. 249, 253-72.

18 47. “When the supply of water in a particular stream system is insufficient to satisfy all  
19 beneficial uses, water rights users must curtail their use.” *Light*, 2014 Cal.App.LEXIS at \*39. While “it  
20 is ordinarily the function of the rule of priority to determine the degree to which any particular use must  
21 be curtailed, the [State] Board has the ultimate authority to allocate water in a manner inconsistent with  
22 the rule of priority, when doing so is necessary to prevent the unreasonable use of water.” *Id.* at 39-40  
23 (citing *El Dorado Irrigation Dist. v. St. Water Res. Control Board* (2006) 142 Cal.App.4th 937, 966).

24 48. A dispute as to the reasonableness of a use of water concerning competing beneficial uses  
25 does not implicate the rule of priority. *See Light*, 2014 Cal.App.LEXIS at 40-41.

26 **D. The Public Trust Doctrine**

27 49. The public trust doctrine provides that “the sovereign owns ‘all of its navigable  
28 waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.’”

1 *National Audubon Society*, 33 Cal.3d at 434 (internal citations omitted).

2 50. It is well settled in the United States generally and in California that the public trust is not  
3 limited by the reach of the tides, but encompasses all navigable lakes and streams. *National Audubon*  
4 *Society*, 33 Cal.3d at 435.

5 51. Public trust resources traditionally included navigation, commerce and fishing. *National*  
6 *Audubon Society*, 33 Cal.3d at 434. The public trust doctrine now also encompasses the preservation of  
7 lands adjacent to navigable waters in their natural state “so that they may serve as ecological units for  
8 scientific study, as open space, and as environments which provide food and habitat for birds and marine  
9 life, and which favorably affect the scenery and climate of the area.” *National Audubon Society*, 33  
10 Cal.3d at 434-35. Such preservation is recognized as “one of the most important public uses of the  
11 tidelands.” *National Audubon Society*, 33 Cal.3d at 434.

12 52. “The public trust doctrine also applies to activities that harm fish in all waters within the  
13 state.” Supp. Cooper Dec., Ex. A (State Board’s Scott River Brief) at 6:13-19 (citing cases).

14 53. “The public trust doctrine, as recognized and developed in California decisions, protects  
15 navigable waters from harm caused by diversion of nonnavigable tributaries.” *National Audubon*  
16 *Society*, 33 Cal.3d at 437 (footnotes omitted). This includes groundwater hydrologically connected to  
17 navigable surface waters. *National Audubon Society*, 33 Cal.3d at 436-37.

18 54. “In administering the trust the state is not burdened with an outmoded classification  
19 favoring one mode of utilization over another.” *National Audubon Society*, 33 Cal.3d at 436. “The state  
20 as sovereign retains continuing supervisory control over its navigable waters and the lands beneath those  
21 waters. This principle, fundamental to the concept of the public trust, applies to rights in flowing waters  
22 as well as to the rights in tidelands and lakeshores; it prevents any party from acquiring a vested right to  
23 appropriate water in a manner harmful to the interests protected by the public trust.” *Id.* at 445.

24 55. “To further the protection of public trust uses, the public trust doctrine limits conduct  
25 affecting those uses,” including groundwater extraction impacting public trust uses. Supp. Cooper Dec.,  
26 Ex. A (State Board’s Scott River Brief) at 6:20-25.

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1           **E. The State Board Has Mandatory Duties to Prevent Unreasonable Use and to Consider**  
2           **Public Trust Resources in Regulating the Use of the State’s Waters**

3           56. Article X, section 2 of the California Constitution is self-executing and imposes a  
4 mandatory duty on the State Board to prevent unreasonable use, among other obligations. *See Env’t*  
5 *Defense Fund v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 195 (“the [State Board’s] duties and  
6 responsibilities over appropriative rights include insuring that they meet the mandate of article X,  
7 section 2”); *see also City of Barstow*, 23 Cal.4th at 1236; *Elmore*, 159 Cal.App.3d at 193-97; *see also*  
8 *Supp. Cooper Dec., Ex. A* (State Board’s Scott River Brief) at 14:15-15:4.

9           57. The mandatory duty imposed by Article X, section 2 is ongoing. *City of Barstow*, 23  
10 Cal.4th at 1243.

11           58. Provisions of the Water Code also impose upon the State Board a mandatory, affirmative  
12 duty to prevent unreasonable use of the State’s waters, such as uses resulting in harm to trust resources.  
13 Specifically, section 275 of the Water Code states: “The department and board shall take all appropriate  
14 proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable  
15 use, unreasonable method of use, or unreasonable method of diversion of water in this state.”

16           59. Consistent with the duty under section 275, section 104 of the Water Code states: “The  
17 people of the State of California have a paramount interest in the use of all the water of the State and the  
18 State determines what water of the State, surface or groundwater, can be converted to public use or  
19 controlled for public protection.”

20           60. The State Board has interpreted section 275 as imposing a mandatory duty: “Water Code  
21 section 275 directs the State Water Board to ‘take all appropriate proceedings or actions before  
22 executive, legislative, or judicial agencies . . .’ to enforce the constitutional and statutory prohibition  
23 against waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion,  
24 commonly referred to as the reasonable use doctrine.” *Supp. Cooper Dec., Ex. B* (State Board’s Notice  
25 of Preparation and Public Scoping Meeting on Russian River Frost Regulation) at 26; *see also Supp.*  
26 *Cooper Dec., Ex. A* (State Board’s Scott River Brief) at 14:3-8.

27           61. Part of the State Board’s mandatory duty to prevent unreasonable use includes  
28 considering impacts to public trust resources caused by water use. *National Audubon Society*, 33 Cal.3d

1 at 446; *see also* Supp. Cooper Dec., Ex. A (State Board’s Scott River Brief) at 14:3-15:16 (explaining  
2 that to carry out its duty under Water Code section 275, the State Board applies the public trust doctrine,  
3 among other considerations).

4 62. The State Board’s mandatory duties prescribed by article X, section 2 and section 275,  
5 which include carrying out its obligations under the Public Trust Doctrine, apply to all types of water  
6 rights, including riparian, pre-1914, and groundwater appropriation rights. *Env’tl Defense Fund*, 26  
7 Cal.3d at 194-95, 198; *see also* Supp. Cooper Dec., Ex. B (State Board’s Notice of Preparation and  
8 Public Scoping Meeting on Russian River Frost Regulation) at 26-27; Supp. Cooper Dec., Ex. C at 48-  
9 50 (explaining that the State Board’s regulation applies to interconnected groundwater).

10 63. The State has a duty to exercise continued supervision over trust resources. *National*  
11 *Audubon Society*, 33 Cal.3d at 437-440. As applied to a water user’s right to use water of the State, the  
12 State Board “has an affirmative duty to take the public trust into account in the planning and allocation  
13 of water resources, and to protect public trust uses whenever feasible.” *National Audubon Society*, 33  
14 Cal.3d at 446.

15 64. The continuing, affirmative duty to take impacts on public trust resources from use of the  
16 State’s waters into account applies to all types of water rights. *National Audubon Society*, 33 Cal.3d at  
17 445. This is especially true when an appropriation of water has never been reviewed for its impact on  
18 public trust resources. *Id.* at 446.

19 65. The State may not abdicate its public trust duties. *National Audubon Society*, 33 Cal.3d at  
20 437-38.

