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10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF KERN—METROPOLITAN DIVISION

12 ROSEDALE-RIO BRAVO WATER  
STORAGE DISTRICT, a California Water  
13 Storage District; CAWELO WATER  
DISTRICT, a California Water District;  
14 PIXLEY IRRIGATION DISTRICT, a  
California Irrigation District; and LOWER  
15 TULE RIVER IRRIGATION DISTRICT,  
a California Irrigation District,

Case No. BCV-21-100418

VERIFIED COMPLAINT FOR:

1. Declaratory Relief;
2. Anticipatory Breach of Contract and Specific Performance;
3. Injunctive Relief;
4. Reformation – Mutual Mistake
5. Reformation – Unilateral Mistake

16 Plaintiff,

17 v.

18 KERN COUNTY WATER AGENCY, a  
special act public agency, on behalf of itself  
19 and its IMPROVEMENT DISTRICT NO.  
4; KERN DELTA WATER DISTRICT, a  
20 California Water District; ARVIN-  
EDISON WATER STORAGE DISTRICT,  
21 a California Water Storage District; RAG  
GULCH WATER DISTRICT, a California  
22 Water District; KERN-TULARE WATER  
DISTRICT, a California Water District;  
23 COUNTY of FRESNO, a political  
subdivision of the State of California;  
24 COUNTY of TULARE, a political  
subdivision of the State of California;  
25 HILLS VALLEY IRRIGATION  
DISTRICT, a California Irrigation District;  
26 TRI-VALLEY WATER DISTRICT, a  
California Water District, and DOES 1  
27 through 100, Inclusive,

28 Defendants.

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Irrigation District and

Lower Tule River Irrigation

District

1 Plaintiffs ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, CAWELO WATER  
2 DISTRICT, PIXLEY IRRIGATION DISTRICT, and LOWER TULE RIVER IRRIGATION  
3 DISTRICT (collectively “Plaintiffs”) allege the following:

4 **PARTIES**

5 **Plaintiffs**

6 1. Plaintiff Rosedale-Rio Bravo Water Storage District (hereinafter, “Rosedale”) is, and  
7 at all times herein mentioned was, a California Water Storage District formed and existing pursuant  
8 to the California Water Storage District Law (Division 14 of the California Water Code Sections  
9 39000, *et seq.*). Rosedale is authorized by the California Water Storage District Law to commence  
10 and maintain this action on behalf of itself and its landowners and water users. Rosedale funded and  
11 participated in the construction of the Cross Valley Canal (hereinafter, the “CVC”) in or around 1976  
12 along with various other “Existing Canal Participants”, and is an “Existing Canal Participant”  
13 pursuant to the “2006 Operating Agreement,” which is that certain agreement by and between all of  
14 the parties hereto entered into in or around 2006 and entitled, *Contract Among Kern County Water*  
15 *Agency and Various Parties for the Construction of the Expansion of the Cross-Valley Canal*. As  
16 described more fully herein, the Existing Canal Participants are those entities which funded and  
17 participated in the original construction of the CVC, and other entities that are successors-in-interest  
18 pursuant to an assignment of the rights and obligations of another Existing Canal Participant.

19 2. Plaintiff Cawelo Water District (hereinafter, “Cawelo”) is, and at all relevant times  
20 herein mentioned was, a California Water District formed and existing under and pursuant to  
21 California Water District Law (Division 13 of the California Water Code Sections 34000, *et seq.*).  
22 Cawelo is authorized by the California Water District Law to commence and maintain this action on  
23 behalf of itself and its landowners and water users. Cawelo funded and participated in the  
24 construction of the CVC in or around 1976 along with various other “Existing Canal Participants”  
25 and is an Existing Canal Participant pursuant to the 2006 Operating Agreement.

26 3. Plaintiff Pixley Irrigation District (“PID”) is, and at all times herein mentioned was,  
27 a California Irrigation District organized and existing under the California Irrigation District Law  
28 (Division 11 of the California Water Code Sections 20500, *et seq.*). PID is authorized by the

1 California Irrigation District Law to commence and maintain this action on behalf of itself and its  
2 landowners and water users. PID is a successor-in-interest pursuant to an assignment of the rights  
3 and obligations of another Existing Canal Participant, and is an Existing Canal Participant pursuant  
4 to the 2006 Operating Agreement.

5 4. Plaintiff Lower Tule River Irrigation District (“LTRID”) is, and at all times herein  
6 mentioned was, a California Irrigation District organized and existing under the California Irrigation  
7 District Law (Division 11 of the California Water Code Sections 20500, *et seq.*). LTRID is  
8 authorized by the California Irrigation District Law to commence and maintain this action on behalf  
9 of itself and its landowners and water users. LTRID is a successor-in-interest pursuant to an  
10 assignment of the rights and obligations of another Existing Canal Participant, and is an Existing  
11 Canal Participant pursuant to the 2006 Operating Agreement.

12 **Defendants**

13 5. Defendant Kern County Water Agency (hereinafter, the “KCWA”) is, and at all times  
14 herein mentioned was, a political subdivision of the State of California organized and existing under  
15 the Kern County Water Agency Act (California Water Code Appendix, § 99-1, *et seq.*). The Board  
16 of Directors of the KCWA is also the governing body of its Improvement District No. 4 (hereinafter,  
17 “ID4”). Plaintiffs are informed and believe, and on that ground allege, that KCWA funded and  
18 participated in the construction of the CVC in or around 1976 on behalf of its ID4, along with the  
19 various other “Existing Canal Participants”. Plaintiffs are informed and believe, and on that ground  
20 allege, that KCWA funded and participated in the construction of the expansion of the CVC  
21 beginning in or around 2004 along with the other “New Canal Participants” as that term is defined  
22 further herein, and is a “New Canal Participant” pursuant to the 2006 Operating Agreement. At all  
23 times relevant to this action, KCWA acted as the operator of the CVC and, among other things,  
24 administered the allocation of capacities in the CVC among the various CVC participants, and  
25 managed the project described herein which included the design and construction of the “New Canal”  
26 (as that term is further defined herein and in relevant agreements) which was to add capacity to the  
27 Existing Canal (as that term is further defined herein and in relevant agreements).



1 informed and believe that RGWD was consolidated with Kern-Tulare Water District in or around  
2 2009, and that the Kern-Tulare Water District is the successor in interest to all of the rights and  
3 interests of RGWD in and to the CVC.

4 10. Kern-Tulare Water District (hereinafter, collectively with RGWD, “KTWD”) is, and  
5 at all relevant times herein mentioned was, a California Water District organized and existing under  
6 and pursuant to California Water District Law (Division 13 of the California Water Code Sections  
7 34000, *et seq.*). Plaintiffs are informed and believe, and on that ground allege, that KTWD funded  
8 and participated in the construction of the CVC in or around 1976 along with various other “Existing  
9 Canal Participants” and is an Existing Canal Participant pursuant to the 2006 Operating Agreement.

10 11. Fresno County (named herein as County of Fresno) is, and at all times herein  
11 mentioned was, a political subdivision of the State of California, organized and existing under the  
12 laws thereof, including California Government Code Sections 23000, *et seq.* Plaintiffs are informed  
13 and believe, and on that ground allege, that Fresno County funded and participated in the  
14 construction of the CVC in or around 1976 as a member of the Fresno-Tulare Group along with  
15 various other “Existing Canal Participants”, and/or is a successor-in-interest pursuant to an  
16 assignment of the rights and obligations of another Existing Canal Participant, and is an Existing  
17 Canal Participant pursuant to the 2006 Operating Agreement.

