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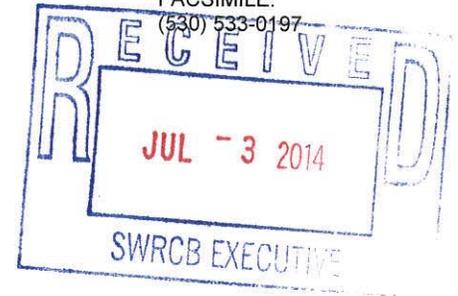
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July 2, 2014

Via California Overnight – Tracking No. D10010695036553

State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

**Re: PETITION FOR RECONSIDERATION OF STANFORD-VINA RANCH
IRRIGATION COMPANY RELATED TO EMERGENCY REGULATIONS
CURTAILING DIVERSIONS ON DEER CREEK AND RELATED ORDERS -
WATER CODE § 1122; TITLE 23 CCR § 768 ET SEQ.**

Dear Members of the State Water Resources Control Board:

1. Name and Address of Petitioner

Stanford-Vina Ranch Irrigation Company (and shareholders) ("Stanford-Vina")
P O Box 248
6230 Tehama-Vina Road
Vina, California 96092

2. Specific Board Action of Which Petitioner Request Reconsideration.

On May 21, 2014, the State Water Board adopted emergency regulations (Cal. Code Regs., Tit. 23, §§ 877 et seq.) ("Regulations"). The Office of Administrative Law approved the Regulations on June 2, 2014. On or around June 5, 2014, the Deputy Director of the State Water Board adopted Order WR 2014-0022-DWR ("Curtalement Order") implementing the Regulations. On June 12, 2014, Assistant Deputy Director for the Division of Water Rights of the State Water Board issued Order WR 2014-00XX-DWR threatening commencement of Enforcement Action ENF001023 and enclosing a draft cease and desist order ("Draft CDO").

July 2, 2014

Re: **PETITION FOR RECONSIDERATION OF STANFORD-VINA RANCH IRRIGATION COMPANY RELATED TO EMERGENCY REGULATIONS CURTAILING DIVERSIONS ON DEER CREEK AND RELATED ORDERS - WATER CODE § 1122; TITLE 23 CCR § 768 ET SEQ.**

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3. The Date on Which the Order or Decision was Made by the Board

On or around May 21, 2014; June 5, 2014; and June 12, 2014.

4. The Reason the Action was Inappropriate or Improper

Reconsideration is sought on the basis of 23 CCR section 768, subdivisions (a)¹, (b)² and (d)³. The reasons why the State Water Board's and its staff's actions are inappropriate and improper are set forth in the following exhibits, attached hereto and incorporated herein by this reference:

Exhibit A: Letter (with enclosures) dated May 19, 2014, from Minasian Law Firm on behalf of Stanford-Vina to State Water Resources Control Board;

Exhibit B: Letter dated May 22, 2014 from Minasian Law Firm on behalf of Stanford-Vina to Michael A.M. Lauffer, Chief Counsel of the State Board;

Exhibit C: Letter dated May 28, 2014, from Minasian Law Firm on behalf of Stanford-Vina to Office of Administrative Law;

Exhibit D: Response dated June 12, 2014, to State Water Board regarding Curtailment Order

4. Specific Action Which Petitioner Requests

Stanford-Vina requests that the State Water Board vacate its decisions to approve the Regulations, Curtailment Order and Draft CDO and compensate Stanford-Vina and its shareholders for damages incurred as a result of the improper actions undertaken by the State Water Board and its staff.

1 "Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;"

2 "The decision or order is not supported by substantial evidence;"

3 "Error in law."

State Water Resources Control Board

July 2, 2014

Re: **PETITION FOR RECONSIDERATION OF STANFORD-VINA RANCH IRRIGATION
COMPANY RELATED TO EMERGENCY REGULATIONS CURTAILING DIVERSIONS ON
DEER CREEK AND RELATED ORDERS - WATER CODE § 1122; TITLE 23 CCR § 768 ET SEQ.**

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5. A Statement that Copies of the Petition and Accompanying Materials Have Been Sent to All Interested Parties

Stanford-Vina does not believe that this petition is required to be sent to any other parties.

Very truly yours,

**MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP**



DUSTIN C. COOPER

Attorneys for Stanford-Vina Ranch Irrigation Company

DCC:aw/dd

Enclosures: Exhibits A, B, C and D

cc w/enclosures: Stanford-Vina Ranch Irrigation Company Board of Directors

S:\Clients District\Stanford-Vinal\Petition for Reconsideration re Emergency Regs Curtailing Diversions on Deer Creek & Related Orders

Exhibit A

MINASIAN, MEITH,
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COOPER, LLP

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WILLIAM H. SPRUANCE,
Retired

MICHAEL V. SEXTON,
Retired

May 19, 2014

Felicia Marcus, Chair
and Members and Staff
State Water Resources Control Board of the State of California
P. O. Box 100
Sacramento, California 95812

Via email transmission:

commentletters@waterboards.ca.gov

Niel Moller
National Oceanic & Atmospheric Association
United States Department of Commerce
1401 Constitution Avenue, NW, Room 5128
Washington, District of Columbia 20230

niel.moeller@noaa.gov

Maria Rea, Assistant Regional Administrator
Howard Brown, Sacramento River Branch
National Oceanic & Atmospheric Association
650 Capitol Mall, Suite 8-300
Sacramento, California 95814

Maria.Rea@noaa.gov
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Neil Manji, Regional Manager
California Department of Fish and Wildlife
Northern Region
601 Locust Street
Redding, California 96001

neil.manji@wildlife.ca.gov

Re: The Office of Administrative Law and State Water Resources Control Board's proposed adoption of emergency regulations purporting to establish a new and senior right to water flows in Deer Creek, Mill Creek and Antelope Creek in Tehama County California in violation of established law

To: Members and Staff of the State Water Resources Control Board
National Oceanic & Atmospheric Association
National Marine Fisheries Service
California Department of Fish and Wildlife

Re: The Office of Administrative Law and State Water Resources Control Board's proposed adoption of emergency regulations purporting to establish a new and senior right to water flows in Deer Creek, Mill Creek and Antelope Creek in Tehama County California in violation of established law

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Ladies and Gentlemen:

Introduction:

The Stanford Vina Ranch Irrigation Company is a Mutual Water Company located in Tehama County, California and administering water rights held by the landowners within its boundaries. Stanford Vina objects to the proposed submission and adoption of Emergency Regulation 877 without (1) first holding a full evidentiary hearing in regard to the reasonableness of use of water, and as to whether the agricultural use is wasteful, (2) without compliance with the eminent domain law of California, and (3) the SWRCB obtaining an amendment or Supplemental Judgment in the Adjudication of water in the respective creeks by the Tehama County Superior Courts without applying to that Court for such an amendment. The users of the water within Stanford Vina are small orchards with some pasture and alfalfa crops. In a dry year, the flows of Deer Creek decline over the summer months and fall of the year, and both the fish and the landowners have long ago adapted to that natural decline. Groundwater recharge from irrigation and balanced use of groundwater supplies and surface supplies has been established through experience and past drought survival with the unincorporated area of the town of Vina depending upon the groundwater from Deer Creek, and Los Molinos depending on the flows from Mill Creek.

Your proposed emergency regulations relating to Deer Creek flows, Mill Creek flows and Antelope Creek flows and the more general regulations allowing such a procedure on any other stream or river should not be adopted for at least the reasons set forth hereafter. It is difficult to imagine that the Board Members are aware of and adopt the arrogance and opportunism represented by a proposal to adopt those regulations taking away approximately 1/3 of the yield of water rights on Deer Creek during dry or critically dry years without a hearing and balancing of impacts. To assure that the Board Members have personal knowledge of why the SWRCB claims it is exempted from long-established rules of water right seniority and due process requiring the holding of hearings, balancing facts, making reasoned decisions and following the directions of the Constitution? We quote from SWRCB's proposed finding of Emergency Staff Report which states in the unnumbered pages under Section "Informative Digest" the following justification for these emergency regulations:

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“For the State Water Board to take an enforcement action, each illegal diversion may be investigated and charged separately, and water right holders may request a full evidentiary hearing that is then subject to de novo review in the superior Court system. As such, the current system is cumbersome...”

Do your Board members wish to be remembered as the persons who allowed Staff and Fishery Agency impatience to abandon the very principles of law and equity our country is based upon?

The reasons why this regulation process and adoption should be abandoned now include the following:

- I. **The action proposed and staged as proposed for you to adopt is in fact inverse condemnation of rights to utilize water established by Tehama County Court Judgment without employment of the Constitutional procedures and guarantees for such an action. The proper action is to reject the proposed regulations and either file a motion with the Tehama County Court, or if you view the public trust or other legal principles of reasonable use to require flows to be bypassed, by convening a hearing yourself to receive evidence as to reasonable and unreasonable uses.**

The Governor's Declaration of Drought neither authorized or directed the SWRCB to provide for condemnation of water rights and did not appropriate or allocate funds for such an inverse condemnation action. The facts are going to be embarrassing to the SWRCB when your Board Staff is required to tell a Court that they didn't think it was taking anything the existing users were entitled to because their use is "unreasonable" or because the public trust allowed the taking, and there is no record to support such claims except for fishery Agency views which no reasonable opportunity to oppose was provided through a hearing.

1. The fact that California DFG and NMFS on both Deer Creek and Mill Creek have had various plans funded through hundreds of thousands of dollars to acquire and substitute water over the previous years, all of which remain uncompleted, is evidence that NMFS and Calif DF&W are trying to substitute your Order for a publicly-

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financed project to make water available for these flows. Those proposed fishery projects have not been completed and a judge and jury are going to recognize that individual citizens property in Deer Creek and Mill Creek was being taken because bureaucracies could not get out of their own way and are so busy spending public money that they never accomplish any results in increasing water availability.

Your Board will take responsibility for that record and your refusal to convene a hearing to receive evidence of that record will plant the flag of responsibility at your feet. Our private citizens are now proposed to bear a public cost, in a disorganized fashion that will kill crops currently maturing and in conditions in which well drillers cannot be found. Not a good record upon which the SWRCB can defend an inverse condemnation action!

2. The hope or thought that somehow the magic label or "public trust" totem will excuse your taking through inverse condemnation, your, lack of due process or otherwise explain your authority to adopt the regulations is misguided. Public Trust uses are not applicable and not reserved upon Mexican Land Grant originated property in California. *Summa Corp v. State of California* 466 U.S. 196, 104 S.Ct 1751 (1984). All of the land made subject to Stanford Vina Mutual Water Company rights, all of the Mill Creek lands holding water rights and most, if not all, of the Deer Creek Irrigation District service area lands are confirmed by the California Commission as portions of Mexican Land Grants.

The Staff of the Fishery Agencies and the SWRCB Staff recommending that you attempt to determine unreasonable use on the basis of public trust uses for fishery purposes on streams the Supreme Court has declared not subject to public trust reservation of authority, without a record, is similar to sending a five year old out on its new bicycle on a steep hill: you don't expect a good result. Try your theory out on "flat land first," giving yourself the best chance of success and least chance of a disaster with a hearing as to the fishery's reasonable needs and the groundwater yield available in the area.

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II. Eminent Domain procedures are required in these circumstances. You can go back to the Governor and ask for further authority, but there is no direction now or approval of condemnation.

Eminent domain acquisition of water or the right to utilize water, even temporarily, requires the SWRCB to hold a hearing, create a record and upon conclusion of the hearing adopt a resolution of necessity by a 2/3 vote and deposit the estimated amounts of damages and value taken unless agricultural use can be found to be unreasonable. CCP §1255.010; CCP §1245.210, *et seq.* Written notice must be served upon every affected landowner. NMFS and DFW and your staff are apparently confident none of this is necessary because due process is, as is stated explicitly in the Staff Report, “cumbersome.” California Constitution at Article I, Section 19 states “Private property may be taken or damaged for public use only when just compensation, ascertained by a jury, unless waived, has first been paid to or into Court for the owner...”. Article I, Section 7 states: “A person may not be deprived of...property without due process of law...”. In *Grannis v. Ordean* (1914) 234 U.S. 385, 394, the United States Supreme Court in regard to the due process requirement of Article 5 of the U.S. Constitution stated “The fundamental requisite of due process of law is the opportunity to be heard.”

This Board has given no notice to the water right users and holders, nor has it provided an opportunity for presentation of evidence (5 minutes of comments is not a “hearing”). Our founding fathers in adopting the Bill of Rights and Constitution would have smiled at British King George’s characterization of the rights established as “cumbersome.”

III. Unreasonable use and public trust, if it applied, each require a noticed hearing.

Even if the “public trust” doctrine applied to these streams, that doctrine and cases involving claimed unreasonable use require an evidentiary hearing geared to the particular facts of each situation. A report from Fishery Agencies of what they want does not constitute a balancing of uses. In *National Audubon v. Superior Court* 33 Cal 3rd 419, 449(1983) it was emphasized that either the Court or the State Board in the case of post-1914 appropriative rights in establishing a public trust revision was required to balance the uses of the water with the public trust values for use of the water and determine on the basis of evidence the proper balance. In *Joslin v. Marin Municipal* 67 Cal.2d 132 (1967),

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the California Supreme Court held that only by balancing and comparing uses could unreasonable use be determined and only on the basis of a hearing record. Here, the SWRCB opens no such record or hearing.