## 21 VI. Facts and Procedural Background

### 22 A. The Ventura River Watershed

23 66. As described in the Ventura River TMDL, the Ventura River Watershed is located in the  
24 northwestern portion of Ventura County with a small portion in the southeastern portion of Santa  
25 Barbara County. Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 94. The watershed drains a fan-  
26 shaped area of about 220 square miles with an elevation from 6,000 feet to sea level. *Id.*

27 67. The River has several major tributaries, including Matilija Creek, North Fork Matilija  
28 Creek, San Antonio Creek, Coyote Creek, and Cañada Larga. Supp. Cooper Dec., Ex. D (EPA Draft

1 TMDL) at 94.

2 68. The cities of Ojai and Ventura are the largest urban areas in the watershed and the  
3 communities of Casitas Springs, Foster Park, Oak View, Valley Vista, Mira Monte, Meiners Oaks,  
4 Upper Ojai, and Live Oak Acres are within the unincorporated Ventura County. Supp. Cooper Dec., Ex.  
5 D (EPA Draft TMDL) at 98.

6 69. The Ventura River consists of five reaches, which, upstream from the Pacific Ocean, are:  
7 Reach 1 (Ventura River Estuary to Main Street), Reach 2 (Main Street to Weldon Canyon), Reach 3  
8 (Weldon Canyon to Casitas Vista Road), Reach 4 (Casitas Vista Road to Camino Cielo Road), and  
9 Reach 5 (above Camino Cielo Road). Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 101-102; Supp.  
10 Cooper Dec., Ex. E (Basin Plan) at 195.

11 70. The Upper Ventura River Basin underlies Reach 4, stretching from Camino Cielo Road  
12 to Foster Park at Casitas Vista Road.

13 71. The Upper Ventura River Basin's maximum capacity is 35,118 acre-feet of water per  
14 year. Supp. Cooper Dec. Ex. V (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at  
15 1060.

16 72. There are two major dams, Matilija and Casitas; a river diversion, Robles Diversion  
17 Facility; and a subsurface diversion, Foster Park Subsurface Diversion, on the River. Supp. Cooper Dec.,  
18 Ex. D (EPA Draft TMDL) at 101.

19 73. Flow in the Ventura River varies seasonally due to a Mediterranean climate pattern of  
20 wet cool winters from November through March and dry warm summers from April through October.  
21 Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 98. High flows predominate during the rainy season,  
22 starting in winter through early spring. *Id.*

23 74. As shown in the Ventura River TMDL, between October 2000 and October 2008 peak  
24 flows in the Foster Park vicinity, i.e., Reaches 3 and 4, occurred after winter storm events and the flows  
25 declined to very low levels, less than 1 cubic foot per second (cfs), during the summer dry season. Supp.  
26 Cooper Dec., Ex. D (EPA Draft TMDL) at 99. This dry pattern was mitigated in the lower Ventura  
27 River, Reaches 1 and 2, by effluent from the Ojai Valley Waste Water Treatment Plant, which  
28 constitutes a majority or, at times, all of the flow in this section of the river during summer and fall of

1 dry years. *Id.*

2 75. In addition to natural variations in flow, based on annual rainfall, flow regimes in the  
3 Ventura River have been altered to support water supply and allow for municipal development,  
4 including by the City. Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 99; Supp. Cooper Dec., Ex. F  
5 (Historical Ecology of the Ventura River) at 204, 274-75, 280.

6 76. Flow in any particular reach of the River is additionally affected by the status of the  
7 underlying groundwater basin (whether full, filling, or emptying), the occurrence of natural recharge  
8 areas where surface flows will disappear at times, flow between groundwater basins, and the amount of  
9 surface or groundwater withdrawals for municipal, domestic, or agricultural uses. Supp. Cooper Dec.,  
10 Ex. D (EPA Draft TMDL) at 100.

11 77. According to the National Marine Fisheries Service (NMFS), flows in the Ventura River  
12 are naturally perennial, due to the geology of the bedrock formation beneath the river facilitating  
13 groundwater from the aquifer to rise, and partially because of the Foster Park subsurface dam. Supp.  
14 Cooper Dec., Ex. G (Draft Biological Opinion) at 355.

15 78. The flow in the river is disrupted at Foster Park (which overlies the Upper Ventura River  
16 Groundwater Basin) due to subsurface diversions and groundwater extraction. Supp. Cooper Dec., Ex. D  
17 (EPA Draft TMDL) at 100.

18 79. The City of Ventura's water production facilities are located at Foster Park, the southern  
19 and down-gradient terminus of the Upper Ventura River Basin. Supp. Cooper Dec., Ex. D (EPA Draft  
20 TMDL) at 100, 102; see also Supp. Cooper Dec., Ex. W (Ventura River Watershed Plan) at 1076-1078.

21 80. There is a high degree of hydraulic connectivity between the groundwater and surface  
22 hydrology in the Foster Park area. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 356. Due to  
23 this connectivity a 1-to-1 relationship between groundwater withdrawals in Foster Park and River  
24 surface flows in Reaches 3 and 4 has been assumed. *Id.* at 356, 363.

25 **B. Southern California Steelhead Trout and Other Endangered Species in the Ventura**  
26 **River Watershed**

27 81. The Ventura River watershed is home to at least 11 endangered or threatened species,  
28 including southern California steelhead trout, arroyo toad, California least tern, California red-legged

1 frog, Foothill yellow-legged frog, Least Bell's vireo, southwestern willow flycatcher, and western  
2 snowy plover. *See* U.S. Fish & Wildlife Service, Listing and Occurrence for California available at:  
3 [http://ecos.fws.gov/tess\\_public/pub/stateListingAndOccurrenceIndividual.jsp?state=CA&s8fid=112761](http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=CA&s8fid=112761032792&s8fid=112762573902)  
4 [032792&s8fid=112762573902](http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=CA&s8fid=112762573902), last visited August 18, 2014; *see also* Cal. Dept. of Fish and Wildlife,  
5 Endangered and Threatened Species List available at:  
6 <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf>, last visited August 18, 2014.

7 82. Before dams were constructed in the Ventura River Watershed, during normal to wet  
8 years the steelhead run was estimated at 4,000-5,000 individuals. Supp. Cooper Dec., Ex. D (EPA Draft  
9 TMDL) at 100.

10 83. Following the construction of Matilija Dam (located upstream of Reach 3), which cut off  
11 access to about half of the prime spawning habitat, and coincident with a drought in the late 1940s,  
12 steelhead runs dropped to about 2,000-2,500 individuals. Supp. Cooper Dec., Ex. D (EPA Draft TMDL)  
13 at 101.

14 84. By the 1990s there had been a 96% decline in the steelhead population in the Ventura  
15 River, prompting its listing as an endangered species in 1997. Supp. Cooper Dec., Ex. G (Draft  
16 Biological Opinion) at 352; *see also* Supp. Cooper Dec., Ex. H (Southern California Steelhead Recovery  
17 Plan) at 437 (describing declines in steelhead run sizes of 90% or more).

18 85. During dry years, juvenile fish unable to transit back downstream to the ocean due to low  
19 flows must survive in pools in the mainstem, i.e., Reaches 3 and 4. Supp. Cooper Dec., Ex. D (EPA  
20 Draft TMDL) at 101.

21 86. The fish are subjected to elevated temperatures, endure competition with other fish for a  
22 decreasing food supply, and are exposed to predators. Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at  
23 101.

24 87. The Ventura River (including Reaches 3 and 4), Ventura River Estuary, San Antonio  
25 Creek, Cañada Larga, Matilija Creek and North Fork Matilija Creek, among other tributaries, have been  
26 designated as critical habitat for the remaining population of the southern California Steelhead, which is  
27 estimated at less than 500 spawning adults. Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 104; Supp.  
28 Cooper Dec., Ex. G (Draft Biological Opinion) at 354.



