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May 28, 2014

***Via email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov) & U.S. Mail***

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Daniel Schultz  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95912-0100

Re: Comments of Los Molinos Mutual Water Company Objecting to SWRCB's  
Proposed Emergency Regulations for Curtailment of Diversions on Certain  
Sacramento River Tributaries

Ladies and Gentlemen:

Los Molinos Mutual Water Company (Los Molinos) is the watermaster for Mill Creek. Los Molinos and the landowners it serves would be subject to the SWRCB's proposed emergency regulations.

In 2007 Los Molinos executed an agreement with the California Department of Fish and Wildlife (CDFW) and California Department of Water Resources (DWR) to provide for a long-term cooperative management and restoration plan for Mill Creek, including providing instream flows for Chinook salmon, while also preserving diversions for the family farms and businesses reliant on the delivery of water from Mill Creek. A copy of the 2007 agreement is enclosed. Recently, Los Molinos and NOAA's National Marine Fisheries Service (NMFS) executed a voluntary drought agreement to establish minimum instream flows and a pulse flow regime for

Office of Administrative Law

Daniel Schultz, State Water Resources Control Board

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the benefit of fish (copy enclosed). A similar agreement has been executed with CDFW (copy enclosed).

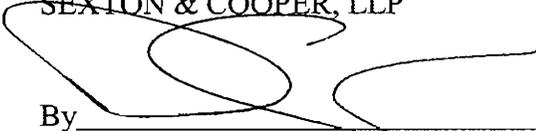
The agreements accomplish, on a voluntary basis, the objectives of the emergency regulations; namely, providing minimum instream flows and pulse flows for the protection of fish species in Mill and Antelope Creeks. The proposed regulations are duplicative of the agreements and merely restate the terms and conditions of the agreements. OAL "shall disapprove" of any proposed regulation that fails to satisfy the necessity, authority, clarity, consistency, reference, and nonduplication standards. (Gov. Code § 11349.6(b)). "Necessity" means "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record." (*Id.* § 11349(a)).

OAL must disapprove the proposed regulations because the SWRCB failed to satisfy the necessity standard. The SWRCB has not demonstrated the need for the regulations in light of Los Molinos' and others' voluntary agreements with NMFS, CDFW, DWR and others. Copies of Los Molinos' agreements were provided as comments to the SWRCB prior to its adoption of the proposed regulations. However, aside from proposed regulation § 878.2<sup>1</sup>, the rulemaking record submitted by the SWRCB to OAL fails to include *any* discussion of the existing agreements that already accomplish the objectives of the proposed regulations. As a result, the SWRCB could not possibly form a conclusion, supported by substantial evidence, that the proposed emergency regulations are necessary notwithstanding the voluntary agreements.

For the foregoing reasons, OAL must disapprove of the SWRCB's proposed emergency regulations.

Very truly yours,

MINASIAN, MEITH, SOARES,  
SEXTON & COOPER, LLP

By 

DUSTIN C. COOPER

DCC/vlh

Enclosures

cc: Los Molinos Mutual Water Company

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<sup>1</sup> Although unclear, section 878.2 appears to delegate authority to the SWRCB's Deputy Director to approve voluntary agreements in lieu of compliance with the proposed emergency regulations.