

1 DOWNEY BRAND LLP
2 KEVIN M. O'BRIEN (CA Bar No. 122713)
3 SAMUEL BIVINS (CA Bar No. 300965)
4 621 Capitol Mall, 18th Floor
5 Sacramento, CA 95814-4731
6 Telephone: 916.444.1000
7 Facsimile: 916.444.2100
8 kobrien@downeybrand.com
9 sbivins@downeybrand.com

10 Attorneys for Petitioner
11 SEMITROPIC IMPROVEMENT DISTRICT OF
12 SEMITROPIC WATER STORAGE DISTRICT

13 STATE OF CALIFORNIA

14 STATE WATER RESOURCES CONTROL BOARD

15 SEMITROPIC IMPROVEMENT
16 DISTRICT OF SEMITROPIC WATER
17 STORAGE DISTRICT,

18 Petitioner,

19 v.

20 KINGS RIVER WATER ASSOCIATION,
21 FRESNO IRRIGATION DISTRICT,
22 CONSOLIDATED IRRIGATION
23 DISTRICT, ALTA IRRIGATION
24 DISTRICT, and DOES 1 through 100,
25 inclusive,

26 Respondents.

**COMPLAINT IN SUPPORT OF PETITION
TO REVISE AND/OR REVOKE
DECLARATION OF FULLY
APPROPRIATED STREAM SYSTEM FOR
THE KINGS RIVER**

- 1. Forfeiture of Water Rights
- 2. Abandonment of Water Rights
- 3. Failure to Perfect Water Rights
- 4. Unauthorized Diversion of Water

27 Petitioner SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER
28 STORAGE DISTRICT ("Petitioner" or "Semitropic"), for its Complaint against Respondents
KINGS RIVER WATER ASSOCIATION, FRESNO IRRIGATION DISTRICT,
CONSOLIDATED IRRIGATION DISTRICT, ALTA IRRIGATION DISTRICT, and DOES 1
through 100, inclusive (collectively, "Respondents"), hereby alleges as follows:

INTRODUCTION

1. For years, the Kings River Water Association ("KRWA") and its member units
have purported to hold the water rights to essentially all of the flow of the Kings River. Pursuant
to appropriative water rights License Nos. 11517 – 11522, issued in 1984 by the State Water

1 Resources Control Board (“State Water Board”), KRWA currently holds appropriative water
2 rights as trustee for the benefit of its member units, including Fresno Irrigation District,
3 Consolidated Irrigation District, and Alta Irrigation District. KRWA allocates Kings River water
4 to its member units based on a “settlement schedule” last modified in 1949.

5 2. Water Rights Decision D 1290, issued by the State Water Board in 1967, granted
6 appropriative water right permits to KRWA’s predecessor based upon its representation that
7 KRWA and its member units could and would store up to one million acre-feet of Kings River
8 flood water in a so-called “cellular dike system” maintained in the bed of Tulare Lake. But rather
9 than exercising the appropriative water right permits authorized under Decision D 1290 as
10 intended by the State Water Board, Respondents instead have historically diverted substantial
11 volumes of water out of the Kings River and into the James Bypass, a flood control channel that
12 conveys water out of the Kings River watershed. The diversion of such substantial volumes
13 water into the James Bypass is inconsistent with Article X, section 2 of the California
14 Constitution, the terms of KRWA’s water rights, and the representations made to the State Water
15 Board by KRWA’s predecessor during the process that resulted in the issuance of Decision D
16 1290. The unauthorized diversion of Kings River water into the James Bypass has been
17 undertaken by Respondents because Kings River flows threaten agricultural operations within the
18 bed of Tulare Lake.

19 3. Ultimately, only six of the eight permits issued pursuant to D-1290 were converted
20 to licenses. Appropriative water right License Nos. 11517 and 11521 (the “Tulare Lake
21 Licenses”) were issued by the State Water Board in 1984. The Tulare Lake Licenses authorize
22 KRWA to divert, store, and beneficially use Kings River water in the bed of Tulare Lake.
23 However, as alleged in paragraph 2 of this Complaint, Respondents have failed to put Kings
24 River water to beneficial use in accordance with the terms and conditions of the Tulare Lake
25 Licenses. Consequently, Respondents have forfeited, abandoned, and failed to perfect the right to
26 divert and use Kings River water under the Tulare Lake Licenses.

27 **JURISDICTION**

28 4. The State Water Board has jurisdiction over this proceeding under California

1 Water Code sections 1240, 1241, 1675, 1831, and under sections 820, 850, 856, and 871 of Title
2 23 of the California Code of Regulations.

