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13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 STANFORD VINA RANCH  
16 IRRIGATION COMPANY,  
17  
18 Plaintiff-Petitioner,

19 v.

20 STATE OF CALIFORNIA, STATE  
21 WATER RESOURCES CONTROL  
22 BOARD, STATE WATER RESOURCES  
23 CONTROL BOARD MEMBERS FELICIA  
24 MARCUS, DOREEN D'ADAMO,  
25 FRANCES SPIVY-WEBER, STEVEN  
26 MOORE, AND TAM DODUC; and DOES  
27 1 THROUGH 20,  
28  
29 Defendants-Respondents.

CASE NO. 34-2014-80001957

**FIRST AMENDED VERIFIED  
COMPLAINT AND PETITION FOR  
(1) INVERSE CONDEMNATION, (2)  
DECLARATORY RELIEF  
JUDGMENT, (3) WRIT OF  
MANDATE, (4) WRIT OF MANDATE,  
AND (5) INJUNCTION OR WRIT OF  
MANDATE**

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**Introduction**

Plaintiff-Petitioner STANFORD VINA RANCH IRRIGATION COMPANY complains against the STATE OF CALIFORNIA; STATE WATER RESOURCES CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD MEMBERS FELICIA MARCUS; DOREEN D'ADAMO, FRANCES SPIVY-WEBER, STEVEN MOORE, TAM DODUC; and DOES 1 THROUGH 20, as follows:



**GENERAL ALLEGATIONS**

**I. Parties.**

1. Plaintiff-Petitioner Stanford Vina Ranch Irrigation Company (hereinafter, “Plaintiff”) is a nonprofit mutual water company formed under California law, whose shareholders own land in the vicinity of Deer Creek in Tehama County, California. Plaintiff holds and administers water rights appurtenant to the lands of its shareholders and its service area, as a trustee for its landowners and shareholders and pursuant to the provisions of California law relating to the functioning of mutual water companies. Plaintiff’s water rights were adjudicated by the Tehama County Superior Court on November 27, 1923. The adjudication and judgment of the Tehama County Superior Court was amended in or about 1926. Pursuant to those court decrees, the water rights held by Plaintiff were affirmed and adjudicated as the right to utilize approximately 66% of the flow of Deer Creek as measured below United States Geological Survey gage 11383500. Plaintiff owns conveyance and diversion works in and connected to Deer Creek, which are used to distribute the water diverted from Deer Creek to and for its shareholders’ use, at cost. Plaintiff serves approximately 5700 acres of irrigated land, which is predominantly used for permanent plantings, including orchards, and for irrigated pasture, stockwatering, and similar beneficial uses.

2. Plaintiff’s shareholders’ lands hold riparian rights to the flows of water in Deer Creek. The plan and system for diverting and distributing water from Deer Creek was a part of the plan to divide, sell, and transfer the lands presently owned by Plaintiff’s shareholders. That plan and the development of the water system, including dams, ditches, pipelines and other apparatus, was implemented pursuant to actions undertaken prior to 1914, and has been continually maintained since the plan was initially developed. The rights to and access to the surface water flows of Deer Creek, through Plaintiff’s water system and facilities, are essential to and an integral portion of maintenance of the irrigated land served by Plaintiff. The water supply system and water rights, as the corpus of the trust administered by Plaintiff, are administered, managed, and protected by

1 Plaintiff because groundwater, and wells to extract groundwater, are not available on all of  
2 Plaintiff's shareholders' lands and local groundwater supplies are insufficient to  
3 sustainably irrigate lands within Plaintiff's service area without the recharge provided by  
4 the surface water that Plaintiff diverts from Deer Creek, and without the reduction of  
5 groundwater use caused by the availability of surface water from Deer Creek for  
6 irrigation.

7 3. Defendant-Respondent State Water Resources Control Board is a California  
8 state Board consisting of five members, named above, and created by Water Code section  
9 175.

10 4. The identities of Defendants-Respondents Does 1-20 are currently unknown.  
11 Does 1 through 20 were involved in and had a role in the actions and omissions  
12 complained of in this action and their identities will be added by amendment at such time  
13 as they are identified.

14  
15 **II. Jurisdiction and Venue.**

16 5. This court has jurisdiction over the inverse condemnation cause of action  
17 alleged in this petition and complaint pursuant to article VI, section 10, of the California  
18 Constitution. This court has jurisdiction over the declaratory relief cause of action  
19 pursuant to Code of Civil Procedure (CCP) section 1060. This court has jurisdiction over  
20 the mandamus causes of action alleged in this petition and complaint pursuant to Water  
21 Code section 1126 and CCP section 1094.5.

22 6. Venue is appropriate in this Court pursuant to CCP section 393(b) because  
23 Defendants-Respondents (hereinafter, "Defendants") undertook these acts and omissions  
24 in the County of Sacramento.

25  
26 **III. Standing.**

27 7. Plaintiff has standing to assert the claims raised in this complaint and  
28 petition. Plaintiff is beneficially interested in the subject matter of the emergency

1 regulations and the property rights held, maintained, and administered as a mutual water  
2 company on behalf of the landowners within Plaintiff's service area. Defendants, through  
3 their actions and undertakings, took, damaged, and interfered with the said rights and  
4 shares of the Plaintiff by taking the water as alleged herein, which physical taking  
5 damaged Plaintiff's trust corpus and interest, without compensation or due process of law,  
6 in violation of the California Constitution and the United States Constitution.

7 8. Plaintiff also brings this action on behalf of its shareholders whose lands and  
8 shares in Plaintiff represent their beneficial right to use and enjoy water rights appurtenant  
9 to their respective lands and for which the trust administered by Plaintiff is maintained and  
10 exercised. Plaintiff's shareholders were injured due to Defendants' taking of the water  
11 rights appurtenant to their lands and by the lack of water available for irrigation and  
12 incidental groundwater recharge on their lands, which was caused by Defendants' acts and  
13 omissions described herein.

14  
15 **IV. Exhaustion of Administrative Remedies.**

16 9. Plaintiff participated orally and in writing in the meetings at which  
17 Defendants voted to adopt the proposed emergency regulations, described below, and  
18 Plaintiff filed comments with the Office of Administrative Law ("OAL") objecting to the  
19 emergency regulations.

20 10. After the OAL approved the emergency regulations and Defendants issued  
21 an order curtailing Plaintiff's exercise of its water rights, Plaintiff sought reconsideration  
22 of the emergency regulations, curtailment order, and draft cease and desist order.  
23 Defendants denied Plaintiff's petition for reconsideration at Defendant State Water  
24 Resources Control Board's regularly scheduled meeting on September 23, 2014.  
25 Plaintiffs sought reconsideration of the State Water Resources Control Board's re-  
26 adoption of the Emergency Regulations in 2015, which request has not been acted upon  
27 by the SWRCB at the time of this amendment. No further administrative remedies are  
28 available to Plaintiff.

1 **V. Factual Background.**

2 **A. Governor's Drought Actions**

3 11. On January 17, 2014, Governor Edmund G. Brown, Jr., issued a  
4 proclamation declaring a drought state of emergency in California and issuing directives  
5 to state agencies to take particular actions in response to the drought.

