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BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

COASTAL RANCHES )  
CONSERVANCY, a non-profit )  
corporation, )  
 )  
Petitioner, )  
v. )  
 )  
CALIFORNIA DEPARTMENT OF )  
PARKS AND RECREATION. )  
 )  
Respondent. )

**ADMINISTRATIVE PETITION  
TO ABATE UNPERMITTED  
DIVERSION,  
UNREASONABLE USE,  
UNREASONABLE METHOD  
OF USE, UNREASONABLE  
METHOD OF DIVERSION, and  
VIOLATION OF PUBLIC  
TRUST**

(Cal. Code Reg., tit. 23, §§ 820,  
855)

GAVIOTA CREEK, tributary to the  
PACIFIC OCEAN

1       **I. INTRODUCTION**

2           Coastal Ranches Conservancy hereby seeks to end the California Department of Parks and  
3 Recreation’s (“State Parks”) illegal diversion of water from a tributary to Gaviota Creek, which is  
4 critical habitat for Southern California Steelhead and other threatened and endangered species. In  
5 accordance with article X, section 2 of the California Constitution; sections 100, 105, 275, 1050,  
6 1055, 2501 of the Water Code; and sections 820–822, 855–857, 4000–4004 of the title 23 of the  
7 California Code of Regulations; and other applicable provisions, Coastal Ranches Conservancy  
8 hereby complain against State Parks and petition the State Water Resources Control Board to act:

9           1.       The people of California own the state’s waters. (Water Code, § 102.) Use of that  
10 water is of vital public concern, and all waters shall be managed for the greatest public benefit.  
11 (Cal. Constitution, art. X, § 2; Water Code, §§ 100, 104–105, 1050; *Nat. Audubon Society v.*  
12 *Superior Court* (1983) 33 Cal.3d 419, 446 [189 Cal.Rptr. 346, 658 P.2d 709] (“*Audubon*”).)  
13 “[C]onservation must be exercised in the interest of the people and for the public welfare.” (*Joslin*  
14 *v. Marin Municipal Wat. Dist.*, 67 Cal.2d 132, 141 [60 Cal.Rptr. 377, 429 P.2d 889].)

15           2.       The State Water Board is responsible to “provide for the orderly and efficient  
16 administration of the water resources of the state,” and is tasked with exercising the adjudicatory  
17 and regulatory functions of the state in the field of water resources. (Water Code, § 174;  
18 *Environmental Defense Fund, Inc. v. E. Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 198 [161  
19 Cal.Rptr. 466] (“*EDF*”).) Its function “has steadily evolved from the narrow role of deciding  
20 priorities between competing appropriators to the charge of comprehensive planning and  
21 allocations of waters.” (*Audubon*, 33 Cal.3d at p. 444.)

22           3.       The Board is vested with “any powers . . . that may be necessary or convenient for  
23 the exercise of its duties authorized by law” and may hold any hearings and conduct any  
24 investigations necessary to carry out such powers. (Water Code, §§ 186, 183.) “[T]he Board’s  
25 obligations in the field of water use adjudication are broad, plenary and all-encompassing.”  
26 (*Imperial Irrigation Dist. v. State Wat. Res. Control Bd.* (1990) 225 Cal.App.3d 548, 560 [275  
27 Cal.Rptr. 250] (“*Imperial IP*”).)

28           4.       The State Water Board has exclusive jurisdiction to issue, condition, or rescind  
post-1914 appropriative water rights, and to regulate pre-1914 and riparian water rights. (Cal.  
Constitution, art. X, § 2; Water Code, §§ 100, 275; *EDF*, 26 Cal.3d at p. 198.) “It is a fundamental  
principle of water law that one may not withdraw water from its source without first acquiring

1 ‘water rights.’” (*United States v. State Wat. Res. Control Bd.* (1986) 182 Cal.App.3d 82, 100 [227  
2 Cal.Rptr. 161].) The Board is empowered to determine all water rights through statutory  
3 adjudication. (Water Code, §§ 2500 *et seq.*)

4 5. Riparian rights run with land adjacent to a stream and are limited to the natural  
5 flow of such stream. (Cal. Const., art. X, § 2; Water Code, §§ 100–101.) “Artificial storage of  
6 water for future use, whether cyclic or seasonal, is not a proper exercise of the riparian right, but  
7 instead constitutes an appropriation of water.” (*United States v. Fallbrook Pub. Util. Dist.* (S.D.  
8 Cal. 1958) 165 F.Supp. 806, 825.)