3 **THE PARTIES**

4 5. Petitioner SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC
5 WATER STORAGE DISTRICT was formed in 1991 as authorized by the California Water
6 Storage District Law, Water Code sections 39000 *et seq.*

7 6. Respondent KINGS RIVER WATER ASSOCIATION is an unincorporated
8 association consisting of 28 member units. KRWA’s member units include public irrigation
9 districts, public water districts, public reclamation districts, a public water storage district and
10 private water companies. KRWA’s offices are located at 4888 E. Jensen Ave, Fresno, CA 93725.
11 Fresno Irrigation District assigned License Nos. 11517-11522 to the KRWA in 1988, and the
12 KRWA has acted as the trustee of those Licenses on behalf of its members ever since. The
13 KRWA manages the diversions and entitlements of its member units under various agreements
14 and water schedules.

15 7. Respondent FRESNO IRRIGATION DISTRICT (“FID”) is a public agency
16 formed under the California Irrigation District Law (Water Code § 20500 *et seq.*) as the successor
17 to the privately owned Fresno Canal and Land Company. FID lies entirely within Fresno County,
18 and its offices are located at 2907 S Maple Ave, Fresno, CA 93725. FID acted as the trustee of
19 License Nos. 11517-11522 until 1988, and is a member of KRWA.

20 8. Respondent CONSOLIDATED IRRIGATION DISTRICT (“Consolidated”) is a
21 public agency formed under the California Irrigation District Law (Water Code § 20500 *et seq.*).
22 Consolidated supplies Kings River water to lands in Fresno, Kings, and Tulare Counties, and its
23 offices are located at 2255 Chandler St, Selma, CA 93662. Consolidated is a member of KRWA.

24 9. Respondent ALTA IRRIGATION DISTRICT (“AID”) is a public agency formed
25 under the California Irrigation District Law (Water Code § 20500 *et seq.*). AID supplies Kings
26 River water to lands in Fresno, Kings, and Tulare Counties, and its offices are located at 289 N L
27 St, Dinuba, CA 93618. AID is a member of KRWA.

28 10. Each of the respondents identified as DOES 1 through 100, inclusive (“DOES 1-

1 100”) are persons other than the named respondents who, whether as individuals, corporations,
 2 unincorporated associations partnerships, trustees, executors, guardians, or otherwise, claim some
 3 right, title, estate, lien, or interest in beneficially using Kings River water within the scope of
 4 License Nos. 11517 and 11521 and overlapping pre-1914 appropriative rights. Petitioner is
 5 unaware of the true names and identities of DOES 1-100 and, therefore, sues DOES 1-100 by
 6 fictitious names. Petitioner will amend this pleading to reflect the true identities and capacities of
 7 DOES 1-50 once ascertained.

GENERAL ALLEGATIONS

A. Geographical Background

10 11. The Kings River originates near the crest of the Sierra Nevada, with the
 11 headwaters of its Middle and South Forks located within Kings Canyon National Park and the
 12 headwaters of its North Fork located within the John Muir Wilderness. The three forks of the
 13 Kings River join in the Sierra Nevada foothills in Fresno County, where they are impounded at
 14 Pine Flat Dam.

15 12. Pine Flat Dam, constructed by the federal government in 1954, is the largest
 16 reservoir and principal control structure on the Kings River. Its reservoir holds approximately 1
 17 million acre-feet (“AF”) of storage and is owned and operated by the United States Army Corps
 18 of Engineers (“Corps”) for flood control and water supply purposes.

19 13. Below Pine Flat Dam, the Kings River traverses southwesterly into the San
 20 Joaquin Valley, crossing both the Friant-Kern Canal and Highway 99. North of the City of
 21 Lemoore, the River splits into two forks. The South Fork drains to the Tulare Lake Bed, which
 22 was the historical outlet for the Kings River. The North Fork drains to the James Bypass.

23 14. The hydrology of the Kings River is highly variable. Average annual runoff is
 24 approximately 1.7 million AF, but ranges from 392,000 AF in Water Year (“WY”) 1924 to 4.5
 25 million AF in WY 1983.

26 15. Because one of Pine Flat Dam’s functions is to provide flood protection for the
 27 Kings River, Pine Flat Reservoir has defined conservation and flood pools. The reservoir
 28 conservation pool ranges from 0.5 million to 1.0 million AF, depending on the time of year.

1 Once reservoir levels exceed the conservation pool and encroach into the flood pool, the Corps
 2 makes flood releases until the water level in the reservoir is brought back down to the
 3 conservation pool.

4 16. Flood releases from Pine Flat Reservoir are first diverted by KRWA to James
 5 Bypass via the North Fork Kings River. When conditions require flood releases greater than
 6 4,750 cubic feet per second (“CFS”)—the approximate capacity of the James Bypass—flows are
 7 also diverted to the former Tulare Lake Bed via the South Fork of the Kings River.