18 12. Tulare County (named herein as County of Tulare) is, and at all times herein  
19 mentioned was, a political subdivision of the State of California, organized and existing under the  
20 laws thereof, including California Government Code Sections 23000, *et seq.* Plaintiffs are informed  
21 and believe, and on that ground allege, that Tulare County funded and participated in the construction  
22 of the CVC in or around 1976 as a member of the Fresno-Tulare Group along with various other  
23 “Existing Canal Participants”, and/or is a successor-in-interest pursuant to an assignment of the  
24 rights and obligations of another Existing Canal Participant, and is an Existing Canal Participant  
25 pursuant to the 2006 Operating Agreement.

26 13. Hills Valley Irrigation District (“HVID”) is, and at all times herein mentioned was, a  
27 California Irrigation District organized and existing under the California Irrigation District Law  
28 (Division 11 of the California Water Code Sections 20500, *et seq.*). Plaintiffs are informed and

1 believe, and on that ground allege, that HVID funded and participated in the construction of the CVC  
2 in or around 1976 as a member of the Fresno-Tulare Group along with various other “Existing Canal  
3 Participants”, and/or is a successor-in-interest pursuant to an assignment of the rights and obligations  
4 of another Existing Canal Participant, and is an Existing Canal Participant pursuant to the 2006  
5 Operating Agreement.

6 14. Tri-Valley Water District (“TVWD”) is, and at all relevant times herein mentioned  
7 was, a California Water District organized and existing under and pursuant to California Water  
8 District Law (Division 13 of the California Water Code Sections 34000, *et seq.*). Plaintiffs are  
9 informed and believe, and on that ground allege, that TVWD funded and participated in the  
10 construction of the CVC in or around 1976 as a member of the Fresno-Tulare Group along with  
11 various other “Existing Canal Participants”, and/or is a successor-in-interest pursuant to an  
12 assignment of the rights and obligations of another Existing Canal Participant, and is an Existing  
13 Canal Participant pursuant to the 2006 Operating Agreement.

14 15. Fresno County, Tulare County, HVID, TVWD, PID, and LTRID are collectively  
15 referred to herein as the “Fresno-Tulare Group”.

16 16. Plaintiffs do not seek any relief to alter any of the interests of RGWD, KTWD, Fresno  
17 County, Tulare County, HVID, or TVWD (hereinafter, collectively “Necessary Parties” and together  
18 with Plaintiffs, the “Existing Canal Participants”), or any other Existing Canal Participant as that  
19 term is defined in the 2006 Operating Agreement with respect to the use and operation of the CVC,  
20 and the rights and interests of the Existing Canal Participants in and to their respective capacities in the  
21 Existing Canal or the related CVC facilities generally. Plaintiffs include the Necessary Parties herein  
22 only as necessary parties pursuant to Sections 389 of the California Code of Civil Procedure.

23 17. The true names and capacities, whether individual, corporate, associate, or otherwise,  
24 of DOES 1 through 100, inclusive, are unknown to Plaintiffs at this time. Plaintiffs sue those  
25 defendants by such fictitious names and will amend this Complaint to show their true names and  
26 capacities when they have been ascertained. Plaintiffs are informed and believe, and on that ground  
27 allege, that each of the defendants designated as a DOE has an interest in the matters alleged in this  
28 action, and/or is responsible in some manner for the conduct complained of herein. At all times

1 herein mentioned, each Defendant, including each of the defendants designated as a DOE, was an  
2 agent, servant, employee or other representative of each other Defendant, and at all times was acting  
3 within the course and scope of said agency, service, employment or other relationship.

4 **JURISDICTION AND VENUE**

5 18. This Court has jurisdiction over all the matters alleged in this Complaint pursuant to  
6 California Code of Civil Procedure Sections 410.10, 526, 527, and 1060 and California Water Code  
7 Section 43700.

8 19. Pursuant to California Code of Civil Procedure Sections 392, *et seq.*, venue is proper  
9 in this Court because a substantial part of the events giving rise to the causes of action set forth herein  
10 occurred within this judicial district and the CVC that is the subject of this action is situated in this  
11 judicial district.

12 20. The parties to this Complaint entered into a certain *Agreement Tolling Time Defenses*,  
13 which was effective February 29, 2020 and expires by its terms on February 28, 2021. Pursuant to  
14 said *Agreement Tolling Time Defenses*, the parties agreed that any time periods for the filing of any  
15 claims, actions, lawsuits or other judicial and quasi-judicial proceedings, including any statutes of  
16 limitation, waiver, estoppel, laches or any other defense based on the passage of time (collectively  
17 “Time Defenses”), shall be tolled for the term of the *Agreement Tolling Time Defenses*. The parties  
18 further agreed not to raise any Time Defenses against any of the claims, actions, lawsuits or other  
19 judicial and quasi-judicial proceedings that could have been filed during the term of the agreement.

20 **STANDING**

21 21. Plaintiffs have standing to assert the claims stated herein as they entered into and  
22 executed the agreements referenced below with the Existing Canal Participants and the New Canal  
23 Participants, and Plaintiffs have determined that this action is necessary to carry out the purpose(s)  
24 and/or protect the interests of Plaintiffs, their landowners and water users.

25 22. Also, as alleged herein, the rights and duties of the New Canal Participants and the  
26 Existing Canal Participants, including Plaintiffs, under the agreements referenced below directly  
27 affect the purpose(s) and interests of Plaintiffs, including the maintenance and operation of their  
28 public projects, including some or all of their respective groundwater storage projects.







1           32.     The 2006 Operating Agreement, in relevant part, defined the “Existing Canal” as the  
2 “the concrete lined canal approximately 17 miles in length, extending from the California Aqueduct  
3 near Tupman easterly to the Arvin-Edison Canal..., together with the turnout from the California  
4 Aqueduct, Pumping Plant Nos. 1 through 6, rights of way, easements, road crossings, fences,  
5 appurtenances and other facilities necessary for its maintenance and operation, with the estimated  
6 capacity of each reach in existence on December 31, 2003 as stated in Exhibit B [to the 2006  
7 Operating Agreement].” In addition, the 2006 Operating Agreement defined the “New Canal” as  
8 “the approximately 500 cfs capacity to be added to the Existing Canal pursuant to the [2006  
9 Construction Agreement],” and which is referred to herein as the “New Canal” (emphasis added).  
10 The expected forward flow capacities in the New Canal and the New Canal Participants’ respective  
11 rights therein are further identified in Exhibit F to the 2006 Operating Agreement as 500 cfs in total.

12           33.     Thus, the New Canal was to have an approximate capacity of approximately 500 cfs,  
13 which together with the Existing Canal’s capacity of approximately 922 cfs, was to result in a total  
14 CVC capacity of approximately 1,422 cfs. These capacities were used and referenced throughout the  
15 2006 Operating Agreement and throughout various other documents relating to the CVC and the  
16 project to expand the CVC by the construction of the New Canal.

17           34.     As reflected in the 2006 Operating Agreement, the parties to said agreement intended  
18 for the rights of the Existing Canal Participants to remain unaltered with respect to the Existing Canal  
19 capacity. In this regard, the 2006 Operating Agreement sets forth and distinguishes between the  
20 rights of the Existing Canal Participants in the Existing Canal (including the capacity therein in  
21 existence on December 31, 2003), and the rights of the New Canal Participants in the New Canal  
22 (including the capacity therein which was to be added to the Existing Canal). As such, the 2006  
23 Operating Agreement reflects the parties’ intent that the “New Canal” and the associated rights in  
24 and to the capacity therein attaches only to the extent that the New Canal and its associated facilities  
25 were added to the Existing Canal and its associated facilities, and that the rights to the Existing Canal  
26 and the New Canal would be administered independently.