6 12. On March 1, 2014, Governor Brown signed a drought relief package, Senate  
7 Bill 104 (2014). Among other things, the drought relief package amended Water Code  
8 section 1058.5, which governs Defendants' drought-related emergency regulatory  
9 authority, limited OAL's review of drought-related emergency regulations promulgated by  
10 Defendants, and increased penalties for violations of such emergency regulations.

11 13. On April 25, 2014, the Governor issued an executive order that, among  
12 other things, reiterated the declaration of emergency and directed Defendants, on behalf of  
13 the State of California, to adopt, as it deemed necessary, emergency regulations in order  
14 "to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable  
15 method of diversion of water, to promote water recycling or water conservation, and to  
16 require curtailment of diversions when water is not available under the diverter's priority  
17 of right."

18  
19 **B. Proposed Emergency Regulations, California Code of Regulations, title**  
20 **23, sections 877-879.2**

21 14. On May 13, 2014, Defendants issued a Notice of Proposed Emergency  
22 Rulemaking which proposed to adopt emergency regulations, sections 877 through 879.2,  
23 title 23, California Code of Regulations (the "emergency regulations") to implement  
24 minimum instream flows and pulse flows for the represented purpose of protecting  
25 anadromous fish. To achieve these minimum instream flows, the proposed emergency  
26 regulations would require Plaintiff and its shareholders to forbear from exercising their  
27 vested rights to the right to use water from Deer Creek during the irrigation season,  
28 thereby eliminating those rights. Water rights holders elsewhere on Deer Creek and on

1 Mill and Antelope Creeks, also in Tehama County, would be similarly affected. The  
2 regulations would require this surrender of rights to divert water so that those same rights  
3 could be used for the benefit and enhancement of steelhead trout and spring- and fall-run  
4 salmon in Deer Creek, without regard for the relative priority of the rights and the  
5 quantities of water that Plaintiffs and others were prohibited from diverting would be  
6 available for use and/or consumption by other users and uses which the State of California  
7 determines is more important than Plaintiffs' use of water. The water required to be  
8 transferred, conveyed, or relinquished for these public purposes under Defendants' plan  
9 would flow down Deer Creek, enter the Sacramento River, and thereafter be available for  
10 other public uses and purposes. These other public uses and purposes include maintaining  
11 river flows, using the bypassed Deer Creek flows as a substitute for water quality flows  
12 from the Central Valley Project and the State Water Project, and supporting other  
13 downstream public water flow and quality purposes and consumptive uses by using the  
14 bypassed Deer Creek flows in the place of stored water or the bypass of other, more junior  
15 water rights.

16 15. The emergency regulations accomplish the protection of anadromous  
17 fish—without a hearing or other evidentiary basis approved or found to be factual—by  
18 automatically declaring any conflicting use or diversion of water in the three named  
19 creeks to be “waste and unreasonable use.” This declaration of unreasonableness was  
20 adopted and ordered regardless of how the water would have been used. The usual and  
21 permitted uses of the water—for irrigation, stockwatering, and incidental groundwater  
22 recharge—were, are, and continue to be reasonable uses under California law. Water  
23 Code section 106 states that “the use of water for domestic purposes is the highest use of  
24 water and that the next highest use is for irrigation.” Plaintiffs are informed and believe  
25 and on that basis allege that this automatic determination of unreasonableness is based on  
26 a belief that putting the water to the public uses of achieving or maintaining instream fish  
27 flows and enhancing the conditions for fish species is more valuable than any other use of  
28 the water. The automatic determination of unreasonableness in 2014 and again in 2015

1 and issuance of curtailment orders by the SWRCB staff has been made without  
2 evidentiary hearings or findings other than that there is a drought, and fishery use of the  
3 water is preferred to Plaintiffs' irrigation use, without any consideration of how the water  
4 would otherwise be used and consumed, and without consideration of the rights' relative  
5 priorities. Nor does the automatic determination consider the number of fish that would  
6 benefit or the ultimate consumptive or instream purposes the water would be put to after it  
7 exits the Deer Creek watershed, at which point it is no longer subject to a prohibition on  
8 diversion.

9           15.1 In each of the original adoption of Emergency Regulations in 2014  
10 and in the re-adoption and continuation of the Emergency Regulations for 2015, the  
11 minimum flow was determined to be required to be taken from Plaintiffs' rights to water  
12 of 65% of the amount required to maintain 50 cfs from April 1 through June 15  
13 downstream of the Stanford Vina Dam, and 65% of 20 cfs from October 15, 2014 through  
14 June 30, 2015, without any hearing or evidentiary basis for concluding that those amounts  
15 of water were more reasonably or beneficially used for this envisioned project and  
16 undertaking for the benefit of the public. The Executive Director of the State Water  
17 Resources Control Board and its Deputy were authorized and directed to issue orders of  
18 curtailment and threaten fines, and did so on or about June 5, 2014 through June 24, 2014,  
19 and again ordered a taking of Plaintiffs' water on October 15, 2014 and thereafter.  
20 Pursuant to the 2015 re-adopted regulations, a notice of curtailment was again issued to  
21 Plaintiff on April 16, 2015. Each order of curtailment also provides for periodic taking of  
22 additional water for so called "pulse flows" of up to 100 cfs, to be scheduled at the  
23 discretion of the Executive Officer of the State Water Resources Control Board upon the  
24 request of the National Marine Fisheries Agency of the Department of Commerce and  
25 California Department of Fish and Wildlife, and without evidentiary hearing or  
26 documentation of the basis of the scheduling or amounts required or amounts of  
27 compensation for use of the property of Plaintiff. The delegation of authority and power  
28 to the Executive Directors and his or her issuance of curtailment orders which take the

1 property interest of Plaintiffs is not accompanied by any requirement of evidence or  
2 hearing. Each of the Notices of Curtailment has caused or will cause Plaintiffs to be  
3 damaged and deprived of property used in agricultural activities and a part of the real  
4 property within Plaintiffs' service area.

5 16. The lands of Plaintiff's shareholders and those otherwise within Plaintiff's  
6 service area, to which the water rights at issue are appurtenant, lie within a former  
7 Mexican land grant, title to which was confirmed and patented by the Public Land  
8 Commission in 1862, pursuant to the California Land Act of March 3, 1851 (9 Stat. 613).  
9 The state has not retained any public trust easements in this or the other former Mexican  
10 land grants that were patented pursuant to this process, including the area encompassing  
11 the land at issue here. (See *Summa Corp. v. California Ex Rel. State Lands Comm.* (1984)  
12 466 U.S. 198.) Pursuant to *Summa Corp.*, the state has no public trust right to withdraw,  
13 prohibit the use of, or otherwise require the bypass, nonuse, or forbearance of water or  
14 water rights in order to serve purposes or uses that are deemed to be in the public interest,  
15 serve the public trust, or are otherwise deemed to be more valuable to the public than  
16 irrigation use, on lands such as these that were patented pursuant to the Act of March 3,  
17 1851.

18 17. The use of water to provide minimum instream flows for fish protection is a  
19 public trust use of the water. (e.g., *National Audubon Society v. Superior Court* (1983) 33  
20 Cal.3d 419, 425.) The emergency regulations were adopted in 2014 and re-adopted in  
21 2015 to serve public trust purposes in an instance where the state has not retained a public  
22 trust easement in the land to which the water rights are appurtenant. These public trust  
23 interests are being asserted pursuant to the emergency regulations without any evidentiary  
24 hearing to provide for the required balancing and evidentiary support for the exercise of a  
25 public trust reservation required in *National Audubon*.