8 **B. Kings River Water Rights**

9 17. KRWA holds the following water rights in trust for its member units: License No.
 10 11517 (Application No. 353/Permit No. 15713), License No. 11518 (Application No. 360/Permit
 11 No. 15714), License No. 11519 (Application No. 5640/Permit No. 15715), License No. 11520
 12 (Application No. 10979/Permit No. 15716), License No. 11521 (Application No. 15231/Permit
 13 No. 15719), and License No. 11522 (Application No. 16469/Permit No. 15720). A map showing
 14 the points of diversion and rediversion, and the places of storage under License Nos. 11517 –
 15 11522 is attached hereto as **Exhibit A**. Petitioner is informed and believes and based thereon
 16 alleges that said licenses are inclusive of any pre-1914 rights owned by KRWA’s member units.

17 18. The Tulare Lake Licenses permit KRWA to divert water at Empire Weir # 2 and to
 18 store water within the Tulare Lake Sump Reservoir as described in the licenses. License No.
 19 11517 permits the direct diversion of 613 CFS from June 1 to June 30 of each year, and the
 20 collection to storage of 188,000 AF from January 1 to June 30 of each year. The maximum
 21 amount of water to be taken from the Kings River under License No. 11517 (direct diversion plus
 22 collection to storage) cannot exceed 224,500 AF per year. License No. 11521 allows for the direct
 23 diversion of 1,096 CFS from January 1 to December 31 of each year, and the collection to storage
 24 of 796,000 AF between January 1 and June 30 of each year. The maximum amount of water to
 25 be placed to beneficial use under the Tulare Lake Licenses cannot exceed 569,600 AF per year.

26 19. License No. 11517 has a priority date of May 24, 1916. License No. 11518 has a
 27 priority date of May 31, 1916. License No. 11519 has a priority date of July 30, 1927. License
 28 No. 11520 has a priority date of February 10, 1945. License No. 11521 has a priority date of

1 March 9, 1953. License No. 11522 has a priority date of July 18, 1955.

2 20. On November 30, 1967, the State Water Board issued Decision D 1290 (“D-
3 1290”) approving eight water right applications for which FID served as trustee, including
4 Application Nos. 353, 360, 5640, 11023, 11075. D-1290 also approved Application No. 10979 in
5 part. In approving those applications, the State Water Board found that they would “appropriate
6 essentially all of the available unappropriated water of the Kings River.” (D-1290 at 37-38.) D-
7 1290 also determined that all direct diversion and storage allowed under these appropriative water
8 rights would include all consumptive use claimed under pre-1914 appropriative and riparian
9 water rights.

10 21. Application Nos. 353 and 15231 were licensed on May 18, 1984. In considering
11 whether to license Application No. 353 (Permit 15713) and 15231 (Permit No. 15719) for the
12 storage of water at Tulare Lake, State Water Board staff expressed concern that such storage
13 never should have been permitted in the first instance, since water stored under those permits was
14 received on an “involuntary” basis and the Tulare Lake Sump Reservoir had a capacity of only
15 450,000 AF, compared to a storage right of 984,000 AF under the permits. Contemporaneously,
16 FID’s engineer also conceded that water is stored in Tulare Lake “unwillingly” and is generally
17 not put to beneficial use.

18 **C. KRWA’s Management of the Kings River**

19 22. Petitioner is informed and believes and based thereon alleges that water diverted
20 from the Kings River is governed by a monthly schedule of water rights and entitlements
21 developed by the KRWA. The documents attached hereto as **Exhibit B** are true and correct
22 copies of the monthly schedules governing Kings River diversions.

23 23. Kings River water is not diverted to Tulare Lake in years when water is available
24 to satisfy the Tulare Lake Licenses. Indeed, because License No. 11517 is the highest priority
25 right held by KRWA, water is always available under that License. But in its Reports of
26 Licensee from 2012-2016, KRWA did not report using any water under License No. 11517.

27 24. Water was available for storage and use under License No. 11521 in 2011, 2010,
28 2006, 2005, and 1998. KRWA’s reports of licensee, however, admit that it failed to beneficially

1 use all water available under License No. 11521 in those years. The following sub-paragraphs
2 detail the specific amount of water available and the amount of water KRWA reported as
3 beneficially used under License No. 11521:

4 a. In 2011, KRWA had the paper right to divert and store 807,718 AF under
5 License No. 11521, and to beneficially use 569,000 AF of such water, but reported using only
6 89,114 AF under that License.

7 b. In 2010, KRWA had the paper right to divert, store, and use 172,172 AF
8 under License No. 11521, but reported using only 45,376 AF under that License.

9 c. In 2006, KRWA had the paper right to divert and store 713,141 AF under
10 License No. 11521, and to beneficially use 569,000 AF of such water, but reported using only
11 147,800 AF under that License.

12 d. In 2005, KRWA had the paper right to divert, store, and use 420,118 AF
13 under License No. 11521, but did not report using any water under that License.

14 e. In 1998, KRWA had the paper right to divert and store 629,528 AF under
15 License No. 11521, and to beneficially use 569,000 AF of such water, but only reported using
16 2,800 AF under that License.