9 6. Application for and issuance of a permit under division 2 of the Water Code is the  
10 exclusive method to acquire rights to appropriate or use water subject to appropriation. (Water  
11 Code, §§ 1225, 1375; Cal. Code Regs., tit. 23, § 715.) Prior to issuing a permit, the State Water  
12 Board must determine that unappropriated water rights exist and that the water use applied for  
13 furthers the water policy articulated in the California Constitution. (Water Code, §§ 1050–1051.)

14 7. Unauthorized diversion or use of water constitutes a trespass against the state, for  
15 which the State Water Board is empowered to impose administrative civil liability. (Water Code,  
16 §§ 1052(a), 1055; *People v. Shirokow* (1980) 26 Cal.3d 301, 304 [162 Cal.Rptr. 30, 605 P.2d 859]  
17 (“*Shirokow*”).)

18 8. The Legislature expressly urges the State Water Board to “take vigorous action to  
19 enforce the terms and conditions of permits . . . and to prevent the unlawful diversion of water.”  
20 (Water Code, § 1825; *Imperial II*, 225 Cal.App.3d at p. 560.) To carry out this duty, the Board  
21 may initiate investigation of possible permit violations on its own motion or in response to a  
22 complaint by any person affected. (Cal. Code Reg., tit. 23, §§ 820–821.) Upon ascertaining a  
23 violation of any permit term or condition or the prohibition against the unauthorized diversion or  
24 use of water and after affording the violator notice and opportunity for hearing, the Board may  
25 issue a cease and desist order, revoke a permit or license, or take any other appropriate action.  
26 (Water Code, § 1831; Cal. Code Reg., tit. 23, § 822–823.)

27 9. The State Water Board is vested with “the separate and additional power” to  
28 perform “all appropriate proceedings or actions” to prevent waste, unreasonable use, unreasonable  
method of use, or unreasonable method of diversion of water.” (*Imperial Irrigation Dist. v. State  
Wat. Res. Control Bd.* (1986) 186 Cal.App.3d 1160, 1170 [231 Cal.Rptr. 283]; Water Code, §  
275.) The Board has a duty to ensure that “[a]ll uses of water . . . conform to the standard of

1 reasonable use.” (*Audubon*, 33 Cal.3d at p. 443.) All permits for water diversion and use are issued  
2 “subject to the continuing authority of the Board to prevent unreasonable use.” (*United States v.*  
3 *State Wat. Res. Control Bd.*, 182 Cal.App.3d at p. 129.)

4 10. Pursuant to such authority, the State Water Board has a duty to investigate  
5 allegations of misuse of water, on its own initiative or when an interested person shows good  
6 cause. (Cal. Code Reg., tit. 23, § 856, 855(b), 4001.) Where the investigation indicates a misuse of  
7 water and after allowing the respondent “a reasonable period of time” to either terminate the  
8 misuse or “demonstrate to the satisfaction of the board staff” that no misuse occurred, the Board  
9 may hold a fact-finding hearing and issue appropriate orders to prevent or terminate such misuse.  
(*Id.*, § 857, 4002–4004.)

10 11. The State Water Board has the further affirmative and ongoing duty to protect the  
11 public trust uses of navigable waters, including fishing, navigation, commerce, recreation, cultural  
12 use, wildlife viewing, aesthetic enjoyment, and environmental quality, to the extent feasible.  
13 (*Audubon*, 33 Cal.3d at pp. 437, 440–441.) The Board is charged with protecting “the people’s  
14 common heritage of streams, lakes, marshlands and tidelands” and is required to take the public  
15 trust into account in all planning and allocation of water resources. (*Id.*, at p. 441.) It may  
16 “surrender[] that right of protection only in rare cases when the abandonment of that right is  
consistent with the purposes of the trust.” (*Id.*, at p. 446.)

