

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

ORDER WR 2020-0113-EXEC

In the Matter of

Eddie Vierra Farms (Delta Watermaster Enforcement Action No. 78)

ORDER APPROVING SETTLEMENT AGREEMENTS

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the Delta Watermaster's issuance of an Amended Draft Cease-and-Desist Order (Amended Draft CDO) to Eddie Vierra Farms, LLC (Respondent) on June 12, 2020. In the three attached settlement agreements, the Delta Watermaster and the Respondent have agreed to settle this matter in lieu of proceeding to hearings. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.¹

2.0 BACKGROUND

Respondent owns the "Home Ranch," an approximately 174-acre irrigated agricultural property on Roberts Island in the Delta. Respondent filed an Initial Statement of Water Diversion and Use for diversions of water for use on the Home Ranch in 2009. The Board's Division of Water Rights (Division) numbered this statement S016199. In this statement, Respondent claimed rights to divert and use water on this ranch under riparian and pre-1914 appropriative rights.

Respondent owns the "Woods Ranch." Respondent filed Initial Statements of Water Diversion and Use for diversions of water for use on the Woods Ranch in 2009 and 2010. The Division numbered the statement for the ranch's western portion S016201 and the statement for the ranch's eastern portion S018904. In these statements, Respondent claimed rights to divert and use water on this ranch under riparian and pre-

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

1914 appropriative rights. This order concerns the western portion of the Woods Ranch. The western portion of the Woods Ranch contains approximately 90 acres of irrigated agricultural property on Roberts Island in the Delta. The Settlement Agreement for the Woods Ranch states that the eastern portion of the Woods Ranch was addressed in the Board's Order WR 2016-0006-EXEC.

Respondent owns the "Walker Ranch," an approximately 108-acre irrigated agricultural property on Roberts Island in the Delta. Respondent filed an Initial Statement of Water Diversion and Use for diversions of water for use on the Walker Ranch in 2009. The Division numbered this statement S016200. In this statement, Respondent claimed rights to divert and use water on this ranch under riparian and pre-1914 appropriative rights.

On December 28, 2009, the Division issued a Draft Cease-and-Desist Order (Draft CDO) to Respondent. The Draft CDO concerned diversions and use of water on the Home Ranch, the Woods Ranch and the Walker Ranch.

On January 8, 2010, Respondent requested a hearing on the Draft CDO. Because of pending litigation concerning other Delta properties owned by other parties that involved similar issues, the State Water Board never issued any notice for this hearing.

On February 7, 2020, the Board's Executive Director assigned proceedings regarding the Draft CDO to the Administrative Hearings Office (AHO).

On June 12, 2020, the Delta Watermaster, acting pursuant to Water Code section 85230, issued the Amended Draft CDO to Respondent.

On August 27, 2020, the AHO issued a Notice of Public Hearing, which set three hearings to consider the issues raised by the Amended Draft CDO. The AHO scheduled these hearings for November 19-20, 2020 (Home Ranch), December 2-3, 2020 (Woods Ranch) and January 7-8, 2021 (Walker Ranch).

3.0 SETTLEMENT AGREEMENT

After the AHO issued its Notice of Public Hearing, representatives of the Delta Watermaster and the Respondent continued to meet and confer to discuss the relevant documents and issues. On October 16, 2020, Respondent and the Delta Watermaster executed a Settlement Agreement with respect to the Home Ranch issues. A copy of this Settlement Agreement is attached hereto as Exhibit A. On October 23, 2020, Respondent and the Delta Watermaster executed a Settlement Agreement with respect to the Woods Ranch (western portion) issues. A copy of this Settlement Agreement is attached hereto as Exhibit B. On October 30, 2020, Respondent and the Delta Watermaster executed a Settlement Agreement with respect to the Walker Ranch issues. A copy of this Settlement Agreement is attached hereto as Exhibit C.

After execution of these Settlement Agreements, Respondent and the Delta Watermaster jointly asked the AHO to cancel the hearings on the Amended Draft CDO. The AHO issued notices cancelling these hearings on October 21, 2020 (Home Ranch), October 28, 2020 (Woods Ranch) and November 2 (Walker Ranch).

The general terms of these Settlement Agreements are:

- (1) Respondent waives its right to hearings on the Amended Draft CDO, waives its right to petition the Board for reconsideration of this Order, and agrees to the terms and conditions of the Settlement Agreements.
- (2) The Delta Watermaster agrees, for purposes of settlement, that the evidence submitted by Respondent is sufficient to support riparian rights claims for these three ranches.
- (3) Respondent will report diversions of water to be used on these three ranches pursuant to its riparian right claims. Respondent will not report diversions pursuant to its pre-1914 appropriative right claims unless Respondent first presents evidence supporting the claims to the Delta Watermaster, which the Delta Watermaster reserves the right to contest, as set forth in the Settlement Agreements.
- (4) The parties agree that this Order approving the Settlement Agreements shall constitute a cease and desist order under Water Code section 1831, which shall be enforceable by the Delta Watermaster pursuant to Water Code sections 1845 and 85230.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreements between the Delta Watermaster Team and Respondent are approved.