26 18. The California Department of Fish and Wildlife (CDFW) has been  
27 attempting to develop a project upon Deer Creek to provide for measures to increase the  
28 numbers of anadromous fish for a number of years prior to 2014. This effort included the



1 study and financing arranging of potential of measures to develop water supplies from  
2 groundwater wells in the vicinity of Deer Creek and Mill Creek to provide for additional  
3 flows in those creeks at the expense of the public. Such efforts were in addition to  
4 proposals to provide for separate, detailed, public trust-type proceedings before Defendant  
5 SWRCB to determine and obtain the optimum water flows and conditions to increase fish  
6 populations. These efforts by CDFW were underway for many years prior to the drought  
7 conditions in 2014 and 2015 and had generally been unsuccessful because of a lack of  
8 funding, flawed planning, flawed assumptions of the public benefits to be realized, and  
9 disorganization of the state and federal agencies involved in the studies and planning.  
10 Plaintiffs are informed and believe that in 2014, when the drought conditions were evident  
11 and being experienced, personnel of CDFW and National Marine Fisheries Service  
12 determined and developed an opportunistic plan to claim an “emergency” existed and to  
13 obtain water flows from Plaintiff which could not otherwise be obtained for their public  
14 project and undertaking without the payment of just compensation; their plan was to pay  
15 no compensation at all. Plaintiffs are informed and believe that the Defendant State Water  
16 Resources Control Board of the State of California joined in that plan and effort to utilize  
17 a claimed emergency to attempt to obtain the property interests in the water flowing in  
18 Deer Creek and Mill Creek for the periods of the regulations and curtailment notices for a  
19 public project without payment because the previous studies, proposals, and planning had  
20 all indicated that the funding requirements of alternative measures to obtain additional  
21 water and additional fish populations would make those alternative plans impractical. The  
22 re-adoption of the re-adoption of the Regulations and issuance of curtailment notices to  
23 Plaintiff in 2015 evidences the continued implementation of this plan and public project to  
24 require at the sole cost of Plaintiff and its landowners and shareholders who must give up  
25 their property in order to implement a public project at Plaintiffs’ sole cost and expense.

26 19. Plaintiff is informed and believes that the anadromous fish populating Deer  
27 Creek have adjusted their life cycle over the approximately 100-plus years of irrigation  
28 diversions by Plaintiff during drought cycles, to prosper and survive and to avoid damage

1 to the respective runs of spring run salmon, fall run salmon, and steelhead. Despite these  
2 adjustments and stability, Plaintiff is informed and believes that Defendants  
3 opportunistically elected and continue to choose to avoid the expense and time necessary  
4 to develop a public project on Deer Creek to condemn water rights or obtain groundwater  
5 or stored water supplies or to avoid the costs and difficulties of obtaining legal authority to  
6 implement the public project envisioned, by utilizing emergency regulations and  
7 curtailment orders based upon emergency conditions when in fact those fish have long ago  
8 adjusted to irrigation use of water in the spring and fall periods by Plaintiff and its  
9 shareholders, and their migration and use of Deer Creek was already attuned to the  
10 irrigation diversion patterns of Plaintiff. Plaintiffs are informed and believe and on that  
11 basis allege that Defendants in 2014 used the labels “emergency,” “drought,” and “harm”  
12 to important and Endangered Species Act-listed species as opportunistic labels to finance,  
13 implement, and initiate a public project utilizing Plaintiff’s and its shareholders’ property  
14 and requiring them to bear and suffer the costs of that plan and project which in fact is a  
15 public project, the expense of which should be borne by the State of California.

16 20. The use of water for the achievement of minimum instream flows for the  
17 protection of fish is a public use because the protection of such fish provides no special  
18 benefit to the Deer Creek water rights holders and the benefit accrues to the public as a  
19 whole.

20  
21 ***C. Adoption of the Emergency Regulations***

22 21. On May 20 and May 21, 2014, Defendants considered the proposed  
23 emergency regulations at a regularly scheduled meeting of Defendant State Water  
24 Resources Control Board.

25 22. Throughout the two-day meeting, significant revisions were made to the  
26 proposed regulations. The revised regulatory language was not made publicly available  
27 during this period except via handouts only available to some of those physically present  
28 at the meeting and by a single reading of the amended language before Defendants voted

1 to adopt the proposed emergency regulations. No evidentiary hearing or balancing of  
2 alternative uses of the water supplies was conducted to support the assertion of the public  
3 trust reservation and revocation of Plaintiffs' right to use water, as required by *National*  
4 *Audubon*, even though Plaintiff requested such hearing, pointed out that the lands and  
5 waters were subject to the *Summa Corp.* determination that the affected water rights were  
6 not subject to withdrawal for public trust purposes, and that condemnation and taking  
7 would occur if the emergency regulations were adopted and implemented.

8 23. On May 21, 2014, Defendants approved Resolution No. 2014-0023, which  
9 adopted the proposed emergency regulations as modified at the meetings.

10 24. On May 22, 2014, Plaintiff requested that the Defendants circulate the  
11 revised proposed emergency regulations' language at least five days before submitting the  
12 proposed emergency regulations to OAL for approval, as required by Government Code  
13 section 11346.1(a)(2).

14 25. In violation of Government Code section 11346.1(a)(2), Defendants  
15 submitted the proposed emergency regulations to OAL on May 23, 2014, for review and  
16 approval without having circulated the specific language proposed to be adopted for the  
17 requisite five-day period, notwithstanding Plaintiff's request for compliance with  
18 Government Code section 11346.1(a)(2).

19 26. On May 28, 2014, Plaintiff submitted to the Office of Administrative Law  
20 comments on and objections to the proposed emergency regulations.

21 27. On June 2, 2014, OAL approved the proposed emergency regulations, and  
22 the regulations thereafter went into effect.

23  
24 **D. The Adopted Emergency Regulations**

25 28. As relevant to this proceeding, the emergency regulations adopted by  
26 Defendants (specifically 23 CCR section 877) declared any diversions in Deer Creek,  
27 regardless of how Plaintiff or its shareholders would have used the water or the water  
28 rights' relative priorities, to be "waste and unreasonable use" if the diversions would

1 reduce the flow of Deer Creek below the emergency regulations’ target instream fish  
2 flows. The emergency regulations therefore prohibit water rights holders from diverting  
3 any water pursuant to their vested water rights if the said diversions would interfere with  
4 achieving the emergency regulations’ target instream fish flows, and to the extent they  
5 would interfere, such historically and legally reasonable uses would be deemed “waste  
6 and unreasonable use.” (23 CCR § 877.) Diversion and use of water under the water  
7 rights that Plaintiff administers was therefore “reasonable and not wasteful” for  
8 approximately 100 years prior to the date and hour that the emergency regulation-based  
9 curtailment order took effect and will not be wasteful or unreasonable as soon as the  
10 curtailment order is lifted. But the exact same diversions and uses are “waste and  
11 unreasonable use” during the period of emergency regulation-based curtailment, even  
12 though there is no change in the proposed amounts diverted or in the uses the water would  
13 be applied to but for the SWRCB order to cease using water under threat of violation of  
14 law. Defendant State Water Resources Control Board’s Deputy Director for the Division  
15 of Water Rights is further authorized by the emergency regulations to preemptively issue  
16 curtailment orders to water rights holders on Deer Creek, and thereby deem their use of  
17 water “waste and unreasonable” if, in his judgment, he believes that continued diversions  
18 pursuant to vested rights would interfere with achieving the emergency regulations’ target  
19 instream fish flows. (23 CCR § 877(b).) The emergency regulations also establish the  
20 minimum instream fish flows for Deer Creek, which vary based on time of year and the  
21 presence of certain species of anadromous fish. (23 CCR § 877(c)(2).)