1           88.     Reaches 3 and 4 of the Ventura River are occupied by steelhead and are rated as having  
2 high conservation value. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 355-56. These reaches  
3 of the River provide spawning and rearing habitat and serve as a migratory corridor for steelhead to  
4 upstream reaches. *Id.* at 356-57.

5           89.     In 2012, NMFS developed the Southern California Steelhead Recovery Plan, a guidance  
6 document the goals of which are to prevent the extinction of southern California steelhead in the wild, to  
7 ensure the long-term persistence of viable, self-sustaining populations of steelhead distributed across the  
8 Southern California Distinct Population Segment, including the Ventura River, and to re-establish a  
9 sustainable southern California steelhead sportfishery. Supp. Cooper Dec., Ex. H (Southern California  
10 Steelhead Recovery Plan) at 417.

11           90.     Since southern California steelhead were listed as endangered in 1997, the impacts  
12 leading to the listing remain prevalent and widespread. Supp. Cooper Dec., Ex. H (Southern California  
13 Steelhead Recovery Plan) at 447. These impacts include present or threatened destruction, modification  
14 or curtailment of habitat or range, over-utilization of the steelhead population for commercial,  
15 recreational, scientific, or educational purposes, disease and predation, inadequacy of existing regulatory  
16 mechanisms, and other natural or human-made factors affecting continued existence. *Id.* at 448-453.

17           91.     As to the steelhead population in the Ventura River, NMFS found the critical recovery  
18 actions to include providing fish passage around dams and diversions, including Foster Park, and  
19 developing and implementing water management plans for diversion operations such as Foster Park.  
20 Supp. Cooper Dec., Ex. H (Southern California Steelhead Recovery Plan) at 462, 514.

21           92.     NMFS also found that diversions from the Ventura River at Foster Park contribute to the  
22 present or threatened destruction, modification or curtailment of steelhead habitat or range and disease  
23 and predation of steelhead. Supp. Cooper Dec., Ex. H (Southern California Steelhead Recovery Plan) at  
24 514.

25           93.     The inadequacy of existing regulatory mechanisms for diversions at Foster Park  
26 contributed to the listing and continuing impacts to endangered steelhead. Supp. Cooper Dec., Ex. H  
27 (Southern California Steelhead Recovery Plan) at 514.

28           94.     Reaches 3 and 4 of the River are part of the lower basin. Supp. Cooper Dec., Ex. I

1 (Steelhead Population Assessment) at 576 (map).

2 95. The fish abundance surveys conducted in the Ventura/Matilija basin over an eight-week  
3 period between June 21 and August 11, 2011 counted or captured a total of 1,241 steelhead in the  
4 Ventura River. Supp. Cooper Dec., Ex. I (Steelhead Population Assessment) at 581.

5 96. In most previous years, and in 2011, overall steelhead abundance was highest in the  
6 upper basin segment above Matilija Dam, intermediate in the middle basin segment between Robles  
7 Diversion Dam and Matilija Dam, and lowest in the lower basin segment. Supp. Cooper Dec., Ex. I  
8 (Steelhead Population Assessment) at 604.

9 97. The upper basin was estimated to contain 77% of steelhead fry, with only 1% in the  
10 lower basin. Supp. Cooper Dec., Ex. I (Steelhead Population Assessment) at 604.

11 98. Relative abundance of juvenile steelhead was more evenly distributed among basin  
12 segments in 2011, with 45% in the upper basin, 25% in the middle basin, and 29% in the lower basin.  
13 Supp. Cooper Dec., Ex. I (Steelhead Population Assessment) at 604.

14 **C. The Ventura River Is Impaired for Pumping and Diversion and Cannot Support its**  
15 **Beneficial Uses**

16 99. The designated potential and existing beneficial uses of Reach 1 are municipal and  
17 domestic supply, industrial service supply, agricultural supply, ground water recharge, freshwater  
18 replenishment, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare, threatened, or  
19 endangered species, migration of aquatic organisms, spawning, reproduction, and/or early development,  
20 wetland habitat, and recreation. Supp. Cooper Dec., Ex. E (Basin Plan) at 195; Supp. Cooper Dec., Ex.  
21 X (Basin Plan) at 1145.

22 100. The designated potential and existing beneficial uses of Reach 2 are municipal and  
23 domestic supply, industrial service supply, agricultural supply, ground water recharge, freshwater  
24 replenishment, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare, threatened, or  
25 endangered species, migration of aquatic organisms, spawning, reproduction, and/or early development,  
26 wetland habitat, and recreation. Supp. Cooper Dec., Ex. E (Basin Plan) at 195; Supp. Cooper Dec., Ex.  
27 X (Basin Plan) at 1145.

28 101. The designated potential and existing beneficial uses of Reach 3 are municipal and

1 domestic supply, industrial service supply, agricultural supply, ground water recharge, freshwater  
2 replenishment, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare, threatened, or  
3 endangered species, migration of aquatic organisms, spawning, reproduction, and/or early development,  
4 wetland habitat, and recreation. Supp. Cooper Dec., Ex. E (Basin Plan) at 195; Supp. Cooper Dec., Ex.  
5 X (Basin Plan) at 1145.

6 102. The designated potential and existing beneficial uses of Reach 4 are municipal and  
7 domestic supply, industrial service supply, agricultural supply, ground water recharge, freshwater  
8 replenishment, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare, threatened, or  
9 endangered species, migration of aquatic organisms, spawning, reproduction, and/or early development,  
10 wetland habitat, and recreation. Supp. Cooper Dec., Ex. E (Basin Plan) at 195; Supp. Cooper Dec., Ex.  
11 X (Basin Plan) at 1145.

12 103. The designated existing beneficial uses of Reach 5 are municipal and domestic supply,  
13 industrial service supply, industrial process supply, agricultural supply, ground water recharge,  
14 freshwater replenishment, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare,  
15 threatened, or endangered species, migration of aquatic organisms, spawning, reproduction, and/or early  
16 development, wetland habitat, and recreation. Supp. Cooper Dec., Ex. E (Basin Plan) at 195; Supp.  
17 Cooper Dec., Ex. X (Basin Plan) at 1145.

18 104. In 1998, the State Board approved and issued California's 303(d) List which first listed  
19 water pumping and diversions as impairing the designated beneficial uses of Reaches 3 and 4 of the  
20 Ventura River. Ex. D (EPA Draft TMDL) at 92; *see also* 33 U.S.C. § 13370 (explaining that the State  
21 Board is responsible for implementing Clean Water Act requirements, which include approval and  
22 issuance of California's 303(d) List).

23 105. Reaches 3 and 4 of the Ventura River were listed on California's 303(d) List as impaired  
24 for pumping and diversion in 1998. Supp. Cooper Dec., Ex. J (Reach 3 Impairment Listing) at 613-15;  
25 Supp. Cooper Dec., Ex. K (Reach 4 Impairment Listing) at 619-21.

26 106. In 2017, the State Board removed Reaches 3 and 4 of the Ventura River from California's  
27 303(d) List, but none of the factors that led to the original impairment listing have been addressed and  
28 the impairment due to pumping and diversion is ongoing and continuous. Supp. Cooper Dec. Ex. AA

1 (2014/2016 Integrated Report Ventura River Excerpt) at 1199, 1209-1216.

2 107. “[T]he River is considered an impacted habitat that is impaired by dams and diversion  
3 structures that impede the seasonal migration of fish, and by groundwater extractions in the upper  
4 Ventura Groundwater Basin and Ojai Groundwater Basin (which drains to San Antonio Creek) that  
5 reduce river flows.” Supp. Cooper Dec., Ex. O (Ventura Flows Study) at 662.

