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10 **STATE WATER RESOURCES CONTROL BOARD**

11 MADERA IRRIGATION DISTRICT, a California Irrigation District,
12 Petitioner.

13 **PETITION FOR THE ADJUDICATION OF RIGHTS TO THE FRESNO RIVER**

14
15 Petitioner Madera Irrigation District, a California Irrigation District (“MID” or
16 “District”), files this Petition for a statutory adjudication of the Rights to the Fresno River pursuant to
17 Water Code section 2500 *et. seq.* In support, MID alleges as follows:

18 **I.**

19 **INTRODUCTION**

20 1. The Fresno River (“Fresno River” or “River”) is a fully-appropriated, intermittent stream
21 primarily located in Madera County, California. The Fresno River runs approximately 68-miles from
22 its headwaters in the Sierra Nevada Mountains near Fish Camp, California, to its terminus at the San
23 Joaquin River near Dos Palos, California. In western Madera County, the Fresno River is bisected by
24 the Eastside Bypass, and then continues on the opposite side of the bypass at a diversion structure located
25 near Road 9 (the “Road 9 Diversion Structure”). After passing through the Road 9 Diversion Structure,
26 the Fresno River runs northward between the San Joaquin River and the Eastside

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1 Bypass, and ultimately terminates at the San Joaquin River at a location near State Route 152 in southern
2 Merced County.

3 2. Since the late 1800s, the District and its predecessors historically imported waters into
4 the Fresno River from Big Creek, a tributary of the Merced River (up to 50 cubic feet per second [“cfs”]),
5 and the Soquel Diversion from a tributary to the San Joaquin River (up to 50 cfs). As recognized in
6 *Union Colonization Company, et. al. v. Madera Canal & Irrigation District* (1916), the District may
7 ultimately divert up to 200 cfs from the Fresno River at Franchi Dam, which is located east of the City
8 of Madera.

9 3. In approximately 1978, the Army Corps of Engineers completed its construction of
10 Hidden Dam. Hidden Dam impounds the waters of the Fresno River to form Hensley Lake, and is
11 located upstream from Franchi Dam in the Madera County Foothills. The District is entitled to store its
12 water from the Fresno River behind Hidden Dam pursuant to the U.S. Bureau of Reclamation’s
13 (“Reclamation”) License No. 13836 (“License”), and a Warren Act contract between the District and
14 Reclamation.

15 4. Downstream of Hidden Dam, several landowners claim riparian and/or post-1914
16 appropriative rights to the waters of the Fresno River. Although Hidden Dam was constructed in
17 approximately 1978, the rights of these downstream landowners have never been fully adjudicated or
18 quantified.

19 5. For many years, claims for riparian and appropriative entitlements from the Fresno River
20 have been largely consistent with historic entitlements and uses when Hidden Dam was constructed.
21 Over the past several years, however, upstream landowners with claimed riparian rights have attempted
22 to increase their diversions to the detriment of downstream landowners and others. For example, some
23 landowners are seeking to divert under previously-unexercised riparian rights to land they claim is
24 riparian to the Fresno River while other landowners near the Fresno River claim riparian acreage beyond
25 what the District understands is supported by the chain of title. In addition, some landowners who have
26 engaged in low-intensity water uses on their riparian lands, such as grazing, are now seeking to convert
27 the land use of those properties to high-intensity water uses, such as orchards, thereby significantly
28 increasing their demands for water from the Fresno River. Further, many landowners with asserted

1 riparian and post-1914 appropriative rights users have unlawfully added points of diversion without the
2 required permits, claim diversion capacities that are not supported by on-the-ground conditions, or
3 attempted to increase their diversion capacity beyond historic practices, to the detriment of other
4 landowners who have diverted water from the River for over a century. Instead of seeking to enjoin
5 such increased diversions, however, many downstream riparian landowners have claimed the District
6 has failed to release sufficient flows to satisfy their alleged demands.

7 6. There is likewise significant uncertainty regarding the priority of rights claimed to the
8 waters of the River. Specifically, the District is required to manage the Fresno River pursuant to the
9 framework of the Fresno River Operations Protocols (the “Protocols”) and the Fresno River Allocation
10 Model (the “FRAM”), which were adopted as a condition of Reclamation’s License. The inputs to the
11 FRAM are based upon annual self-reported riparian acreage and diversion capacity from each landowner
12 claiming a riparian and/or appropriative right, which are then used to determine the allocation of water
13 from the River. The FRAM then allocates the amount of water to be delivered by “reach,” or proximity
14 to the Hidden Dam, rather than by seniority of the asserted right. In other words, no downstream right
15 can be fulfilled until all of the claimed rights – including post-1914 appropriative rights – within each
16 successive reach are met. As a result, the FRAM subverts the chain of water right priority by ensuring
17 water is first delivered to junior before all senior users.

18 7. Unfortunately, while the District operates the FRAM, the District is not a watermaster.
19 The District thus lacks the legal authority to regulate the stream system to ensure appropriations are
20 lawful, and is bound by the Protocols and the FRAM. It is therefore in the public interest to amend the
21 license, and to address the lawful priority of entitlements to the River. Should all rights to the Fresno
22 River be adjudicated, disputes impacting the fairness and efficiency of water allocation of the Fresno
23 River would cease.

24 8. An adjudication could also address physical solutions to many of the issues faced by the
25 water users on the Fresno River. Pursuant to License No. 13836, the District is required to release flows
26 of the Fresno River for riparian landowners downstream from the Road 9 Diversion Structure, in
27 amounts determined by the FRAM. The District has complied with License No. 13836; however, due
28 to claimed upstream diversions and capacity of the Fresno River channel, some landowners claim water

1 released from Hidden Dam has not reached their properties. To the extent those downstream
2 landowners' rights have not been subordinated, physical solutions exist – including (i) existing District
3 infrastructure and (ii) the recently-constructed Red Top Pipeline – to serve as a physical solution to the
4 claims made by all riparians, including those landowners beyond the Road 9 Diversion Structure. Such
5 physical solutions would ensure the economy of downstream riparians and would allow the District to
6 supply those landowners with water sufficient to meet their demands to the Fresno River.

7 9. Finally, an adjudication could subordinate or estop unreasonable claims from Menefee
8 Ranch causing waste of the flows of the Fresno River. On information and belief, Menefee Ranch, a
9 riparian landowner located near the terminus of the Fresno River, has not received water from the flows
10 of the Fresno River since 2011 or earlier. In fact, on information and belief, Menefee Ranch no ability
11 to exercise its point of diversion of Fresno River water. Indeed, on information and belief, the District
12 understands water from the Fresno River did not reach Menefee Ranch in 2017, when the flows of the
13 Fresno River were at one of the highest in recorded history. Rather, the District understands that
14 Menefee Ranch is not interested in using the waters of the Fresno River on its property, but instead using
15 its claimed riparian rights as leverage to attempt to obtain a water supply behind Millerton Dam that it
16 can market to third-parties. An adjudication subordinating Menefee Ranch's rights to other users who
17 have actively put the water of the Fresno River to reasonable and beneficial uses is necessary to achieve
18 the public interest.

19 10. Intervention by the State Water Resources Control Board (the "Board" or "SWRCB") is
20 needed. Increased diversions by upstream landowners with asserted riparian rights threaten to divert
21 the entire flow of the Fresno River to the detriment of downstream riparians during most years.
22 Diversion of the entire Fresno River by upstream riparians would detriment reasonable and beneficial
23 uses of the waters of the Fresno River by downstream landowners with investment-backed expectations
24 developed over decades of use. Less comprehensive measures cannot address the systematic disputes
25 over (i) the extent of acreage that enjoys riparian rights, (ii) increased development allegedly riparian
26 lands from low-intensity water uses, such as rangeland, to high-intensity water uses, such as permanent
27 crops, (iii) increased diversion capacities (that are often unpermitted), and (iv) new (and likewise
28 unpermitted) points of diversion, all of which could deprive other riparian landowners of their

1 correlative share, as well as other landowners who have historically relied upon the Fresno River. It is
2 therefore in the public interest for the Board to complete a comprehensive statutory adjudication of the
3 entire Fresno River to determine (i) which landowners and entities enjoy rights to the waters of the
4 Fresno River, (ii) which acreage is riparian to the Fresno River, (iii) the priority of the various
5 landowners who assert rights to the waters of the Fresno River; (iv) how the water should be put to the
6 most beneficial and reasonable use, (v) the proper location and capacity of the landowners' points of
7 diversion, (vi) whether physical solutions exist, and (vii) whether any landowners have by operation of
8 law or otherwise subordinated their rights (including unexercised rights) to other landowners who have
9 put the waters of the Fresno River to beneficial and reasonable use.

10 11. Failure to adjudicate all the riparian rights of the Fresno River will ultimately cause
11 significant harm and cannot be addressed in other less comprehensive ways without significant costs
12 and the same issues reappearing. For these reasons stated above, the District believes it is in the public's
13 interest for all rights to water from the Fresno River be adjudicated.

14 II.

15 GENERAL ALLEGATIONS

16 12. The District is a California Irrigation District duly organized and validly existing under
17 the Irrigation District Law contained in Section 20500, *et seq.*, of the Water Code. The District's address
18 is:

19 Madera Irrigation District
20 12152 Rd 28 ¼
Madera, CA 93637

21 13. The State Water Resources Control Board has jurisdiction over this petition to adjudicate
22 all rights to the Fresno River pursuant to Section 2501 of the Water Code.

23 III.

24 BACKGROUND OF FRESNO RIVER

25 A. Description of the Fresno River System

26 14. The Fresno River is primarily located in Madera County, California, and is one of the
27 most southern of the major east-side tributaries of the San Joaquin River. The flow of the Fresno River
28 depends on intermittent, high-intensity spring-time rain storms that drain off of 234 square miles of the

1 Sierra Nevada Mountains and foothills. As an intermittent river, once the season for spring-time rain
2 storms ends, the natural flow of the Fresno River ceases as well, and the amount of water available from
3 the Fresno River depends upon the amount of water released from the Hidden Dam. When the Fresno
4 River runs, the Fresno River runs southwest from the Hidden Dam through the City of Madera, across
5 the San Joaquin Valley floor. The Fresno River merges with the Eastside Bypass at Road 9, and then
6 continues again at the Road 9 Diversion Structure. Thereafter, the Fresno River flows roughly
7 northward and merges into the San Joaquin River around State Route 152. Before the construction of
8 the Hidden Dam and the Eastside Bypass, the Fresno River flowed naturally through the river channel
9 with only Franchi Dam impeding the flow.

10 15. Prior to the construction of Hidden Dam, an average of 34,500 Acre Feet per Year (AFY)
11 passed through a gaging station located downstream from the City of Madera and two miles upstream
12 of a facility called the “Sallaberry Canal” near Road 16. (See SWRCB Decision 1407, p. 4.)
13 Historically, water diverted from the River primarily supported irrigation for cattle, annual crops, and
14 permanent crops (until recently, predominantly grape vines).

15 16. The Fresno River is typically divided into seven “Reaches,” or segments. Reach 1 is the
16 section of the River flowing from Hidden Dam to the Madera Canal. The Madera Canal is a conveyance
17 system that allows the District to convey water from Millerton Lake to both the River and District
18 facilities.

19 17. Reach 2 begins approximately five miles from Hidden Dam, and runs from the Madera
20 Canal to the head of several parcels of real property collectively referred to as the “Island Tract.”

21 18. Reach 3 is the section of the Fresno River between the head of Island Tract and Franchi
22 Dam on the northeast edge of Madera. The Franchi Diversion Dam is operated by the District to, *inter*
23 *alia*, divert Fresno River water into the Big Main Canal to be distributed within the District’s service
24 area.

25 19. Reach 4 accounts for the Fresno River at Franchi Dam and the District’s Big Main
26 diversion headworks. Outside of the rainstorm season, the Fresno River is normally dry beyond Reach

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1 4 except for appropriative water releases from Hidden Dam or during flooding conditions when the
2 water surplus flows are necessary to prevent spill from Hidden Dam.

3 20. Reach 5 is the section of the Fresno River between Franchi Dam and Road 16.

4 21. Reach 6 is the section of the Fresno River between Road 16 and the Road 9 Diversion
5 Structure. Between Road 16 and Road 9, the Fresno River merges with the Eastside Bypass channel.
6 From the Eastside Bypass, water from the Fresno River flows through the Road 9 Diversion Structure
7 to Reach 7, which includes property owners west of Road 9 (collectively, "Road 9 Landowners"). Reach
8 7 ends where the Fresno River merges with the San Joaquin River.

9 **B. Statement of the Nature of Rights to the Fresno River**

10 22. The Fresno River has been a fully-appropriated watercourse since the Board issued
11 Decision 1407 in 1973. Since then, the order of priority on the Fresno River has been: 1) the District's
12 imported water, and pre-1914 and adjudicated rights; 2) riparian water rights; 3) senior appropriative
13 rights; and 4) the right of Reclamation to store water in Hidden Dam under License 13836.

14 23. The District has pre-1914 rights to divert up to 50 cfs from Big Creek, a tributary to the
15 Merced River, and 50 cfs from the North Fork of Willow Creek, a tributary to the San Joaquin River
16 during certain times of the year. The Big Creek Diversion is located just upstream of Fish Camp, CA,
17 where the District redirects its flow to Lewis Creek, a tributary of the upper Fresno River. The Soquel
18 Diversion of the North Fork of Willow Creek is located approximately 9 miles upstream of Bass Lake,
19 where the water can be redirected to flow through the Soquel Ditch to Nelder Creek, a tributary of the
20 upper Fresno River. The District's diverted flows are comingled with Fresno River water behind Hidden
21 Dam, and the District diverts its flows downstream at the Franchi Dam in Reach 4.

22 24. Pursuant to *Union Colonization Company, et. al. v. Madera Canal & Irrigation District*,
23 the District holds an adjudicated pre-1914 right to divert 200 cfs of water from the Fresno River at
24 Franchi Dam that has priority over other users of Fresno River water.

25 25. Riparian water right holders along the River have a right to a correlative share of the
26 remaining natural flow of the Fresno River for beneficial use on their riparian acreage as supported by
27 a chain of title. Appropriative water users may divert water pursuant to the terms of their license issued
28 by the Board should any flow of the River remain after the Riparians divert water to meet their needs.