In *Forni*, 54 Cal.App.3d 750, 754, reasonable and unreasonable use required a resolution of factual issues. See also *IID*, 186 Cal.App.3d 1165. It is not as simple as finding that fish are always first and that NMFS is entitled to take property interests without compensation through the SWRCB. The Board's own existing regulations require investigation and an evidentiary hearing of whether the current uses of water are reasonable evidence of misuse of water. Here, there is none.

IV. There is no CEQA exemption for a taking of property in the Governor's Drought Declaration, and this Board will be responsible for the damages, attorneys fees, expert witness fees and costs which will be incurred.

The attached Declaration of the Members of the Board of Directors of the Stanford Vina Ranch Irrigation Company provides a rapidly-gathered but incomplete description of the full damages and dislocation which will be caused. However, the Declaration gives some glimpse to the Board of why it should slow down and provide a more organized approach to these questions. We have all seen past hysterical responses by government proven to be incorrect and unnecessarily damaging. Substantial costs of attorneys, experts and injury to growing crops and improvements and the townships of Vina and Los Molinos. Vina, containing the residences of approximately 100 families, will lose a portion of its groundwater recharge source and domestic well water supply as a result of adopting these regulations, and the clear duty to relocate those citizens is provided in Government Code Section 7260 ("...Programs undertaken shall be planned [so that] ... (4) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable dwelling...") and to compensate for damages to local farming operations and for the death of productive orchard trees by your threatened action.

Please review the hastily-assembled Declaration (attached) and explain why there is no time for a hearing and a plan.

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A Court will eventually ask the SWRCB Members how “cumbersome” it was to attempt to condemn people’s property without even depositing the amount of damages and loss they will suffer and without applying to the Court that is in charge of the judgment affirming these rights to water asking for an exemption or change(either temporarily or permanently) in the diversion regime? There is an existing judgment determining the right to water flows within Deer Creek. The 1924 Tehama County Judgment is attached. If the SWRCB or others believe that Judgment is wrong or should be reopened to include a public trust reservation, the California Supreme Court and other legal authorities have prescribed the procedures to do so. Those procedures have not yet been undertaken and must be undertaken prior to depriving _____

The SWRCB Board Members with knowledge of the terms of that 1924 Judgment can well be termed by the Court to be in contempt of Court if an attempt is made through regulation to violate the terms of that Judgment and attempt to establish a new type of right to water with seniority over the Superior Court determination. Code of Civil Procedure §1209(a)(5) states: “The following acts or omissions...are contempts of the authority of the Court ...(5) Disobedience of any lawful judgment, order or process of the court.” The better practice than a trip to Red Bluff having intentionally violated a judgment of the Superior Court under a contempt citation is to apply for its modification.

V. Even if a taking of the right to use water could be accomplished under the public trust doctrine and Mexican land grant grounds were not present, the improvements installed which become of less value because of the public trust revision of rights is compensable and requires due process procedures and reasonable compensation.

All of the cases establishing and applying the public trust doctrine commencing with *Illinois Central Railroad Co v. Illinois* (1892) 146 U.S. 387 requires that compensation be paid pursuant to Constitutional guarantees if the public trust revision of rights renders property of individuals valueless or damages those individuals relying upon the rights. The Supreme Court stated on page 455 that if the public trust doctrine was utilized to take back the use of property granted, the state “ought to pay” for any “expenses incurred in improvements made under such a grant” when the state wishes to resume possession of the interest in water or property under the public trust doctrine or the concept that a granted use has become unreasonable because of the public trust. In *National Audubon*, the Supreme Court of California at page 439, footnote 22, and in *City*

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of Berkeley v. Superior Court (1980) 26 Cal.3d 515, 532, and *California v. Superior Court* 29 Cal.3d at 261, the California Supreme Court confirmed in each instance that the exercise of a public trust reservation carried with it the duty to provide for damages incurred and loss of value because of the reasonable reliance of private parties upon the use of those resources.

Here, orchards have been planted, fertilized and maintained for years in anticipation of the water being available to produce crops to repay the debts and monies invested. Your action simply requires that all landowners attempt to deplete the groundwater basin with new wells resulting in an even broader disaster ruining neighboring farmers and landowners reliant only on groundwater and destroying the water balance developed over 100 years of experience. Without a hearing and all of the evidence to adopt a resolution of necessity for these improvements and uses to be "taken," (and we apologize for this) it is like sending the 5-year old out on his new bike not only on a steep hill but on a street with fast-moving cars.

VI. A public Agency such as the SWRCB which attempts to take interests in property without due process and without utilizing the proper procedures specified in the California Eminent Domain law is responsible for all attorneys fees, expert witness and other reasonable costs as well as the damages caused by their dislocation of normal procedures.

Code of Civil Procedure §1235.140 is clear that litigation expenses incurred includes expenses incurred before any complaint is filed or even if no complaint in eminent domain is ever filed. It states:

“(B) ...such fees were reasonably and necessarily incurred to protect the defendant's interests in the proceeding...whether such fees were incurred for services rendered before or after the filing of the complaint.”

CCP §1036 provides for the award of attorneys fees and other reasonable costs in the case where actions are taken which are not in the nature of the conduct of an appraisal, filing of a deposit and formal condemnation action under the eminent domain law or the procedures required by the Constitution and eminent domain law are not otherwise followed and an inverse condemnation occurs.

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The right to all reasonable costs incurred in resisting and in requiring compliance with proper procedures under California law is paralleled by the requirements that the failure to follow due process requirements constitutes a violation of the 42 USC 1983, often called the "Civil Rights Enforcement Action" statute. Damages, including damages arising from uncertainty created in regard to the use of property over the long period necessary to resolve questions posed by improper state or federal action, are also awardable in addition to reasonable attorney fees and costs.

An attempt to create a more senior water right, without following the balancing process prescribed for public trust uses in *National Audubon* and without exercising the procedural steps required by California's Eminent Domain Law, would result in repetitive damages in an inability to obtain capital for property maintenance, management and development, an inability to provide for reasonable planning for property use, including planting or replanting of crops, and innumerable other forms of damage.

Hundreds of individuals will have their lives suspended with resulting damages because Federal and State agencies wish to avoid paying the costs of the property and severance damages they would be required to pay if they simply either commenced an action to change the existing water right judgment to include a determination of whether a public trust use for the water is required or reserved, and determined the conditions under which it would be recovered by the public or alternatively condemned the interests in water sought for this higher public benefit which apparently fishery uses represent.

VII. The NMFS has repeatedly been held to be responsible for taking of property when it seeks to obtain water which is otherwise being used beneficially for an imagined higher purposes. NMFS can commence an eminent domain action as can the California DF&W. There is no need for the SWRCB to put its credibility and reputation at stake.

In the *Tulare Lake Water Storage* litigation at 49 Fed. Claims 313 (2001) and *Casitas Municipal Water Storage v. United States* (citation to be supplied), it has been held that the taking of water can constitute an inverse condemnation if it in fact results in the reduction in use and damages, even if done under the claim of an Endangered Species Act violation or threatened violation. The Department of Commerce can commence an eminent domain action. Why then is it necessary or expeditious for this Board to declare that agricultural use of water is unreasonable when fisheries might use the water? The

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same rules related to the award of attorneys fees and costs provide for huge public costs because NMFS will not organize its efforts.

The Federal Action in eminent domain conducted by NMFS is similar but is buttressed by the requirements of 42 USC 1983 and the Fifth Amendment of the United States Constitution which is quoted above.

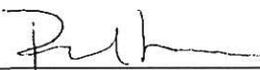
Finally, the Federal Equal Access to Justice Act at 28 USC 2412d and 5 USC 504(a) provide for the award of all attorneys fees and costs of individuals or mutual water companies placed in this predicament where, due to the "cumbersome nature" of rights, constitutional guarantees and due process, the government refuses to comply with the constitutional protections of individuals.

Conclusion

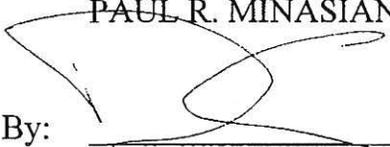
Please abandon the concept of this regulation for Deer Creek, Mill Creek and Antelope Creek and as a basis for future regulatory action as a simple way to adopt the SWRCB authority to tributaries of the San Joaquin or Sacramento basins.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

PAUL R. MINASIAN, ESQ.

By: 

DUSTIN C. COOPER, ESQ.

PRM:dd

Enclosures:

1. Declaration of Members of the Board of Stanford Vina Ranch Irrigation Company
 2. January 3, 1924 Tehama County Superior Court Judgment By the Court, *Stanford Vina, et al. v. Dicus, et al.*
- cc w/enclosures: Members of the Board, Stanford Vina Ranch Irrigation Company

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6 Attorneys for Plaintiffs STANFORD VINA
RANCH IRRIGATION COMPANY
7

8 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

10 STANFORD VINA RANCH
IRRIGATION COMPANY and DEER
11 CREEK IRRIGATION COMPANY,

12 Plaintiffs,

13 v.

14 Defendants.
15

) **DECLARATION OF SOME BOARD**
) **MEMBERS OF STANFORD VINA**
) **RANCH IRRIGATION COMPANY**

17 The undersigned Members of the Board of Directors of Stanford Vina Ranch
18 Irrigation Company make the following declaration under penalty of perjury:

19 1. We, the undersigned, are some of the members of the Board of Directors of
20 the Stanford Vina Ranch Irrigation Company which receives water from Deer Creek in
21 Tehama County, California. The District has a exterior service area of approximately
22 4,500 acres lying North and South of Deer Creek. The Deer Creek Irrigation District
23 diverts from the same Creek at a higher elevation and easterly of our diversion facilities.

24 2. We are landowners or representatives of landowners within the Stanford
25 Vina Ranch Irrigation Company and we have had an inadequate period of time from the
26 receipt of the proposed Emergency Regulation to fully canvass and notify the users of
27 water of its impacts. However, we are informed by our many years of experience with the
28 Mutual operations and experience with flows in Deer Creek, and we believe based upon

1 our past observations and current attempts in the last 5 days to determine the impacts of
2 the proposed emergency regulations and new flow regime proposed, we can state that we
3 are informed and believe as follows:

4 3. If Stanford Vina is required to forego 2/3 of 50 cfs, or if _____ a
5 decline occurs to gradually all diversions of the total flow otherwise available to Stanford
6 Vina and Deer Creek Irrigation District for the latter part of May 2014 and all of June
7 2014, because flows in the Creek are dropping off very fast it will probably lose a right of
8 access and use of approximately 2,000 to 2,500 acre feet of water in 2014.

9 3.1 Obviously, the requirement of a bypass flow of 20 CFS if November
10 2014 through April 2015 is dry could result in a further loss of capacity and water, but
11 little irrigation occurs in that period. The proposed pulse flows would be an additional
12 250 to 500 ac/ft. The proposed steelhead requirement to bypass 500 cfs in October would
13 result in an additional 1,000 to 1,400 ac/ft in most dry years.

14 3.2 We estimate the requirements amount to an approximately 1.2 to 1.75
15 ac/ft applied to each irrigated acre during the irrigation season in the Mutual, with the total
16 duty of irrigated lands being approximately estimated at 3 to 3.5 ac/ft per acre irrigated,
17 depending on the crop. We think the regulation would mean approximately 40% to 50%
18 of agriculture on lands served with our irrigation supply would be lost, and approximately
19 30% to 40% of the total irrigation land (whose water supply is already reduced because of
20 the drought, and with groundwater already being increased in use) will lose its crop this
21 year.

22 4. At a meeting of our Board on Thursday, May 15, 2014, an estimate was
23 made of the numbers of acres that would have to be idled and the crops lost if the
24 regulation is adopted. The District water supply from Deer Creek is already supplemented
25 with well water through wells owned and operated by our landowners in a dry year, and
26 therefore our general observation was that well water production could not be increased
27 substantially to make up the reduction deficit. Because it is a drought, our users had
28 already planned to reduce their plantings of annual crops and to maximize well pumping.

1 4.1 Because of the dry conditions, we have already observed our users
2 idling portions of their property, but the cut of approximately 40% to 50% of the
3 anticipated supplies will result in prune orchards having to be abandoned and the crops
4 allowed to shrivel, alfalfa plantings which have a life of 3 to 4 years will have to be left
5 unirrigated, and pasture that was planted or could have been maintained for the full
6 irrigation season which allows the maintenance of sustaining cattle breeding will be left
7 dry, and if available, hay will have to be purchased or the livestock sold off and the
8 breeding efforts destroyed. Walnuts and almonds will be stressed and under irrigated,
9 resulting in smaller meats and yields, depending on air temperatures.

10 4.2 Some of the grape crops upon the Vina Monastery (about 550 acres
11 total) will have to be abandoned or will be stressed. This affects their output and long-
12 term efforts to have a sustainable market for their wine in order to be economically
13 sustainable.

14 4.3 Our Directors point out that reductions of those volumes in surface
15 water use would affect recharge to the underground aquifer depended upon by both the
16 Company landowners and adjoining lands because more groundwater will be pumped and
17 water levels will be correspondingly lowered. Our soils are quite light, and therefore a lot
18 of annual groundwater recharge occurs through irrigation of the overlying lands with
19 surface water. Reducing groundwater recharge, combined with causing increased
20 groundwater pumping in the range of 2,000 to 3,000 ac/ft in a 7-month period, is a
21 significant change in the balance we have achieved.

