

EXEMPT FROM FILING FEE
[Cal. Gov. Code § 6103]

Daniel N. Raytis, SBN 218374

dan@bbr.law

T. Scott Belden, SBN 184387

scott@bbr.law

Jazmine Flores, SBN 317038

jazmine@bbr.law

BELDEN BLAINE RAYTIS, LLP

5016 California Avenue, Suite 3

Bakersfield, California 93309

Telephone: (661) 864-7827

Facsimile: (661) 878-9797

Attorneys for Plaintiff

Rosedale-Rio Bravo Water Storage District

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF KERN—METROPOLITAN DIVISION

ROSEDALE-RIO BRAVO WATER
 STORAGE DISTRICT, a California Water
 Storage District,

Plaintiff,

v.

CITY OF BAKERSFIELD, a charter city
 and California municipal corporation; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. BCV-19-103483

**ROSEDALE-RIO BRAVO WATER
 STORAGE DISTRICT'S COMPLAINT
 FOR:**

- 1. Declaratory Relief;**
- 2. Breach of Contract and Specific Performance;**
- 3. Anticipatory Breach of Contract and Specific Performance; and**
- 4. Injunctive Relief.**

Plaintiff ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT alleges:

PARTIES

1. Plaintiff ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT (hereinafter, "ROSEDALE") is, and at all times herein mentioned was, a California water storage district formed and existing pursuant to the California Water Storage District Law (Division 14 of the California Water Code sections 39000, *et seq.*)

2. ROSEDALE is authorized pursuant to California Water Code sections 43700, *et seq.*, to commence and maintain any proceeding or action to carry out its purposes and/or to protect its interests. Insofar as is material to this action, ROSEDALE has continuously maintained certain public projects which have as an objective the stabilization of the underlying groundwater table within ROSEDALE and which depend on the use of Kern River water for surface delivery and groundwater recharge to provide for the beneficial use of such water within the boundaries of ROSEDALE.

3. ROSEDALE brings this action on behalf of itself and on behalf of the landowners and those who utilize water within the boundaries of ROSEDALE.

4. Defendant CITY OF BAKERSFIELD (hereinafter, the “CITY”) is a charter city of the State of California and a municipal corporation organized and existing under the laws of the State of California.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 100, inclusive, are unknown to ROSEDALE at this time. ROSEDALE sues those defendants by such fictitious names and will amend this Complaint to show their true names and capacities when they have been ascertained. ROSEDALE is informed and believes, and on that ground alleges, that each of the defendants designated as a DOE has an interest in the matters alleged in this action, and/or is responsible in some manner for the conduct complained of herein. At all times herein mentioned, each Defendant, including each of the defendants designated as a DOE, was an agent, servant, employee or other representative of each other Defendant, and at all times was acting within the course and scope of said agency, service, employment or other relationship.

JURISDICTION AND VENUE

6. This Court has jurisdiction over all the matters alleged in this Complaint pursuant to California Code of Civil Procedure sections 410.10 and 1060 and Water Code section 43700.

7. Pursuant to Code of Civil Procedure sections 392 and 393, venue is proper in this Court because a substantial part of the events giving rise to the causes of action of ROSEDALE set

1 forth herein occurred within this judicial district and the Kern River water that is the subject of this
2 action is situated, at least in part, in this judicial district.

3 **STANDING**

4 8. ROSEDALE has standing to assert the claims stated herein as it entered into and
5 executed the agreements referenced below with the CITY and/or its predecessors in interest, and
6 ROSEDALE has determined that this action is necessary to carry out the purpose(s) and/or protect
7 the interests of ROSEDALE, its landowners and water users. Additionally, as alleged herein, the
8 rights and duties of ROSEDALE and the CITY under the agreements referenced below directly
9 affect the purpose(s) and interests of ROSEDALE to continue to maintain its public projects,
10 including its groundwater storage project. ROSEDALE has timely performed all conditions,
11 covenants, and promises required by it on its part to be performed in accordance with the terms and
12 conditions of the agreements referenced below.

13 9. As of the date of filing this Complaint, the agreements referenced below are and
14 continue to be in full force and effect.

15 **GENERAL ALLEGATIONS**

16 **Physical Setting**

17 10. The Kern River is the most southern of the rivers in the San Joaquin Valley in the
18 State of California; it drains an area of the southern Sierra Nevada mountains northeast of the CITY.
19 The Kern River runs through the CITY and is the only major river in the Sierra Nevada mountain
20 range that drains in a southerly direction.

21 11. The Kern River and its water supply is a unique and large source of extremely high-
22 quality surface water that plays a critical role in minimizing, reducing, alleviating and reversing the
23 depletion of the groundwater basin, and since the late Nineteenth Century, Kern River water has
24 been primarily diverted for irrigation and recharging aquifers, including those that underly
25 ROSEDALE, its landowners and water users.

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1 12. The CITY holds Kern River water rights and facilities that it acquired in or around
2 1976 from Tenneco West, Inc., including Anderson Canal, Inc., James Canal, Inc., Joyce Canal,
3 Inc., Pioneer Canal, Inc., and Plunket Canal, Inc. (hereinafter collectively, the "Canal Companies")
4 (hereinafter, the "City-Tenneco Acquisition").

5 13. ROSEDALE is located west of the CITY in the County of Kern, State of California,
6 north of the Kern River and the Cross-Valley Canal; ROSEDALE encompasses approximately
7 44,000 acres of land, of which most are in irrigated agriculture, the rest are in residential,
8 commercial, and industrial development.