1 On information and belief, the following entities are all persons and/or entities who claim their property
2 give them riparian water rights to the Fresno River and whose interests are in conflict with Petitioner's
3 interests. Petitioner is informed and believes, and thereon allege, the following:

4 ***Reach 2 Claimed Water Rights***

5 a. The Smith Adobe Ranch Family Limited Partnership ("Adobe Ranch") holds title
6 to approximately 7,321 acres of land in Madera County, CA identified by, *inter*
7 *alia*, Madera County Assessor's Parcel Numbers ("APN") 031-172-002, 031-172-
8 001, 031-173-002, 031-173-003, 031-173-001, 031-201-003, 031-161-012, 052-
9 172-001, 052-154-008, 052-181-001, 052-154-009, 031-212-001, 031-211-001,
10 031-131-003, 031-131-004, and 031-131-005. On information and belief, Adobe
11 Ranch maintains a point of diversion using a pump located in Assessor's Parcel
12 Number 031-131-002 at 37° 02' 54.54" N, 119° 56' 10.22" W ("Pump 1"). Pump
13 1 has an existing capacity of 1,550 gallons per minute and irrigates almond, walnut,
14 and pistachio crops. The District is informed and believes, however, that Adobe
15 Ranch has recently sought to increase its diversions by constructing unauthorized
16 and unpermitted diversion structures on the Fresno River that may not be identified
17 on their Statements of Diversion and Use. The District is informed and believes that
18 Adobe operates an unpermitted point of diversion ("Pump 2") approximately 25
19 feet away from Pump 1 and has a capacity to divert 2,400 gallons per minute. On
20 information and belief, Adobe Ranch's properties include 2,341.04 acres riparian
21 to the Fresno River. A map illustrating the properties and riparian acreage owned
22 by Adobe Ranch is attached as **Exhibit A**.

23 ***Reach 3 Claimed Water Rights***

24 b. Kirkland Parrish holds title to approximately 350 acres of land in Madera County,
25 CA identified by APN 031-192-007, 031-201-022, 031-010-036, and 031-010-037.
26 Parrish maintains a point of diversion located on parcel 031-192-007 with a
27 diversion capacity of 2,000 gallons per minute and another point of diversion
28 located on parcel 031-201-018 with a diversion capacity of 1,000 gallons per

1 minute. Combined, the two points of diversion from the Fresno River have an
2 existing diversion capacity of 6.69 cfs, or 3,000 gallons per minute, and irrigate
3 walnut and almond crops. On information and belief, Parrish's properties include
4 309.50 acres riparian to the Fresno River. A map illustrating the properties and
5 riparian acreage owned by Kirkland Parrish is attached as **Exhibit B**.

6 c. Kevin Herman holds title to 330 acres of land in Madera County, California
7 identified by APN 031-201-025, 031-201-026, 031-201-024, 031-201-023, 031-
8 201-027, 031-201-028, 031-201-029, and 031-201-030. Herman's point of
9 diversion is a creek-pump located in parcel 031-201-026 at coordinates 37° 1'
10 30.223" N, 119° 57' 55.71" W in Section 35, Township 10S, Range 18 East. The
11 diversion structure has an existing diversion capacity of 5.01 cfs. Herman diverts
12 Fresno River water to irrigate pistachio crops. On information and belief, Herman's
13 properties include 171 acres riparian to the Fresno River. A map illustrating the
14 properties and riparian acreage owned by Kevin Herman is attached as **Exhibit C**.

15 d. DaSilva Farms ("DaSilva") holds title to 74 acres of land in Madera County,
16 California identified by APN 035-040-039. The point of diversion from the Fresno
17 River is located at 36° 59' 51.3" N, 120° 0' 40.74" W and has an existing diversion
18 capacity of 2.08 cfs. DaSilva diverts River water from the Fresno River to irrigate
19 fig and persimmon crops. On information and belief, DaSilva's property actually
20 includes 36.8 acres riparian to the Fresno River. A map illustrating the properties
21 and riparian acreage owned by DaSilva Farms is attached as **Exhibit D**.

22 e. Madeline Mesple holds title to approximately 600 acres of land in Madera County,
23 California identified by APN 031-230-002. Madeline Mesple and Richard
24 DeBenedetto use the same point of diversion from the Fresno River located at
25 approximately 37° 0' 1.71" N, 120° 0' 36.5" W and has an existing diversion
26 capacity of 5.86 cfs. Mesple diverts Fresno River water to irrigate almond and fig
27 crops. On information and belief, Madeline Mesple's property includes 198.52
28

1 acres riparian to the Fresno River. A map illustrating the properties and riparian
2 acreage owned by Madeline Mesple is attached as **Exhibit E**.

3 f. Richard DeBenedetto holds title to 300 acres in Madera County, California
4 identified by APN 031-230-003. As stated previously, Mesple and Richard
5 DeBenedetto both use the same point of diversion from the Fresno River located at
6 approximately 37° 0' 1.71" N, 120° 0' 36.5" W and has an existing diversion
7 capacity of 5.86 cfs. DeBenedetto diverts Fresno River water to irrigate almond
8 and fig crops. On information and belief, Richard DeBenedetto's property includes
9 219.56 acres riparian to the Fresno River. A map illustrating the properties and
10 riparian acreage owned by Richard DeBenedetto is attached as **Exhibit E**.

11 g. Susan Easley ("Easley") holds title to 24 acres of land in Madera County, California
12 identified by APN 035-010-034. Easley has not exercised any riparian right to
13 divert water from the Fresno River, and Petitioner is unaware of a point of diversion
14 used by Easley. On information and belief, all of Susan Easley's 24 acres are
15 riparian to the Fresno River.

16 h. Rancho Bella Vista holds title to approximately 53 acres in Madera County,
17 California identified by APN 035-010-001. The point of diversion from the Fresno
18 River is located at 37° 0' 30.96" N, 119° 59' 58.92" W and has an existing diversion
19 capacity of 0.68 cfs. Rancho Bella Vista diverts water from the Fresno River to
20 irrigate pistachio, almond, and grape crops. On information and belief, the Rancho
21 Bella Vista' property includes 21.24 acres riparian to the Fresno River. A map
22 illustrating the properties and riparian acreage owned by Rancho Bella Vista is
23 attached as **Exhibit F**.

24 i. Isla Vista Farms holds title to approximately 98 acres of land in Madera County,
25 California identified by APNs 035-010-020, 035-010-019, and 035-010-042. The
26 point of diversion from the Fresno River is located at approximately 37° 0' 29.88"
27 N, 119° 59' 58.92" W and has an existing diversion capacity of 1.99 cfs. Isla Vista
28 diverts Fresno River water to irrigate almond crops. On information and belief, Isla

1 Vista’s properties include 93.39 acres riparian to the Fresno River. A map
2 illustrating the properties and riparian acreage owned by Isla Vista Farms is
3 attached as **Exhibit G**.

4 j. Cal Fischer (“Fischer”) holds title to 149 acres of land in Madera County, California
5 identified by APNs 031-282-009 and 035-040-053. The point of diversion from
6 the Fresno River is located at 36° 59’ 23.14” N, 120° 1’ 13.11” W and has an
7 existing diversion capacity of 1.10 cfs. On information and belief, Cal Fischer’s
8 properties are riparian to the Fresno River. A map illustrating the properties and
9 riparian acreage owned by Cal Fischer is attached as **Exhibit H**.

10 ***Reach 4 Claimed Water Rights***

11 k. Reach 4 includes the Franchi Dam just outside the City of Madera. Franchi Dam
12 serves as the point of diversion for the District to exercise its pre-1914 adjudicated
13 right to divert 200 cfs of water from the Fresno River.

14 ***Reach 5 Claimed Water Right***

15 l. Cosyns Double C Ranch (“Cosyns”) holds title to 686.06 acres of property in
16 Madera County and identified as APN 023-270-005, 043-045-004, 023-270-011,
17 043-051-004, 023-270-011, 043-051-004, 023-270-010, and 023-270-012.¹
18 Cosyns diverts water from the Fresno River at Dry Creek (near Road 16), which is
19 not physically located on the Fresno River. The first is a creek pump at turnout 49
20 on Dry Creek with the capacity to divert 6,000 gallons per minute, or 13.37 cfs, and
21 is located in parcel 023-270-012 in the Southeast quarter of the Southeast quarter
22 of Section 18 in Township 11 South and Range 16 East. This claimed point of
23 diversion is used as the point of diversion for allocating water. The second claimed
24 point of diversion is a creek pump at turnout 50 on the Sallaberry Canal with the
25 capacity to divert 3,000 gallons per minute and is located on parcel 023-270-012,
26 which has not been included in the FRAM. Cosyns diverts water to irrigate

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28 ¹ Rick Cosyns is an owner of Cosyns Double C Ranch. Mr. Cosyns is also an elected Board Member of the Madera Irrigation District. Mr. Cosyns has not participated in the District’s analysis, discussions, or decision-making process with respect to the issues in this Petition.

1 pistachios and alfalfa crops. On information and belief, Cosyns's properties are
2 riparian to the River. A map illustrating the properties and riparian acreage owned
3 by Cosyns is attached as **Exhibit I**.

4 m. Costa View holds title to approximately 5,198 acres of land identified by APNs
5 023-250-006, 023-250-007, 043-030-026, 023-260-001, 043-041-003, 023-200-
6 002, 023-210-001, 023-260-002, 043-043-003, 043-045-006, 023-270-001, 023-
7 220-001, 023-230-004, 023-240-002, and 023-230-002. Costa View diverts water
8 from the Fresno River at Sallaberry Canal and Dry Creek (near Road 16), but claims
9 a points of diversion that are not located on the Fresno River itself. Rather, Costa
10 View claims multiple points of diversion, including a point of diversion located at
11 the Southwest quarter of the Southwest quarter of Section 17, Township 11 South,
12 Range 16 East, which a claimed existing diversion capacity of 178 cfs Costa View
13 diverts Fresno River water to irrigate wheat, corn, alfalfa, and sudan as seasonal
14 crops and almonds year round. On information and belief, Costa View's properties
15 include 1,800 acres riparian to the Fresno River. Costa View also claims a post-
16 1914 senior appropriative right pursuant to License No. 4689 to divert up 45 cfs of
17 River water for irrigation and stock watering purposes on 3,365 acres of land. A
18 map illustrating the properties and riparian acreage owned by Costa View is
19 attached as **Exhibit J**.

20 n. Robert and Neva Iest hold title to properties known as "Tri-Iest" identified by APN
21 022-200-007 and 043-023-005. The District is unaware as to whether the Tri-Iest
22 properties are riparian to the Fresno River. On information and belief, Tri-Iest and
23 its successors have never exercised any riparian rights to the River.

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26 ***Reach 7 Claimed Water Rights***

27 o. John Hancock Life Insurance Company holds title to "Triangle T Ranch," which is
28 identified by APNs 022-030-003, 022-100-006, 022-180-002, 022-180-003, 043-

021-002, 022-100-006, 022-040-003, 022-050-006, 021-130-008, 020-200-004, 020-200-005, 020-200-007, and 020-140-003 in Madera County, California. The point of diversion from the Fresno River is located at the Road 9 Diversion Structure in Section 18 of Township 11 South, Range 15 East. The Road 9 Diversion Structure has an existing diversion capacity of 60 cfs and is shared by all of the landowners in Reach 7. The District is informed and believes, and based thereon alleges, that Triangle T has historically agreed that its share of the diversions through the Road 9 Diversion Structure is 60%. Triangle T uses water from the Fresno River to irrigate almonds, pistachios, and wheat. In Order WR 99-001, the Board previously adjudicated Triangle T having 2,676 acres riparian to the Fresno River. On information and belief, Triangle T also holds title to 112 acres of land riparian to the Fresno River that was previously owned by Harman Ranch at the time of the Board's adjudication in Order WR 99-001. Order WR 99-001 also indicates that Triangle T holds an appropriative right according to License No. 9073 to divert 17.5 cfs between February 1 and about July 15 of each year for irrigation and stock watering purposes, although the District understands Triangle T no longer uses the water for stock watering. A map illustrating the properties and riparian acreage owned by Triangle T Ranch is attached as **Exhibit K and Exhibit L**.

- p. The Richard & Dale Harman Trust, the Harman Family Trust, and the Case Vlots and their respective successors-in-interest hold title to portions of approximately 1,875.04 acres of land in Madera County, California known as "Harman Ranch" and identified as APN 020-170-008, 020-170-010, 020-200-001, 020-140-011, 020-140-012, 020-140-003, 020-140-008, 020-200-006, and 020-181-005 as well as parcels in Merced County, California identified as APNs 074-170-021 and 074-170-021. The point of diversion from the Fresno River is located at the Road 9 Diversion Structure in Section 18 of Township 11 South, Range 15 East, which has an existing diversion capacity of 60 cfs, and is shared by all of the landowners in Reach 7. The District is informed and believes, and based thereon alleges, that the

landowners within the Harman Ranch properties have agreed that their share of the diversions through the Road 9 Diversion Structure is 20%. Harman Ranch diverts Fresno River water to irrigate alfalfa, almonds, olives, and winter forage crops. The Board previously adjudicated in Order WR 99-001 that Harman Ranch has 1,497 acres of land riparian to the Fresno River. On information and belief, since the Board's adjudication in Order WR 99-001, Harman Ranch transferred title to 112 acres of the riparian acreage to Triangle T Ranch, and Harman Ranch now owns 1,385 acres of land riparian to the Fresno River. A map illustrating the properties and riparian acreage owned by Harman Ranch is attached as **Exhibit L**.

q. Menefee River Ranch ("Menefee") holds title to approximately 1,974.75 acres of land identified as APN 074-170-012, 074-160-012, 074-150-004, 074-150-010, 074-150-009, 074-150-008, and 074-130-010. The District is informed and believes, and based thereon alleges, that Menefee has agreed that its share of the diversions through the Road 9 Diversion Structure is 20%. The District is informed and believes, and based thereon alleges, that Menefee irrigates tomatoes, cotton, alfalfa, wheat, milo crop, and pasture with water from other sources. The Board previously adjudicated in Order WR 99-001 that Menefee's property has 495 acres riparian to the Fresno River. Menefee also has an appropriative right under License No. 7561 to divert 3.2 cfs between February 1 to June 15 of each year for irrigation purposes. However, on information and belief, the District understands Menefee has not actually diverted water from the River in over seven years. A map illustrating the properties and riparian acreage owned by Menefee is attached as **Exhibit M**.