17 12. Moreover, all California state agencies, including Respondent State Parks, have a  
18 duty under the public trust doctrine to manage and protect the public trust uses of the state’s  
19 navigable waters. (*Audubon*, 33 Cal. 3d at pp. 437, 441-449.) Therefore, State Parks is also  
20 required to consider the impact of their operations and management practices on Gaviota Creek’s  
21 public trust protected uses, and to implement feasible measures to protect the Gaviota Creek’s  
22 public trust resources. (*Id.*)

23 13. “Wild fish have always been recognized as a species of property the general right  
24 and ownership of which is in the people of the state,” i.e. public trust resources. (*Cal. Trout v.*  
25 *State Wat. Res. Control Bd.* (1989) 207 Cal.App.3d 585, 630 [255 Cal.Rptr. 184] (“*Cal. Trout*”).)  
26 As such, the State Water Board has an affirmative and ongoing duty to protect them in all  
proceedings and actions to the extent possible.

27 14. Steelhead are the anadromous, or ocean-going, form of the wild fish species  
28 *Oncorhynchus mykiss*, one of six Pacific salmon species that are native to the west coast of North

1 America. Steelhead are currently the only species of this group that naturally reproduces within  
2 the coastal watersheds of Southern California, including Gaviota Creek.

3 15. Southern California steelhead populations have declined precipitously in the last 50  
4 years, largely due to extensive watershed development. Every year, steelhead are killed as portions  
5 of Gaviota Creek dry up and fish are prevented from moving to the headwaters where they can  
6 spend the dry season in spring-fed pools.

7 16. State Parks engages in a trespass against the state and an unreasonable diversion  
8 and method of diversion by decades-long unpermitted use of a pipe to divert Gaviota Creek water  
9 for use at a public campground and a Caltrans roadside rest area. Further, by diminishing the water  
10 flow below its diversion pipe, this illegal diversion contributes to dewatering and destruction of  
11 public trust resources in Gaviota Creek.

12 17. The State Water Board is legally mandated to enforce California water law and the  
13 California Constitution. By failing to take action to bring State Parks into compliance with  
14 California water law, Respondent State Water Board breaches its duties to enforce the Water  
15 Code, to prevent unreasonable diversion and method of diversion of water pursuant to the  
16 California Constitution, and to protect public trust resources in Gaviota Creek.

17 18. Petitioner Coastal Ranches Conservancy brings this Petition on its own behalf, on  
18 behalf of the general public, and in the public interest to compel the State Water Board to adhere  
19 to its affirmative duties to enforce California law and protect Gaviota Creek's public trust  
20 resources by:

- 21 a. Initiating an investigation into State Parks' unpermitted diversion and  
22 unreasonable use, unreasonable method of use, and unreasonable method of  
23 diversion of Gaviota Creek water pursuant to California Code of Regulations,  
24 title 23, section 856, 855(b), 4001;
- 25 b. Holding a hearing and issuing appropriate orders to prevent or terminate such  
26 misuse pursuant to California Code of Regulations, title 23, sections 822, 857,  
27 4002–4004; and to determine administrative civil liability for trespass against  
28 the state under Water Code sections 1052(a) and 1055;

This Petition is thus properly before the State Water Board, which has jurisdiction over this  
Petition and the ability to grant Petitioner's requests for relief. (Cal. Constitution, art. X, § 2;

1 Water Code, §§ 100, 105, 275, 1050, 1055, 2501; Cal. Code Reg., tit. 23, §§ 820–822, 855–857,  
2 4000–4004.)

3 **II. NAME AND ADDRESS OF THE PETITIONER**

4 Doug Campbell, Executive Director  
5 Coastal Ranches Conservancy  
6 68 Hollister Ranch Road  
7 Gaviota, CA 93117  
(805) 567-5957  
Dcampbellhr68@gmail.com

8 **III. THE NATURE AND LOCATION OF THE ALLEGED VIOLATION**

9 Unpermitted use of a pipe to divert at Gaviota State Park, Santa Anita Tract, Rancho  
10 Nuestra Senora, T 5N, R 31&32W, Santa Barbara County.