STATE WATER RESOURCES CONTROL BOARD

December 7, 2020

Date



Eileen Sobeck
Executive Director

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement is made this 16th day of October 2020 by and between Eddie Vierra Farms, LLC (Vierra) and the State Water Resources Control Board (State Water Board) acting by and through the Delta Watermaster (Watermaster).

RECITALS

AUTHORITY

1. Pursuant to State Water Board Resolution 2007-0057 and a subsequent re-delegation memo from the Deputy Director for Water Rights, which were in effect at the time, the Assistant Deputy Director for Water Rights issued a draft Cease and Desist Order (CDO) to Vierra on or about December 28, 2009.
2. Water Code section 1831, subdivision (d) provides “the [State Water Board] may issue a cease and desist order in response to a violation or threatened violation of ... [t]he prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to [division 2 of the Water Code].” The CDO alleged that Vierra had violated or threatened to violate Water Code section 1052, which provides that, “The diversion or use of water subject to this division other than as authorized in this division is a trespass.”
3. Water Code section 85230 established the independent, appointed office of Delta Watermaster with authority, among other things, “to issue a notice of a proposed cease and desist order...limited to diversions in the Delta.”
4. On August 7, 2018, the State Water Board adopted Resolution No. 2018-0037 delegating to the Watermaster additional authority related to diversions within the Delta, including authority to settle cease and desist orders prior to notice of a hearing.
5. Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (a)(2), provides that AHO hearing officers shall preside over hearings involving notices of proposed cease and desist orders under Water Code section 1831.
6. On January 3, 2020, the Deputy Director of the State Water Board's Division of Water Rights (Division), sent a memorandum to the State Water Board's Executive Director, proposing to transfer proceedings regarding the CDO to the AHO. On February 7, 2020, the Executive Director issued a memorandum assigning these proceedings to the AHO.
7. On June 12, 2020 the Division of Water Rights/Office of the Delta Watermaster Prosecution Team (Prosecution Team) issued a revised draft Cease and Desist Order (Revised CDO) to Vierra.

BACKGROUND

- 8.** On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the bases of water rights of existing diverters within the Central and South Delta. The Workplan also specified that, if and when unauthorized diversions were found, those diversions would be subject to enforcement action to cease unlawful diversions, obtain a legal water right, or secure a contract for water supplies.
- 9.** Pursuant to the Workplan and based on reviews of U.S. Geological Survey maps, aerial photographs, and San Joaquin County Assessors Maps, on February 18, 2009, the Division sent a letter to Vierra, as owner of San Joaquin County Assessor Parcel Numbers (APNs) 131-190-04, 131-190-05, 131-270-08 and 131-270-09 (sometimes referred to as "Home Ranch") requesting that Vierra file a Statement of Water Diversion and Use or otherwise substantiate the lawful basis for diversion of water to the Home Ranch.
- 10.** Vierra filed an Initial Statement of Water Diversion and Use on April 13, 2009 (Initial Statement) which states that 174 acres of alfalfa were planted within APNs 131-190-04, 131-190-05, 131-270-08 and 131-270-09 (Home Ranch) in 2009. This Initial Statement was assigned identification number S016199.
- 11.** Crop data published by the San Joaquin County Agricultural Commission and aerial photographs suggest that about 174 acres of alfalfa had been grown on Home Ranch over the five years preceding issuance of the CDO. According to the 1980 California Department of Water Resources publication "Crop Water Use in California," alfalfa has an estimated annual water consumptive use of 4.1 acre-feet per acre. The estimated annual consumptive use of water for irrigation on Home Ranch during those five years had been 713 acre-feet.
- 12.** On September 23, 2009, following review of the Initial Statement, the Division mailed a certified letter to Vierra advising that the San Joaquin County Assessor's Parcel maps show that Home Ranch does not have contiguity to a surface stream. The letter stated that the lack of contiguity indicates that a riparian basis of right typically would not exist. The September 23 letter requested that Vierra provide additional evidence to support the riparian claims for Home Ranch and/or documentation supporting initiation and continuous use of water under the pre-1914 claim of right. The September 23 letter warned of potential enforcement if an adequate response were not received. APN 131-270-08 should have been listed with the other parcels, because it contains a small part of the irrigated acres on Home Ranch.