22 4.4 The unincorporated area of Vina includes approximately 100 families
23 or about 500 persons, many of whom are agricultural workers in the area. These
24 residences are served by individual domestic wells in the groundwater aquifer, and
25 generally because the groundwater has been well-managed by the surrounding agricultural
26 areas within the Stanford Vina service, area the wells are believed to be shallow. The
27 Declarants remember some well failures in 1989 through 1992 and would expect that the
28 increased groundwater pumping and reduced recharge from overlying applications

1 proposed by the Proposed Regulations in 2014 would result in a rapid increasing trend of
2 failure of these wells over time. The owners and occupants of these homes will have to
3 relocate until new wells can be installed if that is possible, and there is very little low
4 income housing available in surrounding areas or cities and many of the occupants do not
5 have the funding for new well drilling.

6 5. Historically, Stanford Vina and Deer Creek Irrigation District have been
7 made aware of when adult salmon are migrating during low flow conditions up Deer
8 Creek from the Sacramento river. The Mutual Water Company has proposed to provide
9 equipment to realign riffles and gravel bars in this channel stretch to create a low flow
10 channel so that a smaller pulse flows or bypass flows might allow adults to move
11 upstream and through the fish ladders of each of the Stanford Vina dam and the Deer
12 Creek diversions more rapidly. The low flow channel would both allow the water
13 bypassing the Companies' dams to remain cooler but also provide a deeper and swifter
14 area of water for the fish to swim in. We have been denied authority by the California
15 Department of Fish and Wildlife to provide for operation of the equipment (a smaller
16 dozer or backhoe) to create such a low flow channel to help direct adults in a more
17 efficient manner through this area during periods of low flows and to save water.

18 6. During the last decade, California Department of Fish and Game has
19 studied, proposed and then abandoned cooperative efforts to install additional well
20 capacity to allow foregoance of creek water in the area by Deer Creek and Stanford Vina
21 landowners. Further, both California Fish and Wildlife and NMFS have criticized the fish
22 ladders on the Stanford Vina dam and Deer Creek Irrigation District dam, yet these fish
23 ladders were designed and are maintained by DF&W, and in the case of Stanford Vina are
24 at least owned by DF&W. The overall impression of these agencies' actions in the last
25 few is that "cooperation" means that the local water users should pay in water or money
26 because farmers should not have a right to water, and the State and Federal agencies can
27 thereby succeed in taking the water.

28 7. As suggested by the National Marine Fisheries Service and California

1 Department of Fish and Wildlife, on Sunday, May 18, 2014 at 9:00 a.m., Deer Creek
2 Irrigation District and Stanford Vina reduced their diversions for agricultural use to try to
3 create a 48-hour pulse flow of approximately 100 cfs. This was very wasteful of water,
4 as the water simply spreads across a wide gravel area because we could not excavate a
5 low-flow channel. The water was heated by the spreading, and there is no channel
6 providing a deeper, faster flow to actually encourage the adults to move upstream through
7 the Companies' respective dams. We each determined that we could do some system-
8 wide maintenance and delay some irrigation use and provide for the additional flows at
9 this time rather than in late May or June.

10 8. Our landowners love to see the salmon and steelhead upon our Creek and
11 think we are as much interested in their preservation as the bureaucracies. We do wonder
12 as a result of our experiences with CDF&W and NMFS why the fishery Agency
13 bureaucracies cannot get out of the way of our efforts and continue to insist that the
14 agricultural interests are the enemy. The fish themselves and the agricultural interests
15 seem to have adjusted the timing and quantities of uses and needs over the years, and at
16 least we will pledge to continue to do so, but the adoption of these regulations and the
17 threats of prosecutions, the refusals of California to fix the fish ladders it owns and
18 designs on these dams, and other encounters with rigid bureaucracy such as threats of
19 NMFS prosecutions and now with the SWRCB's proposed regulations, makes us wonder
20 if the fish are threatened by government to a greater extent than by our use of water.

21 9. We are informed and believe the above to be true and correct, and if the
22 SWRCB would agree to conduct an evidentiary hearing, we would to the extent of our
23 information and belief specified above testify to the above facts and information which we
24 are informed and believe to be true and correct. We would further attempt to gather more
25 information and provide as much detail as possible in regard to the predicted
26 environmental and social impacts of the proposed bypass and pulse flow requirements and
27 the damages that would be suffered by our landowners and the occupants of the lands in
28 the Company and near vicinity.

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STATE DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RIGHTS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF TRINAMA.

STANFORD VINA RANCH IRRIGATION COMPANY, a Corporation,
Plaintiff,

vs.

CHARLES DICUS, MARY LIGHTFOOT, (now Mary Lightfoot Foster)
L.R. GRAY, PETER JOHANSEN, GEORGE B. CHAMPLIN, MIGUEL ZUB-
ILLAGA, (Substituted for Gregoire Irigoyen,) MARTIN IRIGOYEN,
J.G. JONES, W.S. JONES, GEORGE BAKER, LYNDON L. BAKER, W.J. BRAND,
NELLIE BRAND, W. SCOTT HEYWOOD COMPANY, (a corporation, sub-
stituted for W. Scott Heywood and Mrs. W. Scott Heywood), EFFIE
BROOKS, FRANK W. COLE, M. SPEEGLE, HAYWARD REED, PERCY GAMMON,
E.A. GAMMON, W.H. FISHER, EPHRAIM W. LEININGER, ANNIE L. GROAT,
JESSE BENNETT, IVISON W. BELL, C. TAMAGNI, (Substituted for
S.R. Pritchett),
FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, SIXTH
DOE, SEVENTH DOE, EIGHTH DOE, NINTH DOE and TENTH DOE,

Defendants.

JUDGMENT BY THE COURT.

THIS CAUSE, came on regularly to be heard by the Court,
on the 27th day of November, 1923;

McCOY & GANS, appearing as Attorneys for the Plaintiff,
and, W.A. FISH, AND, W.P. JOHNSON, appearing as Attorneys for the De-
fendants, CHARLES DICUS, MARY LIGHTFOOT, (Now Mary Lightfoot Foster)
L.R. GRAY, PETER JOHANSEN, GEORGE B. CHAMPLIN, MIGUEL ZUBILLAGA (Sub-
stituted for Gregoire Irigoyen) MARTIN IRIGOYEN, J.G. JONES, W.S.
JONES, GEORGE BAKER, LYNDON L. BAKER, W.J. BRAND, NELLIE BRAND, W.H.
FISHER, EFFIE BROOKS, M. SPEEGLE, HAYWARD REED, EPHRAIM W. LEININGER,
ANNIE L. GROAT, W. SCOTT HEYWOOD COMPANY (Substituted for W. Scott
Heywood, and Mrs. W. SCOTT HEYWOOD), and C. TOMAGNI, (substituted for
S.R. Pritchett), and no one appearing for the defendant FRANK W. COLE,

AND, IT APPEARING TO THE COURT, that the said defendant
FRANK W. COLE, has been duly served with Summons and Complaint,
in said cause, and have made default in that behalf, and the de-

McCOY & GANS
RED BLUFF,
CAL.

1 fault of said defendant for not answering herein is made and enter-
2 ed by order of Court.

3 And request being made by the Plaintiff and its Attor-
4 neys and assented to by W.A.FISH, and, W.P.JOHNSON, Attorneys for
5 Defendants, GEORGE BAKER and LYNDON L. BAKER, ^{that} ~~and~~ the cause be
6 dismissed as to GEORGE BAKER, and, LYNDON L. BAKER, without prejudice,
7 and said cause is hereby dismissed as to said George Baker and, Lyn-
8 don L. Baker, without prejudice.

9 And, it appearing to the court that the plaintiff herein
10 and its Attorneys, and all of the remaining defendants in said
11 cause represented by said W.A.Fish, and, W.P.Johnson, as aforesaid
12 as their Attorneys, have agreed upon and consented to this Decree,
13 setting forth all rights and ownerships of said plaintiff and said
14 defendants, in the waters of Deer Creek, being the subject of this
15 action. At Plaintiff's request, this action is dismissed as to the
16 defendants, Percy Gammon, E.A.Gammon, Jesse Bennett, Ivison W.Bell,
17 G.W.Dicus, and the fictitious defendants.

18 NOW, THEREFORE; In consideration of the premises as
19 aforesaid;-

20 IT IS HEREBY, BY THE COURT, ORDERED, ADJUDGED AND DE-
21 CREED, as follows:

22 I.

23 That said Plaintiff is now and ever since the 20th day
24 of January, 1920, has been a corporation, duly organized and exist-
25 ing under the laws of the State of California.

26 II.

27 That said plaintiff is now, and for many years last
28 past said plaintiff and its predecessors in interest have continu-
29 ously been the owners of and in possession ^{of} and entitled to the
30 possession of, a certain Main Irrigation System heretofore owned
31 by the Board of Trustees of the Leland Stanford Junior University
32 on and about Deer Creek, in the County of Tehama, State of California.

1 and conveyed in common by said Board of Trustees to purchasers from
2 it of certain irrigable lands hereinafter described and situate on
3 and about said Deer Creek, said Main Irrigation System consisting
4 of canals, structures, and other works appurtenant to said system,
5 and used and to be used for the delivery and diversion of said water
6 from said Deer Creek to said irrigable lands.

7 That as a part of said irrigation system and connected
8 therewith and appurtenant to it, said plaintiffs is now and for
9 many years last past, said plaintiff and its said predecessors in
10 interest have been continuously the owners of water rights in and
11 to the waters of said Deer Creek, for the irrigation of said
12 irrigable lands and for other useful purposes thereon, and the
13 right to take such and said water from said Deer Creek, and convey
14 the same to said irrigable lands for said uses and purposes there-
15 on.

16 III.

17 That the principal points of diversion of water from said
18 Creek in and by said irrigation system are at the main Dam of
19 said System at about the center of the East-half (E $\frac{1}{2}$) of Section
20 One (1), in Township Twenty-four (24), North Range Two (2) West,
21 M.D.M. That from said Main Dam one main ditch or canal is taken
22 from the North side of said creek and runs in a general Westerly
23 and North-westerly and south-westerly direction and used for the
24 irrigation of portions of said irrigable lands lying on the North
25 side of said Creek, and that from said Main Dam another main
26 ditch or canal is taken from the South side of said Creek and runs
27 in a general south-westerly direction and used for the irrigation
28 of a portion of said irrigable lands, lying on the South side of
29 said Creek. That another ditch or canal of said system known as
30 the Cone & Kimball Ditch is taken from the north side of said
31 Creek at or near the center line of the East-half of Section
32

1 Thirty-three (33), in Township Twenty-four (24) /North Range One (1)
2 West, M.D.M. and runs in a general Westerly direction and is used
3 for the irrigation of portions of said irrigable lands; and also for
4 the irrigation of 39.85 acres of irrigable lands of W.Scott Hey-
5 wood Company, one of the defendants, and for the irrigation of 70.15
6 acres of the irrigable lands of the defendant W.H.Fisher, and for
7 the irrigation of 81.96 acres of irrigable lands of the defendants
8 Ephraim W.Leininger and Annie L.Groat.

9 That a small portion of said irrigable lands (mentioned
10 in Paragraph II) hereof known as the Parter Place is irrigated by
11 water from what is known as the Dicus Ditch, said ditch being
12 taken from the South side of said Creek, in Section Five (5) in
13 Township Twenty-four (24) North Range One (1) West, M.D.M. and runn-
14 ing thence in a South-westerly direction to and upon said lands.

15 IV.

16 That said Plaintiff was organized as a corporation for
17 the purpose of owning and operating the said Irrigation System and
18 the canals, structures and other works appurtenant thereto, and
19 for and in the interests of the stock-holders of said corporat-
20 ion, as the owners of said lands.

21 That the stock-holders of said corporation are the orig-
22 inal purchasers of said irrigable lands from said Board of Trus-
23 tees, and their successors in interest, and they are using the said
24 system and the said waters of said Deer Creek for the irrigation
25 irrigation of said irrigable lands and for other beneficial pur-
26 poses thereon.

27 That the capital stock of said corporation is appurtenant
28 to the said irrigable lands, and the water from said irrigation
29 system is delivered only to the owners of said Capital Stock, all
30 as provided in Section 324 of the Civil Code of the State of
31 California, and that all of the said water and water rights of
32 the said corporation are appurtenant to the said irrigable lands.

V.

1
2 That the irrigable lands owned by ~~the~~^{said} stock-holders as
3 aforesaid, and purchased from said Board of Trustees, consist of
4 5706.55 acres, and they lie upon and along said Deer Creek and some
5 of them are riparian to said Creek.

6 That said lands are valuable agricultural lands and are
7 susceptible of irrigation from said Creek, and are more particular-
8 ly described as follows, to-wit:

9 "Those certain tracts of land, situate and being in the
10 County of Tehama, State of California, and sold by the Board of
11 Trustees of the Leland Stanford Junior University, to sundry
12 persons in the years 1918, and 1919, upon and about Deer Creek in
13 said County of Tehama, and having the aggregate acreage of 5,706.55
14 acres, and particularly shown and delineated upon that certain
15 Map entitled: "Map showing Ditches and irrigable lands of the Stan-
16 ford ~~V. & W.~~ irrigation Company, Scale 1 inch-500 feet. Polk and
17 Robinson, Civil Engineers, Chico, California, June 1920."