9 14. ROSEDALE was formed and has operated for the purpose of obtaining surface
10 water supplies and constructing and operating a groundwater recharge project to replenish the
11 groundwater aquifer beneath ROSEDALE. To that end, ROSEDALE operates, and at all relevant
12 times operated, numerous groundwater recharge facilities which promote the stabilization and
13 sustainability of the underlying groundwater table within ROSEDALE and which depend on
14 ROSEDALE's acquisition, use and recharge of Kern River water that is extremely high quality.
15 Additionally, ROSEDALE's acquisition, use and recharge of Kern River water enhances and
16 improves water quality through, among other things, increased recharge of high-quality Kern River
17 water into areas of the basin underlying ROSEDALE where the quality of groundwater has been or
18 may become diminished or threatened.

19 15. Because of its location, ROSEDALE's continued acquisition, use and recharge of
20 high-quality Kern River water is of critical importance to the success its groundwater recharge
21 facilities as well as to the economic success of the landowners within ROSEDALE.

22 16. Prior to the construction and operation of the concrete-lined Kern River Canal in
23 1962 by the Canal Companies, there were significant Kern River seepage losses between the First
24 Point of Measurement and the Second Point of Measurement on the Kern River. ROSEDALE and
25 the groundwater aquifer beneath it benefitted from the Kern River seepage that resulted from
26 conveying water from the First Point of Measurement to the Second Point of Measurement through
27 the Kern River or other unlined facilities near the boundaries of ROSEDALE.

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1 17. The Canal Companies undertook the construction of the concrete-lined Kern River
2 Canal in or around 1961, starting in the channel of the Kern River near the outlet of the Friant-Kern
3 Canal in the West One-Half of Section 33, Township 29 South, Range 27 East, MDB&M, and
4 running in the southwesterly direction, south of the Kern River and terminating in the channel of
5 the Kern River at Second Point of Measurement in the Northeast Quarter of Section 17, Township
6 30 South, Range 25 East, MDB&M. At the time, the Canal Companies recognized that the
7 construction of the Kern River Canal would negatively impact the water supply of ROSEDALE, as
8 it would reduce or prevent Kern River seepage into the aquifer underlying ROSEDALE.

9 **The Kern River Water Supply Agreements**

10 18. As a result of the foregoing, ROSEDALE and the Canal Companies entered into the
11 *Kern River Water Service Agreement* (hereinafter, the “1961 Agreement”) on or around August 31,
12 1961 for the permanent supply of Kern River water and the furnishing of water transportation
13 services to ROSEDALE in the amounts and under the terms and conditions set forth in the 1961
14 Agreement, recognizing that “there is and for some years has been a shortage of water in Kern
15 County, and because of such shortage, [ROSEDALE] needs an additional permanent source of
16 water.”

17 19. Through the 1976 City-Tenneco Acquisition, the CITY became the successor-in-
18 interest to the Canal Companies. Pursuant to the terms of the 1961 Agreement, said agreement
19 “shall bind and inure to the benefit of the successors and assigns of each of the parties to this
20 agreement.” As such, the CITY is bound by the terms of the 1961 Agreement.

21 20. The term of the 1961 Agreement commenced on January 1, 1963 and will remain
22 in effect and continue “until terminated by mutual written consent or agreement of the Canal
23 Companies [and subsequently, the CITY] and [ROSEDALE],” which has not occurred.

24 21. Pursuant to the terms of the 1961 Agreement, ROSEDALE is entitled to purchase
25 at least 10,000-acre feet of Kern River water per year accruing to the rights of the Canal Companies
26 and subsequently to the rights of the CITY. That is, the 1961 Agreement provides in relevant part
27 as follows: “Canal Companies [and subsequently the CITY] agree to sell to [ROSEDALE], and
28 [ROSEDALE] agrees to buy from Canal Companies [and subsequently the CITY], ten thousand

1 (10,000) acre-feet of water per year computed as hereinafter provided upon a cumulative annual
2 average basis..." (hereinafter, the "Basic Contract Water"). Basic Contract Water is not at issue in
3 this Complaint in that ROSEDALE is informed and believes that CITY acknowledges its
4 obligations to continue the sale of Basic Contract Water to ROSEDALE under the terms and
5 conditions of the 1961 Agreement.

6 22. Section 1(i) of the 1961 Agreement provides for sales of Kern River water by the
7 CITY to ROSEDALE in addition to Basic Contract Water as follows (hereinafter, "Section 1(i)");

8 **1. Water Sale.**

9 [¶] ... [¶]

10 (i) **Additional Water Sales:** Whenever the quantities of water
11 delivered hereunder shall equal the applicable maximum limit
12 specified above in Paragraph 1(d) hereof in any calendar year, the
13 parties may, by mutual agreement from time to time, provide for the
14 sale and delivery of additional water by Canal Companies [and
subsequently, the CITY] to [ROSEDALE] hereunder at the rate of
One Dollar (\$1.00) per acre-foot.

15 23. Section 1(i) of the 1961 Agreement was subsequently amended by ROSEDALE and
16 the CITY through the *Agreement Amending the Kern River Water Service Agreement Dated August*
17 *31, 1961 to Provide for the Long-Term Sale and Delivery of Kern River Water* (Agreement No. 76-
18 80) entered into on or around June 6, 1976 between ROSEDALE and the CITY (hereinafter, the
19 "1976 Amendment").

20 24. Section 1(i), as amended by the 1976 Amendment, provides that ROSEDALE shall
21 have the right to purchase one-third (1/3) of all "Miscellaneous Quantity Water" available to the
22 CITY per year from the CITY, in addition to any Basic Contract Water that the CITY may provide
23 to ROSEDALE pursuant to the terms of the 1961 Agreement.