13. Vierra submitted materials purporting to support riparian and pre-1914 claims for diversion and use of water on Home Ranch on December 22, 2009, including chain of title documents and historic maps.
14. On January 8, 2010, Vierra requested a hearing on the CDO.
15. Following review of the materials submitted by Vierra in 2009 the Division had remaining questions about whether or not the submitted information supported a riparian right for the Home Ranch, but did not request additional information from Vierra given the pending *Tanaka* litigation, noted below. Thus, the CDO remained outstanding pending the requested hearing.
16. On March 11, 2020 the AHO issued a Notice of Status Conference for the CDO. Thereafter, the Prosecution Team reviewed all available materials relating to the CDO and concluded that it was unable to locate the materials submitted by Vierra in 2009. Vierra thereafter re-submitted the materials for review by the Prosecution Team.
17. Based on review of the record of proceedings at that time (including the materials re-submitted by Vierra) the Prosecution Team was unable to identify evidence that adequately defeated the Prosecution Team's contention that severing a parcel from a natural watercourse ordinarily destroys the riparian right. Therefore, the Prosecution Team issued a Revised CDO on June 12, 2020
18. The Revised CDO proposed that Vierra submit to the Watermaster sufficient evidence establishing a basis of right or a water supply contract to serve Home Ranch, and that no diversions be made to Home Ranch until Vierra receives approval from the Watermaster to exercise the water rights or contracts that substantiate lawful bases for such diversions.
19. After issuance of the Revised CDO, the Prosecution Team met and conferred with Vierra to identify and review the specific deeds in the chain of title that separated Home Ranch from the main watercourses, the relevant language in those deeds, and relevant extrinsic evidence surrounding the deeds.
20. On May 7, 2020, the Third District Court of Appeal (Court) handed down a decision in *Modesto Irrigation District v. Heather Robinson Tanaka*, 48 Cal.App.5th 898 (2020) (*Tanaka*). On August 18, 2020, the California Supreme Court denied Modesto Irrigation District's petition for review and its request to "depublish" the Court's decision (Case S262781). Thus, the Court's decision has become the final, precedential resolution the *Tanaka* case.
21. The *Tanaka* case has significant parallel facts and circumstances to this case in that the Home Ranch parcels are located in a similar area of Roberts Island, were subject to reclamation development and marketing by the same people during the relevant time period, and involve the same or very similar extrinsic evidence related to the deeds that separated the current parcels from the

original larger patented tract of land, which was riparian to several Delta channels.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Vierra and the Prosecution Team (together, Settling Parties) hereby agree to settle the Revised CDO.

22. Recitals Incorporated. The preceding Recitals are incorporated herein.

23. Settlement Conditionally Confidential. Unless and until the State Water Board issues an order approving this Settlement Agreement (Settlement Order), this Settlement Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose. Notwithstanding the conditional nature of this Settlement Agreement, the Settlement Order shall be binding on the Settling Parties and settles any and all challenges by the State Water Board regarding the sufficiency of the riparian water right for the Home Ranch.

24. Request to Vacate Hearing and Issue Proposed Order. The Prosecution Team and Vierra agree to jointly request that the AHO cancel all future hearing dates and document submittal and appearance requirements, and submit a proposed Settlement Order to the State Water Board to effectuate this Settlement Agreement and finally resolve all issues raised by the Revised CDO.

25. Heritage Riparian Parcel. It is undisputed between the Settling Parties that (i) the land now known as Home Ranch was part of a much larger parcel of land on Roberts Island in San Joaquin County acquired by The Glasgow California Land Company (Glasgow) in 1877; and (ii) Glasgow's larger parcel was contiguous to several natural watercourses existing at the time, including the San Joaquin River, Burns Cutoff, Whiskey Slough, Trapper Slough and Duck Slough.

26. Separation of Home Ranch from Natural Watercourses. The Settling Parties have mutually identified the transactions which separated the land which is now Home Ranch from the San Joaquin River, Burns Cutoff, Whiskey Slough and Trapper Slough, which are evidenced by (i) a deed from Glasgow to McClaren in 1894 and (ii) a deed from Glasgow to Wacksmith in 1896. (The separate parcels that are now Home Ranch were later united under single ownership which is a predecessor-in-interest to Vierra's ownership of Home

Ranch.) Both deeds include standard language conveying the real property along with "tenements, hereditaments and appurtenances" thereto; the deeds do not explicitly convey "riparian water rights." The language in the relevant deeds is the same as the language involved in the deeds analyzed in the *Tanaka* decision.

