SOMACH SIMMONS & DUNN
A Professional Corporation
NICHOLAS A. JACOBS (SBN 210091)
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for ALTA IRRIGATION DISTRICT, CONSOLIDATED IRRIGATION DISTRICT, and FRESNO IRRIGATION DISTRICT

KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP
Joseph D. Hughes (SBN 169375)
4550 California Avenue, Second Floor
Bakersfield, CA 93309
Telephone: (661) 395-1000
Facsimile: (661) 326-0418

Attorneys for KINGS RIVER WATER ASSOCIATION



STATE WATER RESOURCES CONTROL BOARD

| | |
|---|---|
| SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER STORAGE DISTRICT,<br><br>Petitioner,<br><br>v.<br><br>KINGS RIVER WATER ASSOCIATION, FRESNO IRRIGATION DISTRICT, CONSOLIDATED IRRIGATION DISTRICT, ALTA IRRIGATION DISTRICT, and DOES 1 through 100, inclusive,<br><br>Respondents. | RESPONSE OF KINGS RIVER WATER ASSOCIATION, ALTA IRRIGATION DISTRICT, CONSOLIDATED IRRIGATION DISTRICT, AND FRESNO IRRIGATION DISTRICT TO SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER STORAGE DISTRICT COMPLAINT IN SUPPORT OF PETITION TO REVISE AND/OR REVOKE DECLARATION OF FULLY APPROPRIATED STREAM SYSTEM FOR THE KINGS RIVER |

Respondents KINGS RIVER WATER ASSOCIATION (**KRWA**), ALTA IRRIGATION DISTRICT, CONSOLIDATED IRRIGATION DISTRICT, and FRESNO IRRIGATION DISTRICT (collectively the "**Districts**") hereby respond to the Complaint in Support of Petition to Revise and/or Revoke Declaration of Fully Appropriated Stream System for the Kings River

(**Complaint**) filed by SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER STORAGE DISTRICT ("**Petitioner**" or "**Semitropic**") as follows:

## I. INTRODUCTION

The water right Complaint filed by Semitropic is part of an ill-conceived and fundamentally unworkable plan to solve Semitropic's Kern County groundwater deficit by exporting Kings River water. The waters of the Kings River are already fully appropriated, however, and the historic flood releases targeted by Semitropic are needed in the watershed of origin - Fresno, Kings, and Tulare Counties - for groundwater recharge/banking projects necessary to meet the mandates of the Sustainable Groundwater Management Act (**SGMA**).

Semitropic's Complaint is riddled with factual errors, but nowhere are those errors more glaring than with regard to why and how Kings River flood control operations occur. Flood control operations on the Kings River are governed by the United States Army Corps of Engineers' Reservoir Regulation Manual (**Manual**), and other agreements. As described in more detail below, the Manual seeks to protect life and property on the South Fork of the Kings River, notably the Tulare Lakebed, by mandating that flood waters are primarily routed to the North Fork via the James Bypass. The Complaint is fundamentally flawed because Semitropic claims that KRWA's member units are not using water under the licensed water rights for the Tulare Lakebed when, in fact, all water that reaches the Lakebed is always used. The only reason more water does not reach the Lakebed is because the United States Army Corps of Engineers (**Corps**) mandates that those flows are routed to the North Fork for flood control purposes. There can be neither forfeiture nor abandonment of water rights when waters have not been available for diversion because of federally-mandated flood control operations. A copy of the Manual is attached to **Exhibit B** of the accompanying comment letter submitted by KRWA and the Districts on today's date.

Simply put, there is no water available for the Semitropic project on the *South Fork* of the Kings River. Semitropic incorrectly assumes that its *South Fork* project can just re-route the flood waters occurring on the *North Fork* – despite the federal flood control mandates to the contrary. Semitropic similarly ignores the real-world channel capacity limitations of the South

Fork, instead erroneously asserting that the higher South Fork channel capacity set forth many years ago in the Manual remains accurate today. The bottom line is that Semitropic's project is contrary to the federally mandated Kings River flood control protocol, impossible with current channel capacities, and would deprive the watershed of origin of water necessary to meet current and future demands – including the implementation of SGMA.