24 25. The 1976 Amendment provides, in part, as follows:

25 **2.1 Amendment**

26 Section 1(i) of the [1961 Agreement] is hereby amended [by the 1976
27 Amendment] to read as follows:
28

1 **(i) Additional Water Sales.** Commencing on January 1, 1977, [the
2 CITY] will make additional Kern River water available to the District
3 [ROSEDALE] pursuant to the following terms and conditions:

4 **(1) Entitlement.** District [ROSEDALE] shall have the right ... to
5 the delivery and use of one-third (1/3) of all Miscellaneous Quantity
6 Water available and accruing to the [CITY] as herein specified. The
7 quantity of Miscellaneous Water to be made available to
8 [ROSEDALE] hereunder may vary from year to year, but on average
9 such deliveries shall be equal to one-third (1/3) of all Miscellaneous
10 Quantity Water available to the [CITY]. The amount of
11 Miscellaneous Quantity Water available in any given year shall be
12 computed as of the end of the calendar year. Appropriate delivery
13 adjustments shall be made from year to year so as to provide
14 [ROSEDALE] on the average with its one-third (1/3) share. Such
15 deliveries of Miscellaneous Water shall be in addition to the
16 entitlement of [ROSEDALE] under [the 1961 Agreement for Basic
17 Contract Water].

18 26. The 1976 Amendment defines “Miscellaneous Quantity Water” as “an amount of
19 nonutility Kern River water which the [CITY] may, from time to time, have available above and
20 beyond the water necessary to meet [the CITY’s] other water commitments.” The 1976
21 Amendment defines those “other water commitments” of the CITY as: (1) All water necessary to
22 honor all presently existing agreements or documents referred to in Exhibit ‘A’ of Exhibit ‘I’ of the
23 1976 Amendment, including the 1961 Agreement; (2) Sufficient water to meet the demands of a
24 seventy thousand (70,000) acre-foot firm irrigation supply considering optimum use of carry-over
25 storage incident thereto; and (3) Ten thousand (10,000) acre-feet per year anticipated to be a
26 Borrow-Payback transaction. In addition, the 1976 Amendment defines “Miscellaneous Water” as
27 the “water which the [CITY] may, from time to time, have available for sale and delivery to
28 [ROSEDALE] as Miscellaneous Quantity Water” (hereinafter, collectively “MQW”).

 27. The 1976 Amendment also defines “nonutility Kern River water” as “the water and
water rights acquired [from the Canal Companies] which are not subject to public utility obligations
of service.”

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28. Additionally, the 1976 Amendment sets forth the following provision, Section 1(i)(6), regarding the notice that the CITY must provide to ROSEDALE:

2.1 Amendment

Section 1(i) of the [1961 Agreement] is hereby amended [by the 1976 Amendment] to read as follows:

(i) Additional Water Sales. Commencing on January 1, 1977, [the CITY] will make additional Kern River water available to the District [ROSEDALE] pursuant to the following terms and conditions:

[¶] ... [¶]

(6) Notice. [The CITY] will endeavor to give [ROSEDALE] thirty (30) days notice of the time when water will be available for delivery under this Section 1(i), but in any event shall give ten (10) days notice. The only exception of this notice provision shall be if the Corps of Engineers orders evacuation of storage at Lake Isabella, and under those circumstances [the CITY] shall give as much notice as possible.

29. The 1976 Amendment also provides that the price of MQW supplied by the CITY to ROSEDALE under the 1976 Amendment shall “be six dollars (\$6.00) per acre foot, provided that any such water delivered at the request of [ROSEDALE] during the months of March through September shall be priced at reasonable rates under then existing conditions, but in no event less than 3.5 times the basic \$6.00 per acre foot price. All prices under this Section 1(i) are subject to escalation....”

30. Additionally, the 1976 Amendment requires that the CITY “use its best efforts, taking into account its obligations under its existing contracts, to deliver [MQW to ROSEDALE] at reasonably uniform and continuous rates of flow, and within the capacity of [ROSEDALE’s] facilities.”

31. Pursuant to the 1976 Amendment, ROSEDALE and the CITY also agreed that the rights of ROSEDALE under the terms of the 1976 Amendment have priority, as it sets forth in pertinent part as follows: “[The CITY] agrees that all other future contracts or commitments it may make regarding the use of nonutility Kern River water it has acquired ... will be made expressly subject to the rights of [ROSEDALE] under [the 1976 Amendment].”

1 32. The 1976 Amendment also sets forth the following provision regarding a possible
2 partial reduction in ROSEDALE's share of MQW available to the CITY (hereinafter, "Section
3 1(i)(2)"). However, as set forth below, this provision was subsequently amended and removed by
4 the CITY and ROSEDALE:

5 **2.1 Amendment**

6 Section 1(i) of the [1961 Agreement] is hereby amended [by the 1976
7 Amendment] to read as follows:

8 **(i) Additional Water Sales.** Commencing on January 1, 1977, [the
9 CITY] will make additional Kern River water available to the District
[ROSEDALE] pursuant to the following terms and conditions: [¶]

10 **(2) Miscellaneous Water Deliveries After 35 Years.** After January
11 1, 2012 [ROSEDALE's] share of [MQW] is subject to reduction under
12 either or both of the following conditions:

13 (aa) [ROSEDALE's] one-third (1/3) share of [MQW] shall be reduced
14 at the rate of one-half (1/2) acre foot for each acre of land within
[ROSEDALE] which is thereafter annexed to the [CITY], provided
15 that the [CITY] uses such water to supply the territory so annexed.