- 27. Extrinsic Evidence of Intent to Convey Riparian Rights.** The Prosecution Team agrees that the extrinsic evidence Vierra proffered supports Vierra's contention that the parties to the 1894 and 1896 deeds intended that the separated parcels would retain proportional and undivided riparian rights theretofore attaching to Glasgow's larger parcel under common law.
- 28. Home Ranch Access to Trapper Slough.** At all times relevant to the CDO and the Revised CDO, Home Ranch has accessed irrigation water from Trapper Slough via the Kukuk Pump and a conveyance ditch therefrom.
- 29. No Determination of Pre-1914 Claim.** The Prosecution Team agrees for purposes of this settlement agreement that the evidence submitted by Vierra is sufficient to support the riparian claim by Vierra for the Home Ranch, but contends that Vierra's claim of pre-1914 appropriative rights is inconsistent with the riparian claim and unnecessary in light of the conclusion regarding the riparian claim. Vierra disputes the Prosecutions Team's position regarding the pre-1914 claim and does not waive and continues to claim a pre-1914 appropriative right to serve the Home Ranch. With regard to the pre-1914 claim, the Settling Parties agree that (i) Vierra shall, without prejudice to otherwise asserting the pre-1914 claim, not indicate diversion or use pursuant to a claim of a pre-1914 right when filing a Statement of Diversion and Use for the Home Ranch without first providing supporting evidence of such claim to the Watermaster; (ii) the Watermaster reserves the right to contest and take any appropriate action challenging such claimed pre-1914 right; and (iii) the Settling Parties acknowledge and agree that Vierra does not, either generally or by this Settlement, waive or forego its claim of pre-1914 rights to serve the Home Ranch or any other colorable claim to divert and use water on the Home Ranch that may be allowed by law. Vierra's agreement not to assert a claim of a pre-1914 right on any Statement of Diversion and Use for the Home Ranch shall not be construed by the State Water Resources Control Board, or any reviewing court, as a prejudice, forfeiture, waiver or relinquishment, nor shall it be considered evidence of non-use of that right.
- 30. Enforcement of this Settlement Agreement.** The Settlement Order approving this Settlement Agreement shall constitute a cease and desist order pursuant to Water Code section 1831 for purposes of any subsequent violations of this Settlement Agreement, which would, accordingly, be enforceable by the Watermaster pursuant to Water Code section 1845.
- 31. Waiver of Reconsideration of Settlement Order.** The Settling Parties waive their respective rights to request reconsideration of the Settlement Order

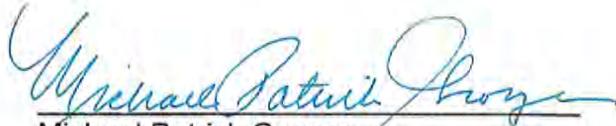
approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in the Settlement Order approving it.

- 32. Home Ranch Successors Bound.** This Settlement Agreement is binding on the successors or assigns of Vierra's ownership of Home Ranch.
- 33. Independent Judgment.** Each Settling Party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them. In exercising its independent judgement to enter into this Settlement Agreement, Vierra has engaged qualified counsel to represent it in the confidential settlement negotiations leading to this Settlement Agreement.
- 34. No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
- 35. Additional Documents.** Each Settling Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
- 36. Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between the Settling Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each of the Settling Parties represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
- 37. Mutual Agreement.** The Settling Parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
- 38. Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 39. Reasonableness of Settlement.** The Settling Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
- 40. Section Headings.** The Settling Parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that

they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.

- 41. Effective Date.** This Settlement Agreement shall become effective immediately upon issuance of the State Water Board's Settlement Order.
- 42. Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- 43. Authorization.** Each Settling Party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
- 44. No Waiver of Other Requirements.** Nothing in this Settlement Agreement or the Settlement Order approving it shall excuse Vierra from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board.

Dated: Oct. 16, 2020


Michael Patrick George
Delta Watermaster

Dated: Oct 16, 2020


Diane Yelland
Eddie Vierra Farms, LLC

EXHIBIT B

SETTLEMENT AGREEMENT – WOODS RANCH

This Settlement Agreement is made this 23rd day of October 2020, by and between Eddie Vierra Farms, LLC (Vierra) and the State Water Resources Control Board (State Water Board) acting by and through the Delta Watermaster (Watermaster).

RECITALS

AUTHORITY

1. Pursuant to State Water Board Resolution 2007-0057 and a subsequent re-delegation memo from the Deputy Director for Water Rights, which were in effect at the time, the Assistant Deputy Director for Water Rights issued a draft Cease and Desist Order (CDO) to Vierra on or about December 28, 2009.
2. Water Code section 1831, subdivision (d) provides "the [State Water Board] may issue a cease and desist order in response to a violation or threatened violation of ... [t]he prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to [division 2 of the Water Code]." The CDO alleged that Vierra had violated or threatened to violate Water Code section 1052, which provides that, "The diversion or use of water subject to the division other than as authorized in this division is a trespass."
3. Water Code section 85230 established the independent, appointed office of Delta Watermaster with authority, among other things, "to issue a notice of a proposed cease and desist order ... limited to diversions in the Delta."
4. On August 7, 2018, the State Water Board adopted Resolution No. 2018-0037 delegating to the Watermaster additional authority related to diversions within the Delta, including authority to settle cease and desist orders prior to notice of a hearing.
5. Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (a)(2), provides that AHO hearing officers shall preside over hearings involving notices of proposed cease and desist orders under Water Code section 1831.
6. On January 3, 2020, the Deputy Director of the State Water Board's Division of Water Rights (Division), sent a memorandum to the State Water Board's Executive Director, proposing to transfer proceedings regarding the CDO to the AHO. On February 7, 2020, the Executive Director issued a memorandum assigning these proceedings to the AHO.
7. On June 12, 2020, the Division of Water Rights/Office of the Delta Watermaster Prosecution Team (Prosecution Team) issued a revised draft Cease and Desist Order (Revised CDO) to Vierra.