17 25. Plaintiff is informed and believes and based thereon alleges that Kings River flood
18 releases have been consistently and repeatedly directed by Respondents to areas outside of the
19 places of use and storage authorized by the Tulare Lake Licenses, in lieu of being stored and
20 beneficially used within Tulare Lake to prevent flooding of farmland in Tulare Lake. For
21 example, during years when water was available for diversion and collection to storage under the
22 Tulare Lake Licenses, Respondents have consistently and repeatedly diverted water from the
23 Kings River and Pine Flat Reservoir into the James Bypass and to other areas outside the Kings
24 River Service Area whenever the Corps makes flood releases from Pine Flat Reservoir.
25 Furthermore, KRWA's member units are parties to a floodwater agreement that expressly
26 contemplates the diversion and delivery of water to non-members of KRWA located outside the
27 places of use identified in the Tulare Lake Licenses. Respondents do not hold water rights
28 authorizing such diversions, nor was the Kings River water diverted to the James Bypass and

1 other areas put to beneficial use by KRWA or any of its members. It is only when flood releases
2 exceed 4,750 CFS—the approximate capacity of James Bypass— that flood water is allowed by
3 KRWA to flow to storage in Tulare Lake. Such storage is temporary in character and Semitropic
4 is informed and believes that, despite representations made in hearings leading to the issuance of
5 D 1290 that Kings River flood water would be stored and used in a cellular dike system within
6 the bed of Tulare Lake, Respondents have never done so. Instead, rather than storing water in the
7 bed of Tulare Lake and beneficially using water within the designated places of use under the
8 Tulare Lake Licenses, Respondents treat such water as a nuisance and make no beneficial use of
9 it.

10 26. Respondents divert water to the James Bypass and other unauthorized areas to
11 avoid delivering water available for diversion, storage, and use under the Tulare Lake Licenses to
12 prevent flooding of farmland in Tulare Lake. The result of this pattern and practice of
13 unauthorized diversion by Respondents is that substantial volumes of water are diverted out of the
14 Kings River and into the James Bypass without any legal basis. Semitropic is informed and
15 believes, and based thereon alleges, that Respondents caused the following amounts of water to
16 be diverted from the River to the James Bypass between 1967 and 2017:

- 17 a. 485,000 AF in 1967.
- 18 b. 1,551,000 AF in 1969.
- 19 c. 86,000 AF in 1964.
- 20 d. 551,000 AF in 1978.
- 21 e. 11,800 AF in 1979.
- 22 f. 580,000 AF in 1980.
- 23 g. 453,000 AF in 1982.
- 24 h. 2,309,000 AF in 1983.
- 25 i. 569,000 AF in 1984.
- 26 j. 668,000 AF in 1986.
- 27 k. 587,000 AF in 1995.
- 28 l. 75,000 AF in 1996.

- 1 m. 437,000 AF in 1997.
2 n. 986,000 AF in 1998.
3 o. 20,000 AF in 1999.
4 p. 63,000 AF in 2005.
5 q. 612,000 AF in 2006.
6 r. 637,000 AF in 2011.
7 s. 709,000 AF in 2017.

8 27. Semitropic is informed and believes, and based thereon alleges, that Respondents
9 cannot make full use of water available under the Tulare Lake Licenses without either flooding
10 farmland in the Tulare Lakebed or constructing new facilities for water storage.

11 28. Semitropic is informed and believes, and based thereon alleges, that Respondents
12 have never intended to construct the water storage facilities necessary to make full use of the
13 Tulare Lake Licenses.

14 **D. Petitions to Modify the Fully Appropriated Stream Designation for the**
15 **Kings River**

16 29. In D-1290, the State Water Board determined that the amounts of water applied for
17 by FID would utilize the entire flow of the Kings River, including flood flows. The State Water
18 Board further stated that “only in years of exceptionally high runoff would any water be allowed
19 to leave the Kings River service area through Fresno Slough.” The State Water Board also noted
20 that outflow through Fresno Slough has occurred in less than one-third of the years since Pine
21 Flat Dam began storing water. The State Water Board concluded that under these circumstances,
22 “essentially all of the available unappropriated water of the Kings River” would be appropriated
23 by its approval of FID’s applications.

24 30. In 1989, the State Water Board declared the Kings River to be a fully appropriated
25 stream. (See Order WR 89-25 at 15.) The State Water Board’s declaration that the Kings River
26 is a fully appropriated stream (“Kings River FAS Declaration”) was expressly based on State
27 Water Board staff’s representation that D-1290 determined that the Kings River is fully
28

1 appropriated year-round. (*See id.*)

2 31. On May 9, 2017, FID, Consolidated, and AID filed a “Petition for Reconsideration
3 Fully Appropriated Stream Kings River System, Tributary to Tulare Lake Basin” (“FID
4 Petition”). The FID Petition expressly admits that Respondents and other KRWA member units
5 “have not historically been able to beneficially use all licensed floodwater.” The FID Petition
6 was accompanied by Application No. 32810, which seeks to appropriate 1 million AF of Kings
7 River water annually. True and correct copies of the FID Petition and Application No. 32810 are
8 attached hereto as **Exhibit C** and **Exhibit D**, respectively.