## II. FACTUAL AND LEGAL BACKGROUND

### A. Physical Setting of the Kings River and Flood Flows

The Kings River originates high in the Sierra Nevada and, after flowing through Fresno, Kings and Tulare Counties, historically terminates in Tulare Lake (what is now referred to as the "Tulare Lakebed"). The North Fork, in high flow years, joins the San Joaquin River. The South Fork terminates in the Tulare Lakebed. As measured at the Pine Flat Dam, the Kings River has an average annual flow of approximately 1.7 million acre-feet ("**af**" or "**acre-feet**"), although its year-to-year flows are highly variable. The hydrology of the Kings River has produced flood years, on average, about once every three years. However, several flood years often occur in sequence, with significant below-average water years in between those high flow years.

Pine Flat Dam is a federally-regulated flood control facility authorized for construction by the 1944 Flood Control Act. The purpose of this act was to provide flood protection to the Tulare Lakebed. In conjunction with the construction of Pine Flat Dam the Manual was developed to provide guidance on the operations of Pine Flat and the Kings River. The Manual's guidance regarding the Kings River system balances water deliveries to senior rights holders with the needs for flood control while considering then existing channel constraints and the broader context of flood control in the San Joaquin Valley. Under certain conditions, if a flood release is necessary, the Manual directs initial flows out the North Fork of the Kings River, via the Army/Island Weir Complex and Fresno Slough. Those flows can reach the Delta Mendota Pool and, eventually, the San Joaquin River. In extreme conditions, as necessary, but only after the North Fork is at capacity, the Manual directs damaging flows to the Tulare Lakebed via the South Fork. A visual depiction of these flood control facilities is found in Chart 7 of the Manual. There is significant risk to life and property when flood conditions require flows reaching the Tulare Lakebed, and so

it is the policy of the Corps, as set forth in the Manual, "to eliminate or minimize flood flows from Kings River into Tulare Lakebed, without causing flooding along the channels of Kings River North . . . ." (Manual, section 17, Objective a.2.)

**B. Kings River Water Rights and FAS Declaration**

Appropriation of Kings River flows for irrigation and other uses dates back to before California was admitted as a state. (State Water Board Decision[1] 1290, p. 10.) KRWA's member units held riparian and pre-1914 appropriative rights to the historic flows of the Kings River. These entities formed the KRWA in 1927, and later filed applications to appropriate all Kings River flows. Some of these applications are dated as early as 1916. The predecessor agency to the State Water Board issued eight permits for the applications and, ultimately, six licenses were issued to cover all the applications.

Attached as **Exhibit A** is a one-page summary of the Kings River licenses held by the KRWA in trust for its 28 member entities: license numbers 11517-11522 (collectively referred to as the "Licenses"). As shown on the summary, the Licenses allow storage of up to 2,169,700 acre-feet annually in Pine Flat and associated auxiliary reservoirs. In addition, the Licenses authorize maximum beneficial use of 3,134,600 acre-feet annually. The Licenses cap the total amount of water diverted from the source at 3,971,200 acre-feet annually.

As described in Decision 1290, the average annual water supply from the Kings River during the period 1896-1966 was 1,626,526 acre-feet, while the maximum flow year came in 1906 and was 3,958,300 acre-feet. Thus, the Licenses' quantities exceeded the pre-Decision 1290 maximum flow year. This fact was confirmed in Decision 1290, which provides:

> [T]he amounts of water applied for . . . exceed the long-term mean annual runoff . . . and, in addition, include flood flows in order to utilize the entire flow of the Kings River. . . . [I]t must be concluded that the prior major applications which are to be approved will appropriate essentially all of the available unappropriated water of the Kings River." (Decision 1290, pg. 37-38.)