18 Said Map consists of six sheets, and said Sheets are on
19 file in the office of the County Recorder of said County of Tehama,
20 at and in and comprising pages 34,35,36,37,38 and 39 of Map Book
21 "F" Tehama County, and are hereby referred to and made a part here-
22 of, as the Official Record and description of said lands.

23 Said Map is marked as recorded on the 28th day of July,
24 1920, at 11 o'clock A.M.

25 Said lands are designated on said map as Tracts, Nos. 1A,
26 1B, 2, 3A, 3B, 3C, 4, 5, 6, 7, 8, 9, 10A, 10B, 11, 12 and 13, and they are
27 particularly described in Exhibit A to the Amended Complaint in
28 this suit, under Seventeen Parcels, giving the acreage of each
29 separate parcel, making up the said total of 5,706.55 acres, and
30 to said Exhibit "A" reference is hereby made for particular de-
31 scriptions.

VI.

1 That said plaintiff has certain rights in the waters
2 of said Deer Creek, for the irrigation of said described lands and
3 for other uses thereon, by reason of the said riparian character
4 of said lands, or some of them, and by reason of the appropriat-
5 ion and use of water thereon, and by reason of a Permit from the
6 State Water Commission of the State of California, mentioned in
7 Plaintiff's Complaint.

VII.

8
9 That the said defendants are the owners of irrigable lands
10 situate in the County of Tehama, State of California, and contain-
11 ing 2195.27 acres, and lying upon and near the said stream of Deer
12 Creek. That the lands of said defendants, containing the said total
13 acreage of irrigable lands, and the names of the owners of said
14 parcels are as follows, to-wit;

15 CHARLES DICUS, is the owner of the following lands, to-
16 wit: "All of the South-east Quarter (SE $\frac{1}{4}$) of Section Twelve (12),
17 lying South and East of the County Road; Also, the North-half of
18 the North-east quarter (N $\frac{1}{2}$ of NE $\frac{1}{4}$), and the South-east quarter of
19 north-east quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$), of Section Thirteen (13), all in
20 Township Twenty-four (24), North Range 2 West, M.D.M.

21 MARY LIGHTFOOT FOSTER, is the owner of the following
22 lands, to-wit; -The south half of the northeast quarter (S. $\frac{1}{2}$ of
23 NE $\frac{1}{4}$), and all of the North-half of the South-east Quarter (N $\frac{1}{2}$ of
24 SE $\frac{1}{4}$) lying North and East of the County Road, save and except that
25 portion heretofore conveyed to D.C. Gray, in Section Twelve (12),
26 in Township Twenty-four (24), North Range Two (2) West, M.D.M. and
27 a four-fifths (4/5) interest in one acre of land situate in the
28 North-west corner (NW) of the North-west quarter (NW $\frac{1}{4}$), of Section
29 Eight (8), in Township Twenty-four (24), North Range 1 West, M.D.
30 M.

31 L.R. GRAY, is the owner of the following lands, to-wit;

32 "Beginning at the North-east corner of the South-east
Quarter of the North-east quarter, of Section Twelve (12), in
Township Twenty-four (24), North Range Two (2) West, M.D. M. run-
ning thence West 8.48 chains; thence South 15 chains; thence East
2 chains; thence South 8.20 chains to the County road; thence
North 61° East 7.40 chains; thence North 19.35 chains to the
place of beginning, in Section Twelve (12), Township Twenty-four
(24), North Range 2 West, M.D.M. Also, a one-fifth interest in
one acre of land, situate in the north-west corner of the north-
west quarter of Section Eight (8), in Township 24, North Range
One (1) West, M.D.M.

1 PETER JOHANSEN, is the owner of the following lands,
2 to-wit; "The fractional north-west quarter (NW $\frac{1}{4}$) of Section Seven
(7); Township Twenty-four (24), North Range One (1) West, M.D.M.

3 GEORGE B. CHAMPLIN, is the owner of the following lands,
4 to-wit;- "Beginning at the north-west corner of the south-half of
5 fractional Section Seven (7), in Township Twenty-four (24), North
6 Range One (1) West, M.D.M. Thence East ~~xxx~~ along the Mid Section line
7 of said section to a point due north of the center line of the wagon
8 road, east of the dwelling house, and west of the first row of trees
9 east of said dwelling house, being distant from said North-west cor-
10 ner 1740 feet, more or less, running thence South at right angles with
11 said north boundary line ~~to~~ a point 600 feet north of the south bound-
12 ary line of said Section; thence West at right angles, and parallel
13 with the south boundary line of said section, a distance of 600 feet
14 to the south boundary line of said section, thence west along said
15 boundary line to the south-west corner of said section; thence north
16 along said boundary line to the place of beginning.

17 MIGUEL ZUBILLAGA and MARTIN IRIGOYEN, are the owners of
18 the following lands, to-wit;-

19 "Beginning at the north-east corner of the south-half of
20 Section Seven (7), in Township Twenty-four (24), North Range One
21 (1) West, M.D.M. and running thence West to a point North of the
22 center line of the wagon road, situate east of the dwelling house
23 on said premises, said point being 174 feet East from the north-
24 west corner of the south-half of said Section Seven (7) thence South
25 to a point 600 feet north of the south boundary line of said Section
26 Seven (7), thence West 600 feet; thence South 600 feet; thence east
27 to the south-east corner of said Section Seven (7), and thence North
28 to the place of beginning.

29 J.G.JONES, and W.S.JONES, are the owners of the follow-
30 ing described lands, to-wit;

31 "All of the North-east quarter (NE $\frac{1}{4}$) of Section 7, in
32 Township Twenty-four (24), North Range One (1) West, M.D.M. ~~is~~

W.J.BRAND and NELLIE BRAND are the owners of the follow-
ing described lands, to-wit;

"The West one-half division of Section Six (6), in Town-
ship 24, North Range 1 West, M.D.M. beginning at a point designat-
ed on Survey plat at Sta 69.02, being the N.W. corner of E $\frac{1}{2}$ divis-
ion and North-east corner of west-half (W $\frac{1}{2}$) division of Section
Six (6) and running North 84° 57' West 443.0 feet; thence along
south bank of Deer Creek south 71° 18' West 455.0 feet; thence
South 67° 20' West 325.0 feet; thence South 57° 58' West 1382.0
feet to west line of Section Six (6); thence South 0° 02' East
3130.0 feet along the west line to South-west corner of Section 6;
thence North 86° 52' East 1450.0 feet along south line of Section
Six (6); thence South 89° 57' East 918.0 feet to point North 89°
57' West 2111.5 feet from southeast corner of Section 6; thence
North 0° 3' West 4057.0 feet along equal division line to point
of beginning.

W. SCOTT HEYWOOD COMPANY, a corporation is the owner
of the following described lands:

"Commencing at the north-east corner of the south-west
quarter of Section Thirty-three (33), in Township Twenty-five (25),
North Range 1 West, M.D.M. running thence South 60 chains; thence
7.

1 West 42.66 chains; thence North 60 chains; thence East 3.03 chains;
2 thence North 20.00 chains and thence East 40.00 chains to the place
of beginning."

3 HAYWARD REED, is the owner of the following lands;

4 "The South-west quarter of Section Five (5), in Township
5 24, North Range 1 West, M.D.M. Also, the fractional North-west
6 quarter of Section Five (NW $\frac{1}{4}$ of Sec. 5) in said Township and Range,
7 and all situate north of the line beginning 3.19 chains west of
8 the north-east corner of the north-east quarter of said section 5,
9 in said Township and Range, and running thence West 5.58 chains to
that certain water ditch known as the Dicus Water Ditch", thence
following down and along the center of said ~~Wx~~ ditch to the center
line running north and south through the said Section Five (5),
said point being 7 chains north of the center of said Section."

10 W.H. FISHER, is the owner of the following lands;

11 "The fractional south-half of the south-east quarter (S $\frac{1}{2}$
12 of SE $\frac{1}{4}$), of Section 32, in Township Twenty-five (25), North Range
One (1) West, M.D.M."

13 M. SPEEGLE, is the owner of the following lands;

14 "The Northwest quarter of the north-east quarter, (NW $\frac{1}{4}$
15 of NE $\frac{1}{4}$) of Section Eight (8), in Township Twenty-four (24), North
Range One (1) West, M.D.M."

16 EPHRAIM W. LEININGER, is the owner of the following
lands;

17 "The North-east quarter (NE $\frac{1}{4}$) and South-half of the north-
18 west quarter (S $\frac{1}{2}$ of NW $\frac{1}{4}$), of Section Thirty-two (32), in Township
Twenty-five (25), North Range One (1) West, M.D.M."

19 ANNIE L. GROAT, is the owner of the following lands;

20 "The East-half of the North-east quarter (E $\frac{1}{2}$ of NE $\frac{1}{4}$)
21 and the East 67 acres of the West-half of the North-east quarter,
(W $\frac{1}{2}$ of NE $\frac{1}{4}$), of Section 31, in Township Twenty-five (25) North
22 Range One (1) West, M.D.M."

23 C. TOMAGNI is the owner of the following lands;

24 "The East-half of the North-east quarter (E $\frac{1}{2}$ of NE $\frac{1}{4}$);
25 East half of North-west quarter (E $\frac{1}{2}$ of NW $\frac{1}{4}$), and South-west
26 quarter of north-east quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Eight (8),
The South-east quarter (SE $\frac{1}{4}$) of Section Five (5), all in Township
24 North Range 1 West, M.D.M."

27 Also, all that portion of the North-east quarter (NE $\frac{1}{4}$)
28 of Section Five (5), in Township 24, North Range 1 West, M.D.M.
described as follows;

29 "Beginning at a point on the north line of said Section
30 5, said point being 3.19 chains West of the North-east corner of
the north-east quarter of said Section Five (5); thence West
31 along the north line of said Section 5, a distance of 5.58 chains
to the center of a slough or irrigating ditch known as the Dicus
Water Ditch; thence down and along the center of said Dicus Water
32 Ditch to a point where the line running north and south through
the center of said section, intersects the line of said ditch;

1 said point being 5.70 chains north of the center of said Section
2 5; thence ~~west~~ South 7.50 chains to the center of said Section 5;
3 thence east along the south line of the north-east quarter of said
4 Section 5, 34.77 chains to the west line of the Cemetery; thence
5 North 5.80 chains; thence East 1.71 chains to the lands owned by
6 W. Scott Heywood Company, a corporation, thence north along said
7 line to the place of beginning. "

8 EFFIE BROOKS, is the owner of the following lands;

9 "The West-half of the north-west quarter ($W\frac{1}{2}$ of $NW\frac{1}{4}$) of
10 Section Eight (8), in Township Twenty-four (24), North Range One
11 (1) West, M.D.M. excepting therefrom a piece of land, described as
12 follows; Commencing at the north-west corner of said Section 8,
13 and running thence East 150 feet; thence South 300 feet; thence
14 West 150 feet; thence North 300 feet; to the place of beginning.

15 VIII.

16 That said defendants are now, and for many years last
17 past, said defendants and their predecessors in interest have con-
18 tinuously been the owners of certain water rights in the waters
19 of Deer Creek for the irrigation of said described lands, and for
20 other uses thereon, by reason of the riparian character of said
21 lands, or some of them, and by reason of the appropriation and use
22 of the water thereon.

23 IX.

24 That the principal ditches and points of diversion from
25 said Creek, by which the said defendants take water from said
26 creek, other than the Cone & Kimball Ditch and point of diversion
27 heretofore described are as follows; That certain water ditch
28 known as the Dicus Water Ditch taking water from the South Bank of
29 Deer Creek, in the North-east quarter ($NE\frac{1}{4}$) of Section Five (5),
30 in Township Twenty-four (24), North Range One (1) West, M.D.M.

31 That certain water ditch known as the Heywood-Reed Ditch,
32 formerly known as the Carter Ditch, taking water from Deer Creek,
33 on the south bank thereof, at a point in the north-half of the
34 South-east quarter of Section Thirty-three (33), in Township
35 Twenty-five (25), North Range One (1) West, M.D.M.

36 That certain water ditch known as the Baker and Brand
37 ditch and also known as the "Shearer Ditch", taking water from

1 Deer Creek, on the south bank thereof, in the North-west quarter
2 (NW $\frac{1}{4}$) of Section Five (5), in Township Twenty-four (24), North
3 Range One (1) West, M.D.M.

4 That certain water ditch known as the Champlin Ditch
5 taking water from the south bank of Deer Creek, in the North-
6 west quarter (NW $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-
7 five (25) North, Range One (1) West, M.D.M.

8 X.

9 That said plaintiff and said defendants and said George
10 Baker and Lyndon L. Baker, and their predecessors in interest,
11 for many years last past, have made beneficial use of the entire
12 flow of the waters of said Deer Creek, upon their said described
13 land, and that they do now require the whole flow of the waters of
14 said Deer Creek for the suitable and proper irrigation of their
15 said lands and for other beneficial uses thereon, excepting the
16 rights therein, of the successors in interest of the defendants
17 in suit No. 2449 hereinafter referred to.

18 XI

19 That the average amount of water naturally flowing in
20 said Deer Creek, during the irrigation season, is hereby designat-
21 ed as 150 second feet or 6000 miner's inches.