9 32. The FID Petition fails to satisfy the requirements of the State Water Board’s
10 regulations governing petitions to revoke or revise a fully appropriated stream declaration. First,
11 the FID Petition does not seek revocation or revision of the Kings River FAS Declaration, as
12 required by the Water Code and the State Water Board’s regulations. (*See* Water Code § 1205(c);
13 Cal. Code Regs., tit. 23, §§ 870-871.) In fact, it does not ask the State Water Board to take *any*
14 action at this time. Instead, it seeks only to establish the highest priority for Application No.
15 32810 *in the event* that the Board changes its determination that the Kings River is a fully
16 appropriated stream. Contingent requests for “reconsideration” are not permitted by the Board’s
17 regulations governing revocation or revision of fully appropriated stream declarations. Second,
18 the FID Petition fails to demonstrate reasonable cause to revoke or revise the Kings River FAS
19 Declaration because FID, AID, and Consolidated expressly contend that the Kings River remains
20 a fully appropriated stream. (*See* Exhibit C at p. 1; Cal. Code Regs., tit. 23, § 871(b)-(c).)
21 Accordingly, State Water Board’s Division of Water Rights should reject and dismiss the FID
22 Petition and Application No. 32810.

23 33. On May 9, 2017, KRWA filed a Petition to Change the Points of Diversion,
24 Rediversion, Place of Use, Purpose of Use and Distribution of Storage for License No. 11521
25 (“KRWA Change Petition”). The KRWA Change Petition seeks to substitute License No.
26 11521’s Tulare Lake bed storage right for storage in Pine Flat Reservoir. It also seeks to vastly
27 expand the authorized place of use for License No. 11521.

28 34. On May 25, 2017, Semitropic filed a petition to revoke or revise the fully

1 appropriated stream declaration for the Kings River (“FAS Petition”) pursuant to Water Code
 2 section 1205 and section 871 of Title 23 of the California Code of Regulations. In conjunction
 3 with the FAS Petition, Semitropic filed Application No. 32815 to appropriate up to 1.6 million
 4 acre-feet AF of water from the Kings River. A true and correct copy of the FAS Petition and
 5 Application No. 32815 is attached hereto as **Exhibit E**.

6 **FIRST CAUSE OF ACTION**

7 **(Forfeiture of Pre- and Post-1914 Appropriative Water Rights – Against All Respondents)**

8 35. Petitioner incorporates by reference the allegations in paragraphs 1 through 34
 9 above as though fully set forth herein.

10 36. Semitropic’s FAS Petition, which was filed with the State Water Board on May
 11 25, 2017, constitutes a competing claim for Kings River water covered by License Nos. 11517
 12 and 11521.

13 37. Water is always available for diversion, use, and collection to storage under
 14 License No. 11517 because it is KRWA’s highest priority right.

15 38. KRWA and its member units have reported using water under License No. 11517
 16 only in 1985 and 1986. KRWA reported using 16.8 and 29.6 AF of water in 1985 and 1986,
 17 respectively. In all other years, KRWA reported that it used no water under License No. 11517.
 18 Respondents have therefore forfeited their rights under License No. 11517, including any pre-
 19 1914 rights that cover the same diversion, purpose of use, and place of use described in that
 20 license.

21 39. Since 1984, water has been available to KRWA under License No. 11521 in the
 22 following years: 2011, 2010, 2006, 2005, 1998, 1997, 1996, 1995, 1993, 1986, and 1984.

23 40. In those years, KRWA reported that it beneficially used a fraction of the water
 24 available under License No. 11521, thereby forfeiting its rights under that license, including any
 25 pre-1914 rights held by Respondents that cover the same diversions, purposes of use, and place of
 26 use described in that license.

27 41. In every year when the Corps has made flood releases from Pine Flat Reservoir
 28 that could have been collected to storage in Tulare Lake, Respondents have instead diverted water

1 to the James Bypass until the Bypass’ capacity was reached. Respondents have therefore
2 forfeited their rights to store and use Kings River flood flows.

3 **SECOND CAUSE OF ACTION**

4 **(Abandonment of Pre- and Post-1914 Appropriative Water Rights – Against All**
5 **Respondents)**

6 42. Petitioner incorporates by reference the allegations in paragraphs 1 through 41
7 above as though fully set forth herein.