6 108. Although low and intermittent flows may be natural in the Ventura River system, low  
7 flows due to pumping and diversion activities likely exacerbate the flow and water quality conditions in  
8 Reaches 3 and 4. Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 102.

9 109. The low flows in conjunction with other existing degraded water quality conditions affect  
10 beneficial uses. Supp. Cooper Dec., Ex. D (EPA Draft TMDL) at 102.

11 110. Beneficial uses impaired by pumping and diversions in Reaches 3 and 4 of the Ventura  
12 River include cold freshwater habitat, wildlife habitat, rare, threatened, or endangered species, migration  
13 of aquatic organisms, spawning, reproduction, and/or early development, and wetland habitat. *See* Ex. D  
14 (EPA Draft TMDL) at 104.

15 **D. Ventura’s Water Rights, and Pumping and Diversions from the Ventura River**

16 111. Ventura has filed groundwater recordations for three diversions from wells in the vicinity  
17 of Foster Park and a Statement of Water Diversion and Use under a pre-1914 claim to water from the  
18 Ventura River. Supp. Cooper Dec., Ex. N (PRA Response) at 654; Supp. Cooper Dec., Ex. Q (Ventura  
19 Water Rights) at 1017-1027. These rights are identified by the following identification numbers:  
20 G561269, G561270, G561025, and S010335. Supp. Cooper Dec., Ex. N (PRA Response) at 654.

21 112. Based on the nature of its water rights, Ventura is not required to apply for or have permit  
22 or license to appropriate water from the Ventura River. And Ventura, in fact, has no permit or license to  
23 appropriate water from the River.

24 113. Ventura’s water right pursuant to S010335 was first put to use in 1870. Supp. Cooper  
25 Dec., Ex. Q (Ventura Water Rights) at 1023.

26 114. The Foster Park diversion/subsurface dam was constructed in 1906. Supp. Cooper Dec.,  
27 Ex. D (EPA Draft TMDL) at 102.

28 115. Ventura’s water rights are appropriative.

1           116.   Ventura’s appropriative water rights are subordinate to upstream riparian and overlying  
2 groundwater rights in the Ventura River watershed.

3           117.   There are riparian water rights upstream of the Foster Park Diversion.

4           118.   There are overlying groundwater rights upstream of the Foster Park Diversion.

5           119.   Ventura’s appropriative water rights are subordinate to appropriative water rights first put  
6 to use before 1870.

7           120.   The Foster Park subsurface dam is downstream of San Antonio Creek near the point at  
8 which Reach 4 ends and Reach 3 begins; it also overlies the downstream end of the Upper Ventura River  
9 Groundwater Basin (Foster Park Diversion). *Id.* “The submerged dam is approximately 975 feet long  
10 and extends from the confluence of Coyote Creek almost completely across the river channel,” the  
11 purpose of which is to bring subsurface water flow to the surface in the Foster Park area for agricultural  
12 and domestic use. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 355.

13           121.   In the winter of 2005, Ventura’s facilities at Foster Park were damaged when large  
14 storms caused the River to flood. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 346. Ventura  
15 applied for a permit from the Army Corps of Engineers (Corps) to repair its well facilities in the Ventura  
16 River pursuant to section 404 of the Clean Water Act, and the Corps requested concurrence from NMFS  
17 that Ventura’s proposed repairs were not likely to adversely affect endangered steelhead in the River. *Id.*

18           122.   In response to the Corps request, and after additional information was provided, NMFS  
19 issued a Draft Biological Opinion finding that Ventura’s resumed pumping and diversion in the Foster  
20 Park vicinity would likely jeopardize the continued existence of steelhead and would likely destroy or  
21 adversely modify critical steelhead habitat. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 346-  
22 47, 379.

23           123.   After NMFS issued its Draft Biological Opinion, Ventura did not pursue its permit  
24 application submitted to the Corps, and did not complete the proposed repairs subject to Corps  
25 jurisdiction.

26           124.   However, pursuant to its water rights (G561269, G561270, G561025, and S010335),  
27 Ventura currently operates 5 water production facilities at the Foster Park Diversion for municipal  
28 supply: Nye Well No. 2, Nye Well No. 7, Nye Well No. 8, Nye Well No. 11, and Subsurface Collector.

1 Supp. Cooper Dec., Ex. O (Ventura Flows Study) at 669, 692 (map), 694 (map).

2 125. Ventura has acknowledged that the appropriation rights Ventura obtained via deed from  
3 Southern California Edison in 1923 for appropriation of 58,035 acre-feet per year allows appropriation  
4 of more water than the Ventura River normally yields. Supp. Cooper Dec., Ex. P (Summary of  
5 Biological Opinion Timeline) at 1002.

6 126. In 2011, Ventura asserted a right to appropriate 72,397 acre-feet per year from the  
7 Ventura River. Supp. Cooper Dec., Ex. Q (Ventura Water Rights) at 1007; Supp. Cooper Dec. Ex. V  
8 (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

9 127. Ventura's asserted right to appropriate 72,397 acre-feet allows appropriation of more  
10 water than the Ventura River normally yields.

11 128. Between 1980 and 2000, Ventura extracted an average of approximately 6,350 acre-feet  
12 of surface flow and groundwater annually. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 361.

13 129. Between 2008 and 2013, Ventura extracted an average of approximately 2,970 acre-feet  
14 of surface flow and groundwater annually. Supp. Cooper Dec., Ex. R (Production and Flows Summary  
15 Table) at 1028-1029.

16 130. From January through July 2014, Ventura extracted approximately 1,955 acre-feet of  
17 surface flow and groundwater from the Ventura River, which reflects an increase in the average monthly  
18 extractions compared to the monthly averages for 2008 through 2013. Supp. Cooper Dec., Ex. R  
19 (Production and Flows Summary Table) at 1028-1029.

20 131. Ventura's extractions from January through July 2014 occurred during California's  
21 current drought with 2014 expected to be the driest year on record. Supp. Cooper Dec., Ex. U (Drought  
22 Declaration) at 1053-59.

23 132. Between 2014 and 2017, Ventura extracted an average of approximately 2,030 acre-feet  
24 of surface flow and groundwater annually. Supp. Cooper Dec., Ex. Y (Updated Production and Flows  
25 Summary Table) at 1164-1167.

26 **E. Ventura's Pumping and Diversion from Reach 4 of the Ventura River**

27 133. From 2014-2016, the Ventura River went dry at the Foster Park Diversion. Supp. Cooper  
28 Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171; Supp. Cooper Dec., Ex. LL

1 (Updated Source Report and Flow Summary) at 2037-2042.

2 134. When Ventura pumps and diverts at the Foster Park Diversion flows in Reach 4 of the  
3 Ventura River are reduced. Supp. Cooper Dec. Ex. BB (Foster Park Production vs. River Flow) at 1217.

4 135. When Ventura ceases its pumping and diversion at the Foster Park Diversion, flows in  
5 Reach 4 of the Ventura River increase. Supp. Cooper Dec. Ex. BB (Foster Park Production vs. River  
6 Flow) at 1217.

7 136. The Foster Park Diversion can impact critical habitat and steelhead at any time of year  
8 because Ventura withdraws water at all times of the year. Supp. Cooper Dec., Ex. G (Draft Biological  
9 Opinion) at 361; Supp. Cooper Dec. Ex. BB (Foster Park Production vs. River Flow) at 1217.