Decision 1290 further provides:

[1] State Water Board Decisions will hereinafter be referred to as "Decision" followed by the number assigned to the decision

> It is the intention of KRWA to utilize all of the runoff of the river. While this is not possible in years of extreme flood, the association (KRWA) members have planned their overall project to take maximum advantage of all storage facilities available to them. This includes recharge of groundwater and underground storage as well as the storage of floodwaters in Tulare Lake Basin and maximum retention in Pine Flat Reservoir. (Decision 1290, pg. 35.)

Decision 1290 memorialized the understanding that KRWA and its member units may utilize all of the flows of the Kings River through, in part, groundwater recharge and storage projects. This is even more critical today as those member units comply with SGMA and seek to balance their groundwater subbasins over the next 20 years.

Subsequent to Decision 1290, there have been only three years when Kings River flows exceeded the maximum annual diversion/storage cap in the Licenses. Notwithstanding these outlier years (3 years out of a flow record dating more than 120 years), the State Water Board underwent the Fully Appropriated Stream process, and through that process re-confirmed that the Kings River is fully appropriated. The Kings River is listed as Fully Appropriated year-round in Order WR 89-25, the original FAS Declaration, and the Kings River system remains listed on the most recent FAS Declaration, which was updated with the issuance of State Water Board Orders WR 91-07 and WR 98-08.

**C. Federal Regulation for Flood Protection**

Federal statutory law and regulations govern flood control regulation associated with the nation's dams and reservoirs constructed with federal funds for purposes including flood control. (See 33 U.S.C., §700 et seq.; 33 C.F.R., §208.11.) Pine Flat Dam and Reservoir were constructed pursuant to specific authorization in the Flood Control Act of 1944. (Pub.L. No. 78-534, (1944) 58 Stat. 901.) In pertinent part, the authorizing language provides, "The project for flood control and other purposes for the Kings River and Tulare Lake Basin, California, is hereby authorized substantially in accordance with plans contained in House Document No. 630, Seventy-sixth Congress, third session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable . . . ." (*Ibid.*) The Flood Control Act of 1944 further requires the Secretary of the Army to prescribe regulations for the use of storage allocated to flood control at all reservoirs constructed wholly or in part with federal funds provided on the

basis of that purpose, and also requires that the operation of any such project be in accordance with those regulations. (Flood Control Act of 1944, Pub.L. No. 78-534, (1944) 58 Stat. 887. Regulations subsidiary to the Flood Control Act further require the Secretary of the Army to develop a "water control plan" for the operation of such reservoirs. (33 C.F.R. § 208.11.)

The Manual is the "water control plan" for Pine Flat Dam and Reservoir, and the Kings River. The Corps originally developed the Manual in 1959, and revised it in 1979. Releases from Pine Flat Lake are further regulated by numerous downstream diversion structures for purposes of irrigation and flood control. (Manual, p. 16.) Pine Flat is operated for flood control and conservation purposes to achieve four primary objectives:

1. To restrict flows in downstream channels of the Kings River and its distributaries to non-damaging rates;
2. To eliminate or minimize flood flows from Kings River into Tulare Lakebed, without causing flooding along the channels of Kings River North or causing flood damage along San Joaquin River below Mendota Dam over that which would occur under preproject conditions;
3. To assist indirectly in providing flood protection along the San Joaquin River; and
4. To provide the maximum practicable amount of storage space for irrigation water without impairment of the flood-control functions.

(Manual, section 17, p. 15.)

KRWA has permission from the Corps to operate the Army Weir, which controls the bifurcation of flows between the North and South Forks of the Kings River, in accordance with agreements among water users. (Manual, p. 15.) The Army Weir is also the primary diversion structure on the Kings River for purposes of flood control operations. (Manual, p. 16.)

Flood control releases are subject to the Flood Control Diagram contained in the Manual (Chart A-8). Based on forecasted runoff, irrigation demand, and vacant storage space, the diagram is used to determine the necessary release from Pine Flat Reservoir at any particular time of year. The diagram is designed to reserve flood control space during the winter season for rain floods and to prepare for spring snowmelt floods. (Manual, p. A-4.). During a flood release, water is first delivered to member units based upon demand. Once demand is satisfied, generally, flood released water is initially directed out the North Fork up to the capacity of the North Fork (set at 4,750 cubic feet per second (**cfs**) pursuant to Note 2 of the "Use of Diagram" key on Chart

A-8). When the North Fork capacity is reached, damaging flood flows are then, as necessary, sent to the South Fork, which ends up in Tulare Lakebed. (Manual, p. 17.)