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1           35.     Articles 5 and 7 of the 2006 Operating Agreement, in relevant parts, provide as  
2 follows (emphasis added):

3           ARTICLE 5. USE OF CAPACITY IN THE EXISTING CANAL.

4           (a) *Each Existing Canal Participant shall have the unrestricted right to utilize*  
5 *its own designated capacity in the Existing Canal on a first priority basis for*  
6 *itself or its assigns*, subject to the priorities and limitations specified herein.

7           (b) To the extent there is at any time unused capacity available in the Existing  
8 Canal, it shall be allocated among the Existing Canal Participants on a second  
9 priority basis. If the requests to use such unused capacity exceed the amount  
10 available, the unused capacity shall be allocated among those requesting it in  
11 proportion to their respective Existing Canal Capacity Percentage within the  
12 respective reach where the unused capacity is available.

13           (c) Any remaining unused capacity shall be offered to the New Canal  
14 Participants on a third priority basis. If the requests to use such unused capacity  
15 exceed the amount available, the unused capacity shall be allocated among those  
16 requesting it in proportion to their respective New Canal Capacity Percentage  
17 within the respective reach where the unused capacity is available.

18           ARTICLE 7. USE OF CAPACITY IN THE NEW CANAL.

19           (a) *Each New Canal Participant shall have an unrestricted right to use its New*  
20 *Canal capacity on a first priority basis for itself or its assigns*, subject to the  
21 priorities and limitations specified herein.

22           (1) Capacity Use During Article 21 Periods: Kern Delta shall have a first priority  
23 right to use up to 40% of the New Canal capacity for delivery of Article 21  
24 Water. If Arvin-Edison acquires a long-term State Water Project water supply,  
25 Arvin-Edison shall have a first priority right to use up to 20% of the New Canal  
26 capacity for delivery of its share of Article 21 Water. Arvin-Edison shall also  
27 have a first priority right to wheel Article 21 Water associated with any State  
28 Water Project Table A amount on behalf of a Basic Member Unit for delivery  
within Arvin Edison's district boundaries up to Arvin-Edison's full capacity. The  
Agency shall have a first priority right to use the remaining 40% of the New  
Canal capacity for the delivery of Article 21 Water. The Agency shall also have  
a second priority right to use all of the New Canal capacity for delivery of Article  
21 Water, less Kern Delta's, Arvin-Edison's and the Agency's use specified  
above. In order for the Agency to exercise this priority to use Kern Delta's and  
Arvin-Edison's New Canal capacity, the Agency's 40% of New Canal capacity  
must first be utilized by the Agency for local water management purposes. Third  
priority for any remaining capacity shall be allocated 2/3 to Kern Delta and 1/3  
to Arvin-Edison. Fourth priority for any remaining capacity shall be offered to  
the Existing Canal Participants. If the requests to use this unused capacity exceed  
the amount available, it shall be allocated to those requesting its use in proportion  
to their Existing Canal Capacity Percentage within the respective reach where  
the unused capacity is available.

1 (2) Capacity Use During Non-Article 21 Periods: During those periods when  
2 Article 21 Water is not available, the Agency and Kern Delta shall each have a  
3 first priority right to use 40% of the New Canal capacity and Arvin-Edison shall  
4 have a first priority right to use 20% of the New Canal capacity. Arvin-Edison  
5 and Kern Delta shall have a second priority right to use each other's capacity to  
6 the extent there is unused capacity. To the extent that there is further unused  
7 capacity available in the New Canal, the other New Canal Participants may use  
8 it on a third priority basis. If the requests to use this unused capacity exceed the  
9 amount available, it shall be allocated to those requesting its use in proportion to  
10 their New Canal Capacity Percentage within the respective reach where the  
11 unused capacity is available. Any remaining unused capacity in the New Canal  
12 shall be offered to the Existing Canal Participants on a fourth priority basis. If  
13 the requests to use this unused capacity exceed the amount available, it shall be  
14 allocated to those requesting its use in proportion to their Existing Canal  
15 Capacity Percentage within the respective reach where the unused capacity is  
16 available.

17 36. Article 2 of the 2006 Operating Agreement states that the agreement shall become  
18 effective upon substantial completion of the New Canal. "Substantial Completion" was to be  
19 determined by KCWA after consulting with a committee of the Existing Canal Participants and New  
20 Canal Participants.

21 **Declaration of Substantial Completion of the New Canal and**  
22 **Operation of the Existing Canal and New Canal Under the 2006 Operating Agreement**

23 37. In or around July, 2012, KCWA advised the Existing Canal Participants, including  
24 Plaintiffs, and the New Canal Participants, that the construction of the New Canal was substantially  
25 complete, and on or around July 26, 2012, the KCWA Board of Directors declared that the New  
26 Canal was substantially complete. At that time, KCWA staff (which had oversaw and administered  
27 the construction of the expansion of the CVC) represented that approximately 500 cfs of New Canal  
28 capacity had been added to the Existing Canal in accordance with the agreements between the  
Existing Canal Participants and the New Canal Participants. KCWA staff further noted that certain  
"issues" may need to be addressed in the future, including "whether final measurements of existing  
and new canal capacities need to be determined and updating the appropriate capacity and voting  
rights in the [2006 Operating Agreement]."

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1 “Cross Valley Canal Advisory Committee” to discuss the allocation of the current capacities in the  
2 CVC.

3 42. During these meetings, Plaintiffs (in particular Rosedale) have contended that the  
4 terms of the 2006 Operating Agreement including, but not limited to, the definitions of the “Existing  
5 Canal” and “New Canal”, and the separate articles (particularly Articles 5 and 7 and the definitions  
6 in the agreement) specifying the parties respective rights in and to the capacities of each, require that  
7 the rights of the Existing Canal Participants in and to the capacity of the Existing Canal and its related  
8 facilities as it existed on December 31, 2003, remain unaltered by the construction of the New Canal.  
9 In this regard, Plaintiffs have contended that, pursuant to the terms of the 2006 Operating Agreement,  
10 the “New Canal” and the associated rights in and to the capacity therein attach only to the extent that  
11 the New Canal and its associated facilities added to the capacity of the Existing Canal, and that the  
12 capacity rights to the Existing Canal and the New Canal should be administered independently in  
13 accordance with the terms of the 2006 Operating Agreement. As such, Plaintiffs have contended that,  
14 pursuant to Article 5 of the 2006 Operating Agreement, Plaintiffs shall each have the unrestricted  
15 right to utilize its own designated capacity in the Existing Canal on a first priority basis for itself and  
16 its assigns, and that the Existing Canal constitutes, generally, all of the capacity in the CVC and its  
17 related facilities in existence on December 31, 2003.

18 43. KCWA and the other New Canal Participants disagree with Plaintiffs’ contentions  
19 and contend that the 2006 Operating Agreement should be (and in fact has been) applied as though  
20 the New Canal has a capacity of 500 cfs (which it in fact does not). KCWA and the other New Canal  
21 Participants contend that the allocation of capacities in and to the flow within the CVC and all related  
22 CVC facilities shall be allocated according to the percentages set forth in Exhibit D to the 2006  
23 Operating Agreement (which assumes that 500 cfs of capacity was in fact “added to” the Existing  
24 Canal by the construction of the New Canal), regardless of the amount of capacity that was in fact  
25 “added to” the Existing Canal by the construction of the New Canal.