10 137. However, negative impacts to steelhead and critical habitat from the Foster Park  
11 Diversion are most likely to occur in the summer and fall when the river flows are low, i.e., April  
12 through October. Supp. Cooper Dec., Ex. G (Draft Biological Opinion) at 361; Supp. Cooper Dec. Ex.  
13 BB (Foster Park Production vs. River Flow) at 1217.

14 138. Summer and fall withdrawals from the Foster Park Diversion decrease the functional  
15 value of the downstream reaches as an oversummering area for juvenile steelhead. Supp. Cooper Dec.,  
16 Ex. G (Draft Biological Opinion) at 361. NMFS considers the reduction in quantity and quality of  
17 oversummering rearing sites from water diversion unfavorable for steelhead conservation. *Id.*

18 139. To avoid jeopardizing steelhead existence and destruction or adverse modification of  
19 critical steelhead habitat, NMFS found that flows in the Ventura River at the Foster Park USGS gauge  
20 no. 111185000 should not fall below 11 to 12 cfs. Supp. Cooper Dec., Ex. G (Draft Biological Opinion)  
21 at 378-79.

22 140. In June 2013, Ventura conducted a preliminary hydrogeological study and surface  
23 water/groundwater interaction study for the City's diversions at Foster Park. Supp. Cooper Dec., Ex. O  
24 (Ventura Flows Study) at 658. "The findings of this study indicate a flow threshold exists whereby when  
25 flows decrease below the threshold, the steelhead habitat suitability declines significantly." *Id.* The  
26 threshold set by the Ventura study is 2 cfs. Supp. Cooper Dec., Ex. O (Ventura Flows Study) at 659.

27 141. Ventura continues to pump and divert water from the Foster Park Diversion after water  
28 levels in the River fall below 11 to 12 cfs. Supp. Cooper Dec., Ex. R (Production and Flows Summary

1 Table) at 1028-29, Ex. S (Ventura Source Report), Ex. T (Foster Park Flow Data); Supp. Cooper Dec.  
2 Ex. BB (Foster Park Production vs. River Flow) at 1217; Supp. Cooper Dec., Ex. Y (Updated  
3 Production and Flows Summary Table) at 1164-1167.

4 142. Ventura continues to pump and divert water from the Foster Park Diversion in a manner  
5 that contributes to water levels in the River falling below 11 to 12 cfs. Supp. Cooper Dec., Ex. R  
6 (Production and Flows Summary Table) at 1028-29, Ex. G (Draft Biological Opinion) at 378; Supp.  
7 Cooper Dec. Ex. BB (Foster Park Production vs. River Flow) at 1217; Supp. Cooper Dec., Ex. Y  
8 (Updated Production and Flows Summary Table) at 1164-1167.

9 143. Ventura continues to pump and divert water from the Foster Park Diversion after water  
10 levels in Ventura River fall below the 2 cfs threshold. Supp. Cooper Dec., Ex. R (Production and Flows  
11 Summary Table) at 1028-29, Ex. S (Ventura Source Report), Ex. T (Foster Park Flow Data); Supp.  
12 Cooper Dec. Ex. BB (Foster Park Production vs. River Flow); Supp. Cooper Dec., Ex. Y (Updated  
13 Production and Flows Summary Table) at 1164-1167.

14 144. Ventura continues to pump and divert water from the Foster Park Diversion in a manner  
15 that contributes to water levels in Ventura River falling below the 2 cfs threshold. Supp. Cooper Dec.,  
16 Ex. R (Production and Flows Summary Table) at 1028-29, Ex. G (Draft Biological Opinion) at 378, Ex.  
17 O (Ventura Flows Study) at 659; Supp. Cooper Dec. Ex. BB (Foster Park Production vs. River Flow) at  
18 1217; Supp. Cooper Dec., Ex. Y (Updated Production and Flows Summary Table) at 1164-1167.

19 145. Ventura's self-reported existing pumping and diversion capacity at the Foster Park  
20 Diversion is 4,200 acre-feet of water per year. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity  
21 Comparisons) at 1168-1171.

22 146. In 2015, Ventura had the existing capacity at Foster Park to pump and divert all water  
23 that would have remained in the river if all non-overlying groundwater users in the Ojai Basin and all  
24 other reported users in the entire Ventura River watershed reduced their pumping and diversions from  
25 the Ventura River watershed by 50%. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity  
26 Comparisons) at 1168-1171.

27 147. In 2016, Ventura had the existing capacity at Foster Park to pump and divert all water  
28 that would have remained in the river if all non-overlying groundwater users in the Ojai Basin and all



1 other reported users in the entire Ventura River watershed reduced their pumping and diversions from  
2 the Ventura River watershed by 50%. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity  
3 Comparisons) at 1168-1171.

4 148. Ventura has stated that it intends to extract 6,700 acre-feet of water from the Ventura  
5 River at the Foster Park Diversion by 2020. Supp. Cooper Dec. Ex. V (City of Ventura Water Claim vs.  
6 Realistic and Comparable Metrics) at 1060.

7 149. In 2014, 2015, and 2016, extractions of 6,700 acre-feet of water from the Ventura River  
8 would have exceeded the amount of water left behind for the river if all non-overlying groundwater  
9 users in the Ojai Basin and all other reported users in the entire Ventura River watershed reduced their  
10 pumping and diversions from the Ventura River watershed by 50%. Supp. Cooper Dec. Ex. V (Ventura  
11 Pumping Capacity Comparisons) at 1060.

12 150. In 2014, 2015, and 2016, given its existing pumping capacity at Foster Park, Ventura  
13 would have consumed all water left behind if the Ventura River Water District and Meiners Oaks Water  
14 District completely eliminated 100% of their pumping and diversions. Supp. Cooper Dec. Ex. V (City of  
15 Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

16 151. In 2015 and 2016, given its projected future pumping capacity and water budget at Foster  
17 Park, Ventura would have consumed all water left behind if all other non-overlying users in the Ojai  
18 Basin and every other pumper or diverter had completely eliminated their pumping and diversions.  
19 Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171.

20 152. Channelkeeper is informed and believes, and thereon alleges, that if all other pumping  
21 and diversions from non-overlying users in the Ojai Basin along with every other pumper or diverter in  
22 the watershed stopped there would be no benefit to the instream uses of the Ventura River given  
23 Ventura's intended pumping and/or diversion capacity at Foster Park. Supp. Cooper Dec. Ex. Z (Ventura  
24 Pumping Capacity Comparisons) at 1168-1171; Supp. Cooper Dec. Ex. V (City of Ventura Water Claim  
25 vs. Realistic and Comparable Metrics) at 1060.

26 153. Channelkeeper is informed and believes, and thereon alleges, that if all junior  
27 appropriators stopped their pumping and diversions there would be no benefit to the instream uses of the  
28 Ventura River given Ventura's intended pumping and/or diversion capacity at Foster Park. Supp.

1 Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171; Supp. Cooper Dec. Ex. V  
2 (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

3 154. Channelkeeper is informed and believes, and thereon alleges, that if there is water  
4 remaining in the Upper Ventura River Basin because all non-overlying users in the Ojai Basin and every  
5 other user in the watershed stop their pumping and diversions, there would be no benefit to the instream  
6 beneficial uses of the Ventura River given Ventura's asserted right to use 72,397 acre-feet per year from  
7 Reach 4 of the Ventura River. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at  
8 1168-1171; Supp. Cooper Dec. Ex. V (City of Ventura Water Claim vs. Realistic and Comparable  
9 Metrics) at 1060.