Prior to February 1, the Manual imposes strict protocol mandating flood releases when Pine Flat storage encroaches on designated flood control space. During this period, when stored water is in the "Flood Control Space," the Manual provides that water is to be released "as rapidly as possible without exceeding 4,750 cfs below Crescent Weir [on the North Fork] or causing flood flows to Kings River South." (Manual, Chart A-8.) After February 1, the Corps and KRWA have more discretion in when and how to make flood releases, but there is no change to the mandate that flows are routed to the North Fork of the Kings River to prevent flooding of the Tulare Lakebed.

When flood releases are not required—as determined by the diagram—outflows depend on irrigation demand and fish requirements. KRWA and the then-named California Department of Fish and Game signed an agreement in 1964 establishing minimum releases and rates of change for releases from Pine Flat Lake and at Centerville Bottoms to benefit fish and wildlife on the Kings River. (Manual, p. 16.) The agreements provide for a minimum release of 25 cfs from Pine Flat Lake and for up to 100 cfs at Centerville Bottoms, depending on the time of year and the volume of runoff during the previous water year. (Manual, Chart 17.) The minimum flow requirements noted in the Manual have been superseded by the 1999 Kings River Fisheries Program Framework Agreement executed between California Department of Fish and Game, Kings River Conservation District and the KRWA. That agreement: established a temperature control pool for Pine Flat Reservoir of 100,000 af; set year around minimum flow requirements of 100 cfs in all years; set minimum flow requirement of 250 cfs in the wettest quartile of years; established a number of downstream flow requirements; established a capital contribution to the program; and established a number of management objectives for the reservoir and various river reaches. The Manual further states that, with a few exceptions, "virtually all use of Kings River water [for irrigation] between Piedra [located just below Pine Flat Lake] and Mendota [located at the confluence of the North Fork of the Kings River and the San Joaquin River] is being administered by the Kings River Water Association." (Manual, p. 24.) Irrigation releases are

based on day-to-day requests made to the Kings River Watermaster. (Manual, p. A-4.)

Any releases in excess of irrigation demands are restricted to channel capacities or as otherwise determined by the Corps of Engineers. Releases of flood water to Tulare Lake are delayed as long as possible to permit harvesting of crops, and flows in the North Fork are restricted when they would cause San Joaquin River flows to exceed pre-project quantities. (Manual, p. A-2).

Once a flood release is deemed necessary, the Corps takes over control of Pine Flat Reservoir and the Kings River. The KRWA works closely with the Corps to aid in administering the river on its behalf. In summary, there are established requirements in the Manual that divest KRWA of discretion in making flood releases. The rate and direction of diversion of flood waters is explicitly detailed in the Manual diagram, and additional agreements among water users determine outflows for irrigation and fish and wildlife.

## III. ARGUMENT

### A. Burden of Proof

The various legal theories asserted in the Semitropic complaint all have a single goal: establish that there is water in excess of existing rights and available for appropriation. The California Supreme Court has established that under these circumstances, the burden of proof falls on the party seeking to prove that there is water available for appropriation. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351, 381.) In this regard, the *Peabody* case holds:

> . . . when one enters a field of water supply and seeks by appropriation to take water from such supply on the claim that there is more than sufficient for all reasonable beneficial uses by those who have the prior and preferential right, it would seem to comport with the principles of fairness and justice that the appropriator, in whatever way the issue may arise, should have the burden of proving that such excess exists. (*Id.* at p. 381, cited with approval in *Barnes v. Hussa* (*Barnes*) (2006) 136 Cal.App.4th 1358, 1365.)

Accordingly, Semitropic bears the burden of proving the elements of its various claims of forfeiture, abandonment, failure to perfect, and unauthorized diversion of water.