11 **IV. THE MANNER IN WHICH PETITIONER WAS AFFECTED**

12 Petitioner brings this Petition on its own behalf and in the public interest for harms to  
13 Southern California steelhead, a resource held in trust by the state for the benefit of the public.

14 **V. A STATEMENT OF WHETHER PETITIONER IS REQUIRED BY PART 5.1**  
15 **(COMMENCING WITH SECTION 5100) OF DIVISION 2 OF THE WATER**  
16 **CODE TO FILE WITH THE BOARD A STATEMENT OF THEIR WATER**  
17 **DIVERSION**

18 Petitioner is not required to have filed with the Board a statement of water diversion under  
19 Part 5.1 of Division 2 of the Water Code.

20 **VI. THE SPECIFIC ACTION WHICH PETITIONER REQUESTS**

21 Pursuant to sections 820–822, 855–857, and 4001–4004 of title 23 of the California Code  
22 of Regulations, Petitioner requests that the State Water Board initiate appropriate investigations  
23 and conduct appropriate hearings to consider testimony, other evidence, and/or argument on the  
24 issues raised in this Petition. The contentions to be addressed at the requested hearing are:

- 25 A. Respondent State Parks is in historical and ongoing violation of Water Code  
26 prohibitions against unauthorized diversion of Gaviota Creek water and thereby  
27 effects a trespass against the state.  
28 B. Respondent State Parks is in historical and ongoing violation of prohibitions of the

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California Constitution and Water Code against unreasonable use, unreasonable method of use, and method of diversion of Gaviota Creek water.

- C. Respondent State Parks' unlawful diversion of Gaviota Creek water effects harm against Southern California steelhead, which is protected public trust property.

Petitioner also seeks all appropriate Orders by the State Water Board that:

- D. Respondent State Parks cease and desist from its unauthorized diversion of Gaviota Creek water and trespass against the state.
- E. Respondent State Parks terminate its unreasonable use, unreasonable method of use, and method of diversion of Gaviota Creek water.
- F. Respondent State Parks take all appropriate action to ensure protection of Southern California steelhead pursuant to the public trust doctrine.

These requests for relief are the conditions and altered operations that, if enacted by the State Water Board, would resolve the claims in this Petitioner against Respondent State Parks.

1 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**  
2 **ISSUES RAISED IN THE PETITION**

3 A. Statement of Facts

4 1. Gaviota Creek, its Native and Endangered Species, and its Public Trust Resources

5 The Gaviota Coast is reputed to be one of the top 15 biodiversity hot spots on the planet. It is  
6 a region where the ranges of northern and southern species overlap, cold ocean currents meet warmer  
7 currents, and where many endemic species can be found. The watershed supports endangered and  
8 threatened species such as the Southern California steelhead, tide-water goby, California red-legged  
9 frog, and south-western pond turtle.

10 On August 18, 1997, following a comprehensive status review of all West Coast steelhead  
11 populations by the National Marine Fisheries Service (NMFS), southern California steelhead were  
12 listed as a distinct evolutionarily significant unit with numbers low enough to warrant endangered  
13 species designation under the Endangered Species Act (ESA). The range of the listed steelhead was  
14 extended to the U.S.-Mexico Border in 2002. Following a status review in 2005, a final listing  
15 determination was issued on January 5, 2006 for the Southern California Steelhead Distinct  
16 Population Segment (DPS). Critical habitat was also designated within 32 DPS watersheds.