10 155. Channelkeeper is informed and believes, and thereon alleges, that if there is water  
11 remaining in the Upper Ventura River Basin because all junior appropriators stop their pumping and  
12 diversions, there would be no benefit to the instream beneficial uses of the Ventura River given  
13 Ventura's asserted right to use 72,397 acre-feet per year from Reach 4 of the Ventura River. Supp.  
14 Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171; Supp. Cooper Dec. Ex. V  
15 (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

16 156. Channelkeeper is informed and believes, and thereon alleges, that if there is water  
17 remaining in the Upper Ventura River Basin because all non-overlying users in the Ojai Basin and every  
18 other user in the watershed stop their pumping and diversions, there would be no benefit to the instream  
19 beneficial uses of the Ventura River given Ventura's historic pumping and/or diversion from Reach 4 of  
20 the Ventura River. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171;  
21 Supp. Cooper Dec. Ex. V (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

22 157. Channelkeeper is informed and believes, and thereon alleges, that if there is water  
23 remaining in the Upper Ventura River Basin because all junior appropriators stop their pumping and  
24 diversions, there would be no benefit to the instream beneficial uses of the Ventura River given  
25 Ventura's historic pumping and/or diversion from Reach 4 of the Ventura River. Supp. Cooper Dec. Ex.  
26 Z (Ventura Pumping Capacity Comparisons) at 1168-1171; Supp. Cooper Dec. Ex. V (City of Ventura  
27 Water Claim vs. Realistic and Comparable Metrics) at 1060.

28 158. Channelkeeper is informed and believes, and thereon alleges, that if there is any water

1 remaining in the Upper Ventura River Basin because all non-overlying users in the Ojai Basin and every  
2 other user in the watershed stop their pumping and diversions, there would be no benefit to the instream  
3 beneficial uses of the Ventura River given Ventura’s existing capacity to pump and/or divert 4,200 acre-  
4 feet of water per year from Reach 4 of the Ventura River. Supp. Cooper Dec. Ex. Z (Ventura Pumping  
5 Capacity Comparisons) at 1168-1171; Supp. Cooper Dec. Ex. V (City of Ventura Water Claim vs.  
6 Realistic and Comparable Metrics) at 1060.

7           159. Channelkeeper is informed and believes, and thereon alleges, that if there is any water  
8 remaining in the Upper Ventura River Basin because all junior appropriators stop their pumping and  
9 diversions, there would be no benefit to the instream beneficial uses of the Ventura River given  
10 Ventura’s existing capacity to pump and/or divert 4,200 acre-feet of water per year from Reach 4 of the  
11 Ventura River. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171; Supp.  
12 Cooper Dec. Ex. V (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

13           160. Channelkeeper is informed and believes, and thereon alleges, that if there is any water  
14 remaining in the Ventura River because all non-overlying users in the Ojai Basin and every other user in  
15 the watershed stop their pumping and diversions, there would be no benefit to the instream beneficial  
16 uses of the Ventura River given Ventura’s intention to pump and/or divert 6,700 acre-feet of water per  
17 year from Reach 4 of the Ventura River. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity  
18 Comparisons) at 1168-1171; Supp. Cooper Dec. Ex. V (City of Ventura Water Claim vs. Realistic and  
19 Comparable Metrics) at 1060.

20           161. Channelkeeper is informed and believes, and thereon alleges, that if there is any water  
21 remaining in the Upper Ventura River Basin because all junior appropriators stop their pumping and  
22 diversions, there would be no benefit to the instream beneficial uses of the Ventura River given  
23 Ventura’s intention to pump and/or divert 6,700 acre-feet of water per year from Reach 4 of the Ventura  
24 River. Supp. Cooper Dec. Ex. Z (Ventura Pumping Capacity Comparisons) at 1168-1171; Supp. Cooper  
25 Dec. Ex. V (City of Ventura Water Claim vs. Realistic and Comparable Metrics) at 1060.

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2 **F. The State Board Has Failed to Conduct an Analysis of the Reasonableness of**  
3 **Ventura’s Use of the Ventura River and Has Failed to Consider Impacts to Public**  
4 **Trust Resources Resulting from Ventura’s Use of the River**

5 162. On May 3, 2013, the State Board acknowledged that it did not possess any documents  
6 that refer, relate, or pertain to a reasonable use analysis of Ventura’s use of Reach 4 of the Ventura  
7 River. Supp. Cooper Dec., Ex. N (PRA Response) at 653.

8 163. Accordingly, Channelkeeper is informed and believes, and thereon alleges, that the State  
9 Board has never conducted an analysis of the reasonableness of Ventura’s use of Reach 4 of the Ventura  
10 River.

11 164. On May 3, 2013, the State Board acknowledged that it did not possess any documents  
12 that refer, relate, or pertain to a public trust analysis of Ventura’s use of Reach 4 of the Ventura River.  
13 Supp. Cooper Dec., Ex. N (PRA Response) at 653.

14 165. Accordingly, Channelkeeper is informed and believes, and thereon alleges, that the State  
15 Board has never conducted an analysis to consider impacts to public trust resources resulting from  
16 Ventura’s use of Reach 4 of the Ventura River.

17 166. On May 3, 2013, the State Board acknowledged that it did not possess any documents  
18 that refer, relate, or pertain to modifications made to Ventura’s water rights. Supp. Cooper Dec., Ex. N  
19 (PRA Response) at 654.

20 167. Accordingly, Channelkeeper is informed and believes, and thereon alleges, that the State  
21 Board has never made any modifications to Ventura’s use of Reach 4 of the Ventura River to conform  
22 Ventura’s use to the Reasonable Use Doctrine or to the Public Trust Doctrine.

23 **G. The Ventura River TMDL Fails to Adequately Address the Pumping and Diversion**  
24 **Impairments**

25 168. On June 28, 2013, the EPA approved the Ventura River TMDL, which established WLAs  
26 to address algae, eutrophic conditions, and nutrients in the River. Supp. Cooper Dec., Ex. L (Ventura  
27 River TMDL Approval Letter) at 622-23; Supp. Cooper Dec., Ex. M (Ventura River TMDL) at 627-28.

28 169. In response to public comments on the Ventura River TMDL that the TMDL will not

1 fully address the pumping and diversion impairments, EPA stated, “The proposed TMDLs were directed  
2 at water quality problems associated with nutrient loadings in Reaches 3 and 4 of the Ventura [sic]  
3 River. USEPA acknowledges that the proposed TMDLs were not expected to address all issues in  
4 Reaches 3 and 4 of the Ventura River that might be associated with pumping and water diversions.”  
5 Supp. Cooper Dec., Ex. L (Ventura River TMDL Approval Letter) at 625.

6 170. In response to public comments on the Ventura River TMDL that EPA should collaborate  
7 with other agencies to complete a comprehensive assessment of pumping impacts, EPA stated, “Prior to  
8 issuance of the draft TMDLs, USEPA worked with the LA RWQCB, the commenters, and other  
9 stakeholders on a draft Memorandum of Agreement to put in place an alternative program of activities to  
10 address the impacts of pumping and water diversions on steelhead trout habitat and other beneficial uses  
11 of the Ventura River. This effort ended without success in September 2012. USEPA supports further  
12 efforts by the Ventura River stakeholders to comprehensively assess the impacts of pumping and  
13 diversion activities and address its detrimental impacts. USEPA believes that the State and other Federal  
14 agencies may be in a better position to lead an assessment and planning process with the involvement of  
15 local agencies, water users, nongovernmental organizations, and other stakeholders.” Supp. Cooper  
16 Dec., Ex. L (Approval Letter) at 625-26.

17 171. Accordingly, Channelkeeper is informed and believes, and thereon alleges that the  
18 Ventura River TMDL fails to adequately address the pumping and diversion impairments of the Ventura  
19 River.