### B. Semitropic Lacks Standing to Bring its Complaint

As a threshold matter, the State Water Resources Control Board (State Board) should dismiss the Complaint because Semitropic lacks standing. The requirement that a plaintiff have

"standing" to file a complaint is a fundamental legal principle. To establish standing to sue, a plaintiff must minimally establish: (1) injury in fact; (2) causation; and (3) redressability. (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 946-47 (9th Cir. 2002)). With regard to complaints filed with the State Board regarding alleged violations of a water right permit/license, the complainant must be directly "affected by a violation" - unless the complaint is brought solely for the benefit of the public. (23 C.C.R., § 820.)

It is undisputed that Semitropic holds no right to divert or use Kings River waters. Semitropic has filed its Complaint solely to bolster a hypothetical water export project. Thus, Semitropic cannot show that KRWA or any of its member units have "caused" an "injury" to any of Semitropic's existing rights. In order for Semitropic to prove that KRWA or its members have forfeited or abandoned water rights, Semitropic must prove that it made a "formal claim" to the flood flows at issue and then observed the five-year forfeiture period. (See *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (*North Kern*) (2007) 147 Cal.App.4th 555, 566.) Yet, Semitropic has never diverted a drop of Kings River water, and its jurisdictional boundaries are dozens of miles from the Kings River.

In addition, Semitropic's petition and application cannot be redressed because: all Kings River flows are subject to existing water rights; Semitropic's application and project conflict with the federally-mandated flood control protocol set forth in the Manual and law; Semitropic's application and project are physically impossible to accomplish with existing channel capacities on the South Fork Kings River; and the application and project violate the "area of origin" law found in Water Code section 11460 and 11463. **Full details and explanations for these shortcomings in the Semitropic application and project are set forth in the May 31, 2019 comment letter submitted by KRWA and the Districts, which letter and its exhibits are fully incorporated by reference herein.**

Certain procedural rules are often relaxed in administrative proceedings, but the standing requirement is a fundamental legal principle that should be carefully observed. The State Board has enough issues to resolve among actual water users on a river system. The State Board does

not now need to be fielding advisory complaints based on hypotheticals from distant entities that wholly lack water rights on the river in question. This is all the more true for the Kings River, which has been the subject of thorough State Board proceedings and repeatedly declared fully appropriated.

**C. Semitropic Has Failed to Establish Any Forfeiture of Water Rights**

"In order to establish a forfeiture, the plaintiff must prove that the defendant failed to use some portion of its water entitlement continuously over a span of five years immediately prior to the plaintiff's assertion of its conflicting right to the water." (*North Kern,* at p. 560; Water Code, § 1241.) Water rights can only be forfeited, however, when water was actually available to divert and use. (*Barnes, supra,* at p. 1372.)

Semitropic alleges forfeiture of the water rights held under Licenses 11517 and 11521 due to nonuse. Both Licenses allow direct diversion to and storage in the Tulare Lakebed area. The Complaint claims that "water is always available for diversion" under License 11517, and that water was available for diversion under License 11521 in eleven years going back to 1984. (Complaint, ¶¶ 37 and 39.) Further, the Complaint claims that "[i]n every year when the Corps has made flood releases from Pine Flat Reservoir that could have been collected to storage in Tulare Lake, Respondents have instead diverted water to the James Bypass until the Bypass' capacity was reached." (Complaint, ¶ 41.) These claims are both factually and legally inaccurate.

The claims are factually inaccurate because it is the Corps, not KRWA, that directs flood flows away from the South Fork of the Kings River and the Tulare Lakebed. As explained above, the Corps is acting pursuant to federal flood control law when directing flood flows to the North Fork via the James Bypass. The Manual sets forth the protocol for managing releases from Pine Flat Dam and how those releases are routed in the system. In most years, those flood flows never reach the South Fork of the Kings River (or its terminus in the Tulare Lakebed) because the Corps routes those flows to the James Bypass. Thus, it is factually inaccurate to claim that these flood flows are available for appropriation and KRWA is choosing not to divert them.