8 43. Respondents never intended to make full beneficial use of Kings River flows
9 within the scope of the Tulare Lake Licenses. Instead of allowing water to reach Tulare Lake for
10 storage or beneficial use within the boundaries of the Tulare Lake Basin Water Storage District as
11 authorized by Licenses 11517 and 11521, Respondents have instead caused Kings River water to
12 be diverted into unauthorized areas including the James Bypass where it cannot be used within
13 the place of use described in the Tulare Lake Licenses.

14 44. Water is collected to storage under the Tulare Lake Licenses on an involuntary
15 basis, only when the James Bypass has reached capacity. Such water is not put to beneficial use,
16 but instead is treated as a nuisance and evacuated as soon as possible so that agricultural
17 production in the Lakebed can be resumed.

18 45. At the time the Tulare Lake Licenses were issued or at some time thereafter,
19 Respondents intended to not utilize or otherwise abandon some, or all, of the rights they received,
20 including any pre-1914 rights that cover the same diversions, purposes of use, and places of use
21 described in those licenses. At the time such rights were issued, Semitropic is informed and
22 believes, and based thereon alleges that the Tulare Lake Sump Reservoir had a capacity of
23 450,000 AF and that Respondents have never intended to take or have taken any steps to
24 construct facilities that would permit storage of the full amount of the Tulare Lake Licenses.

25 46. By diverting Kings River flows to the James Bypass and other unauthorized areas,
26 thereby preventing Kings River flows from reaching Tulare Lake except on an involuntary basis;
27 by evacuating Kings River flows that do occasionally reach Tulare Lake before they are put to
28 beneficial use; by failing to construct storage facilities necessary to make full beneficial use of its

1 rights under License Nos. 11517 and 11521; and by failing to make beneficial use of Kings River
2 water that would have otherwise reached Tulare Lake, Respondents have abandoned their rights
3 to store and use Kings River water under License Nos. 11517 and 11521, including any pre-1914
4 water rights held by Respondents that cover the same diversions, purposes of use, and places of
5 use as described in those licenses.

6 **THIRD CAUSE OF ACTION**

7 **(Failure to Perfect Post-1914 Appropriative Water Rights – Against All Respondents)**

8 47. Petitioner incorporates by reference the allegations in paragraphs 1 through 46
9 above as though fully set forth herein.

10 48. At the time License Nos. 11517 and 11521 were issued, FID and its agents
11 admitted to State Water Board staff that Kings River water received in Tulare Lake was not being
12 put to beneficial use; instead, it was treated as a nuisance and evacuated from Tulare Lake as soon
13 as possible without being put to beneficial use.

14 49. During the licensing process, State Water Board staff suggested that Permit Nos.
15 15713 and 15719 should never have been issued because the storage of water in the Tulare
16 Lakebed was “involuntary” and because such water was not put to a beneficial irrigation use.

17 50. Following the issuance of License Nos. 11517 and 11521, Respondents continued
18 to regularly divert substantial flows of Kings River water to the James Bypass rather than
19 allowing such flows to reach the bed of Tulare Lake for beneficial use as anticipated by those
20 licenses. Indeed, rather than allowing Kings River water to reach the bed of Tulare Lake and be
21 put to beneficial use, Respondents have consistently diverted Kings River water to the James
22 Bypass whenever the Corps makes flood releases from Pine Flat Reservoir and involuntarily
23 allowed Kings River water to flow into Tulare Lake only when the capacity of the James Bypass
24 was exceeded.

25 51. Accordingly, Respondents failed to perfect the appropriative water rights covered
26 by License Nos. 11517 and 11521, including any pre-1914 rights that cover the same diversions,
27 purposes of use, and places of use described in those licenses.

FOURTH CAUSE OF ACTION

(Unauthorized Diversion of Water – Against All Respondents)

52. Petitioner incorporates by reference the allegations in paragraphs 1 through 51 above as though fully set forth herein.

53. Respondents' diversion of water into the James Bypass and other areas is not authorized by any of KRWA's water right licenses, or any pre-1914 water rights held by KRWA or its member units that cover the same diversions, purpose of use, and places of use described in those licenses, and therefore violates Water Code section 1052.

54. Respondents' diversion of water into the James Bypass and other areas violates the terms and conditions of its water rights, including the terms and conditions of any pre-1914 rights that cover the same diversions, purposes of use, and places of use described in License Nos. 11517 and 11521.