26 44. Plaintiffs are informed and believe that KCWA has, and intends in the future to,  
27 allocate the capacity in and to the flow within the CVC (and its appurtenant facilities) as expanded  
28 in a manner which disregards the actual amount of flow capacity that was added to the Existing

1 Canal by the New Canal in direct violation of the terms of the 2006 Operating Agreement, pursuant  
2 to which the rights of the Existing Canal Participants are to remain unaltered with respect to the  
3 Existing Canal capacity. When the capacity is allocated by KCWA in such a manner, especially  
4 during such times as the demands of the Existing Canal Participants and the New Canal Participants  
5 meet or exceed the capacity that is available in the CVC facilities, Plaintiffs have experienced and/or  
6 will experience negative water supply impacts in connection with Plaintiffs' rights in and to the  
7 capacity of the Existing Canal, even though the parties to the 2006 Operating Agreement did not  
8 intend to alter the rights of the Existing Canal Participants to the capacity of the Existing Canal, and  
9 the terms of the 2006 Operating Agreement demand that Existing Canal Participants, including  
10 Plaintiffs, have and maintain the unrestricted right to utilize their own designated capacity in the  
11 Existing Canal on a first priority basis.

12 45. The 2006 Operating Agreement requires that KCWA allocate the capacity within the  
13 CVC as expanded (and its appurtenant facilities) in a manner which takes into account the actual  
14 amount of flow capacity that was added to the Existing Canal by the New Canal (i.e., less than 500  
15 cfs), such that Plaintiffs' rights in and to the capacity of the Existing Canal, which were in existence  
16 on December 31, 2003, remain unaltered.

17 46. Plaintiffs have no plain, speedy, or adequate remedy at law to obtain redress for the  
18 grievances complained of herein; damages, if awarded, cannot be properly ascertained as the  
19 damages from KCWA's failure to perform the 2006 Operating Agreement in accordance with its  
20 terms, as described herein, are difficult to assess and are overly speculative, and damages will be  
21 inadequate to compensate Plaintiffs for the detriment they have suffered and/or will continue to  
22 suffer including, but not limited to, the loss of available water supplies, which will, in turn, affect  
23 Plaintiffs' abilities to supply water to their landowners and water users and ensure sustainability  
24 of the groundwater aquifer underlying Plaintiffs' districts. The sources of water available to  
25 Plaintiffs for use from the CVC are unique and a major source of water that is not readily available  
26 from other sources, locations or facilities, nor is it certain to be capable of replacement, and  
27 Plaintiffs rely heavily on acquisition and use of water conveyed through the CVC, upon which the  
28 use of their numerous groundwater recharge facilities and use by their landowners and water users



1 depend, and which plays a critical role in alleviating and reversing the depletion of the groundwater  
2 basin beneath Plaintiffs' districts. In addition, because of where Plaintiffs and their respective  
3 facilities are located, as well as the extreme variability in available water supplies generally,  
4 Plaintiffs cannot obtain alternate water supplies at such times as those supplies are available to be  
5 conveyed through their capacity in the CVC without suffering an undue burden, hardship, and  
6 delay, if such acquisition is at all possible. Also, the CVC itself is unique and cannot be replaced  
7 by Plaintiffs. Thus, unless KCWA is required to comply with the terms of the 2006 Operating  
8 Agreement, which include allocating the capacity within the CVC in a manner that does not alter  
9 Plaintiffs' rights in and to the capacity of the Existing Canal and its related facilities, Plaintiffs will  
10 suffer great and irreparable damage.

#### 11 **Mistake**

12 47. As described more fully herein, the Existing Canal Participants, including Plaintiffs,  
13 and the New Canal Participants, executed the 2006 Operating Agreement in or around 2006 at a time  
14 when the construction of the New Canal had not yet been completed. At all times relevant hereto,  
15 the management and administration of the design and construction of the New Canal was performed  
16 on a day-to-day basis by KCWA, KCWA staff and/or KCWA consultants.

17 48. Pursuant to Article 2 of the 2006 Operating Agreement, the 2006 Operating  
18 Agreement was to "become effective upon substantial completion of the New Canal" as determined  
19 by the KCWA. The KCWA determined that the New Canal was substantially complete on or around  
20 July 26, 2012.

21 49. During the negotiations leading up to the 2006 Operating Agreement, at the time of  
22 its execution, and at the time it became effective, the Existing Canal Participants, including Plaintiffs,  
23 and the New Canal Participants agreed, intended, and expected that the New Canal was being  
24 constructed to operate effectively at a capacity of approximately 500 cfs. Together with the Existing  
25 Canal (which had a capacity of approximately 922 cfs), the addition of the New Canal was intended  
26 and expected to result in a collective and total CVC capacity of approximately 1,422 cfs. Indeed,  
27 the 2006 Operating Agreement defines the New Canal as "the approximate[] 500 cfs capacity to be  
28 added to the Existing Canal pursuant to the [2006 Construction Agreement]." (Emphasis added).

1           50.     Additionally, as set forth above, during the negotiations leading up to the 2006  
2 Operating Agreement, at the time of its execution, and at the time it became effective, the Existing  
3 Canal Participants, including Plaintiffs, and the New Canal Participants agreed, intended, and  
4 expected, in pertinent part, (a) for the rights of the Existing Canal Participants to remain unaltered  
5 with respect to the Existing Canal capacity, including the allocation of and rights to the capacity of  
6 the Existing Canal which was in existence on December 31, 2003; and (b) to provide the New Canal  
7 Participants with a right to the capacity that was “to be added” to the Existing Canal.

8           51.     As described more fully herein, the parties to the 2006 Operating Agreement, namely  
9 Plaintiffs and the other Existing Canal Participants as well as the New Canal Participants, mistakenly  
10 believed that the New Canal was being constructed to operate effectively at, and would have, a  
11 capacity of approximately 500 cfs upon substantial completion, and as a result, the 2006 Operating  
12 Agreement (including its Exhibits and the allocation of capacities to the Existing Canal Participants  
13 and the New Canal Participants) was based on and assumes that the New Canal would have a  
14 capacity of approximately 500 cfs upon substantial completion, which together with the Existing  
15 Canal’s capacity of approximately 922 cfs was to result in a collective and total CVC capacity of  
16 approximately 1,422 cfs.

17           52.     However, upon the KCWA’s declaration of substantial completion, and subsequently,  
18 the capacity of the CVC as expanded was and has remained substantially and materially less than  
19 1,422 cfs, as required and assumed by the terms of the 2006 Operating Agreement, and unbeknownst  
20 to the Existing Canal Participants, including Plaintiffs, and the New Canal Participants. That is,  
21 unbeknownst to the Existing Canal Participants and the New Canal Participants, at the time that the  
22 2006 Operating Agreement was negotiated, drafted, executed and became effective, the New Canal  
23 was not being constructed to, and did not “add” approximately 500 cfs to the Existing Canal’s  
24 capacity of approximately 922 cfs, as was believed, envisioned, intended and expected by the  
25 Existing Canal Participants, including Plaintiffs, and the New Canal Participants.

26           53.     Alternatively to those allegations set forth herein alleging a mutual mistake of the  
27 parties, Plaintiffs allege that at the time of negotiating and executing the 2006 Operating Agreement,  
28 and at the time that it became effective, Plaintiffs unilaterally and mistakenly believed, through no

1 fault of Plaintiffs to exercise reasonable care, that (a) the New Canal was being constructed to have  
2 and did have a capacity of approximately 500 cfs and could be operated effectively at a capacity of  
3 approximately 500 cfs upon substantial completion and thereafter; and (b) that the 2006 Operating  
4 Agreement and the associated construction of the New Canal, would not and did not alter or  
5 otherwise modify the rights of the Existing Canal Participants, including Plaintiffs, with respect to  
6 their rights in and to the capacity of the Existing Canal and its related facilities in existence on  
7 December 31, 2003. In addition, Plaintiffs are informed and believe that, at the time of negotiating  
8 and executing the 2006 Operating Agreement and at the time that it became effective, some or all of  
9 the Defendants knew and/or suspected that Plaintiffs held such unilateral mistaken belief, and such  
10 Defendants misrepresented to Plaintiffs that the New Canal capacity would be and was in fact  
11 approximately 500 cfs and the 2006 Operating Agreement comported with their negotiations and  
12 agreement, as set forth above, including, but not limited to that the terms of the 2006 Operating  
13 Agreement did not alter or otherwise modify the rights of the Existing Canal Participants, including  
14 Plaintiffs, in and to the capacity of the Existing Canal and its related facilities in existence on  
15 December 31, 2003.