It is also legally inaccurate to claim that KRWA or its member units have forfeited water rights. The Complaint's allegation of forfeiture is *legally* inaccurate because there can be no

forfeiture of water rights where water was not available for diversion. (*North Kern,* at p. 560; *Barnes, supra,* at p. 1372.) Again, flood flows that are routed to the James Bypass by direction of the Corps are not "available for diversion" to the South Fork or Tulare Lakebed. Federal flood control law is superior to state law, including state water rights laws, and KRWA has no legal authority to usurp the Corps' flood control powers.

Finally, while it is true that the Tulare Lakebed is not used as a regular storage reservoir, Licenses 11517 and 11521 are intended to allow for legal diversion and use of those occasional major flood flows that do reach the Lakebed. The storage quantities identified in the Licenses come from actual measured storage during the major events of 1983, and the Lakebed became the flood control of last resort. Thus, Licenses 11517 and 11521 have a valid purpose and reflect quantities of water that have been diverted/stored under certain historic flow conditions.

**D. Semitropic Has Failed to Establish Any Abandonment of Water Rights**

An appropriative right may be lost by abandonment where the appropriator expresses an intent to abandon a right coupled with a relinquishment of dominion and control. (*Wood v. Etiwanda Water Co*. (1905) 147 Cal. 228, 233-234.) Abandonment requires proof of an intent to relinquish permanently the possession of a property right; nonuse is evidence of abandonment, but not determinative. (*Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450, 455.) The intent and relinquishment of possession must be concurrent. (*Utt v. Frey* (1895) 106 Cal. 392, 397-398.)

As described above, the Tulare Lakebed water right licenses are intended to allow for the beneficial use of waters that reach the Lakebed. In order to avoid flood damage to life and property, the Corps mandates flood flows to be first routed to the North Fork via the James Bypass, and at rates up to the channel capacity of 4,750 cfs. Under most conditions, this protocol will protect the Lakebed from flooding. In certain years, however, there have been massive Kings River flood flows resulting in hundreds of thousands of acre-feet of floodwater reaching the Tulare Lakebed (e.g. 1969). In those situations, flood flows are diverted/used and stored in the Lakebed. Licenses 11517 and 11521 evidence KRWA's clear intent to divert, store and use

those flood waters, and Semitropic can make no claim demonstrating any intent to abandon those rights.

**E. KRWA's Post-1914 Appropriative Rights Were Perfected at the Time of Licensing**

Semitropic's third cause of action alleges that the KRWA has failed to perfect Licenses 11517 and 11521. Semitropic cites no legal authority for this claim. The inspections of the permitted water rights occurred in the 1970's and 1980's, which led the State Water Board to issue final licenses in 1984. The claim that the water rights applications/permits associated with Licenses 11517 and 11521 have not been perfected is plainly false.

**F. Diversions of Kings River Water to the North Fork Via the James Weir are not Unauthorized Diversions**

Semitropic's fourth cause of action is again predicated on a fundamental misunderstanding of how and why flood flows are routed to the James Bypass. Flood flows are routed to the James Bypass for flood control purposes and under the ultimate direction of the Corps operating under federal law. Neither Semitropic nor the State Board has the legal authority to change how the Corps manages flood control on the Kings River. (Article VI, clause 2 of the U.S. Constitution; See *Crosby v. Nat'l Foreign Trade Council* (2000) 530, U.S. 363, 372.)

## IV. CONCLUSION

The bottom line is that this Complaint continues Semitropic's false claim that flood flows routed to the North Fork of the Kings River are somehow magically available for appropriation on the South Fork of the Kings River. Those flows are not available on the South Fork because they are routed to the North Fork pursuant to federal flood control authority. Moreover, Semitropic has significantly exaggerated the actual conveyance capacity of the South Fork. Kings River flood flows will be used for recharge/banking projects necessary to address SGMA in the Kings River watershed of origin, but those projects will be realistically planned to coordinate with the Corps' important flood control operations. A thorough discussion of these issues is set forth in the May 31, 2019 comment letter submitted by KRWA and the Districts, and the letter and its exhibits are incorporated by reference herein.