16 (bb) One-half (1/2) of [ROSEDALE's] remaining share of [MQW]
17 shall be subject to reduction for use on City-owned properties or for
18 use within City boundaries, provided that the [CITY] has first used for
such purposes all of its nonutility Kern River water, except for ... [that]
committed to North Kern.

19 33. As of the date of the filing of this Complaint, the CITY has not provided
20 ROSEDALE with notice that either or both of the conditions set forth above has occurred and been
21 invoked by the CITY to reduce MQW supplies available to ROSEDALE in any given year.

22 34. Nonetheless, as set forth below, this Section 1(i)(2) of the 1961 Agreement, as
23 amended by the 1976 Amendment, was subsequently amended by ROSEDALE and the CITY
24 through the *Annexation Agreement* (Agreement No. 06-235) entered into on or around August 16,
25 2006 between ROSEDALE and the CITY (hereinafter, the "Annexation Agreement").

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1 35. The Annexation Agreement dealt with the annexation of certain real property owned
2 by ROSEDALE into the boundaries of the CITY and was meant to ensure, among other things, the
3 **“continued and undiminished availability of [MQW] to [ROSEDALE] beyond 2012”** through
4 amendments to the 1961 Agreement and the 1976 Amendment.

5 36. Through the Annexation Agreement, the CITY and ROSEDALE agreed, among
6 other things, that the CITY’s obligation to account, sell and deliver to ROSEDALE one-third (1/3)
7 of all MQW available to the CITY shall continue undiminished (i.e., without any reduction in
8 quantity) beyond the year 2012, pursuant to the terms of the 1961 Agreement, as amended by the
9 1976 Amendment and subsequently by the Annexation Agreement.

10 37. The Annexation Agreement provides, in part, as follows:

11 [T]o [e]nsure the ... [¶] continued and undiminished availability of
12 [MQW] to [ROSEDALE] beyond 2012.... [The CITY will] continue
13 deliveries to [ROSEDALE of MQW] in order to meet the water
14 service demands of those lands that are within the City limits, current
15 or future annexed. Service demand would be the amount of water
16 needed to balance the water supply of such incorporated lands.
17 [ROSEDALE will] allocate a pro rata share (based on acreage) of its
18 SWP, federal and [Basic Contract Water] allocations first, then apply
19 the [the CITY’s MQW] requirement. [The CITY and ROSEDALE
20 will] jointly determine annual water supply needs using generally
21 acceptable practices in determining water supply demands....

22 38. The Annexation Agreement also improved and enhanced the operational flexibility
23 of ROSEDALE by providing that MQW may be used for spreading, percolating or groundwater
24 recharge in groundwater recharge projects available to ROSEDALE, to accomplish the following,
25 in priority, (a) meeting [the] water supply balance of lands within the City limits in [ROSEDALE],
26 (b) groundwater overdraft correction of [ROSEDALE]; (c) general groundwater overdraft
27 correction of the Kern County portion of the San Joaquin Valley basin.

28 39. The Annexation Agreement also provides that the existing pricing structure between
ROSEDALE and the CITY for MQW will remain in effect. Thus, the price of MQW provided by
the CITY to ROSEDALE would continue to “be six dollars (\$6.00) per acre foot, provided that any
such water delivered at the request of [ROSEDALE] during the months of March through

1 September shall be priced at reasonable rates under then existing conditions, but in no event less
2 than 3.5 times the basic \$6.00 per acre foot price,” subject to escalation, which such escalation has
3 occurred (hereinafter, the “Contract Price”).

4 **The City’s Refusal to Comply with the Agreements**

5 40. On June 13, 2019, ROSEDALE sent the CITY a letter outlining certain obligations
6 of the CITY with respect to MQW and requesting an accounting of MQW supplies.

7 41. On July 22, 2019, the CITY sent ROSEDALE a letter acknowledging that the CITY
8 is obligated to sell one-third (1/3) of the MQW to ROSEDALE at the Contract Price (hereinafter,
9 the “July 2019 Letter”).

10 42. The CITY’s July 2019 Letter then states in part as follows:

11 In light of the [CITY’s] population growth, and other obligations and
12 needs, however, the [CITY] does not expect to have regular, consistent
13 or substantial, supplies of [MQW] to sell to [ROSEDALE] in the future.
14 The availability and volume of [MQW] will further decrease in the
15 future as the [CITY’s] population, demands and needs continue to
16 increase. Any water budget for [ROSEDALE] therefore should not
contemplate or count on [MQW] from the [CITY] as a reliable,
anticipated, or regular water supply.

17 43. The CITY’s July 2019 Letter also contained an enclosed “Status of Contract,” which
18 states that the “1/3 [ROSEDALE] component [was] removed in 2012.” The Status of Contract also
19 reflected an improper allocation of ROSEDALE’s one-third (1/3) share of MQW for 2017 as zero.

20 44. ROSEDALE is informed and believes, and on that ground alleges, that in 2017, and
21 subsequently in 2019, MQW was available to the CITY, but was not sold to ROSEDALE pursuant
22 to the 1961 Agreement, the 1976 Amendment, and the Annexation Agreement between the CITY
23 and ROSEDALE (hereinafter, collectively “Agreements”).

24 45. Pursuant to the terms of the Agreements, ROSEDALE was and remains entitled to
25 buy from the CITY one-third (1/3) of all MQW available to the CITY, including in 2017 and
26 subsequently in 2019 at the Contract Price.