20 172. Channelkeeper is informed and believes, and thereon alleges that the pumping and  
21 diversion impairments of the Ventura River will continue notwithstanding the adoption and  
22 implementation of the Ventura River TMDL.

23 **H. Ventura’s Use of the Ventura River from April through October, at a Minimum, is**  
24 **Unreasonable Thus the State Board is Required to Conduct a Reasonable Use Analysis**  
25 **and Consider Impacts to Public Trust Resources Resulting from Ventura’s**  
26 **Unreasonable Use**

27 173. Given Ventura’s pumping and diversion from Reach 4 of the Ventura River as described  
28 in paragraphs 111-161, Channelkeeper is informed and believes, and thereon alleges, that Ventura’s use

1 of the River from April through October, at a minimum, is unreasonable.

2 174. Given Ventura's pumping and diversion from Reach 4 of the Ventura River as described  
3 in paragraphs 111-161, Channelkeeper is informed and believes, and thereon alleges, that Ventura's use  
4 of the River impacts public trust resources in the River.

5 175. Given Ventura's claimed right to pump and divert 72,397 acre-feet per year from Reach 4  
6 of the Ventura River, Channelkeeper is informed and believes, and thereon alleges, that adherence to  
7 Ventura's water right priority will result in an unreasonable use of the River.

8 176. Given Ventura's claim to pump and divert 72,397 acre-feet per year from Reach 4 of the  
9 Ventura River, Channelkeeper is informed and believes, and thereon alleges, that adherence to Ventura's  
10 water right priority will result in impacts to the public trust resources of the River.

11 177. Given Ventura's existing pumping and diversion capacity from Reach 4 of the Ventura  
12 River, Channelkeeper is informed and believes, and thereon alleges, that adherence to Ventura's water  
13 right priority will result in an unreasonable use of the River.

14 178. Given Ventura's existing pumping and diversion capacity from Reach 4 of the Ventura  
15 River, Channelkeeper is informed and believes, and thereon alleges, that adherence to Ventura's water  
16 right priority will result in impacts to the public trust resources of the River.

17 179. Given Ventura's intended pumping and diversion capacity from Reach 4 of the Ventura  
18 River, Channelkeeper is informed and believes, and thereon alleges, that adherence to Ventura's water  
19 right priority will result in an unreasonable use of the River.

20 180. Given Ventura's intended pumping and diversion capacity from Reach 4 of the Ventura  
21 River, Channelkeeper is informed and believes, and thereon alleges, that adherence to Ventura's water  
22 right priority will result in impacts to the public trust resources of the River.

23 181. Given that the State Board determined that the beneficial uses of Reaches 3 and 4,  
24 including cold freshwater habitat, wildlife habitat, rare, threatened, or endangered species, migration of  
25 aquatic organisms, spawning, reproduction, and/or early development, and wetland habitat, are impaired  
26 by pumping and diversion of water from those reaches of the Ventura River, Channelkeeper is informed  
27 and believes, and thereon alleges that Ventura's pumping and diversion from Reach 4 of the River is  
28 unreasonable.

1 182. Because the State Board listed Reaches 3 and 4 of the Ventura River as impaired for  
2 pumping and diversion in 1998, Channelkeeper is informed and believes, and thereon alleges that the  
3 State Board knew or should have known for the past 20 years that Ventura's pumping and diversion  
4 from the River is unreasonable.

5 183. Because Ventura's use of the Ventura River is unreasonable, Channelkeeper is informed  
6 and believes, and thereon alleges that the State Board is required to conduct an analysis of Ventura's use  
7 of the River, including but not limited to an analysis to consider the impacts to public trust resources  
8 resulting from Ventura's use.

9 **VII. Counts for Relief**

10 **FIRST COUNT FOR RELIEF**

11 **Against Defendant City of Ventura**

12 **Pursuant to California Code of Civil Procedure § 1060 Channelkeeper Seeks a Declaration Stating**  
13 **that Ventura's Use of Reach 4 of the Ventura River From April through October Is an**  
14 **Unreasonable Use In Violation of Article X, § 2 of the Constitution.**

15 184. Petitioner incorporates each paragraph of this complaint and petition, herein.

16 185. Channelkeeper contends that, given the existing conditions in the Ventura River,  
17 Ventura's use of the River is unreasonable.

18 186. Ventura continues to pump and divert water from the Foster Park Diversion during  
19 critical summer months, e.g., April through October, and after water levels in the River fall below levels  
20 determined to be critical minimum levels required to protect steelhead.

21 187. Ventura has failed and continues to fail to manage its use of the Ventura River in a  
22 manner that avoids impacts to public trust resources.

23 188. Thus an actual controversy between Channelkeeper and Ventura exists concerning the  
24 reasonableness of Ventura's pumping and diversion from the Ventura River.

25 WHEREFORE, Petitioner prays for the relief set forth below.

26 **SECOND COUNT FOR RELIEF**

27 **Against Defendant State Board**

28 **Pursuant to California Code of Civil Procedure § 1085**  
**The State Board Has Failed to Perform Its Mandatory Duties**  
**Under Article X, § 2 of the Constitution.**

1 189. Petitioner incorporates each paragraph of this complaint and petition, herein.

2 190. Pursuant to Article X, section 2 of the California Constitution, the State Board has a  
3 mandatory duty to limit Ventura's use of the Ventura River to such water reasonably required for the  
4 River's beneficial uses.

5 191. The State Board has failed and continues to fail to limit Ventura's use of the Ventura  
6 River to such water reasonably required for the River's beneficial uses, as the State Board has never  
7 conducted an analysis of Ventura's use of the Ventura River based on existing conditions of the River  
8 that have changed over time.

9 192. The State Board has a mandatory duty to consider public trust resources in limiting  
10 Ventura's use of the Ventura River to such water reasonably required for the River's beneficial uses.

11 193. The State Board has failed and continues to fail to limit Ventura's use of the Ventura  
12 River to such water reasonably required for the River's beneficial uses, as the State Board has never  
13 considered impacts to public trust resources resulting from Ventura's use of the Ventura River.

14 194. Thus, in violation of Article X, section 2 of the California Constitution, the State Board  
15 has failed and continues to fail to carry out its mandatory duty to limit Ventura's use of the Ventura  
16 River to such water reasonably required for the River's beneficial uses.

17 195. The State Board's ongoing and continuing failure to perform its mandatory duties has and  
18 will cause Channelkeeper, its members, and the general public to suffer substantial, clear, and certain  
19 irreparable injury. Unless and until the State Board follows the requirements of Article X, section 2 of  
20 the California Constitution, Ventura's unreasonable use of the River will continue. As a result,  
21 Channelkeeper, its members, and the general public will not be assured of their rights to reasonable use  
22 of the State's waters as afforded by the California Constitution.

23 196. Channelkeeper has no plain, speedy, or adequate remedy in the ordinary course of law  
24 because the State Board will continue to fail to conduct a reasonable use analysis of Ventura's use of the  
25 Ventura River unless compelled to do so by the Court.

26 WHEREFORE, Petitioner prays for the relief set forth below.

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2 **THIRD COUNT FOR RELIEF**

3 **Against Defendant State Board**

4 **Pursuant to California Code of Civil Procedure § 1085**

5 **The State Board Has Failed to Perform Its Mandatory Duty Under § 275 of the Water Code.**

6 197. Petitioner incorporates each paragraph of this complaint and petition, herein.

7 198. Pursuant to section 275 of the Water Code, the State Board has a mandatory duty to  
8 prevent Ventura's unreasonable use of the Ventura River.