22 That the said natural flow of the waters of said Deer
23 Creek excepting the rights therein of the successors in interest of
24 the defendants in said suit No. 2449 is hereby apportioned and
25 divided between the said plaintiff on the one hand and the said
26 Defendants and said Bakers on the other hand, as follows;

27 To the said plaintiff for the irrigation of said describ-
28 ed 5,706.55 acres, and for other uses thereon, shall belong and be
29 apportioned and divided sixty-five (65%) per cent of said waters.

30 To the said defendants and said Bakers for the irrigat-
31 ion of their said 2195.27 acres, and for other uses thereon shall
32 belong and be apportioned and divided thirty-five per cent (35%)

of said waters.

XII.

That in case the waters naturally flowing in said Deer Creek should at any time become less than 150 second feet or 6000 miner's inches, then the amount of water hereinbefore mentioned and designated to go to the said plaintiff and said defendants and said Bakers, respectively, shall be proportionately diminished; also, whenever the waters naturally flowing in said Deer Creek shall exceed said amount of 150 second feet or 6000 miner's inches, then the amount of water hereinbefore mentioned and designated to go to said Plaintiff and said defendants and said Bakers, respectively, shall be proportionately increased.

XIII.

That the thirty-five (35%) per cent of the waters of Deer Creek apportioned to the defendants represented by said W.A. Fish and W.P. Johnson, and to said Bakers, is apportioned among the said persons, in proportion to the amount of irrigable lands owned by them, and said acreage is as follows;

CHARLES DICUS	187.84
MARY LIGHTFOOT FOSTER	89.44
L.R. GRAY	16.90
GEORGE B. CHAMPLIN	85.10
MARTIN IRIGOYEN, and, MIGUEL ZUBILLAGA	88.39
PETER JOHANSEN	109.75
J.G. JONES and W.S. JONES	157.84
W.J. BRAND and NELLIE BRAND	204.82
GEORGE BAKER and LYNDON L. BAKER	204.42
HAYWARD REED	363.76
C. TOMAGNI	240.63
EFFIE BROOKS	63.00
W.H. FISHER	70.15
EPHRAIM W. LEININGER and ANNIE L. GROAT	81.96
W. SCOTT HEYWOOD COMPANY	220.80
M. SPEEGLE	10.45
Total	2195.27 acres

IT IS FURTHER DECREED; that as between defendants, W. Scott Heywood Company, and Hayward Reed, the waters apportioned to them by this Decree shall as to priority of use, be governed by Court decrees heretofore made by the Superior Court of Tehama

1 County, California.

2 XIV.

3 That the apportionment and ~~division~~ division and diver-
4 sions determined and provided by this Decree, of the waters of said
5 Deer Creek, shall be a final settlement and determination between
6 the Plaintiff and said Defendants represented by Counsel herein,
7 of all of their interests and rights and claims in and to the
8 waters of said Deer Creek, and that said persons and their assigns,
9 respectively, shall have the right to divert the said portions
10 of the waters of said Creek, from the said Creek, and the channels
11 thereof, and convey the same upon their said lands, for any use or
12 beneficial purposes thereon.

13 XV

14 That none of the waters of Deer Creek are to be used by
15 said plaintiff and said defendants or their assigns upon other
16 lands than those described herein, nor shall any of the said waters
17 be sold, or otherwise disposed of, to be used elsewhere than on
18 the said lands.

19 XVI.

20 That each and all of said parties to this Decree shall
21 have the right to retain, have and use the respective ditches,
22 head-gates, intakes, and flumes now used by them, for diverting
23 the waters from said Deer Creek, for use upon their respective
24 lands.

25 That no change of intake shall be made by which any
26 party to this Decree shall move his or its intake further up stream,
27 than the intake next above said party, unless by agreement of
28 the owners of Seventy-five per cent (75%) of said irrigable lands
29 of the Defendants represented by attorneys in this action.

30 XVII.

31 That the waters of said Deer Creek for the purpose of this
32 Decree shall be measured at a point or place above the heads of

intakes of the ditches diverting water from said stream

1 involved in this decree. Said place being at or near the place
2 where the waters of said creek have been measured by the United
3 States Government and known as the Government Measuring Station.

4 XVIII

5 The lands hereinbefore referred to as belonging to
6 George Baker and Lyndon L. Baker and comprising 204.42 acres, and
7 being a part of the 2195.27 acres hereinbefore mentioned, are de-
8 scribed as follows;-

9 East one-half ($\frac{1}{2}$) division of Section Six (6) in Town-
10 ship Twenty-four (24), North Range One (1) West, M.D.M., beginning
11 at a 70d spike in the center line of County road, being the South-
12 east corner of Section Six (6), and the South-west corner of Sect-
13 ion Five (5), and running N 0° -00 4530.0 feet to a point in the
14 center line of the County Road; thence North 53° 46' West 415.0
15 feet to a point in the center line of County Road, South 0° -00'
16 81.0 feet, from center of upper Deer Creek Bridge, thence South
17 53° 14' West 890.0 feet, along South Bank of Deer Creek; thence
18 South 58° 17' West 580.00 feet; thence North 84° 57' West 487.0
19 feet, to a point on survey plat being Sta. 69-2, thence South
20 0° , 03' East 4057 feet along equal division line to south line
21 of Section 6, thence South 89° 57' East 2111.5 feet along said
22 South line, to a point of beginning, at South-east corner of said
23 Section 6.

24 In making this Decree it is understood and agreed by
25 all of the parties to the Decree and their Attorneys that of the
26 thirty-five (35%) per cent of the waters of Deer Creek mentioned
27 and apportioned in Paragraph XIII of this Decree, apportionment is
28 made to said George Baker and Lyndon L. Baker in accordance with
29 the provisions of said Paragraph XIII.

30 It is still further understood and agreed by said part-
31 ies, that if the rights of said Bakers or their assigns, in the
32 waters of said Deer Creek should ever at any time be established
to be greater than as set forth in said Paragraph XIII, then the
excess of waters determined, to belong to said Bakers, or their
assigns shall be taken from the waters apportioned to the plaintiff
and the said defendants. The loss of said parties to be divided
among them in proportion ~~to~~ to their respective interests, as
herein determined. Also, if the right of said Bakers or their
assigns in the waters of said Deer Creek should ever at any time

STATE OF CALIFORNIA, }
County of Tehama. } ss.

I, H. G. KUHN, County Clerk of the County of Tehama, State of California, and Clerk of the Superior Court, do hereby certify that I have compared the foregoing copy of

Judgment by the Court, in re
Stanford Vina Fresh Irrigation Co

Charles Aicus, et al.

and of the endorsements thereon with the original records of the same remaining in this office, and that the same are correct transcripts therefrom and of the whole of said original records.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court of the County of Tehama, the *17th*

day of *May*, 192*4*

H. G. Kuhn
County Clerk and ex-officio Clerk of the Superior Court of said Tehama County.

By *R. H. Holte*
Deputy Clerk.

1 be established to be less than as set forth in said Paragraph XIII,
2 then the rights of the plaintiff and the said defendants in the
3 waters of said Deer Creek shall be increased in proportion to their
4 respective rights as herein determined.

5 Done in open court this 27 day of November, 1923.

6 John F. Ellison,
7 Judge.

8
9 ENDORSED
10 FILED

11 NOV 27 1923

12 H. G. KUHN, CLERK
13 BY *P. H. Holme*
14 DEPUTY CLERK

RECEIVED

A.M. P.M.

STATE OF CALIFORNIA, }
County of Tehama, } SS

....., being first duly sworn
deposes and says, that he is

..... has read the foregoing
in the above entitled action; that and knows the contents
thereof, that the same is true of own knowledge, except as to
the matters which are therein stated on information
or belief, and as to those matters, that believes it to be true.

Subscribed and sworn to before me, this
day of, 192.....

Notary Public.

No.

In the Superior Court

of the

County of Tehama,

STATE OF CALIFORNIA

STANFORD VINA RANCH IRRIGAT-

ION COMPANY, a corporation,

Plaintiff

vs.

CHARLES DICUS, ET AL.,

Defendant. S.

JUDGMENT BY THE COURT.

Filed 192.....

By

Clerk

Deputy Clerk

Due service of the within
by copy is hereby admitted this.....
day of 192.....

Attorney..... for

McCOY & GANS
Red Bluff, California

Attorneys for Plaintiff.

Exhibit B

MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP

ATTORNEYS AT LAW
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May 22, 2014

By email to: Michael.Lauffer@waterboards.ca.gov and by U.S. Mail

Michael A.M. Lauffer
Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: *Deer Creek Curtailment*

Dear Mr. Lauffer:

On May 13 & 14,¹ 2014, the State Water Resources Control Board (State Water Board) issued notice that it planned to curtail diversions due to Deer Creek Irrigation District and Stanford Vina Ranch Irrigation Company's (SVRIC) alleged waste and/or unreasonable use of water and/or unreasonable diversion of water. Specifically, the State Water Board proposed adopting Article 24, Section 877 through 879.2, to Division 3 of Title 23 of the California Code of Regulations through the emergency rulemaking process.

Government Code section 11346.1(a)(2) states:

At least five working days before submitting an emergency regulation to the office, the adopting agency shall, except as provided in paragraph (3), send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. The notice shall include both of the following:

¹ Although some notices were apparently issued on May 13, 2014, the undersigned did not receive the notice from the State Water Board until 9:58 AM on May 14, 2014.

(A) The *specific language proposed to be adopted*.

(B) The finding of emergency required by subdivision (b).

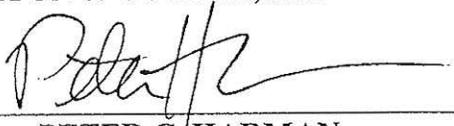
(Emphasis added.)

On May 13 & 14, 2014, the State Water Board issued such notices pursuant to § 11346.1(a)(2). However, the language the State Water Board approved for submittal to the Office of Administrative Law at the conclusion of its meeting on May 21, 2014, had been substantially changed from that which was circulated on May 13 and 14. These changes were neither “nonsubstantial” nor “sufficiently related” changes as defined in Government Code § 11346.8(c) and sections 40 and 42 of title 1 of the California Code of Regulations. Therefore, the State Water Board must issue new notices pursuant to § 11346.1(a)(2).

SVRIC demands that the State Water Board “send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency,” which notice shall include “[t]he *specific language* proposed to be adopted,” no less than five working days before submitting the emergency regulations to the Office of Administrative Law. (Gov. Code § 11346.1(a)(2) [emphasis added].)

Very truly yours,

**MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP**

By: 

PETER C. HARMAN

Exhibit C

**MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP**

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WILLIAM H. SPRUANCE,
Retired

MICHAEL V. SEXTON,
Retired

May 28, 2014

By email to staff@oal.ca.gov and to daniel.schultz@waterboards.ca.gov

Re: Stanford Vina Ranch Irrigation Company's Comments on SWRCB Proposed Emergency Regulations for Curtailment of Diversions on Certain Sacramento River Tributaries; OAL File No. 2014-0523-05E

These comments are submitted on behalf of Stanford Vina Ranch Irrigation Company in response to the State Water Resources Control Board's (SWRCB) proposed emergency drought regulations for Antelope, Mill, and Deer Creeks (title 23, California Code of Regulations (C.C.R.) §§ 877, 878, 878.1, 878.2, 879, 879.1, and 879.2). In short, the proposed regulations fail to satisfy the procedural and substantive requirements of the Administrative Procedure Act; accordingly, the Office of Administrative Law (OAL) must disapprove the proposed regulations.

Background

Stanford Vina Ranch Irrigation Company (SVRIC) is a nonprofit mutual water company located on Deer Creek in Tehama County, California. SVRIC owns conveyance and diversion structures in and connected to Deer Creek, and manages its shareholders' pre-1914 and riparian senior water rights. SVRIC serves approximately 5700 acres of irrigated land. The land is predominately used for permanent plantings including orchards and pasture. Because SVRIC holds senior water rights in an extremely reliable watershed, it has not developed alternative water supplies, such as groundwater, that may be available in other areas with less reliable water supplies to mitigate the effects of drought. Even in historically dry periods such as the early

1990s and 1976-1977, SVRIC was able to divert enough water to keep permanent plantings alive. Now, via emergency regulation and without enough lead time to develop alternative water supplies, the SWRCB proposes to curtail water supplies in a manner that will kill permanent plantings, resulting to catastrophic economic and societal impacts to SVRIC and the community of Vina in Tehama County. In addition, the SWRCB failed to satisfy the procedural and substantive requirements for emergency regulations.

Discussion

The emergency regulations were proposed under the ostensible authority of California Government Code § 11346.1, Water Code § 1058.5, and ¶ 17 of the Governor’s unnumbered Executive Order dated April 25, 2014. Both ¶ 17 of the Executive Order and § 1058.5 of the Water Code authorize the SWRCB to promulgate emergency regulations to, *inter alia*, “prevent the waste, unreasonable use, or unreasonable method of diversion of water” or “to require curtailment of diversions when water is not available under the diverter’s priority of right.” The SWRCB’s issuance of emergency regulations is governed by Government Code §§ 11346.1, 11349.5 and 11349.6, all as modified by Water Code § 1058.5. Because the regulations themselves and the SWRCB’s actions in proposing them violate these and other applicable statutes and laws, OAL must disapprove them.