16         54. As a result, the 2006 Operating Agreement (including its Exhibits and the allocation  
17 of capacities to the Existing Canal Participants and New Canal Participants) fails to represent the  
18 true intentions of the Existing Canal Participants, including Plaintiffs, and the New Canal  
19 Participants to the extent that it allocates to the New Canal Participants capacities greater than the  
20 actual capacity of the New Canal that was added to the Existing Canal, which has resulted and/or  
21 will continue to result in an alteration and diminishment of the rights of the Existing Canal  
22 Participants, including Plaintiffs, to the capacity of the Existing Canal, which in turn, results in a loss  
23 of water supply to the Existing Canal Participants, including Plaintiffs.

24         55. As set forth above, the true intentions of the Existing Canal Participants and the New  
25 Canal Participants in making the 2006 Operating Agreement was for the rights of the Existing Canal  
26 Participants to remain unaltered as to the Existing Canal capacity (including the capacity therein  
27 in existence on December 31, 2003) and for the rights of the New Canal Participants described in  
28 the 2006 Operating Agreement to extend only to the actual capacity of the New Canal, that for the

1 “New Canal” and the associated rights in and to the capacity therein to attach only to the extent  
2 that the New Canal and its associated facilities was added to the Existing Canal; and for the rights  
3 to the Existing Canal and the rights to the New Canal to be administered independently.

4 56. That is, in the event the capacity in and to the flow within the CVC (and its  
5 appurtenant facilities) as expanded is allocated in a manner which disregards the actual amount of  
6 flow that was added by the New Canal, the Existing Canal Participants, including Plaintiffs, will  
7 experience negative water supply impacts in connection with their rights in and to the capacity of  
8 the Existing Canal, even though the parties to the 2006 Operating Agreement did not intend to alter  
9 the rights of the Existing Canal Participants to the capacity of the Existing Canal or its related  
10 facilities, and the terms and effectiveness of the 2006 Operating Agreement were and was based  
11 upon the mistaken declaration by KCWA that the New Canal added to the Existing Canal  
12 approximately 500 cfs of new capacity and was substantially complete.

13 **FIRST CAUSE OF ACTION**

14 **Declaratory Relief**

15 **(All Parties)**

16 57. Plaintiffs incorporate by reference paragraphs 1 through 56 as if they were fully stated  
17 herein.

18 58. An actual controversy has arisen and exists between Plaintiffs and the New Canal  
19 Participants, namely the KCWA, ARVIN-EDISON, and KERN DELTA, regarding the allocation  
20 of capacity, rights and responsibilities associated with the CVC as expanded, including the New  
21 Canal and the Existing Canal and related facilities, pursuant to and under the 2006 Operating  
22 Agreement. Specifically, in part, that in light of recent discoveries, issues and material mistakes of  
23 fact were made with respect to the KCWA’s declaration that the “New Canal” was substantially  
24 complete, which affects the allocation of rights and responsibilities of project participants, namely  
25 the New Canal Participants and the Existing Canal Participants, including Plaintiffs, under and  
26 pursuant to the 2006 Operating Agreement.

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1           59.     An actual controversy also has arisen and exists as to the management and operation  
2 of the allocation of the capacity, rights and responsibilities associated with the CVC and its related  
3 facilities as expanded, and as to the management of rights and operation thereof with respect to the  
4 “Existing Canal” and “New Canal” pursuant to and under the 2006 Agreement.

5           60.     As a result of the following, an actual controversy exists with the respect to the lawful  
6 construction and validity of, and respective rights, duties, and obligations of the Existing Canal  
7 Participants and the New Canal Participants under the 2006 Operating Agreement.

8           61.     Plaintiffs contend that the 2006 Operating Agreement is valid and enforceable  
9 between Plaintiffs and DEFENDANTS, and that pursuant to such Agreement, the management and  
10 operations of the CVC and its related facilities as expanded, both with respect to the rights of and  
11 available capacity thereof to Existing Canal Participants and New Canal Participants, be in  
12 accordance therewith.

13           62.     Plaintiffs contends that the terms of the 2006 Operating Agreement, including but  
14 not limited to the definitions of the “Existing Canal” and “New Canal”, and the separate articles  
15 (Articles 5 and 7) specifying the parties respective rights in and to the capacities of each, require that  
16 the rights of the Existing Canal Participants in and to the capacity of the Existing Canal and its related  
17 facilities remain unaltered by the construction and operation of the New Canal. In this regard,  
18 Plaintiffs contend that, pursuant to the terms of the 2006 Operating Agreement, the “New Canal”  
19 and the associated rights in and to the capacity therein attach only to the extent that the New Canal  
20 and its associated facilities added to the capacity of the Existing Canal, and that the rights to the  
21 Existing Canal and the New Canal should be administered independently in accordance with the  
22 terms of the 2006 Operating Agreement. As such, Plaintiffs contend that, pursuant to Article 5 of  
23 the 2006 Operating Agreement, Plaintiffs shall each have the unrestricted right to utilize its own  
24 designated capacity in the Existing Canal on a first priority basis for itself and its assigns, and that  
25 the Existing Canal constitutes, generally, the capacity in the CVC and its related facilities in  
26 existence on December 31, 2003.

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1           63.     Plaintiffs are informed and believe, and on that ground allege, that the KCWA’s  
2 declaration that the New Canal was substantially complete was false and that the New Canal was, in  
3 fact, either never finished or not constructed to a capacity of approximately 500 cfs as believed,  
4 envisioned, intended and expected by the New Canal Participants and the Existing Canal Participants,  
5 including Plaintiffs, at the time the 2006 Operating Agreement was negotiated, drafted, executed and  
6 became effective.

7           64.     KCWA and the other New Canal Participants disagree with Plaintiffs’ contentions  
8 and contend that the 2006 Operating Agreement should be (and in fact has been) applied as though  
9 the New Canal has a capacity of 500 cfs (which it in fact does not). KCWA and the other New Canal  
10 Participants contend that the allocation of capacities in and to the flow within the CVC as expanded  
11 and all related CVC facilities shall be allocated according to the percentages set forth in Exhibit D  
12 to the 2006 Operating Agreement (which mistakenly assumes that 500 cfs of capacity was in fact  
13 “added to” the Existing Canal by the construction of the New Canal), regardless of the amount of  
14 capacity that was in fact “added to” the Existing Canal by the New Canal.

15           65.     Plaintiffs contend that Defendants’ contentions and actions alleged herein are  
16 contrary to law and the proper construction of the 2006 Operating Agreement.