For all the reasons set forth herein, KRWA requests that the State Board summarily dismiss Semitropic's Complaint. If necessary, KRWA is prepared to present additional law and evidence, but offers this initial response as sufficient for dismissal of the Complaint.

Respectfully Submitted this May 31, 2019,

SOMACH SIMMONS & DUNN

By: _____

Nicholas A. Jacobs
Attorneys for Alta Irrigation District, Consolidated Irrigation District, and Fresno Irrigation District

KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP

By: _____

Joseph Hughes
General Counsel for Kings River Water Association

# EXHIBIT A

## Kings River Licenses Summary

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Application Number | 16469 | 10979 | 353 | 15231 | 360 | 5640 | |
| Permit Number | 15720 | 15716 | 15713 | 15719 | 15714 | 15715 | |
| License Number, Dated May 18, 1984 | 11522 | 11520 | 11517 | 11521 | 11518 | 11519 | |
| Priority Date of "Right" | July 18. 1955 | Feb. 10, 1945 | May 24, 1916 | March 9, 1953 | May 31, 1916 | July 30, 1927 | |
| **The following are licensed items:** | | | | | | | |
| Description | **Courtright** | **Wishon** | **Tulare Lake Sump** | **Tulare Lake Sump** | **Pine Flat** | **Pine Flat** | **Totals** |
| Maximum withdrawal af/yr | 131,000 af | 183,500 af | | | | | |
| Maximum amount held in storage in af | 123,300 af | 128,600 af | | | 1,008,900 af | 1,008,900 af | 1,260,800 af |
| Maximum amount beneficially used by direct diversion | | | 613 cfs | 1,096 cfs | 5,000 cfs | 3,059 cfs | 1/1 - 4/30 6,096 cfs |
| Diversion Season | | | June | Jan 1- Dec 31 | Jan 1- Dec 31 | May 1 - July 31 | 5/1 - 5/31 9,155 cfs |
| | | | | | | | 6/1 - 6/30 9,768 cfs |
| | | | | | | | 7/1 - 7/31 9,155 cfs |
| | | | | | | | 8/1 - 12/31 6,096 cfs |
| Maximum amount by collection to storage | 102,500 af | 128,000 af | 188,000 af | 796,000 af | 600,000 af | 355,200 af | 2,169,700 af |
| Collection period | Sept 1 - July 31 | Jan 1 - Dec 31 | Jan 1- June 30 | Jan 1- June 30 | Sept 1 - July 31 | Sept 1 - July 31 | |
| Maximum amount taken from source per year | | | 224,500 af | 960,700 af | 2,786,000 af | In 360 | 3,971,200 af |
| Maximum amount to be place to **beneficial use** per year | In 360 | In 360 | In 15231 | 569,600 af | **2,565,000** af | In 360 | 3,134,600 af |
| Place of Use | KRWA | KRWA | TLBWSD | TLBWSD | KRWA | KRWA | |
| Place of Storage | Courtwright | Wishon | Tulare Lake Sump in the following | | Pine Flat | Pine Flat | |
| | | | T22S,R20E; T23S, R20E; T24S, R20-22E, MDB&M | | | | |
| Points of Diversion | Courtwright | Wishon | Empire #2 | Boundary of Lake | Pine Flat | Pine Flat | |
| Points of Diversion & Rediversion | 60 points | 60 points | | Boundary of Lake | 60 points | 60 points | |
| Purpose | Irrigation including minimum flow requirement | Irrigation | Irrigation | Irrigation, Domestic, and Stockwatering | Irrigation Use | Irrigation, Domestic | |

DIRECT DIVERSION (cfs): Maximum **monthly average** of natural flow (includes water stored less than 30 days), but does not include water released from storage.
COLLECTED TO STORAGE: Water delivered to storage for more than 30 days.
TAKEN FROM SOURCE: Water collected to storage plus direct diversions.
BENEFICIAL USE: Water taken from storage plus direct diversions.