17 The Southern California Steelhead (SCS) Recovery Planning Area extends from the Santa  
18 Maria River to the Tijuana River at the U.S.-Mexico border and lists Gaviota Creek as a high priority  
19 “core two” watershed. It includes both those portions of coastal watersheds that are at least seasonally  
20 accessible to steelhead entering from the ocean and the upstream portions of watersheds that are  
21 currently inaccessible to steelhead due to man-made barriers but were historically used by steelhead.  
22 Gaviota Creek watershed is one of the few in southern California that consistently hosts a viable  
23 population. Nevertheless, fish passage barriers and decreased water flow inhibit access to potential  
24 spawning sites and limit use of the habitat during various life stages of the fish. These habitat  
25 concerns must be reconciled to sustain the population over the long term.

26 The SCS Recovery Planning Area is divided into five Biogeographic Population Groups  
27 (BPGs). Gaviota Creek is within the Conception Coast BPG. The Conception Coast BPG  
28 encompasses eight small coastal watersheds that drain a 50-mile long stretch of the south-facing  
slopes of the Santa Ynez Mountains in southern Santa Barbara County and extreme southwestern  
Ventura County. The Gaviota Creek watershed penetrates the furthest inland (about seven miles) and  
is the largest in area, some 13,000 acres. Rainfall amounts in the upper watersheds can be five to six



1 times higher than on the coastal terrace during the same storm event, and the steep topography creates  
2 extremely “flashy” flows within these watersheds.

3 State Parks owns and operates a campground near the mouth of Gaviota Creek. At some time  
4 prior to October 6, 1988, State Parks began diverting Gaviota Creek water for storage and use at the  
5 campground. According to an October 6, 1988 memorandum in which the State Parks Legal Office  
6 directed Dan Preece, then District Superintendent for Gaviota District, to an application for “an  
7 appropriation of the water available in Gaviota Creek/Wells” and requests Mr. Preece to “try a run at  
8 filling out the applications yourself, and we can consult after a draft is available.” (See Exhibit A.) A  
9 notice attached to the memorandum advises that “any diversion or storage of water, except under  
10 existing rights, prior to issuance of a permit from the State Water Resources Control Board is a  
11 violation of law (California Water Code Section 1225).” However, no permit application was ever  
12 submitted, nor permit issued, for the referenced diversion.

13 State Parks generated an annotated and incomplete draft “Application to Appropriate Water”  
14 indicating the approximate coordinates of the diversion point for 30 gallons/day/person of Gaviota  
15 Creek water to serve a campground with a maximum capacity of 1500 persons/day (average 657).  
16 (See Exhibit B.) Much of the application is entirely empty, with notes stating “Need Engineering”  
17 and “Need Survey Team.” Question 9(c) of the application, which asks “Have you consulted the  
18 California Department of Fish and Game concerning the proposed project” is answered in the  
19 negative. The follow up question, “If No, state the effects on fish and other wildlife you foresee as  
20 potentially arising from your proposed project” is answered “None,” but is accompanied by a note in  
21 the margins: “Will there be any?” Another question asks whether the applicant claims “an existing  
22 right to the use of all or part of the water sought by this application,” which is answered “Yes,” with  
23 the corresponding grid filled in “riparian,” also accompanied by a question mark in the margins.  
24 Attachments to the incomplete application draft include: a record of analytical results from of a water  
25 sample labeled “Tunnel Spring Water” at “Gaviota State Park,” dated December 18, 1990; multiple  
26 maps indicating the approximate point of diversion; an undated water resources technical report  
27 describing the hydrological features of the Gaviota Creek watershed; and a missed call slip  
28 documenting attempted communication to “Mike” from Don Beauchamp of the Department of Fish  
and Game. These documents not only provide a description of State Parks’ unauthorized activities but  
document State Park’s knowledge that a permit was and is required, dating back decades.

1 **VIII. STATEMENT OF LAW**

2 Recovery and protection of Gaviota Creek’s ecological and human communities is viable if  
3 the State Water Board exercises its powers and fulfills its affirmative duties pursuant to the  
4 California Water Code, California Constitution, and the public trust doctrine.