55. Semitropic is informed and believes, and based thereon alleges that, unless they are ordered by the State Water Board to cease and desist from doing so, Respondents intend to continue to divert Kings River water into the James Bypass and other areas in violation of Water Code section 1052 and the terms and conditions of License Nos. 11517 and 11521. Semitropic is informed and believes and based thereon alleges that if Respondents did not divert Kings River water into the James Bypass and other areas in violation of the terms and conditions of License Nos. 11517 and 11521, such water would be available for diversion by Semitropic.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the State Water Board provide the following relief:

1. A declaration and final determination that Respondents have forfeited the water rights covered by License Nos. 11517 and 11521, and any pre-1914 water rights that cover the same diversions, purposes of use, and places of use described in those licenses;

2. A declaration and final determination that Respondents abandoned the water rights covered by License Nos. 11517 and 11521, and any pre-1914 water rights that cover the same diversions, purposes of use, and places of use described in those licenses;

1 3. A declaration and final determination that Respondents failed to perfect the water
2 rights associated with License Nos. 11517 and 11521, and any pre-1914 water rights that cover
3 the same diversions, purposes of use, and places of use described in those licenses;

4 4. A declaration and final determination that Respondents' diversions of water into
5 James Bypass and other areas are not authorized by the California Water Code or KRWA's
6 Tulare Lake Licenses, and any pre-1914 water rights that cover the same diversions, purposes of
7 use, and places of use described in those licenses;

8 5. An order that Respondents cease and desist diverting Kings River water into James
9 Bypass and any other areas not authorized by the Kings River licenses held and administered by
10 KRWA;

11 6. An order revoking License Nos. 11517 and 11521;

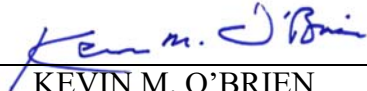
12 7. An order revoking or revising the fully appropriated stream declaration for the
13 Kings River;

14 8. An order declaring that the water covered by the Tulare Lake Licenses, and any
15 pre-1914 water rights that cover the same diversions, purposes of use, and places of use described
16 in those licenses, is available for appropriation by Semitropic under Application No. 32815; and

17 9. Such other relief as the Board deems just and proper.