17           66.     Plaintiffs are informed and believe that KCWA has and, based upon representations  
18 by KCWA, intends in the future to allocate the capacity in and to the flow within the CVC (and its  
19 appurtenant facilities) as expanded in a manner which disregards the actual amount of flow capacity  
20 that was added to the Existing Canal by the construction of the New Canal, in direct violation of the  
21 2006 Operating Agreement, pursuant to which the rights of the Existing Canal Participants are to  
22 remain unaltered with respect to the Existing Canal capacity. When the capacity is allocated by  
23 KCWA in such a manner, especially during such times as the demands of the Existing Canal  
24 Participants and the New Canal Participants meet or exceed the capacity that is available in the CVC  
25 facilities, Plaintiffs have experienced and/or will experience negative water supply impacts in  
26 connection with Plaintiffs’ rights in and to the capacity of the Existing Canal, even though the parties  
27 to the 2006 Operating Agreement did not intend to alter the rights of the Existing Canal Participants  
28 in and to the capacity of the Existing Canal, and the terms of the 2006 Operating Agreement demand

1 that Existing Canal Participants, including Plaintiffs, have and maintain the unrestricted right to  
2 utilize their own designated capacities in the Existing Canal on a first priority basis.

3 67. A final judgment determining and declaring the lawful construction and validity of  
4 the 2006 Operating Agreement and the respective rights, duties and obligations of the parties under  
5 such 2006 Operating Agreement shall serve to guide the future conduct of the parties during the term  
6 of the 2006 Operating Agreement, preserve the legal rights of Plaintiffs and avoid multiplicity of  
7 potential litigation between Plaintiffs and Defendants.

8 68. Accordingly, a judicial determination of the above-referenced actual controversy is  
9 necessary and appropriate under Code of Civil Procedure Section 1060, including a Court declaration  
10 determining the construction of the 2006 Operating Agreement and the respective legal rights and  
11 duties of the parties under such Agreement, including the future conduct and performance of the  
12 parties during the term of such Agreement, as specified in the 2006 Operating Agreement.

### 13 **SECOND CAUSE OF ACTION**

#### 14 **Anticipatory Breach of Contract and Specific Performance**

#### 15 **(Against KCWA)**

16 69. Plaintiffs incorporate by reference paragraphs 1 through 68 as if they were fully stated  
17 herein.

18 70. The consideration set forth in the 2006 Operating Agreement was fair, reasonable  
19 and adequate at the time such agreement was entered into. This includes, but is not limited to, the  
20 significant financial consideration paid by Plaintiffs for the construction, operation, maintenance,  
21 administration and other activities relating to the Existing Canal and its appurtenant facilities, as well  
22 as the operation, maintenance, administration and other activities relating the CVC and its  
23 appurtenant facilities as expanded.

24 71. KCWA has expressly repudiated and/or anticipatorily breached its contractual  
25 obligations with Plaintiffs under the 2006 Operating Agreement by, among other things, declaring  
26 its intention to allocate the capacity in and to the flow within the CVC (and its appurtenant facilities)  
27 as expanded in a manner which disregards the actual amount of flow capacity that was added to the  
28 Existing Canal by the New Canal, and to disregard the rights of the Existing Canal Participants,

1 including Plaintiffs, in and to the capacity of the Existing Canal and its appurtenant facilities under  
2 the 2006 Operating Agreement. KCWA's position in this regard is contrary to the terms of the 2006  
3 Operating Agreement, which requires that KCWA allocate the capacity within the CVC (and its  
4 appurtenant facilities) as expanded in a manner which takes into account the actual amount of flow  
5 capacity that was added to the Existing Canal by the New Canal (i.e., less than 500 cfs), such that  
6 Plaintiffs' rights in and to the capacity of the Existing Canal facilities, which were in existence on  
7 December 31, 2003, remain unaltered.

8         72. KCWA has not retracted this repudiation, even after KCWA and the New Canal  
9 Participants were specifically queried about it by Plaintiffs on various occasions in 2019 and 2020,  
10 nor has KCWA otherwise provided Plaintiffs with any assurance that KCWA intends to carry out its  
11 contractual obligations under the 2006 Operating Agreement by allocating and administering the  
12 parties' respective rights and responsibilities in the CVC as expanded and its related facilities in a  
13 manner consistent with the terms of the 2006 Operating Agreement.

14         73. Plaintiffs have at all times duly performed and/or tendered performance of all  
15 material conditions, covenants, and promises required of them under the 2006 Operating Agreement  
16 to receive KCWA's performance under such 2006 Operating Agreement and remain ready, able and  
17 willing to continue to perform all of those terms and conditions that they were and are required to  
18 perform pursuant to the 2006 Operating Agreement.

19         74. As a result of the foregoing, KCWA has materially and anticipatorily breached the  
20 2006 Operating Agreement.

21         75. As a direct and proximate cause of KCWA's material and anticipatory breaches of  
22 its contractual obligations, and because KCWA's breaches will delay and/or completely prevent  
23 Plaintiffs from obtaining access and use of available water supplies to which they are entitled to  
24 convey in the Existing Canal and its related facilities under the terms of the 2006 Operating  
25 Agreement, Plaintiffs have no plain, speedy, or adequate remedy at law to obtain redress for the  
26 grievances complained of herein. Damages, if awarded, cannot be properly ascertained as the  
27 damages from KCWA's failure to perform the 2006 Agreement in accordance with its terms, as  
28 described herein, are difficult to assess and are overly speculative, and damages will be inadequate



1 to compensate Plaintiffs for the detriment they have suffered and/or will continue to suffer including,  
2 but not limited to, the loss of access to and use of available water supplies, which will, in turn, affect  
3 Plaintiffs' ability to supply water to their landowners and water users and ensure sustainability of the  
4 groundwater aquifer underlying Plaintiffs' districts. The sources of water available to Plaintiffs for  
5 use from the CVC are unique and a major source of water that is not readily available from other  
6 sources, locations or facilities, nor is it certain to be capable of replacement, and Plaintiffs rely  
7 heavily on the acquisition and use of water conveyed through the CVC, upon which the use of  
8 their numerous groundwater recharge facilities and use by their landowners and water users depend,  
9 and which plays a critical role in alleviating and reversing the depletion of the groundwater basin  
10 beneath Plaintiffs' districts. Also, the timing and availability of water supplies is highly variable,  
11 resulting in the permanent loss of water supplies when Plaintiffs are denied access to their rightful  
12 capacity in the CVC and related facilities at those time that water supplies are available to Plaintiffs  
13 and the demands of the Existing Canal Participants and the New Canal Participants meet or exceed  
14 the actual capacity of the CVC as constructed. In addition, due to Plaintiffs' locations with respect  
15 to the location of the CVC and its connected facilities, it is impractical, if not impossible, for  
16 Plaintiffs to obtain the quantity of water that they are entitled to convey within the CVC under the  
17 2006 Operating Agreement at such times as those supplies are available, and/or to replace water  
18 supplies for use within and by Plaintiffs when they are wrongfully denied access to their contractual  
19 capacity in the CVC without suffering an undue burden, hardship, and delay, if such acquisition is  
20 at all possible. Thus, unless KCWA is required to comply with the terms of the 2006 Operating  
21 Agreement, which include allocating the capacity in and to the follow within the CVC (and its  
22 appurtenant facilities) as expanded in a manner that does not alter Plaintiffs' rights in and to the  
23 capacity of the Existing Canal and its related facilities, which were in existence on December 31,  
24 2003, Plaintiffs will suffer great and irreparable damage.

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1 **THIRD CAUSE OF ACTION**

2 **Injunctive Relief**

3 **(Against KCWA)**

4 76. Plaintiffs incorporate by reference paragraphs 1 through 75 as if they were fully stated  
5 herein.

