

SOMACH SIMMONS & DUNN
A Professional Corporation

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2 STUART L. SOMACH, ESQ. (SBN 90959)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
3 THERESA C. BARFIELD, ESQ. (SBN 185568)
LAUREN D. BERNADETT, ESQ. (SBN 295251)
4 500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
5 Telephone: (916) 446-7979
Facsimile: (916) 446-8199

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

6 Attorneys for Petitioner/Plaintiff BYRON-
7 BETHANY IRRIGATION DISTRICT

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9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA

12 Coordination Proceeding
Special Title (Rule 3.550)

Case No. 1-15-CV-285182

13 CALIFORNIA WATER
14 CURTAILMENT CASES

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4838

15 BYRON-BETHANY IRRIGATION
16 DISTRICT,

DECLARATION OF RICK GILMORE
IN SUPPORT OF BYRON-BETHANY
IRRIGATION DISTRICT'S MOTION
FOR ATTORNEYS' FEES PURSUANT
TO CODE OF CIVIL PROCEDURE
§ 1021.5

17 Petitioner/Plaintiff,

18 vs.

19 CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD; THOMAS HOWARD as
EXECUTIVE DIRECTOR OF THE STATE
20 WATER RESOURCES CONTROL BOARD;
MICHAEL GEORGE, as DELTA
21 WATERMASTER; and DOES 1 THROUGH
100, INCLUSIVE,

Date: October 18, 2019
Time: 9:00 a.m.
Dept: 1
Judge: Hon. Brian C. Walsh

22 Respondents/Defendants.
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24
25 I, RICK GILMORE, declare:

26 1. I am the General Manager for Petitioner/Plaintiff Byron-Bethany Irrigation District
27 (BBID). I have been with BBID for over 35 years and have been the General Manager for nearly
28 26 years, since 1993. Prior to serving as BBID's General Manager, I worked in BBID's water

1 operations department, and then as Superintendent.

2 2. I serve on the Association of California Water Agencies' (ACWA) State
3 Legislative and Federal Affairs Committees. I am a Board member on the National Water
4 Resources Association. I also serve as Director on the San Luis & Delta-Mendota Water
5 Authority, a joint powers authority established in 1992 comprised of 29 member agencies
6 representing approximately 2,100,000 acres within the western San Joaquin Valley, in San Benito
7 and Santa Clara counties.

8 3. I serve on the East County Water Management Association. I am a current Board
9 member and past President of California Utility Executive Management Association. I am past
10 President of ACWA / Health Benefits Authority, a joint powers authority providing health
11 benefits to approximately 350 member agencies with approximately 10,000 plan participants,
12 which has recently merged with the ACWA Joint Powers Insurance Authority. In addition to
13 serving on numerous ACWA committees, I served on the Board of Directors of ACWA, a
14 consortium of 450 member agencies, from 2008-2011.

15 4. I formerly served on Power Water Resources Pooling Authority and am a former
16 Commissioner of the San Joaquin County Water Advisory Commission. I served as General
17 Manager of the Plain View Water District (PVWD), a position in which I guided the
18 consolidation of PVWD with BBID in 2004. I serve as General Manager of the Byron Sanitary
19 District and as Executive Director of the Byron-Bethany Joint Powers Authority and the Byron-
20 Bethany Public Finance Authority.

21 5. The following matters are within my personal knowledge and, if called as a
22 witness, I can competently testify thereto.

23 6. BBID is a public agency, a California Irrigation District, formed and operating
24 pursuant to Division 11 of the Water Code, sections 20500 et seq.

25 7. BBID includes lands within Contra Costa County, Alameda County, and San
26 Joaquin County.

27 8. BBID's purposes include the provision of water to lands within BBID for any
28 beneficial use, to construct the necessary works for the diversion and use of water for those

1 beneficial uses, and to commence and maintain any action and proceeding to carry out its
2 purposes or protect its interests.

3 9. BBID holds a vested pre-1914 appropriative water right to divert water from
4 watercourses within the California Delta.

5 10. BBID's water right has a priority date of at least May 18, 1914.

6 11. BBID diverts and delivers water pursuant to its pre-1914 appropriative water right
7 for reasonable and beneficial uses within BBID and, on occasion, makes water diverted under its
8 pre-1914 appropriative water right available for use on lands outside the District.

9 12. BBID's pre-1914 appropriative water right is documented in the Statement of
10 Water Diversion and Use Number S021256 filed with the State Water Resources Control Board
11 (Water Board).

12 13. BBID is one of over 5,000 water right holders in California that claims a pre-1914
13 appropriative water right to divert and beneficially use water from watercourses in the California
14 Delta.

15 14. BBID is currently the sole source of water and the only entity that supplies water
16 to the community of Mountain House, a community of approximately 12,000 people with
17 elementary schools and a high school.

18 15. The fire protection system (hydrants) within Mountain House is also accessed by
19 Cal Fire for fighting wildfire in the Altamont Pass region.

20 16. BBID provides water to Mountain House for all of these uses pursuant to its pre-
21 1914 appropriative water rights.

