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ASSOCIATION

14 STATE WATER RESOURCES CONTROL BOARD

16 SEMITROPIC IMPROVEMENT DISTRICT OF
SEMITROPIC WATER STORAGE DISTRICT,

17 Petitioner,

18 v.

19 KINGS RIVER WATER ASSOCIATION,
20 FRESNO IRRIGATION DISTRICT,
CONSOLIDATED IRRIGATION DISTRICT,
21 ALTA IRRIGATION DISTRICT, and DOES 1
through 100, inclusive,

22 Respondents.

RESPONSE OF KINGS RIVER WATER
ASSOCIATION, ALTA IRRIGATION
DISTRICT, CONSOLIDATED
IRRIGATION DISTRICT, AND FRESNO
IRRIGATION DISTRICT TO
SEMITROPIC IMPROVEMENT
DISTRICT OF SEMITROPIC WATER
STORAGE DISTRICT COMPLAINT IN
SUPPORT OF PETITION TO REVISE
AND/OR REVOKE DECLARATION OF
FULLY APPROPRIATED STREAM
SYSTEM FOR THE KINGS RIVER

24
25 Respondents KINGS RIVER WATER ASSOCIATION (**KRWA**), ALTA IRRIGATION
26 DISTRICT, CONSOLIDATED IRRIGATION DISTRICT, and FRESNO IRRIGATION
27 DISTRICT (collectively the “**Districts**”) hereby respond to the Complaint in Support of Petition
28 to Revise and/or Revoke Declaration of Fully Appropriated Stream System for the Kings River

1 (Complaint) filed by SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER
2 STORAGE DISTRICT (“Petitioner” or “Semitropic”) as follows:

3
4 **I. INTRODUCTION**

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

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

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

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

6 II. FACTUAL AND LEGAL BACKGROUND

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

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

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

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

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

5 Appropriation of Kings River flows for irrigation and other uses dates back to before
6 California was admitted as a state. (State Water Board Decision¹ 1290, p. 10.) KRWA’s member
7 units held riparian and pre-1914 appropriative rights to the historic flows of the Kings River.
8 These entities formed the KRWA in 1927, and later filed applications to appropriate all Kings
9 River flows. Some of these applications are dated as early as 1916. The predecessor agency to
10 the State Water Board issued eight permits for the applications and, ultimately, six licenses were
11 issued to cover all the applications.

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

18 As described in Decision 1290, the average annual water supply from the Kings River
19 during the period 1896-1966 was 1,626,526 acre-feet, while the maximum flow year came in
20 1906 and was 3,958,300 acre-feet. Thus, the Licenses’ quantities exceeded the pre-Decision 1290
21 maximum flow year. This fact was confirmed in Decision 1290, which provides:

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

27 Decision 1290 further provides:

28 ¹ State Water Board Decisions will hereinafter be referred to as “Decision” followed by the number assigned to the decision

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

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

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

19 **C. Federal Regulation for Flood Protection**

20 Federal statutory law and regulations govern flood control regulation associated with the
21 nation's dams and reservoirs constructed with federal funds for purposes including flood control.
22 (See 33 U.S.C., §700 et seq.; 33 C.F.R., §208.11.) Pine Flat Dam and Reservoir were constructed
23 pursuant to specific authorization in the Flood Control Act of 1944. (Pub.L. No. 78-534, (1944)
24 58 Stat. 901.) In pertinent part, the authorizing language provides, "The project for flood control
25 and other purposes for the Kings River and Tulare Lake Basin, California, is hereby authorized
26 substantially in accordance with plans contained in House Document No. 630, Seventy-sixth
27 Congress, third session, with such modifications thereof as in the discretion of the Secretary of
28 War and the Chief of Engineers may be advisable" (*Ibid.*) The Flood Control Act of 1944
further requires the Secretary of the Army to prescribe regulations for the use of storage allocated
to flood control at all reservoirs constructed wholly or in part with federal funds provided on the

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

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

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

19 (Manual, section 17, p. 15.)

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

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

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

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

11 When flood releases are not required—as determined by the diagram—outflows depend
12 on irrigation demand and fish requirements. KRWA and the then-named California Department
13 of Fish and Game signed an agreement in 1964 establishing minimum releases and rates of
14 change for releases from Pine Flat Lake and at Centerville Bottoms to benefit fish and wildlife on
15 the Kings River. (Manual, p. 16.) The agreements provide for a minimum release of 25 cfs from
16 Pine Flat Lake and for up to 100 cfs at Centerville Bottoms, depending on the time of year and
17 the volume of runoff during the previous water year. (Manual, Chart 17.) The minimum flow
18 requirements noted in the Manual have been superseded by the 1999 Kings River Fisheries
19 Program Framework Agreement executed between California Department of Fish and Game,
20 Kings River Conservation District and the KRWA. That agreement: established a temperature
21 control pool for Pine Flat Reservoir of 100,000 af; set year around minimum flow requirements of
22 100 cfs in all years; set minimum flow requirement of 250 cfs in the wettest quartile of years;
23 established a number of downstream flow requirements; established a capital contribution to the
24 program; and established a number of management objectives for the reservoir and various river
25 reaches. The Manual further states that, with a few exceptions, “virtually all use of Kings River
26 water [for irrigation] between Piedra [located just below Pine Flat Lake] and Mendota [located at
27 the confluence of the North Fork of the Kings River and the San Joaquin River] is being
28 administered by the Kings River Water Association.” (Manual, p. 24.) Irrigation releases are

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

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

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

13 III. ARGUMENT

14 A. Burden of Proof

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

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

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

28 B. Semitropic Lacks Standing to Bring its Complaint

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

1 “standing” to file a complaint is a fundamental legal principle. To establish standing to sue, a
2 plaintiff must minimally establish: (1) injury in fact; (2) causation; and (3) redressability. (*Lujan*
3 *v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Cent. Delta Water Agency v. United States*,
4 306 F.3d 938, 946-47 (9th Cir. 2002)). With regard to complaints filed with the State Board
5 regarding alleged violations of a water right permit/license, the complainant must be directly
6 “affected by a violation” - unless the complaint is brought solely for the benefit of the public.
7 (23 C.C.R., § 820.)