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C. Statement of the Facts and Conditions Why the Public Interest and Necessity Will Be Served by a Statutory Adjudication

1. Background

a. Construction of the Hidden Dam Established the Universe of Water Rights to the Fresno River

1 26. From 1972 to 1975, the Army Corps of Engineers constructed Hidden Dam pursuant to
2 the Flood Control Act of 1962, Public Law 87-474, for the purposes of flood control, irrigation, and
3 recreation. Reclamation filed an application on for an appropriative right associated with the storage of
4 water behind Hidden Dam. Several years prior on May 22, 1959, Reclamation applied for an
5 appropriative right for management control of conservation storage behind Hidden Dam, which the
6 Board granted on April 3, 1973 in Decision 1407:

7 The water appropriated shall be limited to the quantity which can be beneficially
8 used and shall not exceed 74,000 [AFY] by storage to be collected from December
9 1 of each year to April 30 of the succeeding year, provided the diversion season
10 may be extended to include the months of November and May when equivalent
exchange water has been or will be released from the Madera Canal and provided
further that a minimum pool of 5,000 [AF] shall be maintained at all times for
recreational use.

11 (*In the Matter of Application 18733*, SWRCB Dec. 1407, p. 10-11.) The decision also required
12 Reclamation to “submit” to the Board agreements reached between Reclamation and downstream
13 landowners “authorizing substitution of Madera Canal water for Fresno River water . . . for protection
14 of downstream rights.” (*Id.* at ¶ 16.)

15 27. The Board incorporated its findings into Permit No. 16584 (“Permit”) issued to
16 Reclamation. Once this occurred, the River was fully apportioned, and the District began operating
17 Hidden Dam. The amount of water available to each riparian was duly apportioned and calculated
18 according to an engineering report in 1980 to maximize the beneficial use of the River to meet all
19 riparian interests along the Fresno River.

20 **b. A Prior Adjudication of Road 9 Riparians Led to Creation of**
21 **Current Fresno River Administration System**

22 28. Though Reclamation and the District operate Hidden Dam, Reclamation did not
23 immediately perfect its rights through a license. Due to unresolved issues, the Road 9 Landowners filed
24 complaints in 1998 with SWRCB claiming Reclamation violated Permit 16584 for failing to release
25 adequate water to flow past the Road 9 Diversion Structure meet their riparian rights to the natural flow
26 of the Fresno River. (See *In the Matter of Water Right Permit 16584* (1999) SWRCB Order No. WR
27 99-001.) In Order WR 99-001, the SWRCB agreed with the Road 9 Landowners and ordered
28 Reclamation to “release sufficient water to satisfy the rights of Triangle T Ranch, the Harmans, and

1 Menefee River Ranch . . . provided that the parties’ rights . . . cannot exceed the natural flow of the
2 Fresno River.” (*Id.* at 27.)

3 29. The Board memorialized the requirements of the order in License No. 13836, a copy of
4 the License is attached as **Exhibit N**. Pursuant to the License, the Bureau may impound water behind
5 Hidden Dam according “to the amount actually beneficially used for domestic, irrigation, and recreation
6 uses and shall not exceed seventy one thousand six hundred (71,600) acre-feet per annum to be collected
7 from December 1 of each year to April 30 of the succeeding year, provided the diversion season may be
8 extended to include the months of November and May when equivalent exchange water has been or will
9 be released from the Madera Canal into the Fresno River within 30 days.” (License No. 13836.) “The
10 maximum withdrawal in any one year shall not exceed 84,300 acre-feet.” (*Id.*) As mandated by Order
11 No. WR 99-001, the License contains the following conditions, among others:

12 *Licensee shall release or bypass sufficient water to satisfy the prior rights of*
13 *Triangle T Ranch, the Harman Brothers Ranch, and Menefee River Ranch, or*
14 *their successors-in-interest, provided that the parties’ rights singly or in*
15 *combination cannot exceed the natural flow of the Fresno River, and provided that*
16 *the licensee is not required to release flows that exceed the capacity of the Fresno*
17 *River Road 9 Control Structures located with SW1/4 of NW1/4 Section 18, T11S,*
18 *R15E, MDB&M, unless the licensee and Triangle T Ranch, the Harman Brothers*
19 *Ranch, and Menefee River Ranch reach an agreement to do otherwise. **At all times,***
20 *licensee shall also release or bypass sufficient water to satisfy the prior rights of*
21 *Costa View Farms, Cosyns Farms and Iest Family Farms unless licensee, Costa*
22 *View Farms, Cosyns Farms and Iest Family Farms, or their successors-in-interest,*
23 *reach an agreement to do otherwise.*

24 (*Id.* at pp. 4-5 [emphasis added].) License 13836 also required the Bureau and the District, by October
25 1, 2011, to “develop, in cooperation with downstream riparian diverters, a Fresno River Operations
26 Protocols document for the purpose of providing guidance to all parties on how to operate the Fresno
27 River water system.” (License 13836, p. 4.) License 13836 required the Protocols to address Big Creek
28 imports, North Fork Willow Creek imports, the operation of Hidden Dam, accounting of storage under
License 13836 and the District’s pre-1914 rights, the Fresno River reach demands, San Joaquin River
imports, downstream appropriative water rights, and downstream riparian water rights. (*Id.*)

30. Reclamation and the District responded to the requirements by developing the Protocols
and the FRAM to allocate water on the Fresno River. The FRAM is a dynamic computer spreadsheet
model that allocates water entitlements based on availability of water supply, channel loss, irrigation

1 demand, and water right priorities. The District, which operates the FRAM, depends upon each riparian
2 user to report accurate riparian acreage and cropping patterns the winter before each growing season to
3 calculate appropriations of Fresno River water to each riparian users. The FRAM then calculates and
4 prioritizes water delivery according to proximity to Hidden Dam by “reach.” Under the FRAM, after
5 accounting for water lost in delivery, Reach 2 water rights must first all be met before the District can
6 release sufficient flows to meet irrigation demands in subsequent reaches, including its senior right to
7 divert water at the Franchi Dam.

8 **2. Why an Adjudication is Necessary and the Public Interest Will be Served**

9 **a. An Adjudication is Necessary to Determine which Land is**
10 **Riparian to the Fresno River and which Uses are Reasonable**
11 **and Beneficial to Avoid Significant Uncertainty for Senior Users**
12 **and Downstream Riparian Entitlements to the Fresno River**

13 31. Land may be riparian to the Fresno River if it is: 1) contiguous with the River; 2) was
14 riparian at the time of patent and reserved the riparian rights in the transfer deed when subdivided away
15 from the contiguous parcels; and 3) within the watershed of the stream. (*Rancho Santa Margarita v.*
16 *Vail* (1938) 11 Cal.2d 501, 528-529, 538.) Thus, determining whether each parcel along the Fresno
17 River is riparian requires reviewing the chain of title from the time of patent to ensure the property rights
18 were reserved. Simply owning parcels that are adjacent to the Fresno River, but not riparian themselves,
19 will not establish riparian rights. (See *Boehner v. Big Rock Irrigation District* (1897) 117 Cal. 19, 26-
20 27.)

21 32. The FRAM relies on the self-reporting of riparian and appropriative landowners to
22 determine how much water each riparian is entitled from the River. Although the District attempts to
23 ///
24 evaluate the veracity of the acreage that riparian landowners claim as riparian, the District lacks authority
25 to make any legal determination as to whether any parcel is in fact riparian to the River.

26 33. Petitioner is informed and believes the majority of the landowners who claim riparian
27 rights to the River have over-reported their riparian acreage to the River in excess of the amount to
28 which the person or entity is legally entitled to under California law. Based on a review of the chain of
title, on information and belief, the District understands the following riparian landowners have claimed

1 parcels as riparian to the River for the purposes of irrigating crops, but which the District believes are
2 not riparian:

3 **a. *Adobe Ranch.*** Adobe Ranch is located in Reach 2 and claimed in its 2017
4 crop reports to the District to have 6,857.03 acres riparian to the Fresno
5 River. Based on a review of the chain of title, the District understands only
6 2,361 acres of Adobe Ranch's land is riparian to the River.

7 **b. *DeBenedetto.*** DeBenedetto is located in Reach 3. According to its 2018
8 cropping information reports submitted to the District, DeBenedetto
9 reported 193 acres of almonds and 55 acres of figs on 248 acres of land
10 claimed to be riparian to the Fresno River. Based on a review of the chain
11 of title, the District understands only approximately 219.56 acres of
12 DeBenedetto's land is riparian to the River.

13 **c. *Mesple.*** Mesple is located in Reach 3. In the 2018 cropping information
14 reports submitted to the District, Mesple reported 415 acres of almonds and
15 140 acres of figs on 555 acres of land claimed to be riparian to the Fresno
16 River. Based on a review of the chain of title, the District understands only
17 approximately 198 acres of Mesple's land is riparian to the River.

18 **d. *Herman.*** Herman is located in Reach 3. In the 2015 cropping information
19 reports submitted to the District, Herman reported farming 320 acres of
20 pistachios on 320 acres of land claimed to be riparian to the Fresno River.

21 ///

22 Based on a review of the chain of title, the District understands only
23 approximately 171 acres of Herman's land is riparian to the River.

24 **e. *Rancho Bella Vista.*** Rancho Bella Vista is located in Reach 3. In the 2018
25 cropping information report submitted to the District, Rancho Bella Vista
26 reported 23 acres of pistachios, 17 acres of almonds, and 1.9 acres of grapes
27 being grown on 53.24 acres of land claimed to be riparian to the Fresno
28

1 River. Based on a review of the chain of title, the District understands only
2 21.24 acres of land is riparian to the River.

3 **f. *Costa View.*** Costa View is located in Reach 5 and claimed in its 2018 crop
4 reports to the District to have 4,005 acres of riparian acreage. Based on the
5 District's review of the chain of title, only approximately 1,800 of Costa
6 View's land is riparian to the River. Nor does Costa View enjoy post-1914
7 appropriative rights that match the amount of acreage that is purportedly
8 authorized to receive water from the Fresno River

9 34. A determination regarding the precise nature, amount, and priority of each person or
10 entity's right or rights to water from the Fresno River is a necessary and proper exercise of the Board's
11 power to seek resolution of the above dispute, to prevent further actions by the parties in violation of
12 law, and to prevent irreparable harm to Petitioner, Reclamation, other water users on the River, the State
13 of California, and others.

14 35. Other means of adjudicating riparian claims would be inadequate, costly, and fail to
15 address the uncertainty currently existing, causing these issues to arise again in the future. Agreements
16 among riparian landowners in a fully-appropriated stream cannot address pre-existing downstream
17 riparian rights while meeting the increasing demands to irrigate more and more permanent crops, and
18 neither the District nor Reclamation has the legal authority to determine any of the disputed riparian
19 rights to the Fresno River. Private litigation between individual parties to quiet title to water from the
20 Fresno River would bind only those water uses made party to the suit. Should any legitimate user of the
21 Fresno River fail to be included as a party, the costly, time-intensive adjudication process would be
22 nullified.

23 36. Therefore, the District seeks the Board to conduct a statutory adjudication to determine
24 the riparian rights associated with the Fresno River to reduce uncertainty in the system administration,
25 prevent mistreatment of riparian rights, and ensure the system is managed fairly and efficiently to its
26 reasonable and beneficial use.

27 **b. Unexercised Riparian Rights Will Create Uncertainty until**
28 **Subordinated to Present, Reasonable, and Beneficial Uses**

1 37. Article X, Section 2, of the California Constitution declares that: “(1) the right to the use
2 of water is limited to such water as shall be reasonably required for the beneficial use to be served; (2)
3 such right does not extend to the waste of water; (3) such right does not include unreasonable use or
4 unreasonable method of use or unreasonable method of diversion of water; and (4) riparian rights attach
5 to, but to no more than so much of the flow as may be used consistently with the foregoing principles.”
6 (*People ex rel. State Water Resources Control Bd. v. Forni* (1976) 54 Cal.App.3d 743, 750 [citing
7 *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367].)

8 38. The Board has authority flowing from Article X, Section 2 to subordinate an unexercised
9 riparian right to prevent “the waste or unreasonable use or unreasonable method of use of water.”
10 (*Peabody, supra*, 2 Cal.2d at 367 [holding that Article X, Section 2’s mandates “apply to the use of all
11 water, under whatever right the use may be enjoyed”].) As the Supreme Court explained in *Long Valley*,
12 “to the extent that [unexercised riparian rights] may deter others from using the water for fear of their
13 ultimate exercise, they are wasteful, in the sense of costing the economy the benefits lost from the
14 deterred uses.” (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 355.)

15 39. Several landowners along the Fresno River are currently seeking to exercise previously
16 unexercised rights to the waters of the Fresno Rivers and/or intensify the use of water far beyond historic
17 uses. One of these landowners is Adobe Ranch. According to the riparian acreage submittals to the
18 District for 2017-2018, Adobe Ranch claims to have 6,857 acres riparian to the Fresno River. However,
19 according to the chain of title for each parcel, only 2,341 acres claimed by Adobe Ranch have a good
20 faith basis for being characterized as riparian. The District believes approximately 4,960 acres that
21 Adobe Ranch claims are riparian have never been riparian because the parcel was not riparian at the
22 time of patent and is not contiguous today. However, should the Board determine otherwise, 4,960
23 unexercised riparian acres may substantially divert flows from the river and cost the downstream
24 riparians their reasonable and beneficial uses.

25 40. In addition, several landowners, including Adobe Ranch, have historically had low
26 demands from the Fresno River, due to the fact that the land was used primarily for grazing. Now,
27 riparian landowners, including Adobe Ranch, are seeking to vastly expand the amount of water used on
28 their claimed riparian acreage by developing those lands into higher water use permanent crops,

1 including pistachio, walnut, and almond orchards, to the detriment of others with rights to the Fresno
2 River.