5 A. The California Constitution and California Water Code

6 1. Exclusive Method of Water Appropriation and Use by Appropriation

7 Water naturally flowing within California is “declared to be public water of the State and  
8 subject to appropriation in accordance with the provisions of [the Water Code],” except insofar as a  
9 stream’s natural flow is used contemporaneously for beneficial purposes by a riparian landowner.  
10 (Water Code, § 1201.) “Artificial storage of water for future use, whether cyclic or seasonal, is not  
11 a proper exercise of the riparian right, but instead constitutes an appropriation of water.” (*United*  
12 *States v. Fallbrook Pub. Util. Dist.* (S.D. Cal. 1958) 165 F.Supp. 806, 825; Water Code, § 101.)  
13 Since 1914, all parties desiring to appropriate have been required to follow the statutory process to  
14 apply to the State Water Board for the right to do so subject to permit terms and conditions.  
15 (*United States v. State Wat. Res. Control Bd.*, 182 Cal.App.3d at p. 102; Water Code, § 1225.) All  
16 water rights, regardless of derivation, are usufructuary, limited, and uncertain. (*United States v.*  
*State Wat. Res. Control Bd.*, *supra*, at p. 104.)

17 In reviewing an application to appropriate water, the State Water Board is charged with  
18 assessing existing water rights and uses prior to issuance of a permit. (*United States v. State Wat.*  
19 *Res. Control Bd.*, 182 Cal.App.3d at p. 102.) The Board must account for, in consultation with the  
20 Department of Fish and Wildlife, “the amounts of water required for recreation and the  
21 preservation and enhancement of fish and wildlife resources” and consider streamflow  
22 requirements proposed for fish and wildlife purposes pursuant to Sections 10001 and 10002 of the  
23 Public Resources Code. (Water Code, §§ 1243, 1257.5.) The Board may only allow for  
24 appropriation of water for beneficial purposes “under such terms and conditions as in its judgment  
25 will best develop, conserve, and utilize in the public interest the water sought to be appropriated.”  
(*Id.*, § 1253.)

26 The Board must also hear and consider protests to permit applications and is empowered to  
27 reject an application “when in its judgment the proposed appropriation would not best conserve  
28 the public interest.” (Water Code, §§ 1330, 1255.) Among the factors the Board must weigh when

1 considering a protested application are “the benefits and detriments, including but not limited to  
2 economic and environmental factors, of the present and prospective beneficial uses of the waters  
3 involved and alternative means of satisfying or protecting such uses.” (Cal. Code Regs., tit. 23, §  
4 756.)

5 The California Supreme Court explained that “the Legislature devised a plan which was  
6 commensurate in scope with the constitutional amendment [art. X, § 2], and delegated to the board by  
7 the Water Commission Act the authority to protect the public interest not only in the issuance of  
8 appropriative permits and licenses but also in their later administration.” (*EDF*, 26 Cal.3d at p. 198.)  
9 The field of water resource management is of such scope and technical complexity that its inquiries  
10 “cannot be resolved in vacuo from statewide considerations of transcendent importance.” (*Id.*, at p.  
11 194.)

12 State Parks’ longstanding use does not entitle it to appropriative rights by adverse possession.  
13 (*Shirokow*, 26 Cal.3d at p. 311.) On the contrary, “diversion of water without first obtaining a permit  
14 from the board constitute[s] a trespass within the meaning of [Water Code] section 1052.” (*Id.*, at p.  
15 304.) If the Board determines that the harm of an unauthorized use to the public benefit outweighs  
16 undue jeopardy to existing beneficial use, “the public interest must prevail.” (*Id.*, at p. 310.) Upon  
17 a finding that State Parks’ unauthorized diversion of water constitutes a trespass against the state,  
18 the Board is empowered to issue an order to cease and desist from such activities until a permit  
19 application has been submitted and approved. (See Water Code § 1831(a),(d)(1).)