BACKGROUND

8. On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the bases of water rights of existing diverters within the Central and South Delta. The Workplan also specified that, if and when unauthorized diversions were found, those diversions would be subject to enforcement action to cease unlawful diversions, obtain a legal water right, or secure a contract for water supplies.
9. Pursuant to the Workplan, and based on reviews of U.S. Geological Survey maps, aerial photographs, and San Joaquin County Assessors Maps, on February 18, 2009, the Division sent a letter to Vierra as owner of San Joaquin County Assessor Parcel Number (APN) 131-180-05 (sometimes referred to as "Woods Ranch") requesting that Vierra file a Statement of Water Diversion and Use or otherwise substantiate the lawful basis for diversion of water to the Woods Ranch.
10. Vierra filed two Initial Statements of Water Diversion and Use in 2009 for APN 131-180-05, (Initial Statements). These Initial Statements were assigned identification numbers S016201 and S018904.
11. The western portion of the Woods Ranch (approximately 90 acres) is irrigated from the Woods Robinson Vasquez pump on Middle River, and covered by S016201, while the eastern portion of the Woods Ranch is irrigated through the Woods Irrigation Company pump and, and covered by S018904.
12. On September 23, 2009, following review of the Initial Statements, the Division mailed a certified letter to Vierra, advising that the San Joaquin County Assessor's Parcel maps show that Woods Ranch does not have contiguity to a surface stream. The letter stated that the lack of contiguity indicates that a riparian basis of right typically would not exist. The September 23 letter requested that Vierra provide additional evidence to support the riparian claims for Woods Ranch and/or documentation supporting initiation and continuous use of water under the pre-1914 claim of right. The September 23 letter warned of potential enforcement if an adequate response were not received.
13. Vierra requested additional time to submit materials in response to the September 23, 2009 letter and thereafter submitted materials purporting to support riparian and pre-1914 claims for diversion and use of water on Woods Ranch on July 1, 2011, including chain of title documents and historic maps. In the meantime, the State Water Board was conducting enforcement proceedings regarding water right claims of Woods Irrigation Company, which impacted the Woods Ranch.

14. On December 28, 2009, the Division issued a CDO against Vierra for the Woods Ranch and two other properties (the Home Ranch and the Walker Ranch). On January 8, 2010, Vierra requested a hearing on the CDO.
15. Following review of the materials submitted by Vierra in 2011, the Division had remaining questions about whether or not the submitted information supported a riparian right for the Woods Ranch, but did not request additional information from Vierra given the pending Woods Irrigation Company proceeding, and the *Tanaka* litigation, noted below. Thus, the CDO remained outstanding pending the requested hearing.
16. On February 8, 2016, the State Water Board entered Order WR 2016-0006-EXEC, approving a settlement agreement resolving the Woods Irrigation Company proceeding, including diversion and use of water on the eastern portion of the Woods Ranch pursuant to Woods Irrigation Company's water rights, as described in S018904.
17. On March 11, 2020, the AHO issued a Notice of Status Conference for the CDO. Thereafter, the Prosecution Team reviewed all available materials relating to the CDO and concluded that it was unable to locate the materials submitted by Vierra in 2011. Vierra thereafter re-submitted the materials for review by the Prosecution Team.
18. Based on review of the record of proceedings at that time (including the materials re-submitted by Vierra), the Prosecution Team was unable to identify evidence for the western portion of the Woods Ranch that adequately defeated the Prosecution Team's contention that severing a parcel from a natural watercourse ordinarily destroys the riparian right. Therefore, the Prosecution Team issued a Revised CDO on June 12, 2020.
19. The Revised CDO proposed that Vierra submit to the Watermaster sufficient evidence establishing a basis of right or a water supply contract to serve the western portion of the Woods Ranch, and that no diversions be made by Vierra to serve the western portion of the Woods Ranch until Vierra receives approval from the Watermaster to exercise the water rights or contracts that substantiate lawful bases for such diversions.
20. After issuance of the Revised CDO, the Prosecution Team met and conferred with Vierra to identify and review the specific deeds in the chain of title that separated the Woods Ranch from the main watercourses, the relevant language in those deeds, and relevant extrinsic evidence surrounding the deeds.
21. On May 7, 2020, the Third District Court of Appeal (Court) handed down a decision in *Modesto Irrigation District V. Heather Robinson Tanaka*, 48 Cal.App.5th 898 (2020) (*Tanaka*). On August 18, 2020, the California Supreme Court denied Modesto Irrigation District's petition for review and its request to "depublish" the Court's decision (Case S262781). Thus, the Court's decision has become the final, precedential resolution the *Tanaka* case.