27 46. However, the CITY failed to notify ROSEDALE of the availability of MQW and
28 failed to allocate, sell, and deliver one-third (1/3) of the MQW available to the CITY in 2017 and

1 subsequently in 2019 to ROSEDALE at the Contract Price, as required under the Agreements.
2 ROSEDALE is informed and believes, and on that ground alleges, that ROSEDALE's one-third
3 (1/3) share of the MQW available to the CITY in 2017 and subsequently in 2019 was sold to others
4 without being made available to ROSEDALE pursuant to the aforementioned Agreements.

5 47. On November 14, 2019, ROSEDALE once again notified the CITY by letter that,
6 among other things, the CITY's conduct—selling the MQW available to the CITY in 2017 and
7 subsequently in 2019 to other entities without notifying ROSEDALE of the availability of MQW
8 and without making one-third (1/3) of the CITY's MQW available to ROSEDALE at the Contract
9 Price—violated the Agreements between the CITY and ROSEDALE. Additionally, ROSEDALE
10 advised the CITY in its November 14, 2019 letter that, among other things, the CITY reconsider its
11 interpretation and construction of the terms of the Agreements and instead confirm its obligation to
12 continue to allocate, sell, and deliver to ROSEDALE an undiminished one-third (1/3) of the MQW
13 available to the CITY at the Contract Price in accordance with the terms of the aforementioned
14 Agreements. ROSEDALE notified the CITY that its determination that the CITY's obligation to
15 make available one-third (1/3) of the CITY's MQW to ROSEDALE was removed in 2012 is an
16 arbitrary, capricious, and unreasonable determination which is not supported by the Agreements,
17 facts or law. Indeed, the Annexation Agreement between the CITY and ROSEDALE specifically
18 provides that the CITY's obligation to account, sell and deliver to ROSEDALE one-third (1/3) of
19 all MQW available to the CITY shall continue undiminished beyond the year 2012, pursuant to the
20 terms of the 1961 Agreement, as amended by the 1976 Amendment and the Annexation Agreement.
21 Further, ROSEDALE advised the CITY in its November 14, 2019 letter that unless the CITY
22 complied with the terms of the Agreements between the CITY and ROSEDALE and fulfilled the
23 CITY's obligations to ROSEDALE under such Agreements, ROSEDALE would suffer immediate,
24 great and irreparable damage. Accordingly, ROSEDALE demanded, among other things, that the
25 CITY provide ROSEDALE with an unqualified acknowledgement that the CITY will continue to
26 allocate, sell, and deliver to ROSEDALE the one-third (1/3) share of all MQW available to the
27 CITY that ROSEDALE is entitled to under the terms of the Agreements, in accordance with the
28 terms of such Agreements between the CITY and ROSEDALE.

1 48. On December 9, 2019, the CITY responded to ROSEDALE's correspondence dated
2 November 14, 2019 by letter. In its letter dated December 9, 2019, the CITY stated that it was
3 unwilling to provide, and would not be providing, an unqualified acknowledgment that the CITY
4 will continue to allocate, sell, and deliver to ROSEDALE the one-third (1/3) share of all MQW
5 available to the CITY that ROSEDALE is entitled to under the Agreements, in accordance with the
6 terms of such Agreements between the CITY and ROSEDALE, as requested by ROSEDALE in its
7 correspondence dated November 14, 2019 to the CITY. Instead, through its December 9, 2019
8 letter, the CITY continues to improperly and incorrectly maintain that its obligation to allocate, sell,
9 and deliver to ROSEDALE the one-third (1/3) share of all MQW available to the CITY that
10 ROSEDALE is entitled to under the Agreements was reduced and/or removed in 2012 under the
11 Agreements, and further that any CITY need, demand or obligation will take precedence over its
12 obligation to supply MQW water to ROSEDALE.

13 49. ROSEDALE is informed and believes, and on that ground alleges, that the CITY
14 has, in a series of written correspondence and/or other communications to ROSEDALE, declared
15 its intention to not allocate, sell, and deliver to ROSEDALE the one-third (1/3) share of all MQW
16 available to the CITY that ROSEDALE is entitled to under the Agreements at the Contract Price in
17 accordance with the terms of the Agreements.

18 50. ROSEDALE contends that the actions of the CITY alleged herein are contrary to
19 law and the proper construction of the Agreements.

20 51. ROSEDALE is informed and believes, and on that ground alleges, that ROSEDALE
21 and the CITY have a continuing relationship arising from the Agreements and that such Agreements
22 require the CITY to allocate, sell, and deliver to ROSEDALE one-third (1/3) of all MQW available
23 to the CITY at the Contract Price in accordance with the terms of the Agreements.

24 52. ROSEDALE has no plain, speedy, or adequate remedy at law to obtain redress for
25 the grievances complained of herein; damages, if awarded, cannot be properly ascertained as the
26 damages from the CITY's failure to continue to implement or perform the Agreements are difficult
27 to assess and are overly speculative, and damages will be inadequate to compensate ROSEDALE
28 for the detriment it has suffered and will continue to suffer including, but not limited to, the loss of

1 high-quality Kern River water, which will, in turn, affect ROSEDALE's ability to supply water to
2 its landowners and water users and ensure sustainability of the groundwater aquifer underlying
3 ROSEDALE. As alleged herein, the Kern River and its water supply is a unique and large source
4 of extremely high-quality surface water that is not readily available from other sources nor is it
5 certain to be capable of replacement. Also, as alleged herein, ROSEDALE relies heavily on the
6 acquisition of high-quality surface water from the Kern River on which its numerous groundwater
7 recharge facilities depend and which plays a critical role in alleviating and reversing the depletion
8 of the groundwater basin beneath ROSEDALE. Additionally, because of where ROSEDALE and
9 its facilities are located, ROSEDALE cannot obtain the high-quality water and the quantity of such
10 high-quality water that it is entitled to under the Agreements as MQW at such times as those
11 supplies are available without suffering an undue burden, hardship, and delay, if such acquisition is
12 at all possible. Thus, unless the CITY is required to comply with the terms of the Agreements which
13 include selling to ROSEDALE one-third (1/3) of the MQW available to the CITY at the Contract
14 Price, ROSEDALE will suffer great and irreparable damage.