## 20 2. Prevention of Waste and Unreasonable Use

21 Title X, section 2 of the California Constitution and section 100 of the California Water Code  
22 both declare that, due to the state’s climatic conditions, “the general welfare requires that the water  
23 resources of the State be put to beneficial use to the fullest extent of which they are capable, and that  
24 the waste or unreasonable use or unreasonable method of use of water be prevented.” As such, all  
25 rights to divert and use water are “limited to such water as shall be reasonably required for the  
26 beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable  
27 use or unreasonable method of use or unreasonable method of diversion of water.” (Cal. Const., tit.  
28 X, § 2; Water Code, § 100.) The rule of reasonable use is the “cardinal principle of California’s water  
law.” (*United States v. State Water Resources Control Bd.*, 182 Cal.App.3d at p. 105.)

In order to carry out the constitutional policy of prevention of unreasonable use, the California  
Water Code provides that the State Water Board has adjudicatory authority over unreasonable use

1 claims and shall take all appropriate actions to prevent unreasonable use. (California Water Code, §  
2 275.) The State Water Board’s jurisdiction to enforce Article X, section 2’s limitations and  
3 prohibitions to prevent waste or unreasonable use apply to the use of all water by all water users,  
4 including state agencies. (*Imperial I*, 186 Cal. App. 3d at p. 1163.) What constitutes a reasonable use  
5 is fact-specific and may change over time due to changed conditions, such as water scarcity. (*Tulare*  
6 *Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 567; *EDF*, 20 Cal.3d at  
7 p. 332.) The State Water Board may properly find a particular diversion or method of diversion  
8 unreasonable where a feasible alternative exists that would prevent harms to other uses of water,  
9 including in-stream public trust uses. (*People ex rel. State Water Res. Control Bd. v. Forni* (1976) 54  
10 Cal. App. 3d 743, 750 (“*Forni*”).)

11 As part of its enforcement authority, the Board may impose injunctions requiring  
12 conservation and efficiency measures on end-users or implement reasonable methods of diversion to  
13 prevent unreasonable use and waste of water. (*Imperial II*, 225 Cal.App.3d at pp. 561-62; *Forni*,  
14 *supra*, at p. 750.) The mere fact that water conservation measures may require the water user to incur  
15 additional expenses does not justify the continued unreasonable use of water. (*Forni*, 54 Cal.App.3d  
16 at pp. 751-52.) The reasonable use doctrine may therefore require water users to “endure some  
17 inconvenience or to incur reasonable expenses” in order to put water to maximum beneficial use. (*Id.*)  
18 In determining the reasonableness of the cost of implementing water conservation measures, the  
19 Board considers the value of the water that would be conserved, the cost of implementing the  
20 conservation measure, and the resources available for financing the measures. (*In the Matter of Waste*  
21 *and Unreasonable Use of Water By Imperial Irrigation District* (Sept. 7, 1988) California State  
22 Water Board Order WR 88-20 at pp. 4, 17, 29-31, 36.)

#### 23 B. The Public Trust Doctrine

24 The Public Trust Doctrine establishes that the waters and wildlife of the state belong to the  
25 people, and that the state acts as a trustee to manage and protect these resources and their  
26 associated public uses for its peoples’ benefit, including from harmful diversion by water rights  
27 holders. (*Audubon*, 33 Cal. 3d at pp. 437, 441-449.) Under the common law doctrine, the state  
28 holds tidal and navigable waters in trust for public uses, which California courts have expanded to  
include not only navigation, commerce, and fishing, but also recreation and habitat conservation.  
(*Center for Biological Diversity v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1360-61.)  
“Once the state has approved an appropriation, the public trust imposes a duty of continuing

1 supervision over the taking and use of the appropriated water.” (*Id.*, at p. 447.)

2 Gaviota Creek is a navigable waterway that contains resources protected by the public trust  
3 doctrine. Public trust protected resources and uses in Gaviota Creek include sensitive and rare  
4 species such as the Southern California steelhead, tide-water goby, California red-legged frog, and  
5 south-western pond turtle. The public trust doctrine also protects Gaviota Creek’s natural cultural  
6 resources that indigenous Chumash Native American Peoples utilize to sustain their life ways and  
7 cultural practices.