6 77. Unless Plaintiffs are granted injunctive relief, Plaintiffs will suffer irreparable harm  
7 in that Plaintiffs will be denied the delivery of valuable water supplies that are essential to their  
8 continued maintenance and operation of their various groundwater recharge facilities and that play  
9 a critical role in alleviating and reversing the depletion of the groundwater basin underlying Plaintiffs'  
10 districts. Additionally, due to the extreme variability in available water supplies and the location of  
11 Plaintiffs' facilities respect to the CVC, Plaintiffs cannot obtain alternate water supplies to replace  
12 those that it is prevented from delivering through its rightful capacity in the Existing Canal without  
13 suffering an undue burden, hardship, and delay, if such acquisition is at all possible. Thus, unless  
14 KCWA is required to comply with the terms of the 2006 Operating Agreement by providing  
15 Plaintiffs with access to and use of their rightful capacity in the Existing Canal, Plaintiffs will (i)  
16 suffer an undue burden, hardship, delay, and uncertainty with regard to the ability to replace the lost  
17 water supply, (ii) suffer significant adverse impacts to the environment in the region and within the  
18 boundaries of Plaintiffs; and (iii) suffer adverse impacts to the quantity, quality, depth and lift for  
19 pumping groundwater within the boundaries of Plaintiffs' districts.

20 78. Plaintiffs are entitled to injunctive relief and an order, pursuant to California Code of  
21 Civil Procedure Sections 526 and 527, prohibiting KCWA from failing to provide Plaintiffs with  
22 access to and use of their rightful capacity within the Existing Canal, pursuant to the terms and  
23 conditions of the 2006 Operating Agreement, including a preliminary injunction pending final  
24 judgment in this action instructing KCWA not to withhold from Plaintiffs access to and use of their  
25 rightful capacity within the Existing Canal, during the term of the 2006 Operating Agreement, as  
26 specified and provided for in said agreement, as described herein.

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1 79. Plaintiffs have no plain, speedy, or adequate remedy at law to obtain redress for the  
2 grievances complained of herein; damages, if awarded, cannot be properly ascertained as the  
3 damages from KCWA's failure to implement or perform the 2006 Operating Agreement in the  
4 manner intended by the parties and in accordance with its terms are difficult to assess and are overly  
5 speculative, and damages will be inadequate to compensate Plaintiffs for the detriment they have  
6 suffered and/or will continue to suffer including, but not limited to, the loss of access to and use of  
7 available water supplies, which will, in turn, affect Plaintiffs' abilities to supply water to their  
8 landowners and water users and ensure sustainability of the groundwater aquifer underlying  
9 Plaintiffs' districts. As alleged herein, available water supplies are highly variable and unique in  
10 timing and availability, and are not readily available from other sources, locations or facilities at any  
11 point in time, nor certain to be capable of replacement. Plaintiffs rely on the acquisition and use of  
12 water conveyed through the CVC, upon which the use by their landowners and water users and their  
13 numerous groundwater recharge facilities depend, and which plays a critical role in alleviating and  
14 reversing the depletion of the groundwater basin beneath Plaintiffs' districts. In addition, due to the  
15 location of Plaintiffs' facilities with respect to the CVC, it is impractical, if not impossible, for  
16 Plaintiffs to replace water supplies for use within Plaintiffs' boundaries when they are wrongfully  
17 denied access to their rightful and contractual capacity in the CVC at those times when water supplies  
18 are available to Plaintiffs.

19 **FOURTH CAUSE OF ACTION**

20 **Alternatively, Reformation of the 2006 Operating Agreement Based on Mutual Mistake of**

21 **Fact**

22 **(All Parties)**

23 80. Plaintiffs incorporate by reference paragraphs 1 through 40, 47 through 52 and 54  
24 through 56 as if they were fully stated herein.

25 81. As alleged above, the Existing Canal Participants, including Plaintiffs, and the New  
26 Canal Participants, executed the 2006 Operating Agreement in or around 2006 at a time when the  
27 construction of the New Canal had not yet been completed, and at all relevant times, the management  
28 and administration of the design and construction of the New Canal was performed on a day-to-day

1 basis by KCWA, KCWA staff and/or KCWA consultants. Pursuant to Article 2 of the 2006  
2 Operating Agreement, such agreement was to become effective upon substantial completion of the  
3 New Canal as determined by KCWA. The determination of substantial completion was made by  
4 KCWA on or around July 26, 2012. At that time, KCWA staff represented that approximately 500  
5 cfs of New Canal capacity had been added to the Existing Canal.

6 82. During the negotiations leading up to the 2006 Operating Agreement, at the time of  
7 its execution, and at the time it became effective, the Existing Canal Participants, including Plaintiffs,  
8 and the New Canal Participants agreed, intended and expected that the New Canal was being  
9 constructed to operate effectively at a capacity of approximately 500 cfs. Together with the Existing  
10 Canal (which had a capacity of approximately 922 cfs), the addition of the New Canal was intended  
11 and expected to result in a collective and total CVC capacity of approximately 1,422 cfs. Indeed,  
12 the 2006 Operating Agreement defines the New Canal as “the approximate[] 500 cfs capacity to be  
13 added to the Existing Canal pursuant to the [2006 Construction Agreement].”

14 83. Additionally, as set forth above, during the negotiations leading up to the 2006  
15 Operating Agreement, at the time of its execution, and at the time it became effective, the Existing  
16 Canal Participants, including Plaintiffs, and the New Canal Participants agreed, intended, and  
17 expected, in pertinent part, (a) for the rights of the Existing Canal Participants to remain unaltered  
18 with respect to the Existing Canal capacity, including the allocation of and rights to the capacity of  
19 the Existing Canal which was in existence on December 31, 2003; and (b) to provide the New Canal  
20 Participants with a right to the approximately 500 cfs of capacity that was “to be added” to the  
21 Existing Canal.

22 84. The parties to the 2006 Operating Agreement, namely Plaintiffs and the other  
23 Existing Canal Participants as well as the New Canal Participants, mistakenly believed that the New  
24 Canal was being constructed to operate effectively at, and would have, a capacity of approximately  
25 500 cfs upon substantial completion, and as a result, the 2006 Operating Agreement (including its  
26 Exhibits and the allocation of capacities to the Existing Canal Participants and the New Canal  
27 Participants) was based on and assumes that the New Canal would have a capacity of approximately  
28 500 cfs upon substantial completion, which together with the Existing Canal’s capacity of

1 approximately 922 cfs was to result in a collective and total CVC capacity of approximately 1,422  
2 cfs.

3 85. However, upon the KCWA's declaration of substantial completion, and subsequently,  
4 the capacity of the CVC as expanded was and has remained substantially and materially less than  
5 1,422 cfs, as required and assumed by the terms of the 2006 Operating Agreement, and unbeknownst  
6 to the Existing Canal Participants, including Plaintiffs, and the New Canal Participants. That is,  
7 unbeknownst to the Existing Canal Participants and the New Canal Participants, at the time that the  
8 2006 Operating Agreement was negotiated, drafted, executed and became effective, the New Canal  
9 was not being constructed to, and did not "add" approximately 500 cfs to the Existing Canal's  
10 capacity of approximately 922 cfs, as was believed, envisioned, intended and expected by the  
11 Existing Canal Participants, including Plaintiffs, and the New Canal Participants.

12 86. In light of the foregoing, the parties mutually and mistakenly believed that the New  
13 Canal was being and in fact was constructed to operate and/or could be effectively operated at a  
14 capacity of approximately 500 cfs, which together with the Existing Canal, was to result in a total  
15 CVC capacity of approximately 1,422 cfs.

16 87. Instead, as set forth above, the New Canal can only operate effectively at a capacity  
17 that is substantially and materially less than 500 cfs.

18 88. Thus, as alleged herein, the 2006 Operating Agreement fails to reflect the true intent  
19 of the parties because the allocations of capacity set forth therein in certain exhibits were based on  
20 the mistaken belief that the New Canal was being constructed to have and would have a capacity of  
21 approximately 500 cfs, when the New Canal actually has a capacity that is substantially and  
22 materially less than 500 cfs.