22 29. The emergency regulations therefore require water rights holders to forgo  
23 exercise of their water rights in order to serve and satisfy a higher public purpose and goal  
24 than private use of the water, and gives Defendants the authority to order water rights  
25 holders to forgo exercise of their vested property rights so that those rights may be used in  
26 service of public trust interests, without regard to the permitted uses of the water or the  
27 priority of the rights.

28 //

1           **E.     Implementation of Regulations; Curtailment of Exercise of Water Rights**

2           30.     On June 5, 2014, Defendants issued Water Rights Order (WRO) 2014-0022-  
3     DWR, which ordered water rights holders in Deer Creek, including Plaintiff, to curtail  
4     exercise of their water rights on Deer Creek, beginning on June 6, 2014. The order  
5     mandated water rights holders on Deer Creek to cease or reduce their diversions in order  
6     to meet the emergency regulations' minimum instream flow goal of 50 cfs (23 CCR  
7     section 877(c)(2)(A) & (B)). Because natural flows in Deer Creek at that time were less  
8     than 50 cfs, this meant that Plaintiff and its shareholders/ landowners were required to  
9     entirely forgo exercise of their vested water rights and their rights to irrigated land.

10          31.     On June 12, 2014, Defendants decreased the effective minimum instream  
11     flow requirement under WRO 2014-0022-DWR to 20 cfs, pursuant to 23 CCR section  
12     877(c)(2)(D).

13          32.     Also on June 12, Defendants sent a draft cease and desist order (CDO) to  
14     Plaintiff for an alleged violation of WRO 2014-0022-DWR and for an alleged unlawful  
15     diversion of water.

16          33.     On June 24, 2014, Defendants suspended WRO 2014-0022-DWR and all  
17     curtailments (either 50 cfs or 20 cfs minimum flow requirements), as Defendants claimed  
18     anadromous fish were no longer present.

19          34.     On July 3, 2014, Plaintiff filed a petition for reconsideration of Defendants'  
20     adoption of the emergency regulations, of Defendants' issuance of WRO 2014-0022-  
21     DWR, and of the draft CDO.

22          35.     On September 23, 2014, Defendants denied Plaintiffs' petition for  
23     reconsideration at a regularly scheduled meeting of Defendant State Water Resources  
24     Control Board. Plaintiffs, as they had done in the previous Board meetings and in their  
25     objections and Petition for Reconsideration, again requested an evidentiary hearing and, if  
26     Defendants sought condemnation in part or in total of their water rights and rights to  
27     maintain irrigated land, that legally required eminent domain proceedings be commenced.  
28     Notwithstanding such requests, Defendants refused to hold an evidentiary hearing or

1 otherwise comply with requisite due process.

2 36. On October 14, 2014, Defendants issued Water Rights Order 2014-0029-  
3 DWR, which established minimum instream flows of 50 cfs for Deer Creek pursuant to 23  
4 CCR section 877(c)(2)(C), which would require Plaintiff to again forgo exercise of its  
5 water rights from and after October 15, 2014.

6 36.1 On March 17, 2015, faced with the fact that the Emergency  
7 Regulation adopted in 2014 would end 270 days following its adoption, on March 30,  
8 2015 the Defendant purported to adopt a further order extending the Emergency  
9 Regulation spanning from March 30, 2015 to December 29, 2015 and applied to and  
10 obtained the authorization of the Office of Administrative Law to enforce that regulation  
11 utilizing the same procedures employed in 2014 as alleged herein. Again, no hearing,  
12 evidentiary basis, or balancing of the benefits and detriments of Plaintiff utilizing water  
13 for irrigation and groundwater recharge or substitution for the real property within  
14 Plaintiffs' service area, compared to utilization for increasing flows in the Deer Creek  
15 stream bed, or of allowing that water to be consumed by third parties or utilized for third  
16 parties' private or public purposes, was ever provided by Defendants, and there was no  
17 finding stating that the use of the water after entering the Sacramento River should be by  
18 other appropriators or for other environmental purposes, or that there was any basis for not  
19 requiring payment for the damages and loss of the property of Plaintiffs. Plaintiffs have  
20 applied for reconsideration of Defendants' orders adopting and approving the Emergency  
21 Regulations, and Plaintiffs have no other administrative remedy available.

22  
23 ***F. Effects of the Curtailments***

24 37. Defendants' promulgation of the emergency regulations and issuance of the  
25 orders curtailing Plaintiff's exercise of its water rights prevented Plaintiff from exercising  
26 the vested water rights it administers on behalf of the shareholders and their lands to  
27 which the shares are appurtenant and will continue to do so until Those Emergency  
28 Regulations and Curtailment Orders are voided and rescinded. Because the orders

1 required Plaintiffs to bypass all (or substantially all)<sup>1</sup> of the flow of Deer Creek, Plaintiff  
2 was unable and will be unable to divert the water it was entitled to during the time the  
3 curtailment orders were in effect and therefore the property rights of Plaintiff, the trust  
4 corpus it administers for the benefit of its shareholders, and the lands to which the shares  
5 are appurtenant have been damaged, and the water, the right to divert water, and the  
6 reasonable value of the water were taken for public use by Defendants.

7  
8 **FIRST CAUSE OF ACTION**

9 **(Inverse Condemnation)**

10 38. Plaintiffs reallege and incorporate herein each and every allegation of  
11 paragraphs 1 through 37 of the General Allegations.

12 39. Article I, section 19 of the California Constitution provides that “[p]rivate  
13 property may be taken or damaged for public use when just compensation, ascertained by  
14 a jury unless waived, has first been paid to, or into court for, the owner.” Article I, section  
15 7, provides that “a person may not be deprived of . . . property without due process of  
16 law.”

17 40. The Fifth Amendment to the United States Constitution provides that “No  
18 person shall . . . be deprived of . . . property, without due process of law; nor shall private  
19 property be taken for public use, without just compensation.” This amendment applies to  
20 the State of California through operation of the Fourteenth Amendment to the United  
21 States Constitution.

22 41. Water rights in California are private property and therefore “cannot be  
23 infringed by others or taken by government action without due process and just  
24 compensation.” (*United States v. State Water Resources Control Board* (1986) 182  
25 Cal.App.3d 82, 101.)

26 \_\_\_\_\_  
27 <sup>1</sup> A rain event on or about October 14, 2014, increased the flow of Deer Creek to slightly above  
28 the minimum flow required by WRO 2014-0029-DWR, allowing Plaintiff to potentially divert a  
nominal proportion of the face value of its vested water right.