8 All state agencies are obligated to “demonstrate affirmatively that that the state has taken  
9 the public trust into account when making a decision about the management and use of trust  
10 property.” (*San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th  
11 202, 242.) As such, State Parks breaches its public trust duty when it harms public trust resources  
12 without an affirmative demonstration of its considered rationale. The State Water Board likewise  
13 has an ongoing and continuous duty to protect the trust uses of navigable waters, which it must  
14 fulfill by considering the impact of State Parks’ practices on Gaviota Creek’s public trust  
15 resources. (See *Audubon*, 33 Cal.3d at pp. 437, 440-441.) In doing so, the State Board can  
16 simultaneously ensure that State Parks meets its own obligations.

17 **IX. CONCLUSION**

18 Petitioner respectfully requests that the State Water Board require State Parks to answer this  
19 Petition in a timely manner. As additional information becomes available, Petitioner requests the  
20 opportunity to amend this Petition. Following the State Water Board’s investigation of this Petition,  
21 Petitioner requests that an evidentiary hearing be scheduled immediately, as time is of the essence to  
22 recover and protect the endangered and declining steelhead population.  
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1 All correspondence and actions from the State Water Board and State Parks regarding this  
2 Petition should be forwarded by electronic mail or first class mail to Petitioner at the address listed on  
3 the first page of this Petition. In conducting the requested investigative report related to this Petition,  
4 the State Water Board should obtain recommendations from the California Department of Fish and  
5 Wildlife, U.S. Fish and Wildlife Service, and National Marine Fisheries Service regarding the  
6 measures necessary to protect the public trust resources impacted by State Parks' diversion of  
7 Gaviota Creek water.

7 **X. STATEMENT THAT THE PETITION HAS BEEN SENT TO RESPONDENT**  
8 **CALIFORNIA DEPARTMENT OF PARKS AND RECREATION**

9 A true and correct copy of this petition was sent via email on June 24, 2020 to Respondent  
10 California Department of Parks and Recreation at the following email addresses:

11 Lisa Mangat, Director  
12 1416 Ninth Street, Suite 1405  
13 Sacramento, CA 95814  
14 (916) 653-8380  
15 Lisa.Mangat@parks.ca.gov

16 Other potentially interested parties, persons, or entities served:

17 Charlton H. Bonham, Director  
18 California Department of Fish and Wildlife  
19 P.O. Box 944209  
20 Sacramento, CA 94244  
21 (916) 445-0411  
22 Director@wildlife.ca.gov

23 Mary Larson, Regional Program Coordinator  
24 Fisheries Restoration Grant Program, South Coast Region  
25 California Department of Fish and Wildlife  
26 4665 Lampson Ave, Suite C  
27 Los Alamitos, CA 90720  
28 (562) 342-7186  
Mary.Larson@wildlife.ca.gov

Respectfully submitted via electronic form at:

<https://calepacomplaints.secure.force.com/complaints/>

and via electronic mail to:

Andy Sawyer, Assistant Chief Counsel  
State Water Resources Control Board

1 P.O. Box 100  
2 Sacramento, CA 95812-0100  
3 (916) 341-5191  
4 Andy.Sawyer@waterboards.ca.gov

5 with one courtesy copy submitted by U.S. mail to:

6 Adrianna M. Crowl  
7 Office of Chief Counsel  
8 State Water Resources Control Board  
9 P.O. Box 100  
10 Sacramento, CA 95812-0100  
11 (916) 341-5156  
12 Adrianna.Crowl@waterboards.ca.gov

13 Dated: June 24, 2020

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15  
16 Daniel Cooper  
17 Sycamore Law, Inc.  
18 1004 B O'Reilly Avenue  
19 San Francisco, CA 94129  
20 (415) 360-2962  
21 Daniel@sycamore.law

22 Attorney for Coastal Ranches Conservancy  
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