15 **FIRST CAUSE OF ACTION**

16 **Declaratory Relief**

17 **(Against all Defendants)**

18 53. ROSEDALE incorporates by reference paragraphs 1 through 52 as if they were fully
19 stated herein.

20 54. An actual controversy has arisen and exists between the CITY and ROSEDALE
21 regarding the lawful construction and validity of, and their respective rights, duties, and obligations
22 under, the 1961 Agreement, the 1976 Amendment, and the Annexation Agreement between the
23 CITY and ROSEDALE.

24 55. ROSEDALE contends that the 1961 Agreement, the 1976 Amendment, and the
25 Annexation Agreement are valid and enforceable between ROSEDALE and the CITY, and that
26 pursuant to such Agreements, the CITY is obligated to notify ROSEDALE of the MQW available
27 to the CITY in any given year and to supply to ROSEDALE one-third (1/3) of the MQW available
28 to the CITY at the Contract Price.

1 56. ROSEDALE is informed and believes, and on that ground alleges, that the CITY
2 has determined prospectively, and without knowledge of future hydrologic and associated future
3 conditions specified in the Agreements, that the CITY will not supply any MQW to ROSEDALE
4 according to the terms of the Agreements including, but not limited, priority, which determination
5 is an arbitrary, capricious and unreasonable determination not supported by the Agreements, facts
6 or law.

7 57. ROSEDALE is informed and believes, and on that ground alleges, that the CITY
8 disputes ROSEDALE's contentions and contends that the CITY does not have any obligation to
9 supply any MQW to ROSEDALE at the Contract Price or otherwise under the Agreements after
10 the year 2012.

11 58. However, ROSEDALE contends that ROSEDALE and the CITY have a continuing
12 relationship arising from the Agreements with respect to the MQW available to the CITY, and such
13 relationship shall continue during the term of the Agreements, as set forth in the 1961 Agreement.

14 59. ROSEDALE contends that the CITY's contentions and actions alleged herein are
15 contrary to law and the proper construction of the Agreements.

16 60. A final judgment determining and declaring the lawful construction and validity of
17 the Agreements and the respective rights and duties of the CITY and ROSEDALE under such
18 Agreements shall serve to guide the future conduct of the CITY and ROSEDALE during the term
19 of the Agreements, preserve the legal rights of ROSEDALE, and avoid multiplicity of potential
20 litigations between ROSEDALE and the CITY.

21 61. Accordingly, a judicial determination of the above-referenced actual controversy is
22 necessary and appropriate under California Code of Civil Procedure Section 1060, including a Court
23 declaration determining the construction and validity of the Agreements and the respective legal
24 rights and duties of the CITY and ROSEDALE under the Agreements, including the future conduct
25 and performance of the CITY and ROSEDALE during the term of the Agreements, as specified in
26 the Agreements.

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1 **SECOND CAUSE OF ACTION**

2 **Breach of Contract and Specific Performance**

3 **(Against all Defendants)**

4 62. ROSEDALE incorporates by reference paragraphs 1 through 61 as if they were fully
5 stated herein.

6 63. The consideration set forth in the Agreements was fair, reasonable and adequate at
7 the time such Agreements were entered into. This includes, but is not limited to, the negative impact
8 ROSEDALE experienced to its water supply as a result of the construction and operation of the
9 concrete-lined Kern River Canal which has reduced and/or prevented Kern River seepage into the
10 aquifer beneath ROSEDALE and the significant sums paid by ROSEDALE for the Kern River
11 water sold by the CITY and ROSEDALE. The Agreements are just and reasonable as to the CITY.

12 64. ROSEDALE has at all times performed all conditions, covenants, and promises
13 required of it under the Agreements to receive the CITY's performance under the Agreements.

14 65. As set forth above, the Agreements obligate the CITY to fully perform all of its
15 obligations under the Agreements in accordance with the terms and conditions thereof, and in
16 accordance with governing law, industry standards, customs and practices including, without
17 limitation, the following: Allocating, selling and delivering one-third (1/3) of all "Miscellaneous
18 Quantity Water" available to the CITY per year from the CITY, in addition to any Basic Contract
19 Water and other water that the CITY may sell to ROSEDALE pursuant to the terms of the
20 Agreements.

21 66. As alleged herein, the CITY acted unreasonably and in breach of the Agreements in
22 that the CITY has failed and refused, and continues to fail and refuse, to tender its performance as
23 required by the Agreements by various acts and omissions as alleged herein including, but not
24 limited to, by failing to notify ROSEDALE of the availability of MQW in 2017 and 2019 and by
25 failing to supply one-third (1/3) of the MQW available to the CITY in 2017 and 2019 to
26 ROSEDALE at the Contract Price, as required under the terms of the Agreements.