3 41. Several landowners are seeking to increase their points of diversion, or install new points
4 of diversion (many of which are unpermitted), which has the practical effect of reducing the amount of
5 water available for downstream riparian and other users.

6 42. Thus, it is in the public interest to determine whether (i) the exercise of previously-
7 unexercised riparian rights; (ii) the recent or future development of riparian lands from less-intensive
8 uses, such as grazing, to high-intensity uses, such as permanent crops; (iii) the recent or future expansion
9 of points of diversion; and (iv) the recent or future installation of new points of diversion should be
10 subordinated historic and/or currently existing reasonable and beneficial uses of other riparian and
11 appropriative landowners on the Fresno River.

12 **c. The FRAM as Required by License 13836 Creates Uncertainty**
13 **as to Priority of Rights to Entitlements from the Fresno River**

14 43. Pursuant to *Union Colonization Company, et. al. v. Madera Canal & Irrigation District*,
15 the District holds an adjudicated pre-1914 right to divert 200 cubic feet per second (“cfs”) of water from
16 the Fresno River at Franchi Dam that has priority over other users of Fresno River water. The District
17 also holds senior pre-1914 rights to water diverted into the Fresno River from Big Creek and the North
18 Fork Willow Creek.

19 44. After senior rights are accounted for, riparian right holders “enjoy as an incident of
20 common ownership with other riparians on the stream a correlative share of the [entire] natural flow” of
21 the stream. (*United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 104.)
22 “Thus, in times of water shortage, all riparians must curtail their usage in order that they share the
23 available water” amongst themselves. (*Id.*) Once senior rights are satisfied, riparian interests to the
24 Fresno River have a right to a correlative share of the remaining natural flow of the River for beneficial
25 use on their riparian acreage as supported by a chain of title.

26 45. The Protocols and the FRAM do not account for the priority of water right according to
27 seniority. Instead, the FRAM prioritizes water delivery by “reach,” or proximity to the Hidden Dam,
28 and it is only after all rights in a reach, regardless of seniority, are fulfilled that the demands from any

1 subsequent reach are met. As a result, the FRAM effectively inverts the chain of priority by delivering
2 to all water interests in Reaches 2 and 3 without consideration of certain senior rights. The FRAM also
3 subordinates Road 9 riparian allocations and only delivers downstream after post-1914 appropriative
4 rights, including those held by Costa View in Reach 5, are fulfilled.

5 46. The inversion of the priorities of rights under the FRAM is unlawful and creates
6 uncertainty for the District's administration. While the District operates the FRAM, the District is not
7 a watermaster and lacks authority to regulate or enforce the appropriate allocation of water for its most
8 beneficial and reasonable use under the FRAM. The District anticipates permanent crop plantings will
9 continue to expand and will exacerbate its ability to lawfully allocate water to senior rights on the Fresno
10 River.

11 47. To serve the most fair and efficient allocation of entitlements to the Fresno River, it is in
12 the public interest to address the unlawful order of priorities structured into the FRAM during the
13 adjudication process to ensure the allocation of River water occurs fairly and efficiently and according
14 to the most reasonable and beneficial use.

15 **d. Red Top Pipeline Could Serve as a Physical Solution for Road 9**
16 **Riparians**

17 48. A physical solution is available in situations where a practical method to modify the
18 existing water use practices of a senior right holder will increase the senior's efficiency and make water
19 available to the junior user. (See California Water Law & Policy at 9-44.) Generally, if the decision
20 maker finds that the holder of the prior and paramount right is exercising a reasonable and beneficial
21 water use, he or she cannot be compelled to modify existing water use practices for the benefit of junior
22 users. (*Id.*; see also *City of Lodi v. East Bay Municipal Utility Dist.* (1936) 7 Cal.2d 316, 339-41.)
23 However, if the junior user, at its own cost, proposes to finance a physical solution that ensures the prior
24 and paramount rights are not injured, then a physical solution may be ordered. (*Id.*) To order a physical
25 solution, it must also be shown the proposed physical solution will not result in substantial injury or
26 material expense to the holder of the prior and paramount right. (California Water Law & Policy at 9-
27 44; see also *Peabody, supra*, 2 Cal.2d 351.)
28

1 49. The Board has the authority to order a physical solution as part of the adjudication of
2 rights to the Fresno River. (See *Imperial Irrigation District v. State Water Resources Control Board*
3 (1986) 186 Cal.App.3d 1160, 1169 [stating that Board has “broad, open-ended, [and] expansive
4 authority to undertake comprehensive planning and allocation of water resources . . .”].)

5 50. Since 2011, in accordance with the FRAM, the District has either (i) diligently released
6 sufficient flows at the Road 9 Diversion Structure or (ii) reached agreement with the Road 9 Landowners
7 to meet their needs. Despite this, inflated demands, increased diversions by upstream landowners, and
8 other factors have prevented the water from reaching the Road 9 property owners. The District’s
9 diversion of 200 cfs at Franchi Dam is a reasonable and beneficial use providing irrigation water for its
10 members and cannot be modified.

11 51. The Red Top Pipeline could serve as a physical solution to resolve these issues and
12 alleviate future harm. The San Joaquin River Exchange Contractors and Triangle T have financed the
13 Red Top Pipeline to build a pipeline to deliver water to Road 9 riparians from other sources available to
14 the District. Among other things, the Pipeline would allow the District to work with the Exchange
15 Contractors to service the Road 9 riparian rights through a series of water exchanges. This way, the
16 District can directly provide water to Road 9 Landowners to meet their riparian rights for reasonable
17 and beneficial uses without the risk the water is lost along the River due to the natural soil conditions or
18 diversions. The Red Top Pipeline would provide an alternative water source for riparian acreage Road
19 9 Landowners are already entitled to receive. The Pipeline would also help reduce adverse impacts to
20 downstream riparians.

21 52. The proposed Red Top Project does not result in substantial injury or material expense
22 to the District’s prior and paramount pre-1914 water rights. The Red Top Pipeline infrastructure is
23 already financed by the end users and will not require any additional expense from the District. Further,
24 because the Red Top Pipeline is downstream, it poses no substantial injury or material expense to any
25 other upstream riparian right along the Fresno River.

26 53. The Red Top Pipeline insures the prior riparian rights of the Road 9 Landowners are
27 substantially enjoyed by current and future generations of landowners and the countless numbers of
28

1 consumers who benefit from the agricultural production in the valley. The physical solution also
2 prevents the ultimate destruction of the deep-well aquifers caused by overdrafting groundwater.

3 54. The Red Top Pipeline is consistent with the mandate of Article X, Section 2 of the
4 California Constitution to prevent waste and unreasonable water use and maximize the beneficial use of
5 the state's water resources to the fullest extent of which they are capable. By providing a direct pipeline
6 to Triangle T Ranch and other users of Fresno River water in Reach 7, the Red Top Pipeline ensures
7 California's water is used to its maximized beneficial use.

8 **e. A Statutory Adjudication could Prevent Waste by**
9 **Subordinating or Estopping Menefee from Asserting His**
10 **Riparian and Appropriative Rights to Fresno River Allocations**
11 **with No Present Reasonable or Beneficial Use of the Water**

12 55. Since the implementation of the Protocols and the FRAM in 2011, the District has either
13 (i) diligently released sufficient flows for Road 9 riparians to the Road 9 Diversion Structure or (ii)
14 reached agreement with the Road 9 Landowners. Based on information and belief, since 2011, the flow
15 of the Fresno River has never reached Road 9 riparian Menefee. The District has diligently incorporated
16 Menefee's lands into the FRAM and the Protocols to meet his riparian and appropriative water rights,
17 with the reasonable belief that Menefee has the ability and desire to use riparian water for a reasonable
18 and beneficial irrigation use.

19 56. Menefee, however, has neither the intention nor the ability to use flows from the Fresno
20 River to justify any demand for an allocation. For example, when significant amounts of rainfall created
21 surplus flows and ended the drought in the winter of 2017, Menefee contends the flow of the River did
22 not reach Menefee's property. The District is therefore unaware of any Fresno River water being put to
23 reasonable and beneficial uses on the Menefee property.

24 ///

25 57. Nor does Menefee have the intention of using Fresno River water for reasonable and
26 beneficial uses on its property. Instead of using the water for a reasonable beneficial use, it has recently
27 become clear that Menefee's goal has not been to receive riparian water from the Fresno River, but
28 rather to leverage his asserted water rights for a marketable water supply at Millerton Lake. The District
is unaware of any appropriative right that would permit any of Menefee's riparian allocations to be used

1 anywhere other than Menefee’s riparian acreage. During this time, other riparian landowners along the
2 Fresno River had an interest in his water, and the District is informed and believes that Menefee in fact
3 did not use any allocation of Fresno River water on its property. Because the Fresno River is a fully-
4 allocated stream, Menefee’s demands that the District allocate water to Menefee – even though he does
5 not intend to use that water – has diminished the amount of water other landowners with claims to the
6 Fresno River may put to reasonable and beneficial use.

7 58. Because Menefee has no present reasonable and beneficial use to Fresno River water, or
8 intention to put the water to reasonable and beneficial use on the riparian property, it is in the public
9 interest that his riparian interest be subordinated to all other landowners with valid claims to the River
10 through the statutory adjudication process.

11 59. Alternatively, it is in the public interest to estop Menefee from asserting his riparian
12 entitlement to the Fresno River. Estoppel may preclude a riparian from asserting their right where the
13 riparian induces another party to rely on a statement of facts to their detriment. (California Water Law
14 & Policy 3-61.) Under California law, equitable estoppel can be applied where:

15 (1) the party to be estopped must be apprised of the facts; (2) he must intend that
16 his conduct shall be acted upon, or must so act that the party asserting the estoppel
17 had a right to believe it was so intended; (3) the other party must be ignorant of the
18 true state of facts; (4) he must rely upon the conduct to his injury.

19 (See *Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89, 115.) Second, the next
20 step is to “weigh the equities and consider the impact on public policy of permitting an estoppel in a
21 given case.” (*Id.*) Ultimately, “[t]he fundamental question is, when do the equities shift from protecting
22 the investment-backed expectation and property rights of riparians and overlying owners to the need to
23 recognized the reliance of third parties and the state’s interest in efficient water rights administration?”
(*Id.*)

24 60. Here, Menefee had engaged in conduct to the detriment of upstream users of Fresno River
25 water. By seeking to leverage his claimed rights solely to obtain a marketable supply of water at
26 Millerton Lake, and not using Fresno River water for reasonable and beneficial uses on his property,
27 Menefee’s conduct indicates he had no need for a riparian entitlement.
28

Dated: July 1, 2019

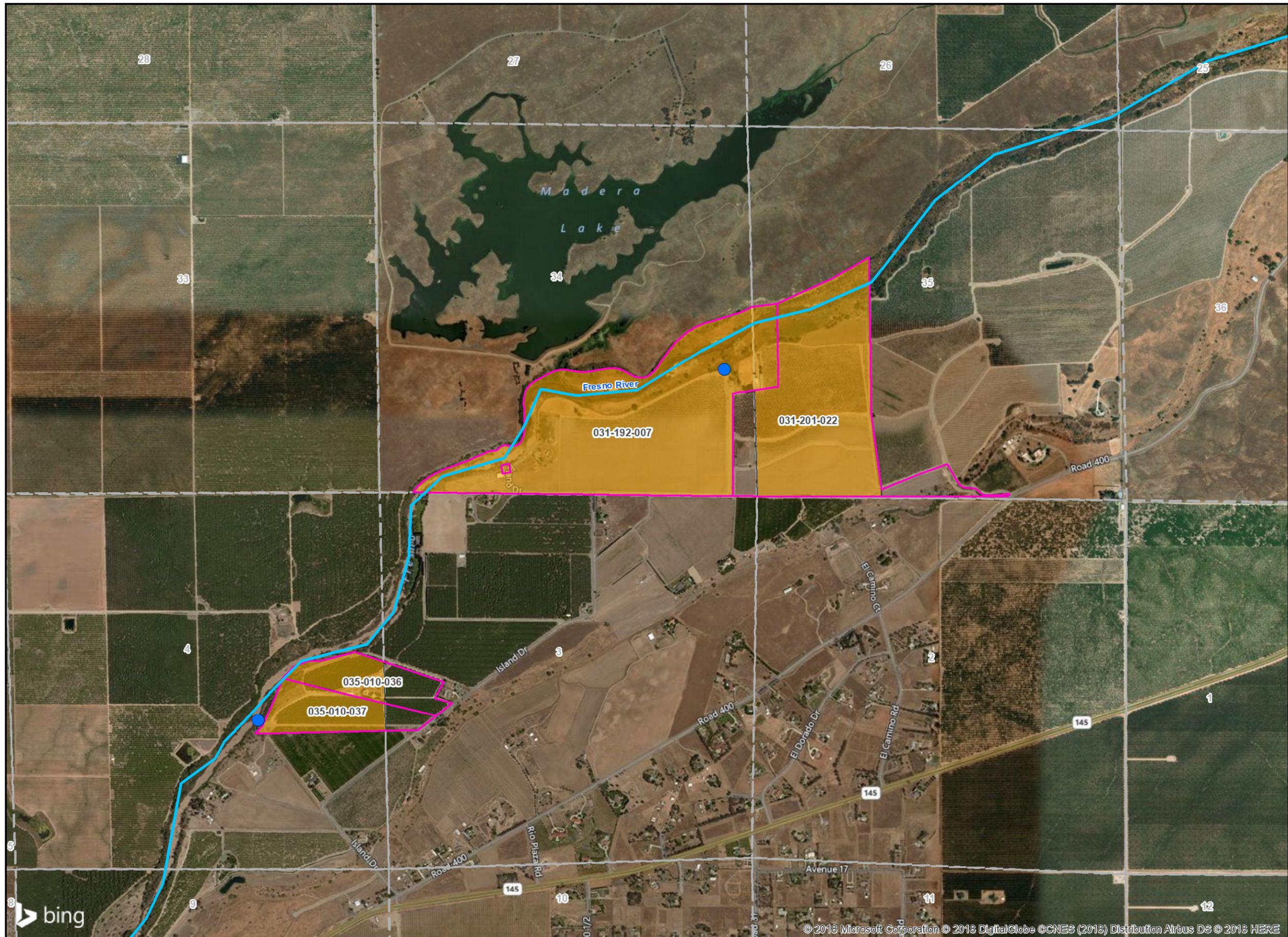
WANGER JONES HELSLEY PC

By: ORIGINAL SIGNED BY
John P. Kinsey
Rebecca S. Maddox
Nicolas R. Cardella
Attorneys for Petitioner
Madera Irrigation District