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

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

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

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

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

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

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

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

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

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

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

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

13 An appropriative right may be lost by abandonment where the appropriator expresses an
14 intent to abandon a right coupled with a relinquishment of dominion and control. (*Wood v.*
15 *Etiwanda Water Co.* (1905) 147 Cal. 228, 233-234.) Abandonment requires proof of an intent to
16 relinquish permanently the possession of a property right; nonuse is evidence of abandonment,
17 but not determinative. (*Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450, 455.) The
18 intent and relinquishment of possession must be concurrent. (*Utt v. Frey* (1895) 106 Cal. 392,
19 397-398.)

20 As described above, the Tulare Lakebed water right licenses are intended to allow for the
21 beneficial use of waters that reach the Lakebed. In order to avoid flood damage to life and
22 property, the Corps mandates flood flows to be first routed to the North Fork via the James
23 Bypass, and at rates up to the channel capacity of 4,750 cfs. Under most conditions, this protocol
24 will protect the Lakebed from flooding. In certain years, however, there have been massive
25 Kings River flood flows resulting in hundreds of thousands of acre-feet of floodwater reaching
26 the Tulare Lakebed (e.g. 1969). In those situations, flood flows are diverted/used and stored in
27 the Lakebed. Licenses 11517 and 11521 evidence KRWA’s clear intent to divert, store and use
28

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

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

4 Semitropic’s third cause of action alleges that the KRWA has failed to perfect Licenses
5 11517 and 11521. Semitropic cites no legal authority for this claim. The inspections of the
6 permitted water rights occurred in the 1970’s and 1980’s, which led the State Water Board to
7 issue final licenses in 1984. The claim that the water rights applications/permits associated with
8 Licenses 11517 and 11521 have not been perfected is plainly false.

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

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

17 **IV. CONCLUSION**

18 The bottom line is that this Complaint continues Semitropic’s false claim that flood flows
19 routed to the North Fork of the Kings River are somehow magically available for appropriation
20 on the South Fork of the Kings River. Those flows are not available on the South Fork because
21 they are routed to the North Fork pursuant to federal flood control authority. Moreover,
22 Semitropic has significantly exaggerated the actual conveyance capacity of the South Fork.
23 Kings River flood flows will be used for recharge/banking projects necessary to address SGMA
24 in the Kings River watershed of origin, but those projects will be realistically planned to
25 coordinate with the Corps’ important flood control operations. A thorough discussion of these
26 issues is set forth in the May 31, 2019 comment letter submitted by KRWA and the Districts, and
27 the letter and its exhibits are incorporated by reference herein.
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For all the reasons set forth herein, KRWA requests that the State Board summarily dismiss Semitropic's Complaint. If necessary, KRWA is prepared to present additional law and evidence, but offers this initial response as sufficient for dismissal of the Complaint.

Respectfully Submitted this May 31, 2019,

SOMACH SIMMONS & DUNN

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

By: 

By: 

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

Joseph Hughes
General Counsel for Kings River Water
Association

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

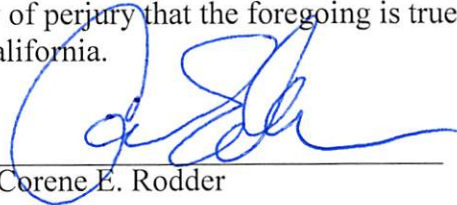
On May 31, 2019, I served the following document(s):

KINGS RIVER WATER ASSOCIATION COMMENT LETTER REGARDING PETITIONS TO REVISE DECLARATION OF FULLY APPROPRIATED STREAM SYSTEMS – KINGS RIVER SYSTEM

RESPONSE OF KINGS RIVER WATER ASSOCIATION, ALTA IRRIGATION DISTRICT, CONSOLIDATED IRRIGATION DISTRICT, AND FRESNO IRRIGATION DISTRICT TO SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER STORAGE DISTRICT COMPLAINT IN SUPPORT OF PETITION TO REVISE AND/OR REVOKE DECLARATION OF FULLY APPROPRIATED STREAM SYSTEM FOR THE KINGS RIVER

X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

X (mail) by causing to be delivered a true copy thereof to the person(s) and at the address(es) set forth below: I declare under penalty of perjury that the foregoing is true and correct. Executed on May 31, 2019 at Sacramento, California.


Corene E. Rodder

SERVICE LIST

Kevin O'Brien
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, California 95814

Attorneys for Semitropic Water Storage District

EXHIBIT A

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

DIRECT DIVERSION (cfs): Maximum **monthly average** of natural flow (includes water stored less than 30 days), but does not include water released from storage.

COLLECTED TO STORAGE: Water delivered to storage for more than 30 days.

TAKEN FROM SOURCE: Water collected to storage plus direct diversions.

BENEFICIAL USE: Water taken from storage plus direct diversions.