1           42.     The emergency regulations and related curtailment orders take Plaintiff's  
2 water rights which are appurtenant to its shareholders' lands for public purposes and to  
3 implement a public project. This was accomplished by requiring Plaintiff to forgo  
4 exercise of its water rights so that those same usufructory rights could be used for the  
5 purpose of providing water in Deer Creek, the Sacramento River, and the Sacramento-San  
6 Joaquin River Delta, for fishery enhancement purposes in Deer Creek and downstream,  
7 together with other consumptive and non-consumptive uses of the bypassed water. By  
8 requiring Plaintiff to forgo exercise of the water rights and instead requiring Plaintiff to  
9 allow water to pass by Plaintiff's diversion facilities, Defendants have physically occupied  
10 and taken Plaintiffs' property.

11           43.     This invasion of Plaintiff's vested property rights had and will in the future  
12 have the effect of prohibiting Plaintiff from diverting water for agricultural purposes  
13 pursuant to those vested rights, causing a direct and proximate injury to Plaintiff and the  
14 lands of its shareholders, caused by the loss of water and the effects of that loss.  
15 Plaintiff's shareholders were directly and proximately injured by Defendants' taking of  
16 these water rights due to decreased agricultural yields, monies expended to mitigate the  
17 effects of the curtailments, decreased business and property valuations due to increased  
18 uncertainty concerning the ability to exercise and benefit from vested water rights, and  
19 decreased groundwater recharge caused by the decrease of irrigation water applied to the  
20 land within the local groundwater basin.

21           44.     This invasion and taking of property rights forces Plaintiff alone (with its  
22 shareholders and similarly situated water rights holders) to bear burdens which, in all  
23 fairness and justice, should be borne by the public as a whole. Requiring Plaintiff and its  
24 shareholders to give up the exercise of water rights during these periods of time causes  
25 financial injuries to Plaintiff and to its shareholders' lands for the benefit of anadromous  
26 fish, which Defendants have deemed to be a more important public purpose and project,  
27 and for preferred consumptive and instream uses in areas downstream of Deer Creek. The  
28 burdens associated with providing water to endangered fish species should therefore be



1 borne by the public as a whole, and not just by Plaintiff and similarly situated water rights  
2 holders.

3 45. Defendants' acts and omissions in promulgating, implementing, and  
4 enforcing the emergency regulations constitute a physical invasion of the real property  
5 rights held and administered by Plaintiff, for a public use. The burden placed on Plaintiff  
6 and the property rights held in trust by Plaintiff is direct, substantial, and peculiarly  
7 burdens Plaintiff and its shareholders, to their detriment. Defendants have not provided  
8 due process or reasonable compensation in accomplishing the taking of the property  
9 interests held by Plaintiff and administered in the form of the right to divert and utilize  
10 water of Deer Creek. The property rights administered and held in trust by Plaintiff have  
11 been damaged as a proximate result of the actions and omissions of Defendants and the  
12 reasonable value of the damages and the interests in real property taken exceeds the  
13 minimum jurisdiction of this Court and will be added by amendment hereafter in  
14 accordance with proof submitted at trial.

15 46. Defendants have not, and indicate by their actions that they will not in the  
16 future, compensate Plaintiff for the invasion, taking, and damaging of Plaintiff's property  
17 rights and water, nor have Defendants deposited just compensation with the court.

18 46.1 Defendants issued Temporary Urgency Permits purporting to  
19 establish accounts of water via orders to curtail or other changes in operation which  
20 require Plaintiffs to account for and then make those waters available for disposition and  
21 control and sale as Defendants' property. Such language has been included in every  
22 Temporary Urgency Permit issued to the State of California State Water Project and  
23 Central Valley Project of the United States since February 2014, and includes terms  
24 making that water the property of Defendant for disposition to more favored parties and  
25 uses of the Defendants, such as:

26 "...maintain a record of the amount of water conserved through  
27 the changes authorized by this Order...and shall submit such  
28 records on a monthly basis to the State Water Board and  
fisheries agencies...The use of such water shall be determined  
by the Executive Director or his representative...."

1 The water available to and adjudicated to Plaintiff has become the property of the State to  
2 be awarded for use as the State sees fit. The value of that water in 2014 was at least \$500  
3 per ac/ft, and the value of that water in 2015 will be in excess of \$700 per ac/ft.

4 47. Plaintiffs have incurred and will incur attorneys' and expert fees and costs  
5 related to this proceeding, in amounts that cannot yet be ascertained, which are  
6 recoverable in this action under the provisions of Code of Civil Procedure section 1036.

7 WHEREFORE the Plaintiffs pray for judgment as set forth hereafter.

8  
9 **SECOND CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 48. Plaintiffs reallege and incorporate herein each and every allegation of  
12 Paragraphs 1 through 37 of the General Allegations and Paragraphs 38 through 47 of the  
13 First Cause of Action.

14 49. A real and justiciable dispute exists between Defendants and Plaintiff  
15 requiring resolution under the provisions of Code of Civil Procedure section 1060.

16 50. Defendants claim and maintain that they may, without providing for the  
17 implementation of eminent domain action proceedings, take and acquire the interests in  
18 water held and administered by Plaintiff for its shareholders without first providing for  
19 due process, reasonable compensation, and satisfaction of the requirements of California  
20 Constitution article I, sections 7 and 19, and statutory law. These requirements include  
21 the conduct of hearings (CCP section 1250.01 et seq.), the adoption of resolutions of  
22 necessity (CCP section 1245.210 et seq.), the deposit of estimated damages and  
23 reasonable value of the interests taken before the taking occurs (California Constitution  
24 article 1, sections 7 & 19 and CCP section 1255.010 et seq.), and the conduct of  
25 proceedings to authorize the immediate possession of the interests sought to be obtained  
26 (CCP section 1255.410 et seq.).

27 51. Defendants claim and maintain that they are not required, prior to asserting a  
28 public trust type use of water as superior and advantageous to the public interest, to

1 conduct evidentiary hearings examining alternative uses and the public interest and benefit  
2 from comparative uses of water as required by *National Audubon v. Superior Court* and as  
3 required in any eminent domain action in regard to public necessity. Defendants instead  
4 assert that they may simply adopt an emergency regulation and thereafter delegate to its  
5 employees the decision of whether and when to order the taking of water and water rights  
6 for public purposes. Defendants further claim that they have the right to assert a public  
7 trust reservation even though no such reservation was included in the confirmation of title  
8 and patent issued to Plaintiff's and its shareholders' predecessors-in-interest pursuant to  
9 the original Mexican land grant and the Act of March 3, 1851 (9 Stat. 613).

10 52. Plaintiff is informed and believes that Defendants may not perform or cause  
11 to be performed such required acts and that Defendants' actions therefore would be in  
12 violation of the requirements of the Government Code, California Constitution, and Code  
13 of Civil Procedure. Such acts would result in a multiplicity of actions, which would cause  
14 the citizens of California to incur substantial and repetitive costs pursuant to Code of Civil  
15 Procedure section 1036 and which would constitute trespasses to agricultural property  
16 pursuant to Code of Civil Procedure section 1021.9, requiring the payment of expert  
17 witness and attorneys' fees.

18 WHEREFORE Plaintiff prays for a declaratory relief judgment as set forth  
19 hereafter, that such actions are in violation of law and would if conducted in the future by  
20 Defendants be in violation of law.