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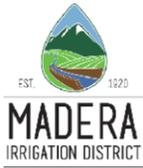
EXHIBIT "A"

EXHIBIT “B”



Kirk Parrish Riparian Lands

- Riparian Land (309.50 Acres)
 - Parcel
 - Section Boundary
 - Waterways
 - Point of Diversion
- Note: Boundaries are approximate



Date: 10/16/2018
 Author: Ramon E Mendez

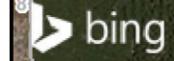
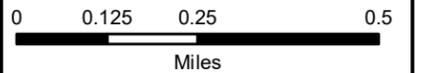
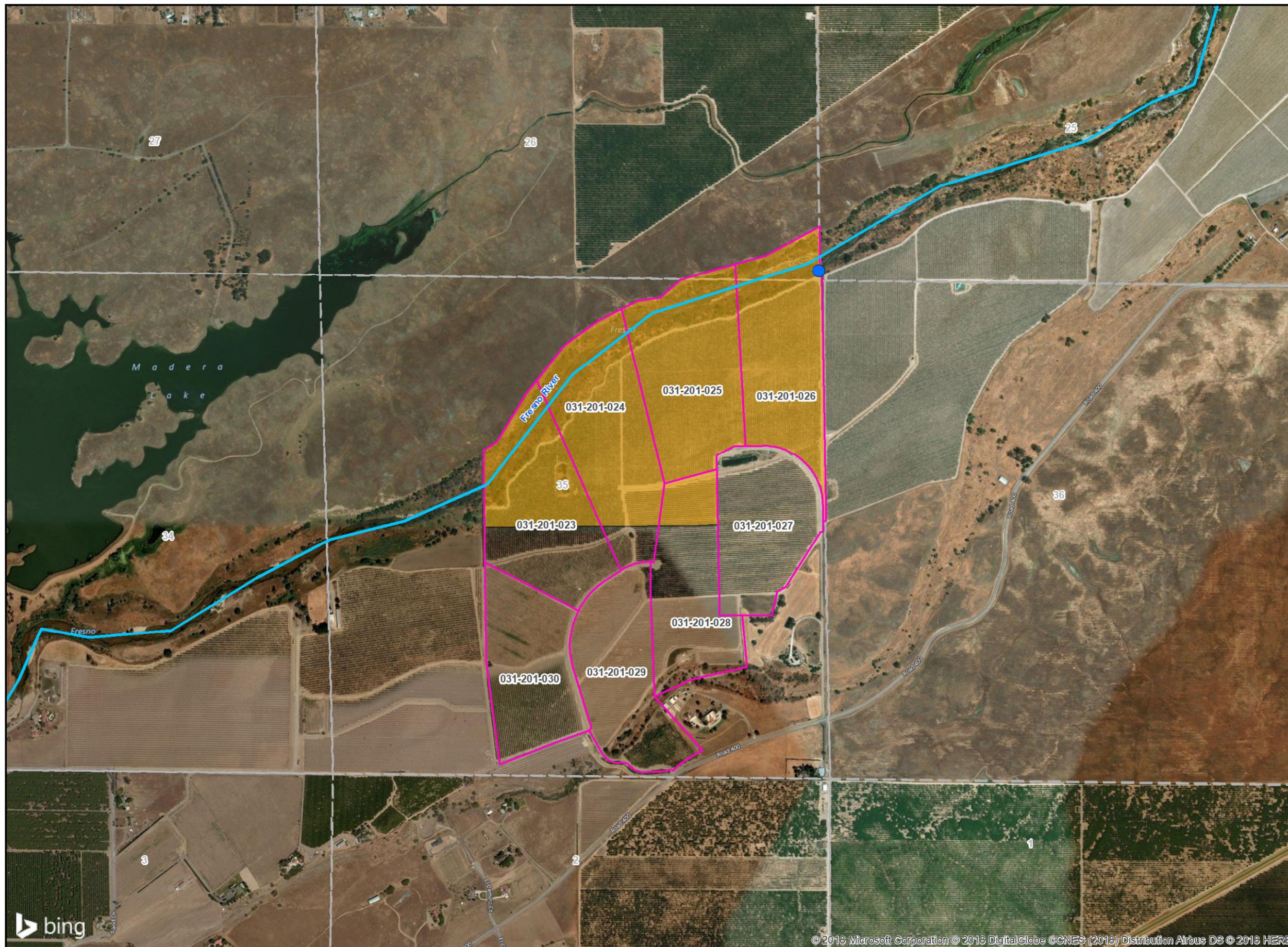


EXHIBIT “C”

Kevin Herman Riparian Lands

- Riparian Land (171 Acres)
- Parcel
- Section Boundary
- Waterways
- Point of Diversion

Note: Boundaries are approximate



EST. 1920
MADERA
IRRIGATION DISTRICT

Date:
10/16/2018

Author:
Ramon E Mendez

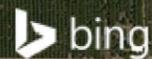
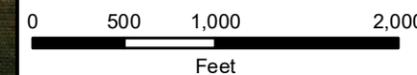
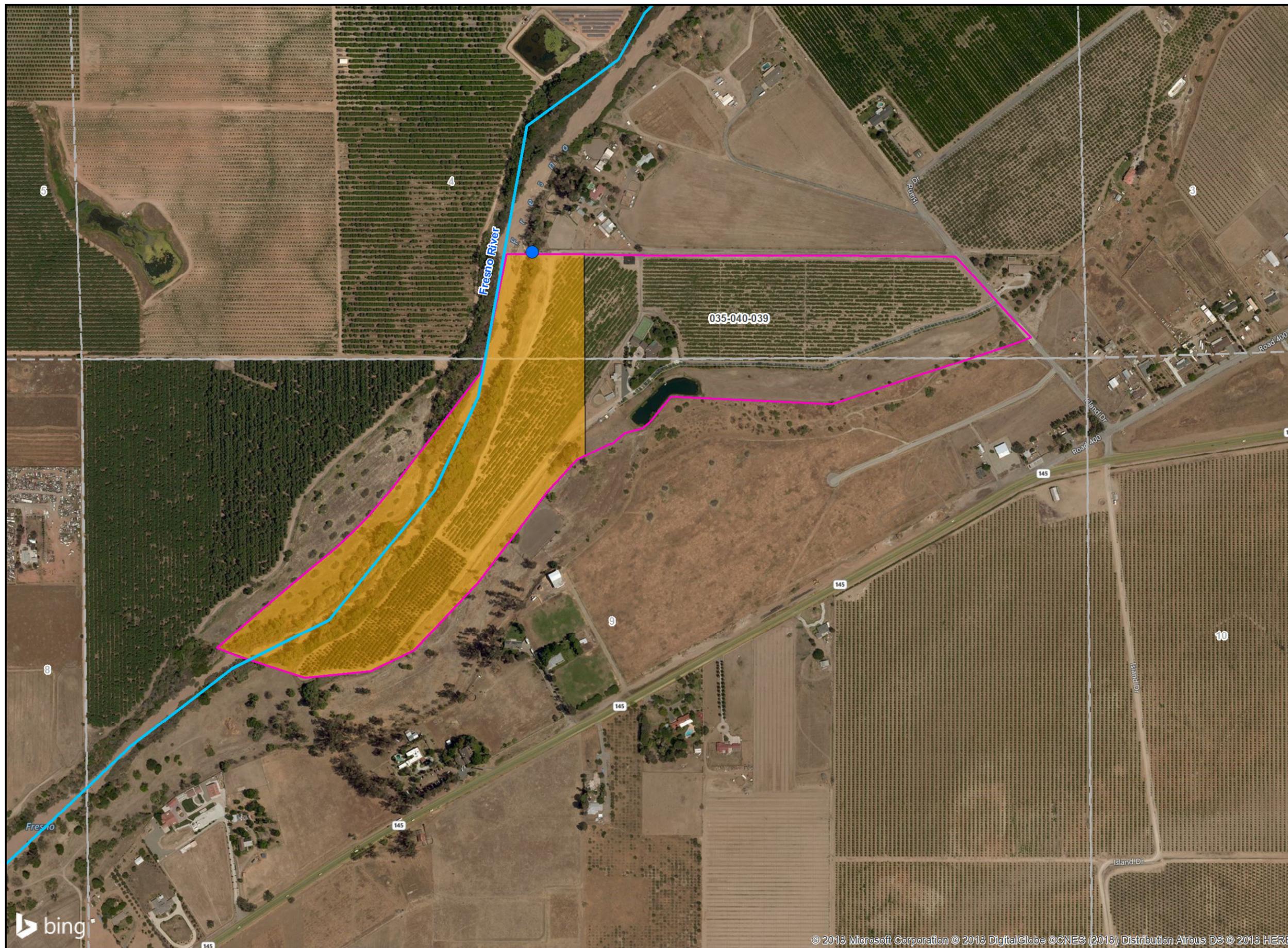


EXHIBIT “D”

Da Silva Riparian Lands

-  Riparian Land (36.8 Acres)
-  Parcel
-  Section Boundary
-  Waterways
-  Point of Diversion

Note: Boundaries are approximate



EST. 1920
MADERA
IRRIGATION DISTRICT

Date:
10/8/2018

Author:
Ramon E Mendez

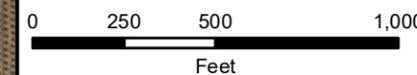
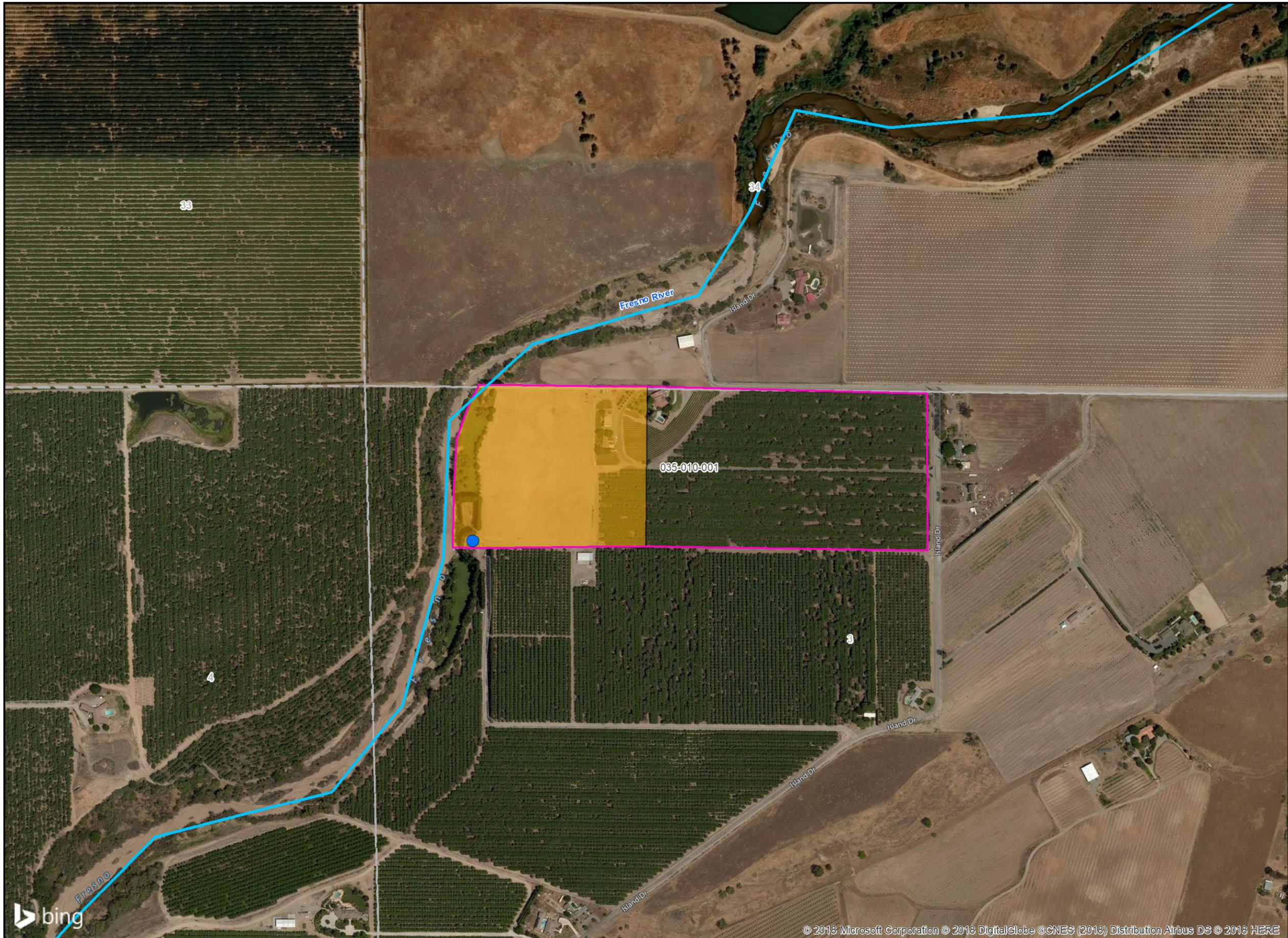


EXHIBIT “E”

EXHIBIT “F”



Rancho Bella Vista Riparian Lands

- Riparian Land (21.24 Acres)
- Parcel
- Section Boundary
- Waterways
- Point of Diversion