I. The SWRCB Failed to Adhere to Applicable Procedural Requirements.

A. The SWRCB Violated Mandatory Public Notice Requirements.

OAL is required by law to disapprove the SWRCB’s proposed emergency regulations “if it determines the agency failed to comply with [Government Code] Section 11346.1.” (Gov. Code § 11349.6(b).) The SWRCB failed to comply with the public notice requirements imposed by § 11346.1(a)(2), and thus OAL must disapprove the proposed emergency regulations.

On May 13 & 14, 2014, the SWRCB issued notice of proposed emergency regulations.

A copy of the proposed regulatory language was included with the notice, along with a limited amount of additional supporting information. The SWRCB held a meeting on May 20th and 21st to consider the proposed emergency regulations and receive public comments. Changes were made to the originally proposed language via “Change Sheet #1”, which was circulated during the May 20th portion of the Board meeting. Among other things, Change Sheet #1 added a requirement that parties wishing to divert water for “minimum health and safety needs” must submit a petition to the Deputy Director before such a diversion could be approved. (Change Sheet #1 at 1 (unnumbered).) These changes were only available in hard copy to those physically present at the SWRCB meeting, and were not distributed to the public or made publicly available by email or on the internet.

Additional changes to the proposed regulations were made via “Change Sheet #2” which added a requirement that mandatory minimum flows be suspended within 5 days of the end of the relevant fish migration, rather than leaving that decision to the Deputy Director’s discretion, as originally proposed. Change Sheet #2 was made available to some but not all of the public in attendance at the meeting on May 21st, and was not distributed to the public at large, or made available by email or on the internet.

The most substantial changes to the proposed regulations were made at the end of the May 21st session. These changes were not incorporated in any change sheet and copies of the amendments were not made available to the public. SWRCB staff briefly presented this third set of changes via overhead projector during the meeting and read them aloud a single time. These amendments contained the most significant changes: Among other things, the 5-day deadline for suspending mandatory minimum flows implemented in Change Sheet #2 was reduced to a single business day and a poorly worded provision was added that granted the SWRCB Executive Director discretion to decide whether the voluntary agreements entered into between the governmental agencies responsible for the fish species and the water rights holders would sufficiently protect the fish, and thus whether the mandatory minimum flows would be in effect at all. This third set of changes was never released to the public. During the two-day period between May 21st when the SWRCB approved the amended regulatory language and May 23rd

when the amended proposed regulations were submitted to OAL, the SWRCB kept secret the specific proposed language it intended to submit; the language was not revealed to the public until OAL posted it on its website just before the close of business on May 23—the last day before the long holiday weekend.

Government Code section 11346.1(a)(2) states:

At least five working days before submitting an emergency regulation to [OAL], the adopting agency shall, except as provided in paragraph (3), send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. The notice shall include both of the following:

- (A) *The specific language proposed to be adopted.*
- (B) *The finding of emergency required by subdivision (b).*

(Emphases added.)

Government Code § 11349.6(b) mandates that OAL “*shall* disapprove the emergency regulations if . . . it determines the agency failed to comply with Section 11346.1.” (Emphasis added.) Compliance with § 11346.1(a)(2) is simple: The SWRCB was required only to “send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency,” which notice must include “[t]he *specific language* proposed to be adopted,” no less than five working days before submitting the emergency regulations to OAL. (Gov. Code § 11346.1(a)(2) [emphasis added].) However, the SWRCB did not circulate the specific language it proposed to be adopted *at all* prior to submitting it to OAL, let alone give such notice 5 working days prior to submittal. The requirement was simple, the SWRCB’s noncompliance is clear and irrefutable, and the outcome is mandatory—OAL *must* disapprove the proposed emergency regulations.¹

¹ By operation of Government Code § 11346.1(a)(1), Government Code § 11346.8(c) does not apply to emergency regulations. Thus, there is absolutely no exception to the requirement that “the specific language proposed to be adopted” be circulated for 5 working days prior to submission to OAL. And even if § 11346.8(c) did apply to emergency regulations (and it does not), the SWRCB still could not circumvent the requirement that the exact language to be

B. The Record Submitted in Support of the Rulemaking Lacks Required Components.

Government Code § 11349.6(b) requires OAL to disapprove proposed emergency regulations if they do not meet the standard for “necessity.” The necessity standard is described in § 11349(a) and in the California Code of Regulations, title 1, § 10. Section 10(b) of C.C.R. title 1 requires that the record of the rulemaking must include a “statement of the specific purpose of each adoption” and “information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision.” The record submitted in support of these emergency regulations does not include any such statements or explanations, and only contains the most generalized statements of need. (See “Curtailed of Diversions due to Insufficient Flow for Specific Fisheries Emergency Regulations Digest,” May 13, 2014, at pp. 16-18 (unnumbered).) The proposed emergency regulations should be disapproved because the SWRCB has failed to explain the specific purpose and need for each provision of the regulations.

II. The Proposed Regulations Fail to Meet Substantive Standards of Authority, Necessity, Clarity, and Consistency.

OAL is required by statute to disapprove the SWRCB’s proposed emergency regulations “if it determines that the regulation fails to meet the standards set forth in [Government Code] Section 11349.1.” (Gov. Code § 11349.6(b).) Section 11349.1 requires that emergency regulations meet six standards: Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication. Each of the six standards is defined in Government Code § 11349. If the

adopted be circulated for 5 working days. Section 11346.8(c) only permits changes to the originally circulated language without a new notice if the changes are “(1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.” Therefore, even if those exceptions applied to emergency regulation procedures, they would not exempt the substantial, unforeseeable changes made during the May 20th and 21st SWRCB meeting.

proposed emergency regulations fail to meet any of the standards, OAL “*shall* disapprove” them. (Gov. Code § 11349.6(b) [emphasis added].) The SWRCB’s proposed emergency regulations for “Curtailed Diversion Based on Insufficient Flow to Meet All Needs” violate at least four of the six standards, so Government Code § 11349.6(b) mandates that OAL disapprove them.

A. The Proposed Regulations Do Not Meet the Standard for Authority.

Because SWRCB lacks the authority to adopt these emergency regulations, OAL is required to disapprove them. (Gov. Code §§ 11349(b), 11349.6(b).) Acceptable authority must be in the form of “a California constitutional or statutory provision which expressly permits or obligates the agency to adopt . . . the regulation” or one that “grants a power to the agency which impliedly permits or obligates the agency to adopt . . . the regulation in order to achieve the purpose for which the power was granted.” (1 C.C.R. § 14(a).) The SWRCB’s interpretation of its own regulatory power is not conclusive or binding upon OAL because the provisions of 1 C.C.R. § 14(c)(1)(A) through (C) apply in this case: (A) the SWRCB’s “interpretation alters, amends or enlarges the scope of the power conferred upon it”; (B) SVRIC and others challenge the SWRCB’s alleged authority; and (C) “a judicial interpretation of a provision of law cited as ‘authority’ or ‘reference’ contradicts the SWRCB’s interpretation.” (*Id.* at subd. (c)(1).) Through these proposed emergency regulations, the SWRCB’s novel interpretation of its authority would serve to alter, amend, and enlarge the scope of its authority. This new interpretation contradicts previous judicial interpretations of the same authority and, by this public comment, SVRIC challenges the SWRCB’s authority to promulgate these emergency regulations.

1. Section 1058.5 and the Governor’s April 25 Executive Order Do Not Authorize the SWRCB to Issue Emergency Regulations for the Purpose of Protecting Public Interests or Public Trust Uses.

The SWRCB has exceeded its authority by attempting to issue emergency regulations for

the purpose of protecting public trust (fishery) interests when it was not authorized to issue emergency regulations to serve that purpose. Water Code § 1058.5 and the Governor’s April 25, 2014, Executive Order, at ¶ 17, authorize the SWRCB to issue emergency regulations “to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water.” These authorities did not authorize the SWRCB to issue emergency regulations for the purpose of protecting public trust interests, nor did they authorize the SWRCB to vastly expand the definitions of waste and unreasonable use in order to include serving the public trust as an acceptable regulatory goal. OAL must disapprove the proposed emergency regulations because the SWRCB was never authorized to issue regulations in this area.

The statute and executive order that authorized the SWRCB to issue emergency regulations simply did not authorize the SWRCB to use that authority for the purpose of protecting public trust uses. The scope of “public trust” interests in water was well-explained in *National Audubon v. Superior Court* (1983) 33 Cal.3d 419. The public trust is intended to preserve among other things, environmental and recreational values. (E.g., *National Audubon*, 33 Cal. 3d at 425.) Historically, and in the cases upon which the SWRCB relies, the prohibition of waste and unreasonable use is separate and distinct from the public trust doctrine. (See, e.g., *Imperial Irrigation District v. SWRCB (IID I)* (1986) 186 Cal.App.3d 1160, 1168 n.12 (“*National Audubon* did not involve a charge of unreasonable use under article X, section 2, but rather a claim that use of water is harmful to interests protected by the public trust.” Emphases added.)) Water Code § 1058.5 authorizes the SWRCB to promulgate emergency regulations *only* in order

to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.

(Water Code § 1058.5(a)(1).) The Governor’s April 25, 2014, executive order used the same

language in its directive to the SWRCB. (Governor’s Executive Order, unnumbered, April 25, 2014, ¶ 17.) Had the Legislature or the Governor intended to authorize the SWRCB to promulgate emergency regulations in order to protect public trust interests, it could have done so explicitly. Other sections of the Water Code and the Governor’s drought proclamation make specific mention of “the public interest” and of “public trust uses.” (E.g., Water Code § 1335(d); Governor’s Drought Proclamation, January 17, 2014, ¶ 14.) No such language is included anywhere in any grant of emergency regulatory authority to the SWRCB. The proposed emergency regulations must be disapproved because the SWRCB was not authorized to promulgate emergency regulations to serve public trust interests.

2. Section 1058.5 and the Governor’s April 25 Executive Order Do Not Authorize SWRCB to Redefine “Waste and Unreasonable Use”.

The SWRCB was not authorized to redefine established concepts in water law so that they would fall under its regulatory authorization; its reliance on Water Code § 1058.5 as authorization to redefine “waste and unreasonable use” is totally misplaced. (See proposed § 877, “Authority” section.) Section 1058.5 authorizes the SWRCB to issue emergency regulations when needed to achieve one or more of the listed goals:

to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports

Water Code § 1058.5(a)(1).

The SWRCB shoehorned “service of public trust interests” into § 1058.5’s authorization by defining any perceived impingement on public trust interests to be “waste and unreasonable use of water.” (Proposed § 877 (“The State Water Resources Control Board has determined that it is a waste and unreasonable use under Article X, section 2 of the California Constitution to

continue diversions that would cause or threaten to cause flows to fall beneath the drought emergency minimum flows” as established in the proposed emergency regulations.) By redefining some of the terms included in § 1058.5’s grant of authority (waste and unreasonable use) to include a term that was purposefully excluded from that authorization (serving public trust uses), the SWRCB is clearly attempting to circumvent facial limitations to § 1058.5’s grant of authority, as defined by the Legislature. Had the Legislature intended § 1058.5 to permit the issuance of emergency regulations to protect public trust interests, it could have done so in clear language. (See, e.g., Water Code § 1335(d) (specifically mentioning “public trust uses” and “the public interest”).) It did not. Similarly, the Governor chose not to include a directive to protect purported public trust interests in his January 17 emergency drought proclamation or in his April 25 executive order. The SWRCB’s attempt to shoehorn the protection of public trust interests into § 1058.5’s grant of authority is a thinly veiled attempt to make an end-run around § 1058.5’s and the April 25 executive order’s clear and deliberate limitations.

3. The SWRCB Lacks Authority to Declare Uses of Water to be Unreasonable via Emergency Regulations.

The SWRCB lacks authority to declare uses of water to be “unreasonable” in the absence of an evidentiary hearing and particularized factual findings. “What is reasonable use or reasonable method of use of water is a *question of fact* to be determined *according to the circumstances in each particular case.*” (*Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 139 (emphasis added).) “The question of reasonable use or reasonable method of use of water constitutes a factual issue” (*SWRCB v. Forni* (1976) 54 Cal.App.3d 743, 754.) The SWRCB cannot declare a use—or, as in this case, all consumptive uses in a particular watershed—to be unreasonable without holding a hearing and establishing the factual circumstances that make each individual diverter’s use “unreasonable.” In the absence of a formal adjudicatory action, a SWRCB proclamation defining a use or class of uses to be unreasonable amounts to no more than an unenforceable “policy statement.” (*Forni*, 54 Cal.App.3d at 752.)

4. The Proposed “Authority” Citations are Incorrect.

The SWRCB’s “Authority” citations are incorrect because they include Water Code § 1058 as a source of the Board’s authority to issue these emergency regulations. The SWRCB cannot conflate its general regulatory authority with the specific and circumscribed authority to issue emergency regulations, as described in § 1058.5. The Board has not followed the procedural requirements applicable to its general regulatory authority under § 1058, so it may only promulgate regulations for the specific, limited purposes enumerated in § 1058.5 and the Governor’s April 25 executive order.

B. The Proposed Regulations Do Not Meet the Standard for Consistency with Existing Law.

Consistency “means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” (Gov. Code § 11349(d).) The proposed emergency regulations are a complete departure from 165 years of California water law. In addition, imposing these regulations would violate U.S. Supreme Court precedent and both the Federal and California constitutions. OAL is therefore required by statute to disapprove the proposed regulations because they are inconsistent with existing statutes, court decisions, and other provisions of law. (See Gov. Code §§ 11349(d), 11349.6(b).)