21  
22 **THIRD CAUSE OF ACTION**

23 **(Petition for Writ of Mandate to Prevent Violation of Due Process in the Taking of**  
24 **Water Rights for Public Use)**

25 53. Plaintiffs reallege and incorporate herein each and every allegation of  
26 Paragraphs 1 through 37 of the General Allegations and Paragraphs 38 through 47 of the  
27 First Cause of Action, and paragraphs 48 through 52 of the Second Cause of Action.

28 //

1           54.     Article I, section 19, of the California Constitution allows private property  
2 to be taken or damaged for a public use if and only if just compensation has *first* been paid  
3 to, or into court for, the owner.

4           55.     Defendants took Plaintiff’s vested water rights so that the rights could be  
5 exercised for the benefit of the public by providing water for anadromous fish in Deer  
6 Creek and for use downstream for other public purposes.

7           56.     Defendants did not first pay just compensation to Plaintiff or deposit that  
8 sum into court for the Plaintiff, nor did Defendants at any time afterward compensate  
9 Plaintiff for the taking.

10          57.     Plaintiff alleges that Defendants failed to abide by the procedural  
11 requirements of sections 7 and 19(a) of article I of the California Constitution, when it  
12 took the water and real property rights as described in the First Cause of Action without a  
13 hearing on reasonable compensation.

14          58.     The requirements of the California Constitution, article 1, sections 7 and 19,  
15 and title 7 of the Code of Civil Procedure are mandatory legal requirements. Defendants  
16 at all times had a clear and present duty to perform those obligations and conduct those  
17 proceedings and had the legal authority and ability to do so and did not comply with its  
18 legal duties. In doing so, Defendants violated Plaintiff’s due process rights, proceeded in  
19 a manner not authorized by law, and abused its discretion by implementing and enforcing  
20 regulations not promulgated according to law. Defendants had the ability to perform the  
21 duty, the duty was ministerial and not discretionary, and Plaintiff has no other adequate  
22 remedy.

23           WHEREFORE the Plaintiffs pray for judgment as set forth hereafter.

24 //  
25 //  
26 //  
27 //  
28 //

1 **FOURTH CAUSE OF ACTION**

2 **(Petition for Writ of Mandate to Prevent Violation of Due Process in Promulgating**  
3 **the Emergency Regulations)**

4 59. Plaintiffs reallege and incorporate herein each and every allegation of  
5 Paragraphs 1 through 37 of the General Allegations and Paragraphs 38 through 47 of the  
6 First Cause of Action, Paragraphs 48 through 52 of the Second Cause of Action, and  
7 Paragraphs 53 through 58 of the Third Cause of Action.

8 60. Government Code section 11346.1(a)(2) requires an agency adopting  
9 emergency regulations to, “[a]t least five working days before submitting an emergency  
10 regulation to the [Office of Administrative Law], . . . send a notice of the proposed  
11 emergency action to every person who has filed a request for notice of regulatory action  
12 with the agency. The notice shall include . . . [t]he specific language proposed to be  
13 adopted.”

14 61. Defendants did not, at least five working days before submitting the  
15 proposed emergency regulations to OAL, send a notice of the proposed emergency action  
16 that included the specific language proposed to be adopted to every person who had filed a  
17 request for notice of regulatory action with the agency. Instead, Defendants relied upon  
18 the notice sent on May 13, 2014, which did not include the specific language that  
19 Defendants adopted and ultimately submitted to OAL for approval.

20 62. Defendants therefore violated Government Code section 11346.1(a)(2). In  
21 doing so, Defendants violated Plaintiff’s due process rights, proceeded in a manner not  
22 authorized by law, and abused its discretion by implementing and enforcing regulations  
23 not promulgated according to law. Defendants had the ability to perform the duty, the  
24 duty was ministerial and not discretionary, and Plaintiff has no other adequate remedy.

25 63. Water Code section 1058.5(a)(1) authorizes Defendants to promulgate  
26 emergency regulations for the following exclusive list of purposes: “to prevent the waste,  
27 unreasonable use, unreasonable method of use, or unreasonable method of diversion, of  
28 water, to promote water recycling or water conservation, to require curtailment of

1 diversions when water is not available under the diverter's priority of right, or in  
2 furtherance of any of the foregoing, to require reporting of diversion or use or the  
3 preparation of monitoring reports.”

4 64. Nothing in section 1058.5 authorizes Defendants to promulgate emergency  
5 regulations for the purpose of serving public trust interests as was purported to be the  
6 purpose of the 2014 and 2015 emergency regulations.

7 65. Defendants exceeded their authority and violated due process when they  
8 approved and enforced emergency regulations that were promulgated for the purpose of  
9 serving public trust interests, which is not a purpose authorized by Water Code section  
10 1058.5.

11 66. Defendants attempted to conceal the emergency regulations' public trust  
12 purpose by declaring, without any evidentiary hearings, that all diversions that would  
13 interfere with minimum instream flows established to serve public trust interests are per se  
14 a “waste and unreasonable use,” without any consideration how the diverted water would  
15 have otherwise been used, and without admitting that the conserved water, once it passes  
16 by Plaintiffs' lands, would be accounted for and disposed of by Defendant State of  
17 California to preferred persons or uses.

18 67. California law considers the prohibition on waste and unreasonable use of  
19 water to be separate and distinct from the public trust doctrine. (E.g., *Imperial Irrigation*  
20 *District v. State Water Resources Control Board* (1986) 186 Cal.App.3d 1160, 1168 n.12  
21 (“*National Audubon* did not involve a charge of unreasonable use under article X, section  
22 2, but rather a claim that use of water is harmful to interests protected by the public  
23 trust.”).)

24 68. The reasonableness of any particular use of water is a question of fact.  
25 (E.g., *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 139; *State Water Resources*  
26 *Control Board v. Forni* (1976) 54 Cal.App.3d 743, 754.) A determination of the  
27 reasonableness of a particular water use must be adjudicated by either Defendant State  
28 Water Resources Control Board or by a superior court, with attendant due process.

1 (*Imperial Irrigation District, supra*, 186 Cal.App.3d at 1168-69.)

2 69. Defendants' promulgation of emergency regulations pursuant to Water Code  
3 section 1058.5, for the purpose of acquiring Plaintiff's water and water rights, which are  
4 appurtenant to Plaintiff's shareholders' lands, to serve uses deemed to be more valuable  
5 and of a higher purpose as public trust interests, without any evidentiary hearing,  
6 exceeded Defendants' emergency regulatory authority, in violation of Water Code section  
7 1058.5 and Plaintiff's due process rights. Defendants violated Plaintiff's due process  
8 rights, proceeded in a manner not authorized by law, and abused their discretion by  
9 implementing and enforcing regulations not promulgated according to law. Plaintiff has  
10 no other adequate remedy at law, and Defendants' duty to comply with the requirements  
11 of law was ministerial and mandatory and not discretionary and was a clear and present  
12 duty.