Note: Boundaries are approximate



Date:
10/5/2018

Author:
Ramon E Mendez

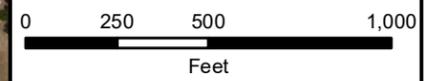
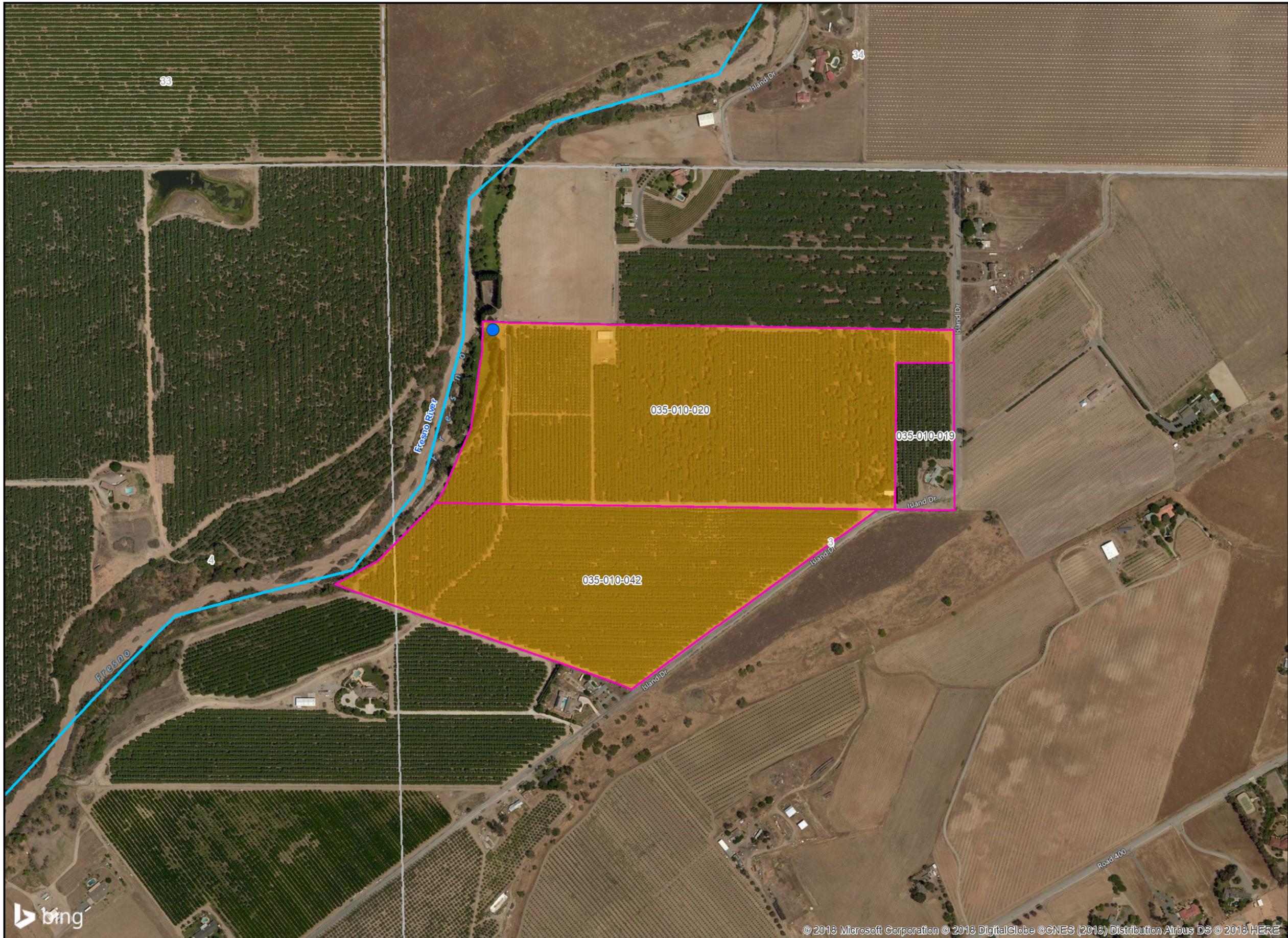


EXHIBIT “G”



Isla Vista Riparian Lands

- Riparian Land (93.39 Acres)
- Parcel
- Section Boundary
- Waterways
- Point of Diversion

Note: Boundaries are approximate



MADERA
IRRIGATION DISTRICT

Date:
10/11/2018

Author:
Ramon E Mendez

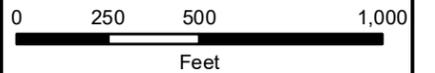
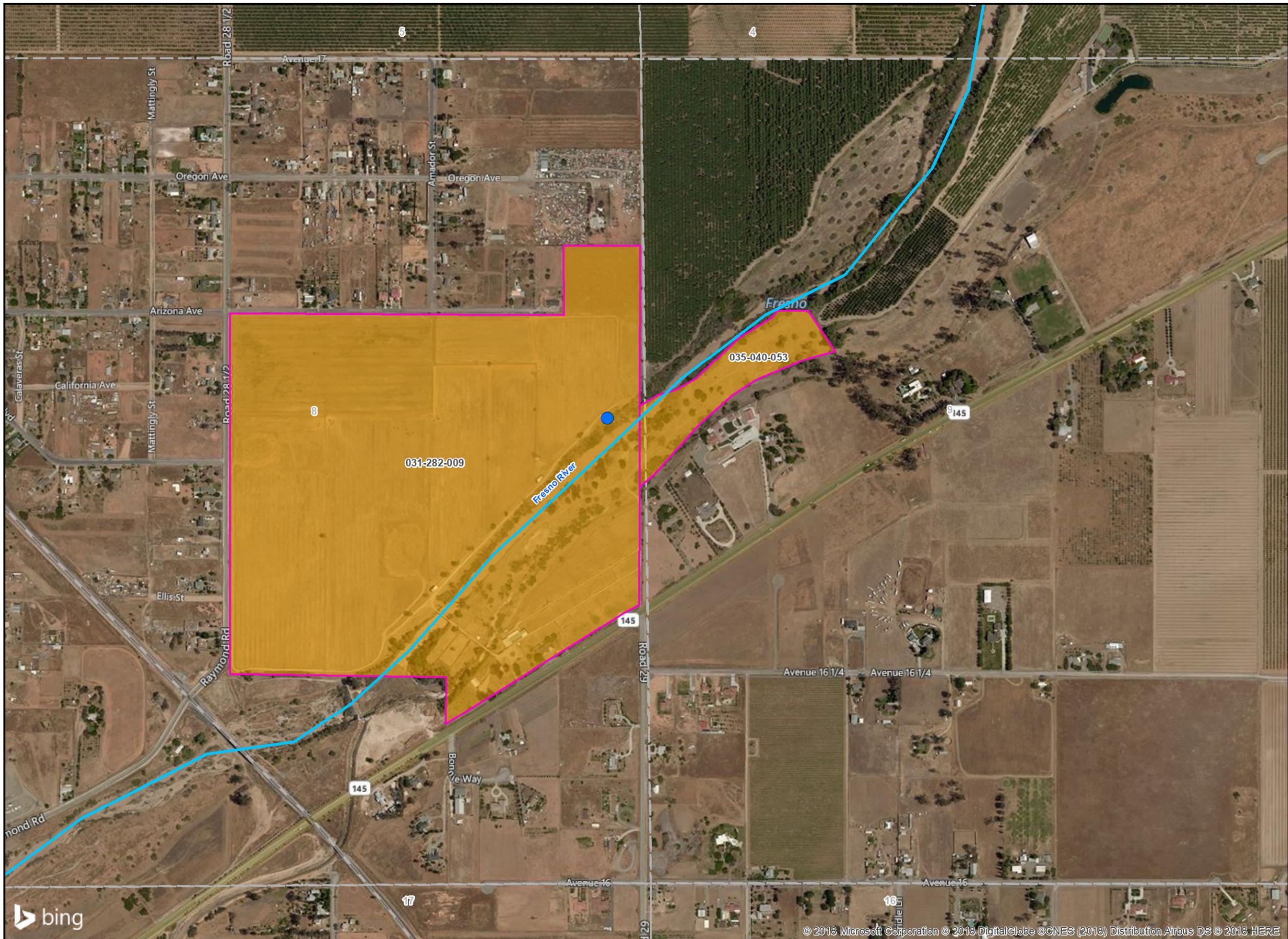


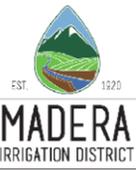
EXHIBIT “H”



Cal Fischer Riparian Lands

- Riparian Land (149 acres)
- Parcel
- Section Boundary
- Waterways
- Point of Diversion

Note: Boundaries are approximate



Date:
10/12/2018

Author:
Ramon E Mendez

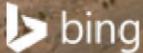
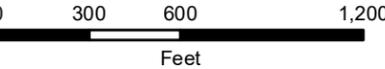
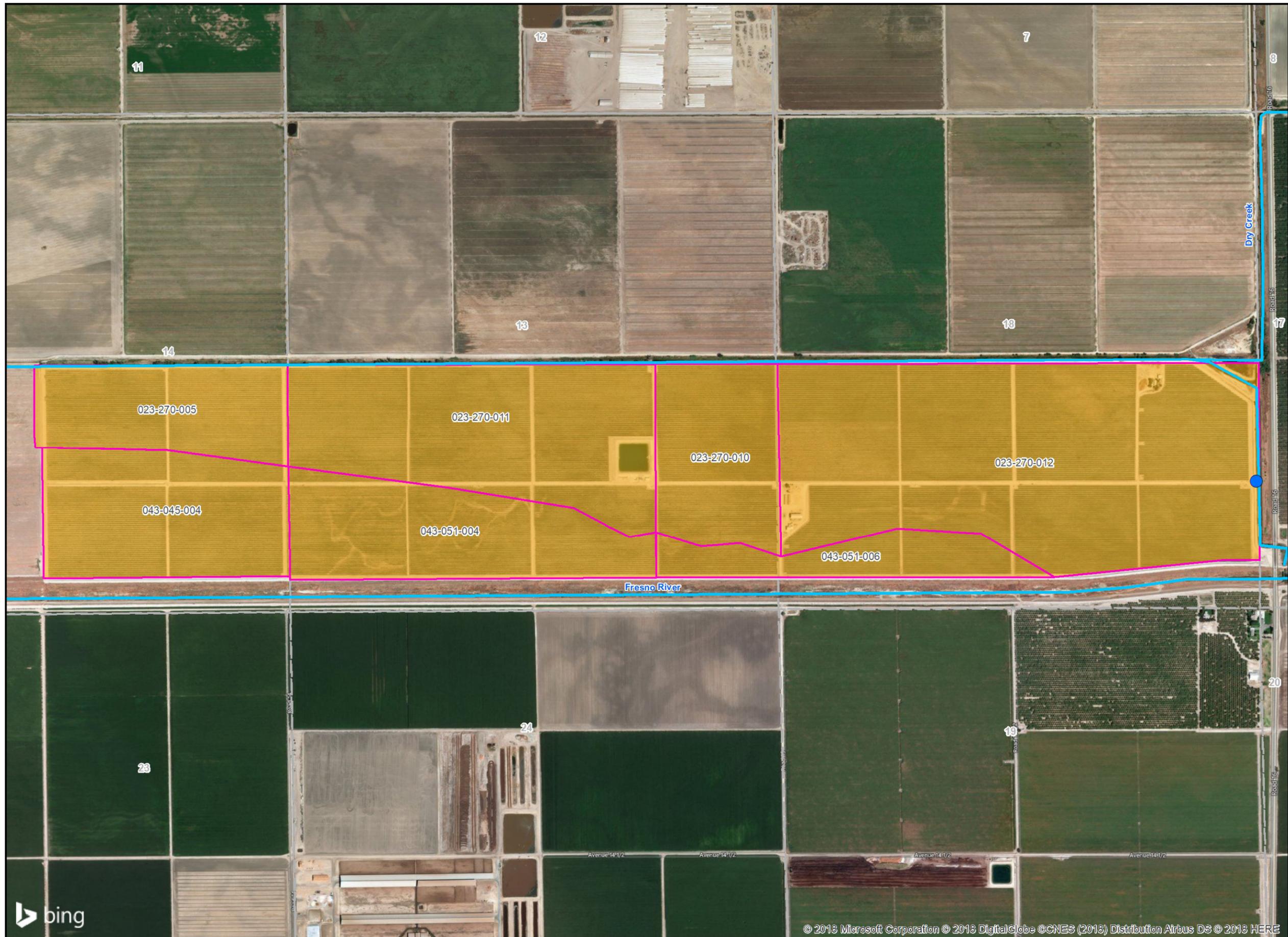


EXHIBIT “I”



Cosyns Farms Riparian Lands

- Riparian Land (627 acres)
 - Parcel
 - Section Boundary
 - Waterways
 - Point of Diversion
- Note: Boundaries are approximate