1. The Proposed Regulations are Fatally Inconsistent with Foundational Principles of California Water Law.

It is important to remember that water rights are vested property rights. “As such, they cannot be infringed by others or taken by government action without due process and just compensation.” (*United States v. SWRCB* (1986) 182 Cal.App.3d 82, 101 [citations omitted].) SVRIC and its shareholders have been exercising their rights to divert water for well over 100 years. The seniority and reliability of their water rights has become integrated into and inseparable from the local economy and community. To upend these property rights and way of life will do irreparable damage. This damage is even more acute and offensive given the SWRCB’s infringement of legal and constitutional protections enjoyed by SVRIC and other water right holders subject to the proposed emergency regulations.

a. The Proposed Emergency Regulations Disregard the Established Water Rights Priority System.

The proposed regulations are inconsistent with the water rights priority system, which “has long been the *central principle in California water law.*” (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1243 [emphasis added]; see also Civ. Code § 1414.) Section 878.1 of the proposed regulations would give domestic and municipal uses priority over all other uses, regardless of seniority. This disruption effectively extends to any diversion needed for “public safety”, subject only to the Deputy Director’s unfettered discretion. (See proposed § 878.1(d)(6).)

In addition, during the May 20th SWRCB hearing on the proposed regulations, Board Member D’Adamo suggested—and SWRCB staff agreed—that the Board’s adoption of these regulations would elevate public trust uses of water to a super-senior priority. All uses that compete with this super seniority are declared unreasonable and wasteful. This is totally inconsistent with the Supreme Court’s long-standing holding that the public trust interests are not a part of the California water rights priority system. (*National Audubon*, 33 Cal.3d at 452.)

Instead, public trust interests are to simply be taken “into account in the planning and allocation of water resources” when water rights are initially adjudicated in a quasi-judicial proceeding by the Board or in a proceeding in state court. (*Id.* at 446.)

Moreover, the SWRCB has not explained why the rule of priority must be abandoned by curtailing all diversions in favor of instream uses. The case of *El Dorado Irr. Dist. v. SWRCB* (2006) 142 Cal.App.4th 937, 966, notes that the rule of priority and the rule against unreasonable use of water occasionally clash. However, “Every effort . . . must be made to respect and enforce the rule of priority.” (*Id.*) Indeed, the regulatory authorizations themselves specifically limit the SWRCB’s emergency regulatory curtailment authority to “curtailment of diversions *when water is not available under the diverter’s priority of right.*” (Wat. Code § 1058.5(a)(1); Governor’s Executive Order, unnumbered, April 25, 2014, ¶ 17.) It is the SWRCB’s duty to make every effort to protect the rule of priority before resorting to emergency regulations that upend the established legal water right priority system.

b. The Proposed Emergency Regulations Ignore the Governing Judicial Water Rights Decrees.

As to Deer Creek, whose water rights, like Mill Creek’s, were adjudicated in Tehama County Superior Court, “[t]he decree [entered by the court] is conclusive as to the rights of all existing claimants upon the stream system lawfully embraced in the determination.” (Wat. Code § 2773.) The Board cannot change the decreed allocations absent an order from the court (which maintains continuing jurisdiction over these issues) or a formal adjudication under Water Code § 2500 et seq.

c. The Proposed Regulations Rewrite the Law of Waste and Unreasonable Use of Water and the Public Trust Doctrine.

The proposed regulations ignore and attempt to collapse the distinction between the state constitution's prohibition of waste and unreasonable use of water on the one hand, and the public trust doctrine on the other. As discussed *supra*, these two overarching ideas are totally separate aspects of California water law. (See, e.g., *IID I*, 186 Cal.App.3d at 1168 n.12 (“*National Audubon* did not involve a charge of unreasonable use under article X, section 2, but rather a claim that use of water is harmful to interests protected by the public trust.” Emphases added.)) These regulations represent a wholesale reconfiguration of the law, combining the two theories into a single idea.

The Legislature has declared that “the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.” (Water Code § 106.) Without an evidentiary hearing finding SVRIC's or any other water right holder's irrigation practices to be inefficient, unreasonable, or wasteful, the SWRCB's proposed emergency regulations upend the Legislature's declared policy by declaring instream, public trust uses to be the highest use of water. All other uses, including domestic and irrigation, are declared wasteful and unreasonable without *any* reference to how each water right holder's water is used.

d. The Proposed Regulations Evade Established Due Process Requirements.

Adoption of the proposed regulations would effect a blanket determination that all uses by an entire class of users are per se unreasonable, without any of the required elements of due process: an evidentiary hearing, an opportunity for stakeholders to be heard, and, most importantly, a factual inquiry guided by “the circumstances in each particular case.” (*Joslin*, 67 Cal.2d at 139.) Such a determination of reasonableness requires an adjudication by the Board or by a superior court with attendant due process. (See, e.g., *IID I*, 186 Cal.App.3d at 1168-69.)

- e. The Proposed Regulations Seek to Impose Public Trust Duties on Established Water Rights Without Engaging in the Requisite Balancing of Harms.

This blanket application of public trust requirements to existing water rights, without any of the required balancing of those interests against those of the affected water rights holders, is inconsistent with *National Audubon* and subsequent law. Questions such as what constitutes waste and unreasonable use of water and the quantity of instream flows that may or may not be necessary to protect public trust resources cannot be resolved *in vacuo* without the benefit of the SWRCB or the superior court conducting an evidentiary hearing to receive and consider evidence and testimony. The State and Federal Constitutions and applicable case law demand that these important questions be considered in an adjudicatory or quasi-adjudicatory process.

Protecting public trust resources while at the same time respecting long-held property rights to water is not a zero-sum game. Indeed, holding an evidentiary hearing to receive and consider evidence could have borne this out. For example, creating a low-flow channel in the creeks while coordinating irrigation diversions could have provided adequate instream flows and enough water to keep permanent plantings alive. OAL should not undermine legal requirements and the rule of law simply because such processes are “cumbersome” in the opinion of the SWRCB.

2. The Application of the Public Trust Doctrine to SVRIC’s Water Rights is Inconsistent with U.S. Supreme Court Authority.

Summa Corp. v. California State Lands Comm'n (1984) 466 U.S. 198, holds that the public trust doctrine does not apply to former Mexican land grants annexed under the Treaty of Guadalupe Hidalgo that were patented pursuant to the Act of March 3, 1851 (9 Stat. 632). The land encompassing the area served by SVRIC was patented under the Act, and the General Land Office, U.S. Department of the Interior, issued Land Patent Nos. CACAAA002833 and CACAAA001106 for that land. Under the Supreme Court’s holding in *Summa Corp.*,

“California cannot at this late date assert its public trust easement over” the land served by SVRIC, because SVRIC’s shareholders’ (the landowners’) “predecessors-in-interest had their interest[s in the land] confirmed without any mention of such an easement in proceedings taken pursuant to the Act of 1851.” (*Summa Corp.*, 466 U.S. at 209.) Because the public trust doctrine has no applicability to the land served by SVRIC, the SWRCB cannot impose these emergency regulations for the purpose of serving public trust interests.

3. These Regulations are Inconsistent with the Federal and California Constitutions.

It is undisputed that the right to reasonably and beneficially use water is a protectable property right. The imposition of the proposed emergency regulations on long-standing water rights is a taking of property without just compensation or due process of law, in violation of the Federal and California constitutions. Both the Federal and state constitutions prohibit the government from taking private property for public use without just compensation and due process of law. (U.S. Constitution, 5th Amendment; California Constitution, art. 1, § 19(a).) The California Constitution further requires that, before the state government may take or damage private property, it must first pay just compensation directly to the owner or to the court on behalf of the owner. (Cal. Const., art. 1, § 19(a).) Because the SWRCB is seeking to take and damage the landowners’ water rights without any hearing, without any advance deposit, and without even any acknowledgment that compensation is owed to the landowners for their condemned property, these proposed emergency regulations violate both the state and the Federal constitutions.

C. The Proposed Regulations Do Not Meet the Standard for Necessity.

Proposed regulations meet the necessity standard only if “the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the . . . provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record.” (Gov. Code § 11349(a).) The record of the

rulemaking proceeding for these emergency regulations lacks substantial evidence to support the need for these emergency regulations, so OAL is required by statute disapprove them. (Gov. Code § 11349.6(b). See generally, “Curtailment of Diversions due to Insufficient Flow for Specific Fisheries Emergency Regulations Digest”, May 13, 2014.)

Further, in order to meet the necessity standard, the record of the rulemaking must include a “statement of the specific purpose of each adoption” and “information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision.” (1 C.C.R. § 10(b).) The record submitted in support of these emergency regulations does not include any such statements or explanations, and only contains the most generalized statements of need. (See “Curtailment of Diversions due to Insufficient Flow for Specific Fisheries Emergency Regulations Digest”, May 13, 2014, at pp. 16-18 (unnumbered).)

1. The Record Lacks Substantial Evidence Showing that the Regulations are Necessary.

The record of the rulemaking does not demonstrate, by substantial evidence, that these regulations (particularly the minimum flow requirements) are necessary to implement Cal. Const. art. X, § 2, as the SWRCB claims.² First, as was explained above, the SWRCB’s redefinition of “waste and unreasonable use” to include uses that may affect purported public trust interests is a wholesale departure from existing law. Thus, the SWRCB’s position that the regulations are necessary to implement art. X, § 2 of the California constitution rests entirely on circular reasoning. The proposed regulations are only necessary to implement the constitutional provision because the SWRCB is now reinterpreting that provision as encompassing the subject matter of the proposed regulations. The subject matter of the regulations (water for public trust purposes) is entirely unrelated to “waste and unreasonable use of water,” *but for* the regulations’ new definition of that phrase as including any uses that could affect public trust interests.

² Water Code § 100 repeats and implements art. X, § 2 of the California Constitution, so references in this letter to the Constitutional provision may be deemed to include a reference to the related Water Code provision.

Further, the SWRCB's own supporting documents indicate that the minimum flow requirements are not strictly necessary. While some flow goals are simply declared (without citation to any support) to be the "minimum flows needed", others have only "generally . . . been found" to permit fish passage, and still others are no more than the agencies' wishes about what flows "should be". (See "Curtailment of Diversions due to Insufficient Flow for Specific Fisheries Emergency Regulations Digest", May 13, 2014, Attach 12, at p. 56.) Unequivocal scientific support for the "necessity" of these flows is absent from the rulemaking record.

2. Acceptability of Voluntary Agreements to Achieve the Same Goals Clearly Indicates that the Regulations are Unnecessary.

The SWRCB's recognition that voluntary agreements can achieve the same ends as the proposed minimum flow requirements (see proposed § 878.2.) shows that these regulations are not necessary to implement art. X, § 2 of the California Constitution. A member of the SWRCB went so far as to state during the May 20 SWRCB meeting that "as long as there are [voluntary] agreements, [the Boardmember did not] see the need for going forward with the regulations." (Remark of Boardmember D'Adamo, May 20, 2014 SWRCB Meeting.) Such voluntary agreements can achieve maximum benefit for fish more efficiently than one-size-fits-all regulations, and they are backstopped by the threat of Endangered Species Act liability to ensure compliance. Given that the same goals can be achieved with more flexibility via voluntary agreements, this emergency regulatory scheme is clearly not "necessary." Not only do voluntary agreements more effectively achieve the same goals, but they do not resort to the extra-legal procedures that the SWRCB appears to prefer.

The record before OAL does not include a description of the water right holders that have voluntarily agreed to provide instream flows for fishery protection. As a result, the record fails to establish, by substantial evidence, that such voluntary agreements are inadequate to address the stated need for instream flow. In order to satisfy the necessity standard, the SWRCB must analyze the voluntary agreements and (a) accept them in lieu of emergency regulations as

adequate protection of public trust resources or (b) explain on the basis of substantial evidence why the emergency regulations are necessary notwithstanding voluntary efforts.

D. The Proposed Regulations Do Not Meet the Standard for Clarity.

OAL must disapprove the proposed emergency regulations because they lack the required degree of clarity—they are not “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” (Gov. Code §§ 11349(c), 11349.6(b).) A regulation does not meet the standard for clarity if “the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning” or if “the language of the regulation conflicts with the agency's description of the effect of the regulation.” (1 C.C.R. § 16(a)(1), (a)(2).)

1. The Proposed Regulations are Impermissibly Vague and Ambiguous.

The proposed regulations include several patently ambiguous and vague provisions, which require that OAL disapprove them. For instance, proposed § 878.1(b)(1)(B) allows junior water rights to take priority over more senior water rights if, *inter alia*, “all other alternate sources of potable water have been used” and no “other potable water is available.” It is completely unclear what constitutes alternate sources or availability. Does this refer only to sources located upon the affected parcel (e.g., wells and storage)? Or does this truly refer to “all . . . alternate sources,” as the plain language of the regulation would suggest (e.g., deliveries from water trucks; bottled water)? Do expense and financial means come into play? This provision is impermissibly unclear.

