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State Water Board Has Authority to Implement Temporary Emergency Regulations Curtailing Water Diversions Without Prior Evidentiary Hearing

The Third Appellate District held that the State Water Resources Control Board has the authority to issue temporary emergency regulations and curtailment orders which establish minimum flow requirements, regulate unreasonable use of water, and protect threatened fish species during drought conditions. [Stanford Vina Ranch Irrigation Co. v. State of California](#), No. C085762 (3rd Dist., June 18, 2020) During California's severe drought period in 2014 and 2015, the State Water Board adopted emergency regulations and curtailment orders on three tributaries of the Sacramento River, including Deer Creek in Tehama County. The regulations were established pursuant to urgency legislation authorizing the State Water Board "to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water," or "to require curtailment of diversions. . . ." Wat. Code, §1058.5. The regulations issued by the Water Board limited the diversion of water from Deer Creek for certain periods in order to maintain the required flow of water and protect Chinook salmon and steelhead trout, two threatened species affected by the drought during their migratory cycles.



Petitioner, a non-profit irrigation company that operates diversion dams and ditches for agricultural use in Deer Creek, filed suit challenging the regulations. Petitioner noted that it was entitled by a 1923 judicial decree to use roughly 66 percent of the flow of Deer Creek and argued that the Water Board was required to hold an evidentiary hearing before issuing and implementing the regulations. It further argued that the regulations resulted in a taking of its vested water rights and that the Water Board did not comply with due process under the federal and California constitutions. The appellate court first found that the Water Board's statutory authority under the urgency legislation was constitutionally valid and that the temporary emergency regulations were consistent with article X, section 2 of the California Constitution, which ordains conservation of water resources. The court also concluded that adoption of the regulations was not arbitrary, capricious, or lacking in evidentiary support. The court next concluded that contrary to Stanford Vina's arguments, the Water Board was not required to hold an evidentiary hearing prior to adoption of a regulation governing reasonable water use. Neither the due

process guarantees of federal or California Constitutions, nor article X, section 2 of the California Constitution required such a hearing. The court likewise dismissed petitioner's argument that the regulations violated its vested rights. Based on review of the record, the court found that petitioner lacked a fundamental vested right to the flow and thus the Water Board's curtailment orders were valid if supported by substantial evidence. The record contained such substantial evidence and hence the curtailment of water did not equate to a taking of petitioner's water rights and no compensation was due.