Date:
10/9/2018

Author:
Ramon E Mendez

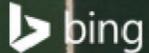
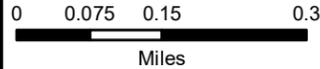
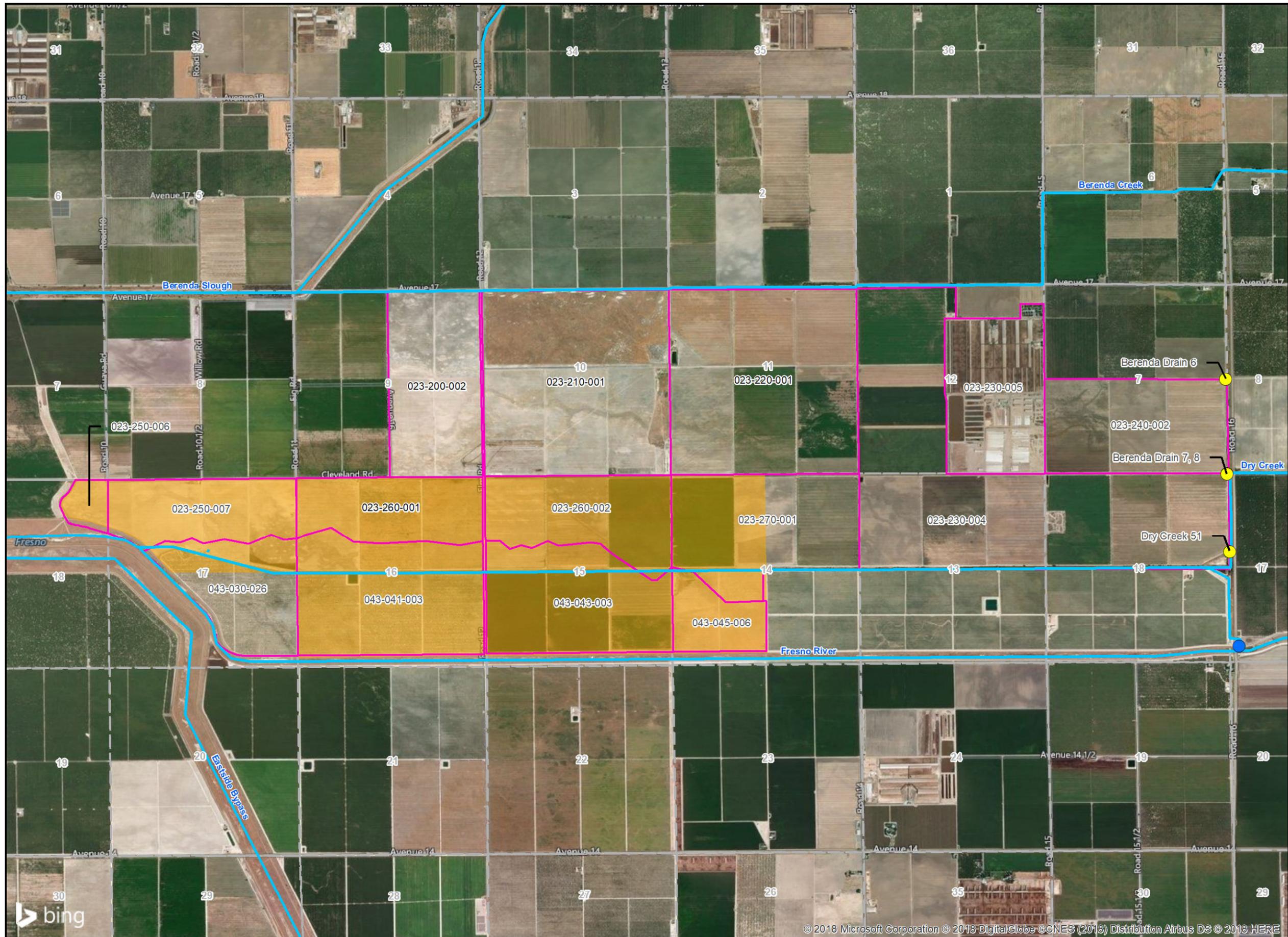


EXHIBIT “J”



Costa View Riparian Lands

- Riparian Lands (1,800 acres)
 - Parcel
 - Section Boundary
 - Waterways
 - Point of Delivery
 - Point of Diversion
- Note: Boundaries are approximate

Date: 10/9/2018

Author: Ramon E Mendez

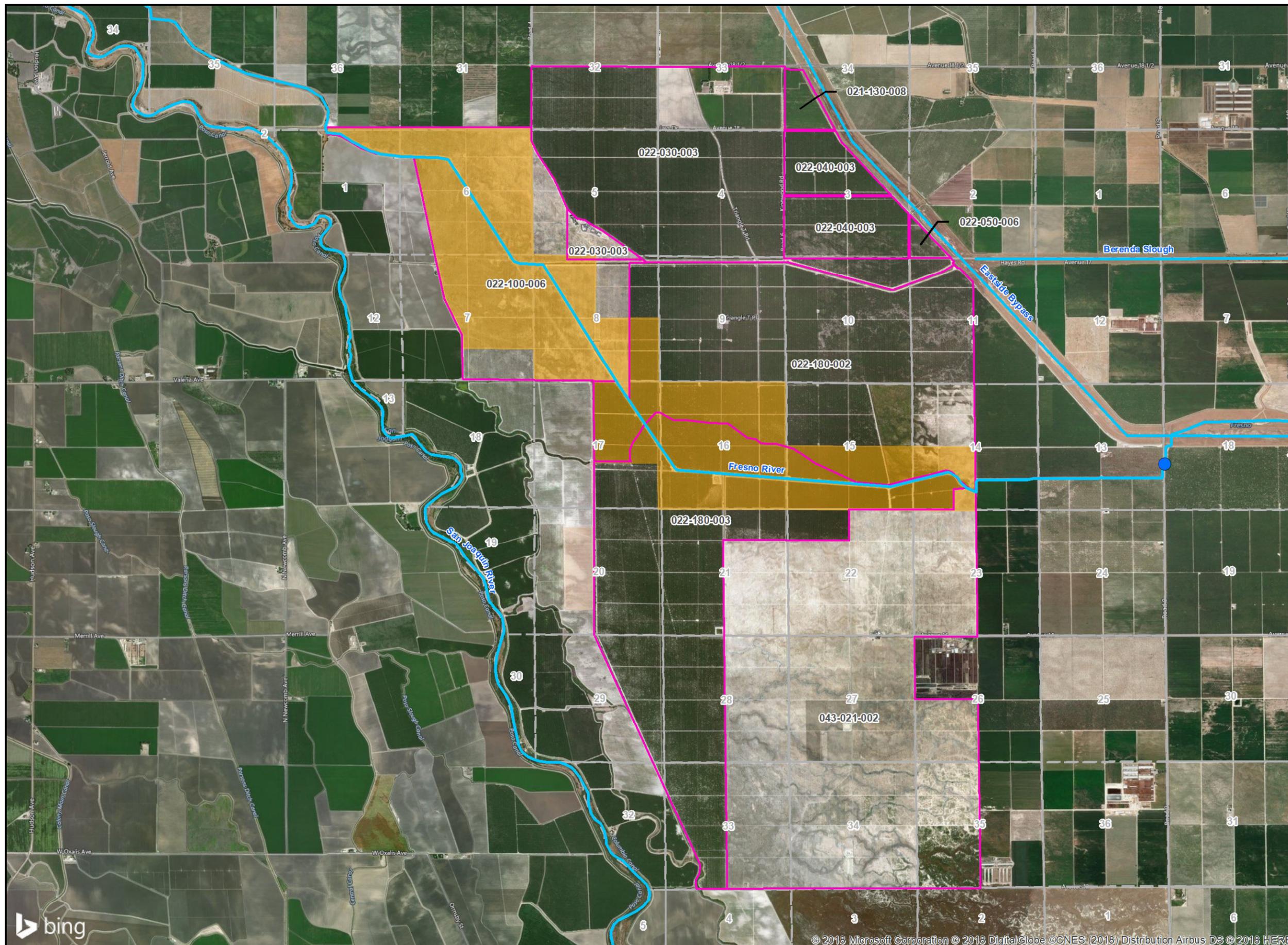
Miles

EXHIBIT “K”

John Hancock (Triangle T Ranch) Riparian Lands

- Riparian Land (2,676 acres)
- Parcel
- Section Boundary
- Waterways
- Point of Diversion

Note: Boundaries are approximate



MADERA
IRRIGATION DISTRICT

Date:
10/16/2018

Author:
Ramon E Mendez

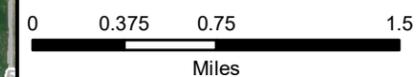
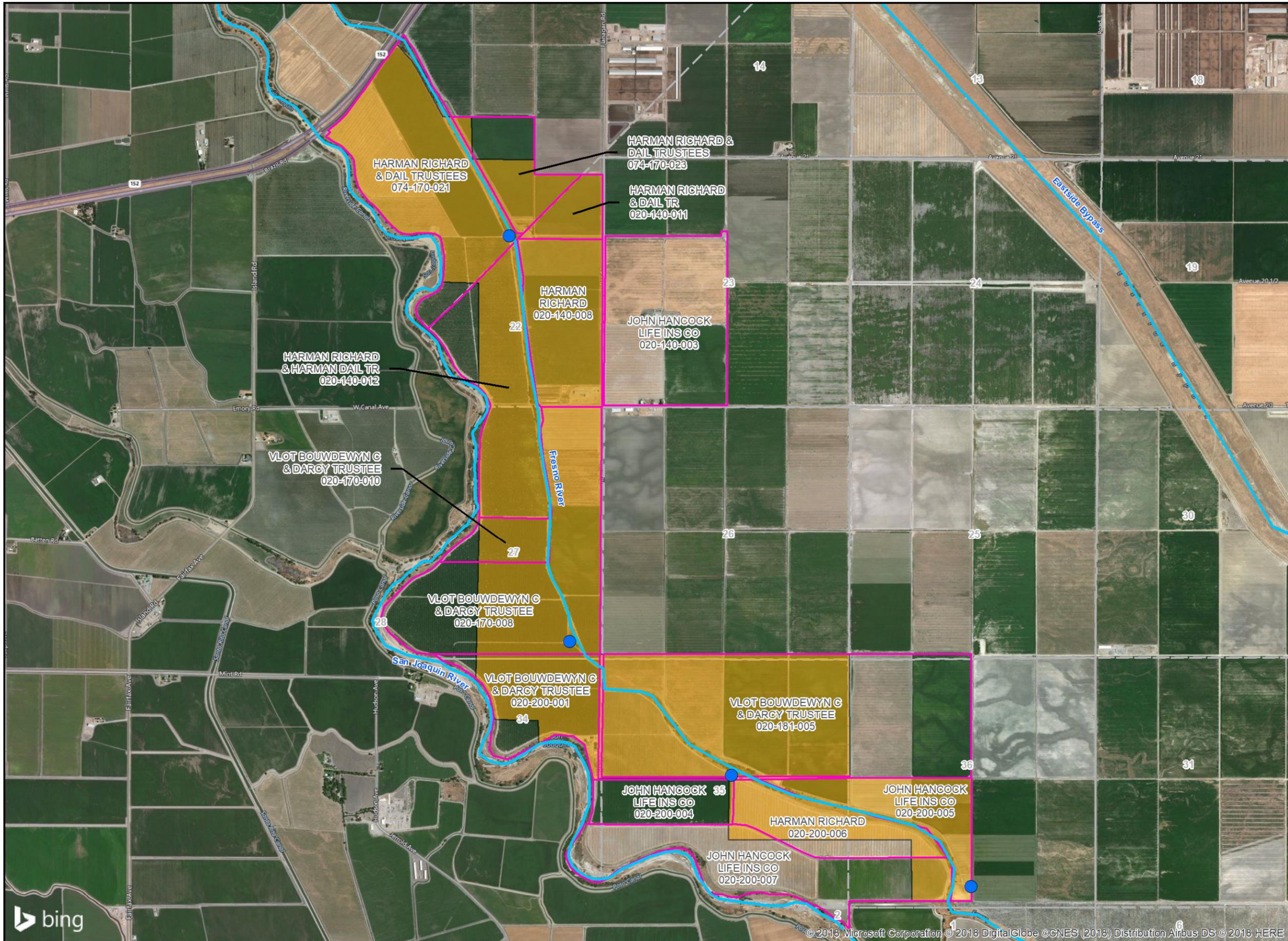


EXHIBIT “L”

Harman/Vlot/John Hancock Riparian Lands

- Riparian Land (1,497 acres)
 - Parcel
 - Section Boundary
 - Waterways
 - Point of Diversion
- Note: Boundaries are approximate





MADERA
IRRIGATION DISTRICT

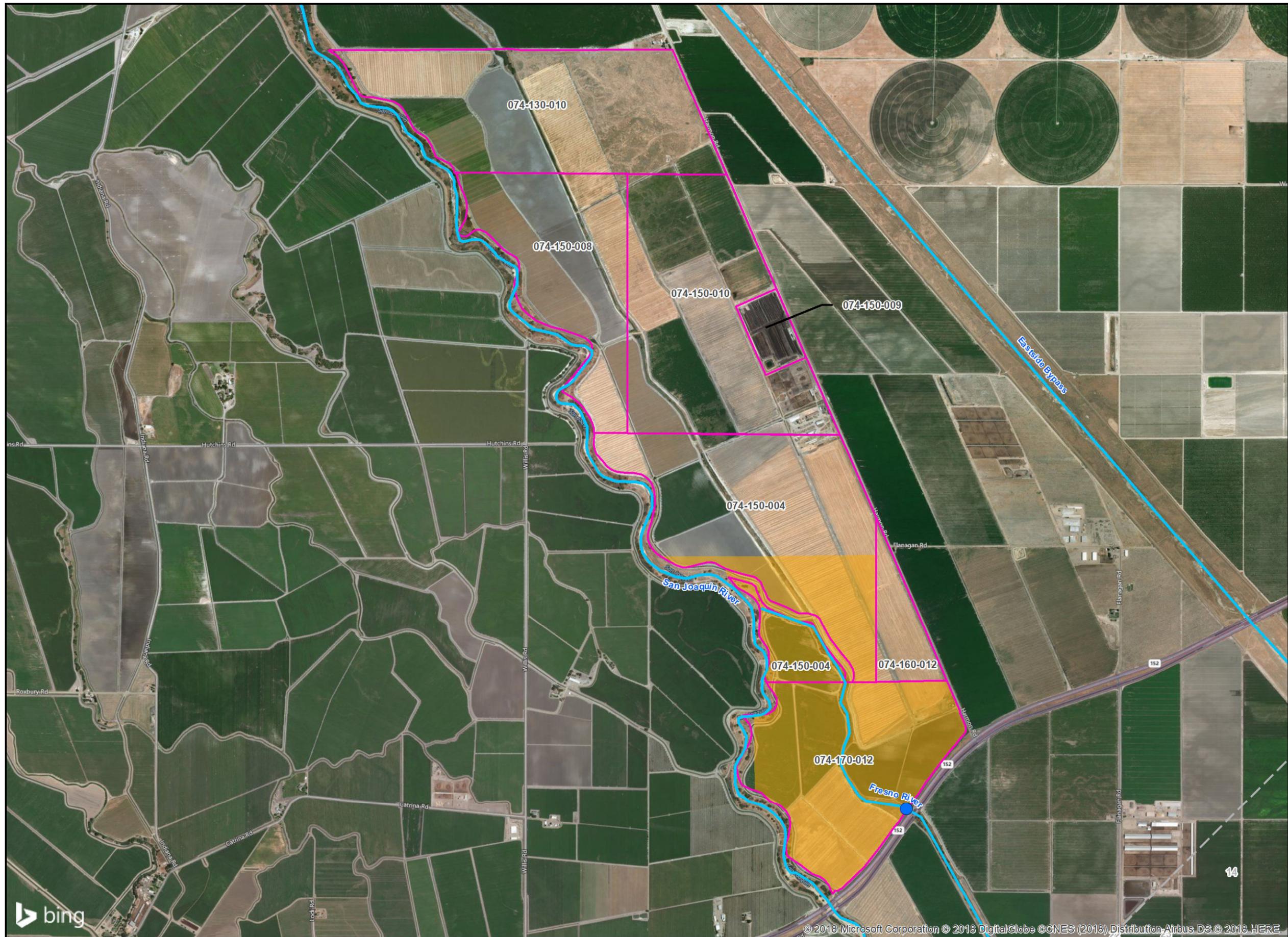
Date:
10/12/2018

Author:
Ramon E Mendez





EXHIBIT “M”