Similarly, the flurry of ill-conceived, last-minute amendments to the proposed regulations introduced significant uncertainties and internally inconsistent language. For instance, voluntary agreements between landowners and the agencies with jurisdiction over the fish species were originally subject to review and approval by the SWRCB’s Deputy Director for the Division of Water Rights (Deputy Director). However, the provisions describing the Deputy Director’s

standard of review are completely contradictory. Proposed § 878.2 first states that “[t]he Deputy Director *shall* approve the request [for approval of a voluntary agreement] so long as other users of water will not be injured.” (Emphasis added.) However, the very next sentence states that “[t]he Deputy Director’s approval *may be subject to any conditions . . . that the Deputy Director determines to be appropriate.*” (*Id.* [Emphasis added.].) So while the Deputy Director is mandated to approve any voluntary agreement (and thus excuse the landowner-signatories from curtailment) so long as it does not injure other water users, she is contradictorily authorized to condition her mandatory approval on the inclusion in the agreement of any additional provisions that she deems “appropriate.” How is it possible that the Deputy Director is mandated to approve any agreement that meets the single statutory criterion, but at the same time enjoys the discretionary authority to require that the parties include additional conditions before she will approve it? And to complicate matters further, the SWRCB’s Executive Director, not the Deputy Director, has the discretion to put the minimum flow requirements into effect (proposed § 877(c)) if *he* decides that a voluntary agreement is insufficient to protect a watershed—completely independent (and without any mention) of the Deputy Director’s quasi-“mandate” to approve the same agreements. OAL is required to disapprove these confusing, internally contradictory regulations because they are so unclear that they cannot “be easily understood by those persons directly affected by them.” (Gov. Code § 11349(c).)

2. The Language of the Proposed Regulations Conflicts with the SWRCB’s Description of the Regulations’ Effects.

The SWRCB’s description of the proposed regulations’ effects conflicts with the language of the proposed regulations. This mismatch is largely the result of the SWRCB’s failure to comport with due process—had the agency complied with Government Code § 11346.1(a)(2) and given notice of, circulated, and described the actual language it proposed to adopt, rather than an early draft, it may have avoided this conflict. However, the SWRCB’s description of the regulations’ effects conflicts with the regulatory language, so OAL is required to disapprove the proposed emergency regulations. (Gov. Code § 11349(c), 11349.6(b); 1 C.C.R. § 16(a)(1), (a)(2).)

The SWRCB described the effects that would occur if an earlier version of the proposed regulations were adopted. (“Curtailed of Diversions due to Insufficient Flow for Specific Fisheries Emergency Regulations Digest,” May 13, 2014, at pp. 25-33.) However, more than a week after issuing that analysis, the SWRCB significantly amended the proposed regulations, to the extent that descriptions of their effects no longer matched the proposed regulatory language. For instance, the description of the effects of proposed § 877 (which in fact is mostly justifications for the regulation, rather than a description of its effects) fails completely to mention that the proposed minimum flows would not be effective unless the SWRCB’s Executive Director determines that voluntary agreements do not cover enough of the diversions. (Compare proposed § 877(c) with Emergency Regulations Digest at pp. 25-32.) In sum, the SWRCB’s last-minute amendments to the regulations, along with its failure to comply with Government Code § 11346.1(a)(2), prevented the proposed regulations from meeting the standard for clarity, and OAL is now required to disapprove the proposed regulations.

Conclusion

The emergency regulations should be disapproved because they are procedurally and substantively defective. The SWRCB failed to follow procedural prerequisites prior to

transmitting the proposed emergency regulations and rulemaking record to OAL. Additionally, the emergency regulations suffer substantive defects insofar as the SWRCB is attempting to circumvent clearly established limitations on its authority to push through ill-advised “emergency” regulations, and in the process is rewriting California water law, undermining case law precedent, such as the Supreme Court’s conclusive holding that public trust requirements cannot be imposed on land patented under the Act of March 3, 1851, and violating Constitutional protections, such as the prohibitions on taking private property without due process or just compensation. While the SWRCB has chosen not to abide by the statutes, regulations, constitutional provisions, and judicial precedent that govern these regulations and the emergency regulatory process, OAL’s statutory mandate is clear: The proposed emergency regulations must be disapproved.

Respectfully submitted,

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SEXTON & COOPER, LLP
Counsel for Stanford Vina Ranch
Irrigation Company

By:

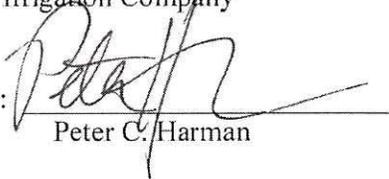

Peter C. Harman

Exhibit D

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7 Attorneys for STANFORD VINA RANCH IRRIGATION COMPANY

8
9
10
11 Before the

12 STATE WATER RESOURCES
13 CONTROL BOARD

14) WATER RIGHTS ORDER
2014-0022 DRAFT
OAL File No. 2014-0523-05E
15)
16)
17)
18)
19) **RESPONSE TO STATE WATER
RESOURCES CONTROL BOARD
REGARDING EMERGENCY
REGULATIONS FOR
CURTAILMENT – DEER CREEK**

20 STANFORD VINA RANCH IRRIGATION COMPANY, a Mutual Water
21 Company (hereinafter “Company”), does hereby respond to the demand and order
22 pursuant to Paragraph 5 of the State Water Resources Control Board’s Emergency
23 Regulation Curtailment Order as follows:

24 1. No Certificate under penalty of perjury is provided hereunder by Company,
25 partially because such a certificate would have to be adopted by the SVRIC Board of
26 Directors and no meeting of the Board of Directors is feasible since the President is out of
27 the country. Further, the members of the SVRIC Board do not have sufficient information
28 to provide that certification at this time due to a number of factors, some of which are
described herein.

1 2. The Company does hereby reassert each of the objections contained in the
2 previous communications to the State Water Resources Control Board attached hereto
3 dated May 19, 2014 and May 28, 2014 in regard to the unlawful nature of the proposed
4 Curtailment Order, the Emergency Regulations adopted supporting the issuance of the
5 Curtailment Order, and does reserve all other objections claimed, both monetary,
6 procedural and substantive, to the proposed Curtailment Order.

7 3. In addition to the objections and grounds reserved and asserted in the letter
8 to the SWRCB dated May 19, 2014 by Minasian, *et al.*, and the letter from Minasian, *et*
9 *al.*, to the SWRCB and OAL dated May 28, 2014, each of which is attached as Exhibit
10 “A”, the SWRCB provided no basis for determining facts with which to amend or modify
11 the terms of the Order to adjust the flows downward on the basis of the presence or
12 absence of certain species of fish in June of 2014 or at other time. The SWRCB is
13 effectively accepting rumor, hearsay and declarations outside of a hearing, cross-
14 examination and full disclosure of that information to all parties in adopting the
15 Curtailment Order and now amending it to apply different flow requirements (although
16 helpful to Stanford Vina users), and is attempting to deprive users of water from Deer
17 Creek on the basis of informal “hunches” coordinated outside of due process procedures.

18 4. The lack of an emergency in regard to determining to change the Judgment
19 of the Superior Court of Tehama County allocating water flows and the terms of any
20 minimum flow is apparent. The “emergency” here is the SWRCB, federal and state fish
21 agencies implementing a program to take citizens’ property held in trust condemning its
22 existing rights in order to implement their program without due process and reasonable
23 compensation. The SWRCB and all other persons have been aware of the presence of
24 salmon and steelhead in this stream for years yet no proceeding, hearing or other
25 evidentiary way of determining whether the rights to surface water of the lands of Deer
26 Creek Irrigation District and Stanford Vina Ranch Irrigation Company should be acquired
27 for a higher imagined purpose of fish propagation and expansion or protection from
28 natural conditions was ever commenced or maintained. No weighing of public benefits or

1 the costs of those acquisitions of water rights has ever occurred. Claiming the drought is
2 an “emergency” does not excuse public officials’ past failure to implement a program in
3 compliance with due process and in an orderly fashion for protection or enhancement of
4 fish without payment of reasonable compensation and the provision of reasonable notice
5 so that measures to reduce the damages justify this procedure. “Emergency” is defined as
6 a condition that cannot be anticipated in reasonable human experience. A drought is not
7 such a condition. These actions are easily anticipatable, and measures can be undertaken
8 in an orderly manner to abide by and respect constitutional rights.

9 4.1 Establishing flows for October 2014 and beyond is not an
10 “emergency”. There is plenty of time for an evidentiary hearing or petition to the Superior
11 Court to modify the Judgment. Government is ignoring Constitutional requirements for
12 the purpose of claiming acts of saving fish.

13 5. Notice is given that the riparian water rights appurtenant to the lands within
14 the Company are held and owned by the landowners, not the Company who acts as a
15 trustee for the landowners. Because the SWRCB insists upon pursuing this matter without
16 a hearing, without notice and without evidentiary findings and without giving notice itself
17 to the landowners, effective and actual notice of the SWRCB’s action has not been
18 provided to many of the SVRIC landowners.

19 6. Notice is provided to the SWRCB that to the best of our knowledge and
20 information, with the Company reserving all of its rights and reserving all the rights of its
21 landowners, that the Company is attempting to comply with the terms of the Curtailment
22 Order, including reducing diversions at the Company’s three (3) points of diversion, the
23 Cone-Kimball Ditch, the North and South Canals at the Stanford Vina dam, and
24 attempting to utilize the downstream USGS website to determine the effects of those
25 adjustments.

26
27
28

1 Because there is no means to determine the amounts of water being diverted by users
2 upstream on a readily-available basis, and because the SWRCB determined not to attempt
3 to apply to the Superior Court for a hearing and order requiring coordination and
4 determination of the procedure for implementation of exercise of the water rights as would
5 normally and customarily be required when a public agency is proposing to condemn a
6 right to water for a specified period, to make dramatic changes in water usage and rights
7 as a public project to enhance and protect fish, efforts made by Stanford Vina to obtain
8 that use and loss information. Stanford Vina attempted to cease all diversions of the
9 Company on June 11, 2014 for a period of time and to monitor the gauges and the effects
10 to determine the amounts of water being diverted within the Deer Creek Irrigation District
11 service area – both official diversions, unofficial diversions and losses – through
12 subtraction and observations. The Company has been informed by the California
13 Department of Fish and Wildlife representatives that Deer Creek Irrigation District was
14 diverting in excess of the constrained amount share allocable to Deer Creek because of
15 Deer Creek’s misinterpretation of a parshall flume rating schedule, and made a change
16 mid-afternoon on Wednesday, June 11, 2014 after Stanford Vina’s cessation in order to
17 reduce and correct the amount of Deer Creek’s diversion to a calculated 35% of the
18 upstream USGS reading. It is unknown if any adjustment for evaporation or streambed
19 depletion was applied either previously or as part of the adjustment. Therefore, the effect
20 and accuracy of terminating all deliveries to the Company in order to attempt to estimate
21 evaporation, accretion flows or depletion flows below the USGS gauge above both the
22 diversions of Deer Creek and Stanford Vina to Stanford Vina’s diversions will be difficult
23 to appraise until the flows have stabilized.

24 7. On the afternoon of Wednesday, June 11, 2014 at 4:40 p.m., the SWRCB
25 put out a notice that the flow after June 14, 2014 would not be 50 cfs but would be 20 cfs.
26 To the best of our knowledge, the determination of the SWRCB as to a lack of presence of
27 adult spring run Chinook salmon and steelhead migrating was not made by the SWRCB,
28 and the determination is apparently based upon hearsay, suspicion and guesswork of third

1 parties communicated to the SWRCB who ordered the change, again pointing out the
2 failure to hold hearings or continued hearings and to determine on a true, factual basis
3 based on evidence presented, the facts in regard to fish flow and the beneficial use of
4 water from Deer Creek in 2014. The SWRCB is taking the property and assets of hard
5 working families in the form of their orchards, pasture and water use for what it conceives
6 to be a higher public purpose without undertaking due process and reasonable
7 compensation, and without ongoing and updated factual and evidentiary hearings upon
8 which to base decisions.

9 8. On the afternoon of June 11, 2014, the SWRCB purported to order a further
10 pulse flow to occur commencing Thursday, June 12, 2014 at 5:00 p.m. and continuing
11 until Saturday, June 14 at noon. This provided approximately 24 hours notice of such a
12 pulse flow. Stanford Vina intends to comply with the pulse flow order, although such
13 short notice prevents accumulation and storage of stock water which is required for use on
14 a continuous basis, and such short notice limits any ability to reduce crop damages. Crop
15 damages and costs of measures to provide stock water will be increased because of the
16 late notice. The failure to implement this plan by hearings and advanced notice through a
17 coordinated plan adopted years ago applicable to drought conditions and providing
18 compensation for the interests taken, even if flexibility in timing shutoffs of all surface
19 water is necessary for pulse flows as part of the plan, is an egregious violation of civil
20 rights.

21 9. Indications have been made by representatives of the California Department
22 of Fish and Game and representatives of the State of California Department of Water
23 Resources Red Bluff offices to Stanford Vina representatives that the readings at the
24 gauge below Stanford Vina Dam, or the translation of those gauge readings on the
25 website, are in error, and shift changes are required. Obviously, without a means of
26 providing for accurate readings of the flows below the Stanford Vina Dam, neither Deer
27 Creek Irrigation District or the Company can provide for any reasonable assurance of
28 approaching the 50 cfs, nor the 20 cfs after noon on June 14, 2014. We will continue our