23 89. That is, the 2006 Operating Agreement (including its Exhibits and the allocation of  
24 capacities to the Existing Canal Participants and New Canal Participants) fails to represent the true  
25 intentions of the Existing Canal Participants, including Plaintiffs, and the New Canal Participants to  
26 the extent that it allocates to the New Canal Participants capacities greater than the actual capacity  
27 of the New Canal that was added to the Existing Canal, which has resulted and/or will continue to  
28 result in an alteration and reduction of the rights of the Existing Canal Participants, including

1 Plaintiffs, to the capacity of the Existing Canal, which in turn, results in a negative water supply  
2 impact to the Existing Canal Participants, including Plaintiffs.

3 90. As set forth above, the true intentions of the Existing Canal Participants and the New  
4 Canal Participants in making the 2006 Operating Agreement was for the rights of the Existing Canal  
5 Participants to remain unaltered as to the Existing Canal (including the capacity therein in  
6 existence on December 31, 2003) and for the rights of the New Canal Participants described in the  
7 2006 Operating Agreement to extend only to the actual capacity of the New Canal, that for the  
8 “New Canal” and the associated rights in and to the capacity therein to attach only to the extent  
9 that the New Canal and its associated facilities was added to the Existing Canal; and for the rights  
10 to the Existing Canal and the rights to the New Canal to be administered independently.

11 91. Pursuant to the authority to reform contracts contained within Civil Code Sections  
12 3399 and 3401, as a result of said mutual mistake, Plaintiffs request that the 2006 Operating  
13 Agreement be reformed to reflect the actual capacity of the New Canal that was in fact added to the  
14 Existing Canal by reforming the language of the 2006 Operating Agreement that references and/or  
15 depends upon the addition of 500 cfs to the Existing Canal by the construction of the New Canal and  
16 by reforming the corresponding allocations of capacity and percentages of the Existing Canal  
17 Participants and the New Canal Participants in the exhibits to the agreement as the parties intended.

18 **FIFTH CAUSE OF ACTION**

19 **Alternatively, Reformation of the 2006 Operating Agreement**

20 **Based on Unilateral Mistake of Fact**

21 **(All Parties)**

22 92. Plaintiffs incorporate by reference paragraphs 1 through 40, 47 through 50, and 52  
23 through 56 as if they were fully stated herein.

24 93. As a separate, distinct and alternative cause of action, Plaintiffs allege that at the time  
25 of negotiating and executing the 2006 Operating Agreement, and at the time that it became effective,  
26 Plaintiffs unilaterally and mistakenly believed, through no fault of Plaintiffs to exercise reasonable  
27 care, that (a) the New Canal was being constructed and did ultimately have a capacity of  
28 approximately 500 cfs and could be operated effectively at a capacity of approximately 500 cfs upon

1 substantial completion and thereafter; and (b) that the 2006 Operating Agreement and the associated  
2 construction of the New Canal, would not and did not alter or otherwise modify the rights of the  
3 Existing Canal Participants, including Plaintiffs, with respect to their rights in and to the capacity of  
4 the Existing Canal and its related facilities in existence on December 31, 2003.

5 94. Additionally, Plaintiffs are informed and believe that at the time of negotiating and  
6 executing the 2006 Operating Agreement and at the time that it became effective, some or all of the  
7 Defendants knew and/or suspected that Plaintiffs held such unilateral mistaken belief and such  
8 Defendants misrepresented to Plaintiffs that the New Canal capacity would be and was in fact  
9 approximately 500 cfs and the 2006 Operating Agreement comported with their negotiations and  
10 agreement, as set forth above, including, but not limited to that the terms of the 2006 Operating  
11 Agreement did not alter or otherwise modify the rights of the Existing Canal Participants, including  
12 Plaintiffs, in and to the capacity of the Existing Canal and its related facilities in existence on  
13 December 31, 2003.

14 95. In the event the capacity in and to the flow within the CVC (and its appurtenant  
15 facilities) as expanded is allocated in a manner which disregards the actual amount of flow that was  
16 added by the New Canal, the Existing Canal Participants, including Plaintiffs, will experience  
17 negative water supply impacts in connection with their rights in and to the capacity of the Existing  
18 Canal, even though the parties to the 2006 Operating Agreement did not intend to alter the rights of  
19 the Existing Canal Participants to the capacity of the Existing Canal or its related facilities, and the  
20 terms and effectiveness of the 2006 Operating Agreement were and was based upon the mistaken  
21 declaration by KCWA that the New Canal added to the Existing Canal approximately 500 cfs of new  
22 capacity and was substantially complete.

23 96. In order for the 2006 Operating Agreement to comport with the understanding of the  
24 parties at the time of negotiation, execution and when it became effective, the 2006 Operating  
25 Agreement must be reformed to reflect the actual capacity of the New Canal and the corresponding  
26 allocations of capacity and percentages of the Existing Canal Participants and the New Canal  
27 Participants as the parties intended.





- 1 v. The Existing Canal constitutes the capacity in the CVC and its related facilities in  
2 existence on December 31, 2003; and  
3 vi. Such other orders and judgments which may be just and proper according to proof  
4 at trial.

5 C. For specific performance of the 2006 Operating Agreement, ordering KCWA to  
6 specifically perform KCWA's obligations under the 2006 Operating Agreement regarding the  
7 allocation of the capacity of the Existing Canal and its related facilities, as set forth herein, consistent  
8 with the Court's final judgment determining and declaring the lawful construction of the agreement  
9 and the parties' respective rights, duties and obligations under such agreement, including the  
10 following:

- 11 i. That KCWA allocate the capacity within the CVC (and its appurtenant facilities)  
12 as expanded in a manner which takes into account the actual amount of flow  
13 capacity that was added to the Existing Canal by the New Canal;  
14 ii. That KCWA provide Plaintiffs with complete access to and use of their rights in  
15 and to the capacity of the Existing Canal (and its related facilities) which were in  
16 existence on December 31, 2003; and  
17 iii. Such other orders and judgments which may be just and proper according to proof  
18 at trial.

19 D. For injunctive relief, including a temporary restraining order, preliminary injunction,  
20 and permanent injunction, directing KCWA to allocate the capacity in and to the Existing Canal and  
21 its related facilities in accordance with the 2006 Operating Agreement, as set forth herein, consistent  
22 with the Court's final judgment determining and declaring the lawful construction of said agreement  
23 and the respective rights, duties and obligations of the parties under such agreement;

24 E. For reformation of the 2006 Operating Agreement to reflect the actual capacity of the  
25 New Canal that was in fact added to the Existing Canal by reforming the language of the 2006  
26 Operating Agreement that references and/or depends upon the addition of 500 cfs to the Existing  
27 Canal by the construction of the New Canal, and by reforming the corresponding allocations of  
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1 capacity and percentages of the Existing Canal Participants and the New Canal Participants in the  
2 exhibits to the agreement as the parties intended;

3 F. For attorneys' fees and costs of suit incurred herein to the fullest extent permitted or  
4 provided by law; and

5 G. For such other and further relief as the Court deems just and proper.

6 Dated: February 25, 2021

BELDEN BLAINE RAYTIS, LLP

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8 By:   
9 DANIEL N. RAYTIS,  
Attorneys for Plaintiffs

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VERIFICATION

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I, Eric Averett, declare:

I am the General Manager of the Rosedale-Rio Bravo Water Storage District (“Rosedale”), a Plaintiff in this action, and I am authorized to make this verification for and on Rosedale’s behalf. I have read the foregoing Verified Complaint and know the contents thereof; the matters stated therein are true of my own knowledge, except as to matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed at Bakersfield, California, on February 25, 2021.

  
\_\_\_\_\_  
Eric Averett