9 199. The State Board has failed and continues to fail to prevent Ventura's unreasonable use of  
10 the Ventura River, as the State Board has never taken action or instituted any proceedings to consider  
11 Ventura's use of the Ventura River.

12 200. Thus, in violation of section 275 of the Water Code, the State Board has failed and  
13 continues to fail to prevent Ventura's unreasonable use of the Ventura River.

14 201. The State Board's ongoing and continuing failure to perform its mandatory duty has and  
15 will cause Channelkeeper, its members, and the general public to suffer substantial, clear, and certain  
16 irreparable injury. Unless and until the State Board follows the requirements of section 275 of the Water  
17 Code, Ventura's unreasonable use of the River will continue. As a result, Channelkeeper, its members,  
18 and the general public will not be assured of their rights to reasonable use of the State's waters as  
19 afforded by the Water Code.

20 202. Channelkeeper has no plain, speedy, or adequate remedy in the ordinary course of law  
21 because the State Board will continue to fail to conduct a reasonable use analysis of Ventura's use of the  
22 Ventura River unless compelled to do so by the Court.

23 WHEREFORE, Petitioner prays for the relief set forth below.

24 **FOURTH COUNT FOR RELIEF**

25 **Against Defendant State Board**

26 **Pursuant to California Code of Civil Procedure § 1085**

27 **The State Board Has Failed to Perform Its Mandatory Duty to Consider Impacts to Public Trust  
28 Resources Resulting from Ventura's Use of the Ventura River.**

29 203. Petitioner incorporates each paragraph of this complaint and petition, herein.

30 204. Pursuant to the Public Trust Doctrine, the State Board has a mandatory duty to consider

1 impacts to public trust resources resulting from Ventura’s use of the Ventura River.

2 205. In violation of its mandatory duty under the Public Trust Doctrine, the State Board has  
3 failed and continues to fail to consider impacts to public trust resources resulting from Ventura’s use of  
4 the Ventura River.

5 206. The State Board’s ongoing and continuing failure to perform its mandatory duty has and  
6 will cause Channelkeeper, its members, and the general public to suffer substantial, clear, and certain  
7 irreparable injury. Unless and until the State Board follows the requirements of Public Trust Doctrine,  
8 Ventura’s use of the River resulting in unconsidered impacts to trust resources will continue. As a result,  
9 Channelkeeper, its members, and the general public will not be assured of their rights afforded by the  
10 Public Trust Doctrine.

11 207. Channelkeeper has no plain, speedy, or adequate remedy in the ordinary course of law  
12 because the State Board will continue to fail to consider the impacts to public trust resources resulting  
13 from Ventura’s use of the Ventura River unless compelled to do so by the Court.

14 WHEREFORE, Petitioner prays for the relief set forth below.

15 **FIFTH COUNT FOR RELIEF**

16 **Against Defendant State Board**

17 **Pursuant to California Code of Civil Procedure § 1085**

18 **The State Board Has Prejudicially Abused Its Discretion by Failing to Limit Ventura’s Use of the  
19 Ventura River and by Failing to Consider Impacts to Public Trust Resources Resulting from  
20 Ventura’s Use of the Ventura River.**

21 208. Petitioner incorporates each paragraph of this complaint and petition, herein.

22 209. The State Board has and continues to prejudicially abuse its discretion by arbitrarily,  
23 capriciously, and without any evidentiary support failing to limit Ventura’s use of the Ventura River,  
24 pursuant to Article X, section 2 of the California Constitution.

25 210. The State Board has and continues to prejudicially abuse its discretion by arbitrarily,  
26 capriciously, and without any evidentiary support failing to limit Ventura’s use of the Ventura River by  
27 considering impacts to public trust resources resulting from Ventura’s use of the River, pursuant to  
28 Article X, section 2 of the California Constitution.

29 211. The State Board has and continues to prejudicially abuse its discretion by arbitrarily,  
30 capriciously, and without any evidentiary support failing to prevent Ventura’s unreasonable use of the

1 Ventura River, pursuant to section 275 of the Water Code.

2 212. The State Board has and continues to prejudicially abuse its discretion by arbitrarily,  
3 capriciously, and without any evidentiary support failing to consider impacts to public trust resources  
4 resulting from Ventura's use of the Ventura River, pursuant to the Public Trust Doctrine.

5 213. The State Board's prejudicial abuse of its discretion has and will cause Channelkeeper, its  
6 members, and the general public to suffer substantial, clear, and certain irreparable injury. Unless and  
7 until the State Board follows the requirements of the Article X, section 2 of the California Constitution,  
8 section 275 of the Water Code, and/or the Public Trust Doctrine, Ventura's unreasonable use of the  
9 River resulting in unconsidered impacts to trust resources will continue. As a result, Channelkeeper, its  
10 members, and the general public will not be assured of their rights afforded by the California  
11 Constitution, the Water Code, or the Public Trust Doctrine.

12 214. Channelkeeper has no plain, speedy, or adequate remedy in the ordinary course of law  
13 because the State Board will continue to prejudicially abuse its discretion of Ventura's use of the  
14 Ventura River unless compelled to exercise its discretion by the Court.

15 WHEREFORE, Petitioner prays for the relief set forth below.

16 **PRAYER FOR RELIEF**

17 215. Channelkeeper therefore prays that this Court:

18 a. Issue a declaratory judgment stating that Ventura's use of Reach 4 of the Ventura  
19 River from April through October is unreasonable in violation of Article X, section 2 of the California  
20 Constitution;

21 b. Issue a writ of mandate directing the State Board to conduct an analysis of Ventura's  
22 use of the Ventura River based on existing conditions in the River, which have changed since Ventura  
23 first began its use of the River, pursuant to Article X, section 2 of the California Constitution;

24 c. Issue a writ of mandate directing the State Board to conduct an analysis of Ventura's  
25 use of the Ventura River based on the State Board's consideration of impacts to public trust resources  
26 resulting from Ventura's use of the River, pursuant to Article X, section 2 of the California Constitution;

27 d. Issue a writ of mandate directing the State Board to conduct an analysis of Ventura's  
28 use of the Ventura River based on existing conditions in the River, which have changed since Ventura

1 first began its use of the River, pursuant to section 275 of the Water Code;

2 e. Issue a writ of mandate directing the State Board to conduct an analysis to consider  
3 impacts to public trust resources resulting from Ventura's use of the Ventura River pursuant to the  
4 Public Trust Doctrine;

5 f. Issue a writ of mandate enjoining the State Board from continuing to prejudicially  
6 abuse its discretion by arbitrarily, capriciously, and without any evidentiary support failing to conduct an  
7 analysis of Ventura's use of the Ventura River, pursuant to Article X, section 2 of the California  
8 Constitution, section 275 of the Water Code, and/or the Public Trust Doctrine;

9 g. Award Channelkeeper its costs and fees for bringing suit for the State Board's  
10 violations of State law as provided under Code of Civil Procedure section 1021.5; and/or

11 h. Grant such other relief as the Court deems just and proper.

12  
13 Dated: September 6, 2018

Respectfully Submitted,

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Daniel Cooper  
LAWYERS FOR CLEAN WATER, INC.  
Attorneys for Petitioner  
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**VERIFICATION**

I, the undersigned, declare:

I am the Executive Director of Santa Barbara Channelkeeper, the Petitioner in this action. I have read the foregoing petition and know its contents. The facts alleged in the above petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on April 13, 2018, in Santa Barbara, California.



\_\_\_\_\_  
Kira Redmond  
Executive Director  
Santa Barbara Channelkeeper