22. The *Tanaka* case has significant parallel facts and circumstances to this case in that the Woods Ranch parcels are located in a similar area of Roberts Island, were subject to reclamation development and marketing by the same people during the relevant time period, and involve the same or very similar extrinsic evidence related to the deeds that separated the current parcels from the original larger patented tract of land, which was riparian to several Delta channels.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Vierra and the Prosecution Team (together, Settling Parties) hereby agree to settle the Revised CDO, on the bases identified below, as to the western portion of the Woods Ranch covered by S016201. The Settling Parties mutually observe that diversion and use of water on the eastern portion of the Woods Ranch, from the Woods Irrigation Company pumps, is addressed in Order WR 2016-0006-EXEC.

23. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
24. **Settlement Conditionally Confidential.** Unless and until the State Water Board issues an order approving this Settlement Agreement (Settlement Order), this Settlement Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose. Notwithstanding the conditional nature of this Settlement Agreement, the Settlement Order shall be binding on the Settling Parties and settles any and all challenges by the State Water Board regarding the sufficiency of the riparian water right for the western portion of the Woods Ranch covered by S016201.
25. **Request to Vacate Hearing and Issue Proposed Order.** The Prosecution Team and Vierra agree to jointly request that the AHO cancel all future hearing dates and document submittal and appearance requirements, and submit a proposed Settlement Order to the State Water Board to effectuate this Settlement Agreement and finally resolve all issues raised by the Revised CDO.
26. **Heritage Riparian Parcel.** It is undisputed between the Settling Parties that (i) the land now known as Woods Ranch was part of a much larger parcel of land on Roberts Island in San Joaquin County acquired by Stewart, Burton and King in 1878; and (ii) this larger parcel was contiguous to several natural watercourses existing at the time, including the San Joaquin River, Burns Cutoff, Duck Slough, and Middle River.
27. **Separation of Woods Ranch from Natural Watercourses.** The Settling Parties have mutually identified the transactions which separated the land which is now the Woods

Ranch from the San Joaquin River, Burns Cutoff, and/or Middle River. These transactions include a deed from Stewart, et al. to Easton in 1892 for a portion of the Woods Ranch, a second deed from Stewart, et al. to Easton in 1892 for the remainder of the Woods Ranch and additional property extending to Burns-Cutoff, and a deed from Wilhoit and Douglass to Woods in 1909 including the entire Woods Ranch and additional property extending to Middle River. The deed from Wilhoit and Douglass to Woods in 1909 was part of a larger plan to divide the significant landholdings of Woods and Wilhoit and Douglass in the middle division of Roberts Island after the death of John Woods. These three deeds include standard language conveying the real property along with "tenements, hereditaments and appurtenances" thereto; the deeds do not explicitly convey "riparian water rights." The language in the relevant deeds is the same as the language involved in the deeds analyzed in the *Tanaka* decision. The current Woods Ranch parcel was not created and separately conveyed until 1972, through the distribution of the Estate of Celia Mary Woods to the three Vierra brothers. The 1972 deed to the Vierra brothers expressly includes rights to irrigation water through the Woods Robinson Vasquez system.

28. **Extrinsic Evidence of Intent to Convey Riparian Rights.** The Prosecution Team agrees that the extrinsic evidence Vierra proffered supports Vierra's contention that the parties to the 1892 deeds intended that the separated parcels would retain proportional and undivided riparian rights theretofore attaching to Stewart et al.'s larger parcel under common law.
29. **Woods Ranch Access to Middle River.** At all times relevant to the CDO and the Revised CDO, the western portion of the Woods Ranch has accessed irrigation water from Middle River via the Woods Robinson Vasquez pump and ditch system.
30. **No Determination of Pre-1914 Claim.** The Prosecution Team agrees for purposes of this settlement agreement that the evidence submitted by Vierra is sufficient to support the riparian claim by Vierra for the western portion of the Woods Ranch covered by S016201, but contends that Vierra's claim of pre-1914 appropriative rights is inconsistent with the riparian claim and unnecessary in light of the conclusion regarding the riparian claim. Vierra disputes the Prosecutions Team's position regarding the pre-1914 claim and does not waive and continues to claim a pre-1914 appropriative right to serve the western portion of the Woods Ranch covered by S016201. With regard to the pre-1914 claim, the Settling Parties agree that (i) Vierra shall, without prejudice to otherwise asserting the pre-1914 claim, not indicate diversion or use pursuant to a claim of a pre-1914 right when filing a Statement of Diversion and Use for the western portion of the Woods Ranch covered by S016201, without first providing supporting evidence of such claim to the Watermaster; (ii) the Watermaster reserves the right to contest and take any appropriate action challenging such claimed pre-1914 right; and (iii) the Settling Parties acknowledge and agree that Vierra does not, either generally or by this Settlement, waive or forego its claim of pre-1914 rights to serve the western portion of the Woods Ranch covered by S016201, or any other colorable claim to divert and use water on the western portion of the Woods Ranch that may be allowed by law. Vierra's agreement not to assert a claim of a pre-1914 right