27 67. ROSEDALE has no plain, speedy, or adequate remedy at law to obtain redress for
28 the grievances complained of herein; damages, if awarded, cannot be properly ascertained as the

1 damages from the CITY's failure to continue to implement or perform the Agreements are difficult
2 to assess and are overly speculative, and damages will be inadequate to compensate ROSEDALE
3 for the detriment it has suffered and will continue to suffer including, but not limited to, the loss of
4 high-quality Kern River water, which will, in turn, affect ROSEDALE's ability to supply water to
5 its landowners and water users and ensure sustainability of the groundwater aquifer underlying
6 ROSEDALE. As alleged herein, the Kern River and its water supply is a unique and large source
7 of extremely high-quality surface water that is not readily available from other sources nor is it
8 certain to be capable of replacement. Also, as alleged herein, ROSEDALE relies heavily on the
9 acquisition of high-quality surface water from the Kern River on which its numerous groundwater
10 recharge facilities depend and which plays a critical role in alleviating and reversing the depletion
11 of the groundwater basin beneath ROSEDALE. Additionally, because of where ROSEDALE and
12 its facilities are located, ROSEDALE cannot obtain the high-quality water and the quantity of such
13 high-quality water that it is entitled to under the Agreements as MQW at such times as those
14 supplies are available without suffering an undue burden, hardship, and delay, if such acquisition is
15 at all possible. Accordingly, unless the CITY is required to comply with the terms of the
16 Agreements which includes selling to ROSEDALE one-third (1/3) of the MQW available to the
17 CITY at the Contract Price, ROSEDALE will suffer great and irreparable damage.

18 **THIRD CAUSE OF ACTION**

19 **Anticipatory Breach of Contract and Specific Performance**

20 **(Against all Defendants)**

21 68. ROSEDALE incorporates by reference paragraphs 1 through 67 as if they were fully
22 stated herein.

23 69. The consideration set forth in the Agreements was fair, reasonable and adequate at
24 the time such Agreements were entered into. This includes, but is not limited to, the negative impact
25 ROSEDALE experienced to its water supply as a result of the construction and operation of the
26 concrete-lined Kern River Canal which has reduced and/or prevented Kern River seepage into the
27 aquifer beneath ROSEDALE and the significant sums paid by ROSEDALE for the Kern River
28 water sold by the CITY and ROSEDALE. The Agreements are just and reasonable as to the CITY.

1 70. The CITY, by virtue of its July and December 2019 letters referenced herein and its
2 failure to notify ROSEDALE of the availability of MQW to the CITY and failure to supply one-
3 third (1/3) of the MQW available to the CITY in 2017 and 2019, as required by the terms of the
4 1961 Agreement, the 1976 Amendment, and the Annexation Agreement, has expressly repudiated
5 and/or anticipatorily breached its contractual obligations with ROSEDALE. Specifically, the CITY
6 has manifested this repudiation by—for the first time—stating that it does not expect to provide
7 MQW available to it to ROSEDALE in the future, and that ROSEDALE’s 1/3 share of MQW has
8 been terminated or “removed,” and thus, ROSEDALE should not count on receiving MQW
9 available to the CITY from the CITY, and also failing to supply one-third (1/3) of the MQW
10 available to the CITY in 2017 and 2019, as required by the terms of the Agreements.

11 71. The CITY has not retracted this repudiation, even after the CITY was specifically
12 queried about it by ROSEDALE on or around November 14, 2019 nor has the CITY otherwise
13 provided ROSEDALE with any assurance that the CITY intends to carry out its contractual
14 obligations under the Agreements and supply one-third (1/3) of the MQW available to the CITY in
15 2020 and subsequently to ROSEDALE at the Contract Price.

16 72. ROSEDALE has at all times performed all conditions, covenants, and promises
17 required of it under the Agreements to receive the CITY’s performance under the Agreements.

18 73. As a consequence of the foregoing, the CITY is in material default and/or breach of
19 the Agreements.

20 74. As a direct and proximate cause of the CITY’s material and anticipatory breaches
21 of its contractual obligations, and because the CITY’s material breach has delayed or prevented and
22 will continue to delay or prevent ROSEDALE’s ability to obtain the high-quality Kern River water
23 to which it is entitled to under the terms of the Agreements as MQW, ROSEDALE has no plain,
24 speedy, or adequate remedy at law to obtain redress for the grievances complained of herein.
25 Damages, if awarded, cannot be properly ascertained as the damages from the CITY’s failure to
26 continue to implement or perform the Agreements are difficult to assess and are overly speculative,
27 and damages will be inadequate to compensate ROSEDALE for the detriment it has suffered and
28 will continue to suffer including, but not limited to, the loss of high-quality Kern River water, which

1 will, in turn, affect ROSEDALE's ability to supply water to its landowners and water users and
2 ensure sustainability of the groundwater aquifer underlying ROSEDALE. As alleged herein, the
3 Kern River and its water supply is a unique and large source of extremely high-quality surface water
4 that is not readily available from other sources nor is it certain to be capable of replacement. Also,
5 as alleged herein, ROSEDALE relies heavily on the acquisition of high-quality surface water from
6 the Kern River on which its numerous groundwater recharge facilities depend and which plays a
7 critical role in alleviating and reversing the depletion of the groundwater basin beneath
8 ROSEDALE. In addition, because of where ROSEDALE and its facilities are located, ROSEDALE
9 cannot obtain the high-quality water and the quantity of such high-quality water that it is entitled to
10 under the Agreements as MQW at such times as those supplies are available without suffering an
11 undue burden, hardship, and delay, if such acquisition is at all possible. Thus, unless the CITY is
12 required to comply with the terms of the Agreements which include supplying to ROSEDALE one-
13 third (1/3) of the MQW available to the CITY at the Contract Price, ROSEDALE will suffer great
14 and irreparable damage.

15 **FOURTH CAUSE OF ACTION**

16 **Injunctive Relief**

17 **(Against all Defendants)**

18 75. ROSEDALE incorporates by reference paragraphs 1 through 74 as if they were fully
19 stated herein.