Menefee Riparian Lands

- Riparian Land (495 acres)
- Parcel
- Section Boundary
- Waterways
- Point of Diversion

Note: Boundaries are approximate



Date: 10/17/2018

Author: Ramon E Mendez

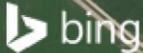
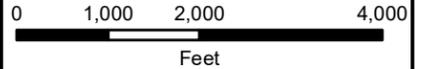


EXHIBIT “N”



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 18733

PERMIT 16584

LICENSE **13836**

Page 1 of 7

THIS IS TO CERTIFY, That

U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

has made proof as of **November 6, 2008, November 14, 2008, and July 9, 2009** (the dates of inspection) to the satisfaction of the State Water Resources Control Board (State Water Board) of a right to the use of the waters of **Fresno River** in **Madera County**

tributary to **San Joaquin River**

for the purposes of **Domestic, Irrigation and Recreational uses**

under Permit **16584** of the State Water Board; that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the State Water Board, and the permit terms; that the priority of this right dates from **May 22, 1959**; and that the amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **seventy one thousand six hundred (71,600) acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year, provided the diversion season may be extended to include the months of November and May when equivalent exchange water has been or will be released from the Madera Canal into the Fresno River within 30 days. The maximum withdrawal in any one year shall not exceed 84,300 acre-feet.**

The capacity of the reservoir covered by this license shall not exceed 90,259 acre-feet.

This license does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 3, North 1,863,400 feet and East 6,741,170 feet, being within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 34, T9S, R19E, MDB&M.

THE POINT OF REDIVERSION OF SUCH WATER TO OFFSTREAM REGULATORY STORAGE IS LOCATED:

FR 10 - By California Coordinate System of 1983, Zone 3, North 1,834,960 feet and East 6,721,890 feet, being within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 25, T10S, R18E, MDB&M (FRM 27; Madera Lake diversion gate).

THE POINTS OF REDIVERSION OF SUCH WATER ON THE FRESNO RIVER ARE LOCATED:

- FR 1 - By California Coordinate System of 1983, Zone 3, North 1,840,670 feet and East 6,726,220 feet, being within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 19, T10S, R19E, MDB&M (FRM 28.4; Adobe Ranch pump).
- FR 2 - By California Coordinate System of 1983, Zone 3, North 1,832,030 feet and East 6,717,770 feet, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 25, T10S, R18E, MDB&M (FRM 26; DMP Development Corp et al pump).
- FR 2D- By California Coordinate System of 1983, Zone 3, North 1,829,320 feet and East 6,714,070 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T10S, R18E, MDB&M (FRM 25; Stoetzi Ranch pump # 2D).
- FR 2B- By California Coordinate System of 1983, Zone 3, North 1,828,540 feet and East 6,712,160 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, T10S, R18E, MDB&M (FRM 24.6; Stoetzi Ranch pump # 2B).
- FR 3 - By California Coordinate System of 1983, Zone 3, North 1,827,130 feet and East 6,708,990 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T10S, R18E, MDB&M (FRM 23.8; Island Tract pump).
- FR 6 - By California Coordinate System of 1983, Zone 3, North 1,825,960 feet and East 6,707,800 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 3, T11S, R18E, MDB&M (FRM 23.5; Rancho Bella Vista pump).
- FR 7 - By California Coordinate System of 1983, Zone 3, North 1,825,900 feet and East 6,707,800 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 3, T11S, R18E, MDB&M (FRM 23.49; Isla Vista Farms, LLC pump).
- FR 4 - By California Coordinate System of 1983, Zone 3, North 1,823,490 feet and East 6,705,570 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4, T11S, R18E, MDB&M (FRM 22.9; Herman and DaSilva pump).
- FR 5 - By California Coordinate System of 1983, Zone 3, North 1,823,040 feet and East 6,704,740 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4, T11S, R18E, MDB&M (FRM 22.8; DeBenedetto Ranch pump).
- FR 9 - By California Coordinate System of 1983, Zone 3, North 1,817,200 feet and East 6,700,170 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 8, T11S, R18E, MDB&M (FRM 22; Franchi Diversion Dam).

THE MOVABLE POINT OF REDIVERSION OF SUCH WATER ON THE FRESNO RIVER IS LOCATED:

- FR 2C- By California Coordinate System of 1983, Zone 3, North 1,828,540 feet and East 6,712,170 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, T10S, R18E, MDB&M (FRM 24.6; Stoetzi Ranch pump).
Trailer-mounted pump is portable within APN 031-192-007.

THE POINTS OF REDIVERSION OF SUCH WATER ON COTTONWOOD CREEK ARE LOCATED:

- CWC 1A - By California Coordinate System of 1983, Zone 3, North 1,786,790 feet and East 6,696,530 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 7, T12S, R18E, MDB&M (Singh Ranch pump).
- CWC 1B - By California Coordinate System of 1983, Zone 3, North 1,785,190 feet and East 6,686,170 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 11, T12S, R17E, MDB&M (Campos Land Co. et al pump).
- CWC 1C - By California Coordinate System of 1983, Zone 3, North 1,785,070 feet and East 6,680,860 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T12S, R17E, MDB&M (High and Mighty Farms Inc. pump).
- CWC 2 - By California Coordinate System of 1983, Zone 3, North 1,785,680 feet and East 6,672,340 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9, T12S, R17E, MDB&M (Cavaletto pump).
- CWC 2A - By California Coordinate System of 1983, Zone 3, North 1,784,310 feet and East 6,670,860 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, T12S, R17E, MDB&M (Prosperi pump).

- CWC 2B - By California Coordinate System of 1983, Zone 3, North 1,781,710 feet and East 6,667,680 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17, T12S, R17E, MDB&M (La Vina Ranch pump # 2B).
- CWC 2C - By California Coordinate System of 1983, Zone 3, North 1,781,700 feet and East 6,667,750 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17, T12S, R17E, MDB&M (La Vina Ranch pump # 2C).
- CWC 3 - By California Coordinate System of 1983, Zone 3, North 1,780,410 feet and East 6,665,030 feet, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 17, T12S, R17E, MDB&M (La Vina Ranch pump # 3).
- CWC 4 - By California Coordinate System of 1983, Zone 3, North 1,780,380 feet and East 6,664,960 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 18, T12S, R17E, MDB&M (La Vina Ranch pump # 4).
- CWC 10S - By California Coordinate System of 1983, Zone 3, North 1,777,750 feet and East 6,661,040 feet, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 19, T12S, R17E, MDB&M (Nolo Farms II, LLC pump).
- CWC 11 - By California Coordinate System of 1983, Zone 3, North 1,784,040 feet and East 6,670,370 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, T12S, R17E, MDB&M (CWC Lateral Diversion Dam).
- CWC 12 - By California Coordinate System of 1983, Zone 3, North 1,780,140 feet and East 6,665,130 feet, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 17, T12S, R17E, MDB&M (South Lateral Diversion Dam).
- CWC 13 - By California Coordinate System of 1983, Zone 3, North 1,784,340 feet and East 6,677,240 feet, being within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15, T12S, R17E, MDB&M (Galeener Ditch Diversion Dam).
- CWC 14 - By California Coordinate System of 1983, Zone 3, North 1,783,810 feet and East 6,678,210 feet, being within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15, T12S, R17E, MDB&M (Hargrove Ditch Diversion Dam).
- CWC 15 - By California Coordinate System of 1983, Zone 3, North 1,785,640 feet and East 6,683,550 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 11, T12S, R17E, MDB&M (Mordecai Ditch Diversion Dam).

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Irrigation of 46,031 acres net within a gross area of 49,002 acres, and Domestic use all within the Hidden Dam Place of Use shown on USBR map Drawing No. 214-202-93 dated April 18, 2011 filed with the State Water Board. Recreational use at Hensley Lake Reservoir within Sections 13, 14, 22, 23, 26, 27, 28, 34 and 35, T9S, R19E, MDB&M.

Storage of water under this license, which occurs by reason of furnishing a substitute supply of water to owners of prior downstream water rights, shall not constitute an abandonment or loss of the downstream owners' rights, nor create a right to store water hereunder when a substitute supply is not furnished the downstream owner under an existing contract with said owner.

(0000800)

This license shall be subject to appropriations by storage upstream from Hidden Reservoir with a priority subsequent to May 22, 1959 for stockwatering and recreational purposes, provided the individual capacity of reservoirs for such purposes does not exceed 10 acre-feet and the reservoirs are kept free of phreatophytes.

(0230800)

In addition to the reservation in the preceding paragraph, this license shall be subject to depletion of flow into Hidden Reservoir of 2,000 acre-feet per annum by upstream appropriations with a priority subsequent to May 22, 1959.

(0230800)

The State Water Board reserves jurisdiction over this license for the purpose of approving terms and conditions of agreements authorizing substitution of Madera Canal water for Fresno River water which have been formulated by the parties for protection of existing downstream water rights. Licensee shall submit to the State Water Board agreements reached with owners of downstream rights to the flow of the Fresno River. The State Water Board may, at any time, on its own motion or at the request of protestants or interested parties, hear, review, and make such further order as may be necessary.

(0000600)

A minimum pool of 5,000 acre-feet shall be maintained at all times for Recreational use.

(0540071)

The reservoir shall be kept open to the public for Recreational use, subject to reasonable charge for any services or facilities that are provided by the licensee. Failure to allow public access may result in revocation of this license or reduction in the amount of water that may be stored.

(0030045)

Licensee shall render and maintain the low-flow outlet pipes for Hensley Lake/Hidden Dam in proper working order unless Licensee and downstream riparian parties are in agreement to provide downstream flows according to a mutually-acceptable schedule.

(0050800mod)

Licensee shall release or bypass sufficient water to satisfy the prior rights of Triangle T Ranch, the Harman Brothers Ranch, and Menefee River Ranch, or their successors-in-interest, provided that the parties' rights singly or in combination cannot exceed the natural flow of the Fresno River, and provided that the licensee is not required to release flows that exceed the capacity of the Fresno River Road 9 Control Structures located within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 18, T11S, R15E, MDB&M, unless the licensee and Triangle T Ranch, the Harman Brothers Ranch, and Menefee River Ranch reach an agreement to do otherwise. At all times, licensee shall also release or bypass sufficient water to satisfy the prior rights of Costa View Farms, Cosyns Farms and Iest Family Farms unless licensee, Costa View Farms, Cosyns Farms and Iest Family Farms, or their successors-in-interest, reach an agreement to do otherwise.

(9999999)

By October 1, 2011, licensee and the Madera Irrigation District shall develop, in cooperation with downstream riparian diverters, a Fresno River Operations Protocols document for the purpose of providing guidance to all parties on how to operate the Fresno River water system. The Protocols document should address the following:

- A. Big Creek imports
- B. North Fork Willow Creek imports
- C. Operation of Hensley Lake/Hidden Dam
- D. Accounting of Storage under this Permit and pre-1914 rights held by the District
- E. Fresno River reach demands
- F. San Joaquin River imports
- G. Downstream post-1914 appropriative water rights; and
- H. Downstream riparian water rights

(9999999)

By October 1, 2011, licensee shall ensure that Madera Irrigation District completes an analysis satisfactory to the Deputy Director for Water Rights to determine (1) the limits of its pre-1914 direct diversion rights; and (2) whether the conversion of the District's pre-1914 direct diversion water rights to Big Creek, North Fork Willow Creek, and Fresno River water to storage rights in Hensley Lake behind Hidden Dam may cause injury to any legal user of water.

(9999999)

Licensee shall have priority for storage over all other storage at Hidden Dam/Hensley Lake Reservoir. Water stored under other existing rights shall not interfere with the exercise of full and unrestricted use under this license or with any downstream prior rights.

(9999999)

The maximum withdrawal from storage in any twelve-month period from Hidden Dam/Hensley Lake Reservoir has been 84,300 acre-feet. Water stored behind Hidden Dam and subsequently withdrawn for use can include (1) water stored under this license; and (2) water stored under existing pre-1914 rights held by Madera Irrigation District. The inclusion of this term does not quantify or qualify the existing rights of Madera Irrigation District.

(9999999)

Diversion to storage under existing rights held by Madera Irrigation District shall be appropriated only in accordance with law.

(9999999)

By October 1, 2011, licensee, in cooperation with the District, shall jointly develop and submit to the Division a Water Diversion and Use Monitoring Program (Program) that identifies water stored under this license and water directly diverted and stored under the District's pre-1914 rights. The Program will be subject to approval by the Deputy Director for Water Rights, and must include the following:

- A. A timeline identifying completion dates for the Program's action items;
- B. A description of the frequency of data collection, and the measuring devices and methods for recording flow and storage levels; and
- C. A methodology (including assumptions) for analyzing flow and storage data to account for water directly diverted and stored under this license and pre-1914 rights held by the District.

The methodology will be used to confirm future compliance with the terms and conditions of this license. If the Deputy Director for Water Rights determines that the submitted Program is not acceptable, the District must correct the deficiencies within 120 days of notification.

(9999999)

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
PHIL CRADER FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: AUG 25 2011