on any Statement of Diversion and Use for the western portion of the Woods Ranch shall not be construed by the State Water Resources Control Board, or any reviewing court, as a prejudice, forfeiture, waiver or relinquishment, nor shall it be considered evidence of non-use of that right.

31. **Enforcement of This Settlement Agreement.** The Settlement Order approving this Settlement Agreement shall constitute a cease and desist order pursuant to Water Code section 1831 for purposes of any subsequent violations of this Settlement Agreement, which would, accordingly, be enforceable by the Watermaster pursuant to Water Code section 1845.
32. **Waiver of Reconsideration of Settlement Order.** The Settling Parties waive their respective rights to request reconsideration of the Settlement Order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in the Settlement Order approving it.
33. **Woods Ranch Successors Bound.** This Settlement Agreement is binding on the successors or assigns of Vierra's ownership of Woods Ranch.
34. **Independent Judgment.** Each Settling Party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them. In exercising its independent judgment to enter into this Settlement Agreement, Vierra has engaged qualified counsel to represent it in the confidential settlement negotiations leading to this Settlement Agreement.
35. **No Precedent.** This Settlement Agreement involved unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
36. **Additional Documents.** Each Settling Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
37. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between the Settling Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each of the Settling Parties represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
38. **Mutual Agreement.** The Settling Parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.

39. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed as an original, but all of which, together, shall constitute one and the same instrument.
40. **Reasonableness of Settlement.** The Settling Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
41. **Section Headings.** The Settling Parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
42. **Effective Date.** This Settlement Agreement shall become effective immediately upon issuance of the State Water Board's Settlement Order.
43. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the law of the State of California.
44. **Authorization.** Each Settling Party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
45. **No Waiver of Other Requirements.** Nothing in this Settlement Agreement or the Settlement Order approving it shall excuse Vierra from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board

Dated: October 23, 2020



Michael Patrick George
Delta Watermaster

Dated: 10/23, 2020



Diane Yelland
Eddie Vierra Farms, LLC

EXHIBIT C

SETTLEMENT AGREEMENT – WALKER RANCH

This Settlement Agreement is made this 30th day of October 2020 by and between Eddie Vierra Farms, LLC (Vierra) and the State Water Resources Control Board (State Water Board) acting by and through the Delta Watermaster (Watermaster).

RECITALS

AUTHORITY

1. Pursuant to State Water Board Resolution 2007-0057 and a subsequent re-delegation memo from the Deputy Director for Water Rights, which were in effect at the time, the Assistant Deputy Director for Water Rights issued a draft Cease and Desist Order (CDO) to Vierra on or about December 28, 2009.
2. Water Code section 1831, subdivision (d) provides “the [State Water Board] may issue a cease and desist order in response to a violation or threatened violation of ... [t]he prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to [division 2 of the Water Code].” The CDO alleged that Vierra had violated or threatened to violate Water Code section 1052, which provides that, “The diversion or use of water subject to this division other than as authorized in this division is a trespass.”
3. Water Code section 85230 established the independent, appointed office of Delta Watermaster with authority, among other things, “to issue a notice of a proposed cease and desist order...limited to diversions in the Delta.”
4. On August 7, 2018, the State Water Board adopted Resolution No. 2018-0037 delegating to the Watermaster additional authority related to diversions within the Delta, including authority to settle cease and desist orders prior to notice of a hearing.
5. Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (a)(2), provides that AHO hearing officers shall preside over hearings involving notices of proposed cease and desist orders under Water Code section 1831.
6. On January 3, 2020, the Deputy Director of the State Water Board’s Division of Water Rights (Division), sent a memorandum to the State Water Board’s Executive Director, proposing to transfer proceedings regarding the CDO to the AHO. On February 7, 2020, the Executive Director issued a memorandum assigning these proceedings to the AHO.
7. On June 12, 2020 the Division of Water Rights/Office of the Delta Watermaster Prosecution Team (Prosecution Team) issued a revised draft Cease and Desist Order (Revised CDO) to Vierra.