22 17. BBID also provides water to the Mariposa Energy Project for air quality and other
23 purposes and provides water for fire-fighting purposes at the Contra Costa Airport.

24 18. BBID is the sole source of water supply for these uses.

25 19. In each and every year since the early 1900s, BBID diverted and beneficially used
26 water from the watercourses in the Delta for agricultural and other purposes.

27 20. Even during the driest years in California's history, in the 1920s and 1930s, BBID
28 was able to divert and deliver water for beneficial use from the Delta for agricultural.

1 21. For the 2015 agricultural season, BBID was the sole source of water supply for
2 more than 6,300 acres of agricultural crops, as follows: 636 acres of walnuts, 11 acres of olives,
3 38 acres of nursery, 1,200 acres of grapes, 387 acres of fruit trees, 10 acres of figs, 463 acres of
4 cherries, 789 acres of almonds, 100 acres of mixed vegetables, 326 acres of bell peppers, 275
5 acres of tomatoes, 414 acres of sweet corn, 5 acres of strawberries, 837 acres of Sudan, 703 acres
6 of alfalfa, 39 acres of clover, and 86 acres of pasture.

7 22. On June 12, 2015, the Water Board issued a Curtailment Notice to all pre-1914
8 water right holders in the Sacramento and San Joaquin River watersheds and the Delta with a
9 priority date between 1903 and 1914.

10 23. The Curtailment Notice was issued without a hearing or proceeding before the
11 Water Board.

12 24. BBID was not provided an opportunity to test any evidence or information relied
13 upon by the Water Board or the Executive Director, and BBID was not provided an opportunity
14 to present the Water Board with evidence regarding the availability of water diverted under
15 BBID's pre-1914 appropriative water right.

16 25. Despite the absence of any supporting evidence for its actions, on the same day the
17 Curtailment Notice was issued, the Water Board issued a press release that provided in bold
18 lettering "Senior Water Rights Curtailed in Delta, San Joaquin & Sacramento Watersheds."

19 26. The Curtailment Notice left BBID with two options: (1) disregard the Curtailment
20 Notice and continue diverting under its pre-1914 appropriative water right in order to prevent the
21 economic injury and threats to public health and safety that would ensue as a result of ceasing
22 water diversion and deliveries, and face enforcement proceedings and the threat of monetary
23 penalties that could exceed BBID's ability to pay; or, (2) comply with the demand in the
24 Curtailment Notice to cease diverting under its pre-1914 appropriative water right, leaving
25 communities within BBID without a source of drinking water, water for fire protection, and basic
26 human health and sanitation needs, and resulting in landowners losing crops, the closing of
27 agricultural businesses, and the loss of jobs that would follow the cessation of farming within
28 BBID.

1 27. The immediate cessation of diversions would have resulted in the cessation of
2 water deliveries to the approximately 12,000 residents of the community of Mountain House,
3 depriving the community of water desperately needed for human health and sanitation needs, fire
4 protection, and other uses.

5 28. It likewise would have resulted in thousands of acres of land lying fallow and the
6 destruction of thousands of acres of annual and permanent crops resulting in a loss estimated to
7 exceed \$65 million dollars.

8 29. Compliance with the Water Board's arbitrary Curtailment Notice would have
9 caused the estimated loss of over 500 jobs for agricultural workers who would lose their jobs as a
10 result of the lack of water for agricultural uses within BBID.

11 30. Thus, even though BBID disagreed with the Water Board's curtailment of pre-
12 1914 water rights, it tried to avoid the controversy by, among other things, buying water from
13 other sources at a significant expense to BBID.

14 31. It did so in an effort to avoid challenging the Water Board's curtailment actions.

15 32. BBID conveyed to a Water Board member the desire not to challenge the
16 curtailments and sought help from the Department of Water Resources (DWR) and the Water
17 Board to try to find backup supplies.

18 33. BBID took every option available to it to protect the water supply for BBID's
19 landowners and to keep the local community from being devastated by the Water Board's actions,
20 including incurring enormous attorneys' fees to defend against the Water Board's actions.

21 34. BBID simply could not let the Water Board arbitrarily cut off the water supply for
22 the families that farm within BBID.

23 35. Since the Water Board curtailments 2015 through the present, I have personally
24 reviewed and approved for payment the monthly attorneys' fees and costs invoices generated by
25 Somach Simmons & Dunn. From June 1, 2015 through June 30, 2019, BBID has incurred
26 \$2,165,872.23 in attorneys' fees for professional services directly related to the Water Board's
27 2015 curtailments and litigation arising therefrom, including the Superior Court and
28 administrative proceedings. BBID paid all outstanding invoices. The total amount of attorneys'

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fees that BBID seeks to recover in this motion as of the date of this Declaration is \$1,957,950.73. BBID will receive additional invoices for work subsequently performed, including work on this motion and motions related to recovery of litigation costs.

I declare under penalty of perjury under the laws of the State of California that the facts recited above are true and correct. Executed this 2nd day of August 2019 at Sacramento, California.

By: 
Rick Gilmore