13 WHEREFORE the Plaintiffs pray for judgment as set forth hereafter.

14  
15 **FIFTH CAUSE OF ACTION**

16 **(Request for Injunction / Petition for Writ of Mandate to Prohibit Defendants'**  
17 **Adoption of Further Orders Relating to Unreasonable Use of Water Without**  
18 **Compliance with Constitutional and Statutory Legal Requirements.)**

19 70. Plaintiffs reallege and incorporate herein each and every allegation of  
20 Paragraphs 1 through 37 of the General Allegations and Paragraphs 38 through 47 of the  
21 First Cause of Action, Paragraphs 48 through 52 of the Second Cause of Action,  
22 Paragraphs 53 through 58 of the Third Cause of Action, and Paragraphs 59 through 69 of  
23 the Fourth Cause of Action.

24 71. Plaintiff is informed and believes and on that basis alleges that Defendants'  
25 illegal taking, actions in excess of authority, abuses of discretion, actions to proceed in  
26 manners not authorized by law, and other violations of due process and of statute, as  
27 alleged above, will likely continue into the future for the reasons that follow.

28 72. The emergency regulations have a nominal expiration date of 270 days after

1 they go into effect, the 2014 curtailment order had a nominal expiration date of February  
2 28, 2015, and the 2015 regulations have a minimal expiration date of December 29, 2015.  
3 However, Plaintiff is informed and believes and on that basis alleges that Defendants have  
4 extended the emergency regulations into 2015 and will attempt to extend or renew the  
5 emergency regulations and/or the curtailment order before its expiration, or issue  
6 additional curtailment orders, based on their claimed authority to declare Plaintiff's  
7 traditional water uses to be per se wasteful and unreasonable, without an evidentiary  
8 hearing or conformance with other due process requirements. Such actions would result  
9 in a multiplicity of actions and the incurrence of further damages and expenses, including  
10 attorneys' fees compensable under CCP section 1036. Such damages and expenses can be  
11 avoided or reduced through the adoption of an injunction and/or writ of mandate requiring  
12 the Defendants to comply with the legal requirements related to condemning vested  
13 property rights for public use.

14 73. These requirements include adopting resolutions of necessity demonstrating,  
15 pursuant to CCP section 1245.230, that the public use is planned in a manner that will be  
16 most compatible with the greatest public good and the least private injury; holding a  
17 hearing in accordance with CCP section 1250.010 et seq., before the taking is ordered;  
18 after the hearing, making a determination of reasonable estimated value of the interests to  
19 be taken and the severance damages arising from the taking and depositing the same, as  
20 required by CCP section 1255.010 et seq.; and developing an administrative record to  
21 authorize the immediate possession of the interests sought to be obtained, as required by  
22 CCP section 1255.410, et seq..

23 74. Unless restrained and enjoined by injunction or by a peremptory writ of  
24 mandate, Plaintiffs are informed and believe and on that basis allege that Defendant State  
25 Water Resources Control Board and its officers, officials, and employees will hereafter act  
26 in a fashion and manner to continue the violation of the statutes and rights alleged above  
27 without due process and evidentiary hearings. Plaintiffs will then be required to incur  
28 substantial damages, costs, and attorneys' fees as a proximate result of those violations



1 and damages, which arise from the taking of water and the resulting lack of water for crop  
2 irrigation and for maintaining groundwater supplies.

3 75. The prohibition on Plaintiff's diversions creates a situation in which  
4 groundwater supplies cannot be maintained in a balanced condition, as is needed to  
5 provide reliable groundwater supplies to supplement surface water supplies. This effect  
6 on groundwater recharge in Plaintiffs' service area makes it extremely difficult to  
7 ascertain the amount of compensation which would afford adequate relief. The lack of  
8 groundwater recharge and the reduction in availability of groundwater will only become  
9 evident after compounding over a long period, but will eventually result in the fallowing  
10 of formerly irrigated lands due to the lack of surface water and the need to conserve  
11 groundwater in Plaintiff's service area. Pecuniary compensation will not afford an  
12 adequate remedy or relief because the full extent of the damage, and the areas it affects,  
13 will not be immediately evident.

14 WHEREFORE the Plaintiffs pray for judgment as set forth hereafter.

15

16 **PRAYERS FOR RELIEF**

17 Plaintiff prays for judgment as follows:

18 **1. Under the First Cause of Action for Inverse Condemnation:**

19 1.1 Pursuant to the First Cause of Action, Plaintiff prays that judgment be  
20 entered for inverse condemnation damages and severance damages in excess of the  
21 jurisdictional amount of this Court and in an amount shown according to proof at the time  
22 of trial that Defendants have by their actions and undertakings inversely condemned  
23 interests in the water rights and property rights represented by those rights to use water  
24 held, administered and managed by Plaintiff, and taken without due process as required by  
25 Article 1, sections 7 and 19 of the California Constitution, the reasonable value of those  
26 amounts of water and caused severance damages to the remainder of the rights to water  
27 and the real property to which those rights are appurtenant; and

28 //

1           1.2     For an award of attorneys' fees, expert witness fees, and reasonable costs  
2 pursuant to CCP section 1036 and CCP section 1021.9 as the actions of Defendants  
3 constitute a trespass upon agricultural lands; and

4           1.3     For an award of costs incurred; and

5           1.4     For such other and further judgments and awards as the court shall deem  
6 proper.

7  
8     **2.     Under the Second Cause of Action for Declaratory Relief:**

9           2.1     That a Declaratory Relief Judgment be entered against Defendants State of  
10 California, State Water Resources Control Board, and State Water Resources Control  
11 Board Members, and their agents, employees, and persons working in concert with such  
12 parties:

13           2.2     Declaring that California Constitution article I, sections 7 and 19, and the  
14 Code of Civil Procedure each require that, prior to attempting to utilize emergency  
15 regulations or regulations to order that the right to use water be bypassed or foregone, due  
16 process must be employed, including the conduct of evidentiary hearings, the adoption of  
17 findings based upon adequate evidence of reasonable public necessity, the deposit of  
18 adequate compensation, and reasonable notice and opportunity to be heard; and

19           2.3     Declaring that Defendants may not contend that public trust reservations in  
20 public grants of real property may be reserved and exercised by the Defendants without  
21 evidentiary hearings and findings and orders declaring (1) that no public trust reserved  
22 rights exist in land comprising former Mexican land grants that were patented pursuant to  
23 the Act of March 3, 1851, unless the patent issued by the Public Lands Commission  
24 includes a specific reservation of the right to recover a public trust use such as a right to  
25 prevent the use or diversion of water or other rights of access to resources useful for the  
26 general public, and (2) that the Mexican Land Grants and Patents issued pursuant to those  
27 Grants for the land which water rights held by Plaintiff are appurtenant to have no such  
28 reservation of public trust authority to Defendant State of California; and

1           2.4     That Plaintiffs be awarded their costs and attorneys’ fees pursuant to CCP  
2 section 1021.5 as providing a substantial public benefit in maintain this action; and

3           2.5     For such other and further relief as the Court shall deem appropriate.  
4

5     **3.     Under the Third Cause of Action for Writ of Mandate:**

6           3.1     That a peremptory writ of mandate be ordered and entered against  
7 Defendants, its Board members, successor board members, officers, and officials, and  
8 other public employees acting in concert with Defendants, that:

9           3.2     Defendants rescind, cancel, and nullify any notices to curtail diversions of  
10 water pursuant to the emergency regulations and that the emergency regulations be  
11 deemed of no lawful effect and null and void until and unless Defendants first provide for  
12 compliance with the requirements of the California Constitution, article 1, sections 7 and  
13 19, and CCP title 7 (relating to eminent domain), by holding the hearings, providing for  
14 the production of evidence of the public necessity of the acquisition and taking of  
15 Plaintiff’s usufructory water right and the water Plaintiff is entitled to pursuant to that  
16 right, and that reasonable compensation has been determined and paid to the Plaintiffs  
17 before the taking of the water shall be ordered and accomplished; and

18           3.3     Defendants (1) prior to acting pursuant to emergency regulation or  
19 otherwise in an attempt to determine or find that water use is unreasonable or a wasteful,  
20 first be required to provide for reasonable due process including the conduct of  
21 evidentiary hearings in regard to the determinations of the public interest and public  
22 necessity, and balancing alternatives to the acquisition of interests in water and the current  
23 uses of water, and (2) further ordering that Defendants not act to implement any such  
24 regulation or requirement without first complying with the requirement of ascertaining  
25 that a valid public trust reservation in the real property and rights to water which are  
26 appurtenant to real property was reserved pursuant to *Summa Corp. v. California*; and

27           3.4     For the award of reasonable costs, expert witness fees, and attorneys’ fees  
28 pursuant to CCP section 1036; and

1           3.5     For such other and further relief as shall be deemed appropriate by the  
2 Court.

3

4     **4.     Under the Fourth Cause of Action for Writ of Mandate:**

5           4.1     That a peremptory writ of mandate be issued to Defendants ordering that (1)  
6 the emergency regulations related to Deer Creek, Mill Creek and Antelope Creek must be  
7 withdrawn, rescinded, cancelled, and not acted upon until all requirements of statute are  
8 performed and met because the Emergency Regulations were not adopted or promulgated  
9 in accordance with due process due to the Water Code Section 1058.5(a)(1) limitations the  
10 purposes for which such a regulation can be utilized, under which the acquisition and  
11 taking of water for the service of public trust interests is not a permitted purpose; (2) the  
12 regulations must be withdrawn, rescinded, cancelled, and not acted upon until all  
13 requirements of statute are performed and met because the 2014 emergency regulation  
14 was modified without at least five working days' notice of the new language, as required  
15 by Government Code section 11346.1(a)(2), before submission to OAL of the modified  
16 language; and (3) the regulations must be withdrawn, rescinded, cancelled, and not acted  
17 upon until all requirements of statute are performed and met because notice of the specific  
18 language to be adopted as the 2014 Emergency Regulation was not given and served upon  
19 all persons as required by section 11346.1(a)(2) of the Government Code.

20           4.2     That Plaintiffs be awarded their costs and attorneys' fees pursuant to CCP  
21 section 1021.5 as providing a substantial public benefit in maintain this action; and

22           4.3     For such other and further relief as the Court shall deem appropriate.

23

24     **5.     Under the Fifth Cause of Action for Injunction or Writ of Mandate:**

25           5.1     That an injunction and/ or writ of mandate be issued prohibiting Defendants  
26 from adopting further orders relating to unreasonable use of water which have the effect  
27 of prohibiting one use of water in order to benefit or enhance an alternative use of water,  
28 without first complying with constitutional and statutory legal requirements of due process

1 and reasonable compensation. Those requirements include the conduct of hearings,  
2 determination of public necessity and use, and the deposit of the estimated value of the  
3 interests in property to be acquired and severance damages to be incurred; and

4 5.2 For an award of attorneys fee and expert witness fees pursuant to CCP  
5 section 1021.5 on the grounds of the provision of a substantial public benefit and  
6 enforcement of a substantial public interest protective of the interests of a substantial  
7 population of persons;

8 5.3 For costs of suit; and

9 5.4 For such other and further relief as the Court shall deem proper.

10 Respectfully submitted,

11 MINASIAN, MEITH,  
12 SOARES, SEXTON & COOPER LLP

13 By:   
14 PAUL R. MINASIAN

15 By:   
16 PETER C. HARMAN  
17 Attorneys for STANFORD VINA RANCH  
18 IRRIGATION COMPANY, Plaintiff-Petitioner  
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**VERIFICATION  
(C.C.P. §446, 2015.5)**

STATE OF CALIFORNIA        }  
COUNTY OF BUTTE

I, PAUL R. MINASIAN, declare:

I am an attorney at law duly admitted and licensed to practice before all courts of this State and I have my professional office at Oroville, Butte County, California.

I am the attorney of record for STANFORD VINA RANCH IRRIGATION COMPANY Plaintiff-Petitioner in the above-entitled action.

The Plaintiff is absent from the county in which I have my office. For that reason I am making this verification on its behalf.

I have read the foregoing FIRST AMENDED VERIFIED COMPLAINT AND PETITION FOR (1) INVERSE CONDEMNATION, (2) DECLARATORY RELIEF JUDGMENT, (3) WRIT OF MANDATE, (4) WRIT OF MANDATE, AND (5) INJUNCTION OR WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. If called to testify in this matter, I could competently and of my own knowledge testify to each of the matters set forth above and would so testify.

Executed on this 11<sup>th</sup> day of May, 2015, at Oroville, California.

  
\_\_\_\_\_  
PAUL R. MINASIAN

1 **DECLARATION OF SERVICE**

2 *Stanford Vina Ranch Irrigation Company v. State of California SWRCB, et al.*  
3 Sacramento County Superior Court Case No. 34-2014-80001957

4 I, **DENISE DEHART**, declare:

5 I am employed by the law firm of MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP. My business address is 1681 Bird Street, Post Office Box 1679, Oroville, California 95965-1679. I am over the age of 18 years and not a party to this action.

6 On May 11, 2015, I served the following document(s) set forth below in the manner indicated:

7 ( ) **Via Facsimile**: By facsimile machine at the fax number(s) shown below. I caused the machine to print a transmission record of the transmission and no error was reported by the machine.

8 ( ) **Personal Service**: By personally delivering to the person named below, at the address indicate.

9 ( ) **Service by Mail (Deposit)**: By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

10 ( ) **Electronic Transmission on Service Date**: By electronically mailing to the person named below, at the email address indicated on the attached Service List. No return transmission was received this date indicating that the email transmission did not transmit properly to the recipient.

11 ( X ) **Service by Mail (Collection)**: By enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on May 11, 2015, at Oroville, California, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

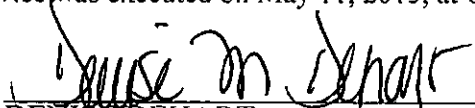
12 **Document(s) Served: FIRST AMENDED VERIFIED COMPLAINT AND PETITION FOR**  
13 **(1) INVERSE CONDEMNATION, (2) DECLARATORY RELIEF JUDGMENT, (3) WRIT**  
14 **OF MANDATE, (4) WRIT OF MANDATE, AND (5) INJUNCTION OR WRIT OF**  
15 **MANDATE**

16 **Person(s) Served:**

17 William Jenkins, Deputy Attorney General  
18 Kristin Peer  
19 State of California Department of Justice  
20 455 Golden Gate Avenue, Suite 11000  
21 San Francisco, California 94102-7004

William.Jenkins@doj.ca.gov  
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22 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration of Service was executed on May 11, 2015, at Oroville, California.

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25 \_\_\_\_\_  
26 DENISE DEHART  
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