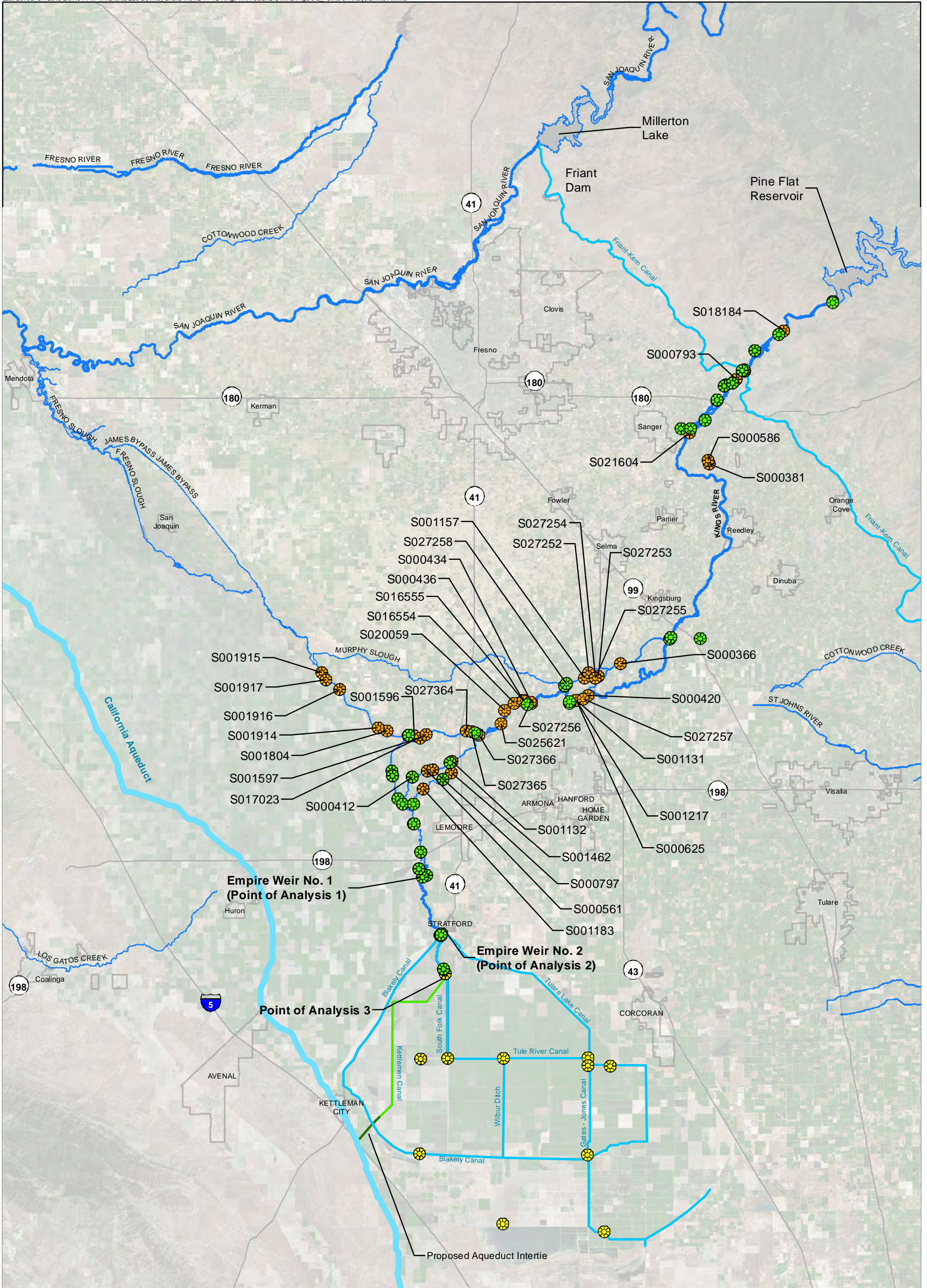
18 DATED: July 2, 2018

DOWNEY BRAND LLP

20 By: _____ 

21 KEVIN M. O'BRIEN
22 Attorney for Plaintiff
23 SEMITROPIC IMPROVEMENT DISTRICT OF
24 SEMITROPIC WATER STORAGE DISTRICT

Exhibit A



- Kings River POD - A360 and A5640
- Tulare Lake Bed POD - A353 and A1523
- Statements of Diversion
- California Aqueduct
- Canal
- Proposed Kettleman Canal
- Proposed Aqueduct Intertie
- Fresno/Kings/San Joaquin River
- River/Creek/Slough
- City Limits

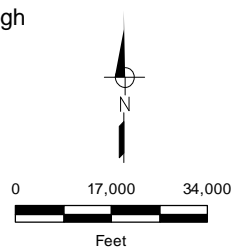
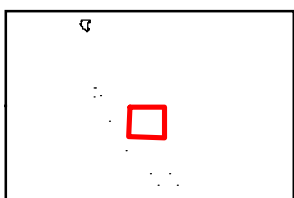


Figure 4
Points of Analysis

Semitropic Improvement District of
Semitropic Water Storage District
Water Availability Analysis

Exhibit B

ADJUDICATED KINGS RIVER WATER DIVERSION SCHEDULE - January -

Table with columns: River at Piedra, Main River and South Fork, Laguna Dist., Murphy Slough Assn., Fresno Dist., Leucore Canal, Peoples Canal, Last Chance Canal, Consol-Idated Canal, Alta Canal, Liberty Canal, Crosscut Canal, Stinson Canal, Burrell Ranch, Jones Main Canal, Beta Main Canal, Lake-Lands Canal, South Fork, Clark's Fork, Oper San Jose Canal, Heinlan Canal, Empire No. 1, Empire No. 2, Lower-Lands, Water at Empire No. 2. Rows list various river mile markers from 100 to 11500.

Notes: For flows above 11,500 cubic feet per second at Piedra, the excess is to be divided one-half to the Main River and North Fork and one-half to the South Fork.

ANGLED KING RIVER No. DIVERSION SCHEDULE - April -

Table with columns: River at North Fork, Main River, Laguna Dist., Murphy, Praso, Lenore Canal, Peoples Canal, Last Canal, Counsel, Alta Canal, Liberty Canal, Crescent Canal, Sisson Canal, Purcell Canal, Jones Main Canal, Bala Canal, Lake-lands Canal, South Fork, Clark's Fork, Upper San Jose, Helms Canal, Empire No. 1, Empire No. 2, Lower, Water at Empire No. 2, River at Piedra. It contains a detailed grid of flow rates for various river sections and diversions.

Note: For flows above 10,625 cubic feet per second at Piedra, the excess is to be divided one-half to the Main River and North Fork and one-half to the South Fork.

AMENDED KINGS RIVER DIVERSION SCHEDULE

Table with columns: River at Piedra, Main River North Fork, Laguna Dist., Murphy Shoshone Assn., Fresno Dist., Leucore Canal, Peoples Canal, Last Canal, Condit Canal, Alta Canal, Liberty Canal, Crescent Canal, Shilson Canal, Rural Ranch, James Main Canal, Beta Main Canal, Laka-Laka Canal, South Fork, Clark's Fork, Upper San Jose, Hamilton Canal, Empire No. 1, Empire No. 2, Love-Less, Water at Empire No. 2, River at Piedra. Rows list various diversion points and dates.

Notes: 0.2% 14.5% 0.6% 0.1% 0.2% 26.2% 14.5% 1.2% 2.0% 1.5% 2.0% 2.0% 2.0% 2.1% 2.1%
For Flows above 17,000 cfs the excess is divided one-half to the Main River and North Fork and one-half to the South Fork.

8732 000-000-0000 P. S. L. CO.

The following exhibits to this complaint are available at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/petitions/fas_kings.html

Exhibit C

Consolidated Irrigation District, Fresno Irrigation District, and Alta Irrigation District Petition to Revise FAS

Exhibit D

Consolidated Irrigation District, Fresno Irrigation District, and Alta Irrigation District Application to Appropriate Water

Exhibit E

Semitropic Water Storage District Petition to Revise FAS and Application to Appropriate Water