20 76. Unless ROSEDALE is granted injunctive relief, ROSEDALE will suffer irreparable
21 harm in that ROSEDALE will be denied its legal right to the timely delivery of a valuable water
22 supply that is essential to its continued maintenance and operation of its various groundwater
23 recharge facilities and that plays a critical role in alleviating and reversing the depletion of the
24 groundwater basin underlying ROSEDALE. Additionally, as alleged herein, the Kern River and its
25 water supply is a unique and large source of extremely high-quality surface water that is not readily
26 available from other sources nor is it certain to be capable of replacement. Also, because of where
27 ROSEDALE and its facilities are located, ROSEDALE cannot obtain the high-quality water and
28 the quantity of such high-quality water that it is entitled to under the Agreements as MQW at such

1 times as those supplies are available without suffering an undue burden, hardship, and delay, if such
2 acquisition is at all possible. Thus, unless the CITY is required to comply with the terms of the
3 Agreements by supplying one-third (1/3) of the MQW available to the CITY, ROSEDALE will (i)
4 suffer an undue burden, hardship, delay, and uncertainty with regard to its ability to replace the lost
5 water supply to which ROSEDALE is entitled to under the Agreements as MQW from the CITY,
6 (ii) suffer significant adverse impacts to the environment in the region and within the boundaries of
7 ROSEDALE; and (iii) suffers adverse impacts to the quantity, quality, depth and lift for pumping
8 groundwater in the region and within the boundaries of ROSEDALE.

9 77. ROSEDALE is entitled to injunctive relief and an order, pursuant to California Code
10 of Civil Procedure Sections 526 and 527, prohibiting the CITY from failing to allocate, sell and
11 deliver one-third (1/3) of the MQW available to the CITY to ROSEDALE at the Contract Price
12 pursuant to the terms and conditions of the Agreements, including a preliminary injunction pending
13 final judgment in this action instructing the CITY not to withhold the one-third (1/3) of the MQW
14 available to the CITY that is required to be sold to ROSEDALE at the Contract Price during the
15 term of the Agreements, as specified in the 1961 Agreement, as amended by the 1976 Amendment
16 and subsequently by the Annexation Agreement, and as provided in the Agreements.

17 78. ROSEDALE has no plain, speedy, or adequate remedy at law to obtain redress for
18 the grievances complained of herein; damages, if awarded, cannot be properly ascertained as the
19 damages from the CITY's failure to continue to implement or perform the Agreements are difficult
20 to assess and are overly speculative, and damages will be inadequate to compensate ROSEDALE
21 for the detriment it has suffered and will continue to suffer including, but not limited to, the loss of
22 high-quality Kern River water, which will, in turn affect ROSEDALE's ability to supply water to
23 its landowners and water users and ensure sustainability of the groundwater aquifer underlying
24 ROSEDALE. As alleged herein, the Kern River and its water supply is a unique and large source
25 of extremely high-quality surface water that is not readily available from other sources nor is it
26 certain to be capable of replacement. Also, as alleged herein, ROSEDALE relies heavily on the
27 acquisition of high-quality surface water from the Kern River on which its numerous groundwater
28 recharge facilities depend and which plays a critical role in alleviating and reversing the depletion

1 of the groundwater basin beneath ROSEDALE. Moreover, because of where ROSEDALE and its
2 facilities are located, ROSEDALE cannot obtain the high-quality water and the quantity of such
3 high-quality water that ROSEDALE is entitled to under the Agreements as MQW, at such times as
4 those supplies are available, without suffering an undue burden, hardship, and delay, if any such
5 acquisition is at all possible.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, ROSEDALE prays for relief against the CITY and DOES 1 through 100,
8 inclusive, and each of them, as follows:

- 9 1. For entry of judgment in favor of ROSEDALE;
- 10 2. For a judicial determination construing and determining the effect and validity of
11 the 1961 Agreement, the 1976 Amendment, and the Annexation Agreement, and the respective
12 rights, duties, and obligations of the CITY and ROSEDALE under such Agreements;
- 13 3. For a judicial determination that the 1961 Agreement, the 1976 Amendment, and
14 the Annexation Agreement are valid and require in part that the CITY notify ROSEDALE of the
15 MQW available to the CITY in any given year and to allocate, sell and deliver to ROSEDALE one-
16 third (1/3) of the MQW available to the CITY at the Contract Price;
- 17 4. For specific performance of the Agreements between the CITY and ROSEDALE,
18 ordering the CITY to specifically perform the CITY's obligations under the Agreements regarding
19 the sale of MQW available to the CITY to ROSEDALE at the Contract Price, consistent with the
20 Court's final judgment determining the and declaring the lawful construction of the Agreements
21 and the CITY and ROSEDALE's respective rights, duties and obligations under such Agreements;
- 22 5. For injunctive relief, including a temporary restraining order, preliminary injunction,
23 and permanent injunction, directing the CITY to continue to supply MQW available to the CITY to
24 ROSEDALE under the Agreements, consistent with the Court's final judgment determining the and
25 declaring the lawful construction of the Agreements and the respective rights, duties and obligations
26 of the CITY and ROSEDALE under such Agreements;
- 27 6. For costs of suit incurred herein to the full extent otherwise provided by law; and

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1 7. For such other and further relief as the Court deems just and proper.

2 Dated: December 11, 2019

BELDEN BLAINE RAYTIS, LLP

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By:



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DANIEL N. RAYTIS,
Attorneys for Plaintiff Rosedale-Rio
Bravo Water Storage District

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[Complaint Deemed Verified Pursuant to California Code of Civil Procedure Section 446]

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