BACKGROUND

8. On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the bases of water rights of existing diverters within the Central and South Delta. The Workplan also specified that, if and when unauthorized diversions were found, those diversions would be subject to enforcement action to cease unlawful diversions, obtain a legal water right, or secure a contract for water supplies.
9. Pursuant to the Workplan and based on reviews of U.S. Geological Survey maps, aerial photographs, and San Joaquin County Assessors Maps, on February 18, 2009, the Division sent a letter to Vierra, as owner of San Joaquin County Assessor Parcel Number (APN) 131-260-02 (sometimes referred to as "Walker Ranch") requesting that Vierra file a Statement of Water Diversion and Use or otherwise substantiate the lawful basis for diversion of water to the Walker Ranch.
10. Vierra filed an Initial Statement of Water Diversion and Use in 2009 (Initial Statement) for Walker Ranch, APN 131-260-02 (approximately 108 acres). This Initial Statement was assigned identification number S016200.
11. Walker Ranch is also part of the 377.6 acre place of use under License 1345 (Application 5121), which authorizes the diversion of 4.7 cubic feet per second from about May 1 to about September 1 of each year from Burns Cutoff.
12. On September 23, 2009, following review of the Initial Statement, the Division mailed a certified letter to Vierra advising that the San Joaquin County Assessor's Parcel maps show that Walker Ranch does not have contiguity to a surface stream. The letter stated that the lack of contiguity indicates that a riparian basis of right typically would not exist. The September 23 letter requested that Vierra provide additional evidence to support the riparian claims for Walker Ranch and/or documentation supporting initiation and continuous use of water under the pre-1914 claim of right. The September 23 letter warned of potential enforcement if an adequate response were not received.
13. After requesting additional time to respond, Vierra submitted materials purporting to support riparian and pre-1914 claims for diversion and use of water on Walker Ranch on December 14, 2010, including chain of title documents and historic maps.
14. On January 8, 2010, Vierra requested a hearing on the CDO.

15. Following review of the materials submitted by Vierra in 2010 the Division had remaining questions about whether or not the submitted information supported a riparian right for the Walker Ranch, but did not request additional information from Vierra given the pending *Tanaka* litigation, noted below. Thus, the CDO remained outstanding pending the requested hearing.
16. On March 11, 2020 the AHO issued a Notice of Status Conference for the CDO. Thereafter, the Prosecution Team reviewed all available materials relating to the CDO and concluded that it was unable to locate the materials submitted by Vierra in 2010. Vierra thereafter re-submitted the materials for review by the Prosecution Team.
17. Based on review of the record of proceedings at that time (including the materials re-submitted by Vierra) the Prosecution Team was unable to identify evidence that adequately defeated the Prosecution Team's contention that severing a parcel from a natural watercourse ordinarily destroys the riparian right. Therefore, the Prosecution Team issued a Revised CDO on June 12, 2020.
18. The Revised CDO proposed that Vierra submit to the Watermaster sufficient evidence establishing a basis of right or a water supply contract to serve Walker Ranch, and that no diversions be made to Walker Ranch, in excess of those allowed by License 1345, until Vierra receives approval from the Watermaster to exercise the water rights or contracts that substantiate lawful bases for such additional diversions.
19. After issuance of the Revised CDO, the Prosecution Team met and conferred with Vierra to identify and review the specific deeds in the chain of title that separated Walker Ranch from the main watercourses, the relevant language in those deeds, and relevant extrinsic evidence surrounding the deeds.
20. On May 7, 2020, the Third District Court of Appeal (Court) handed down a decision in *Modesto Irrigation District v. Heather Robinson Tanaka*, 48 Cal.App.5th 898 (2020) (*Tanaka*). On August 18, 2020, the California Supreme Court denied Modesto Irrigation District's petition for review and its request to "depublish" the Court's decision (Case S262781). Thus, the Court's decision has become the final, precedential resolution of the *Tanaka* case.
21. The *Tanaka* case has significant parallel facts and circumstances to this case in that the Walker Ranch parcels are located in a similar area of Roberts Island, were subject to reclamation development and marketing by the same people during the relevant time period, and involve the same or very similar extrinsic evidence related to the deeds that separated the current Walker Ranch parcel from the original larger patented tract of land, which was riparian to several Delta channels.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Vierra and the Prosecution Team (together, Settling Parties) hereby agree to settle the Revised CDO.

- 22. Recitals Incorporated.** The preceding Recitals are incorporated herein.
- 23. Settlement Conditionally Confidential.** Unless and until the State Water Board issues an order approving this Settlement Agreement (Settlement Order), this Settlement Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose. Notwithstanding the conditional nature of this Settlement Agreement, the Settlement Order shall be binding on the Settling Parties and settles any and all challenges by the State Water Board regarding the sufficiency of the riparian water right for the Walker Ranch.
- 24. Request to Vacate Hearing and Issue Proposed Order.** The Prosecution Team and Vierra agree to jointly request that the AHO cancel all future hearing dates and document submittal and appearance requirements, and submit a proposed Settlement Order to the State Water Board to effectuate this Settlement Agreement and finally resolve all issues raised by the Revised CDO.
- 25. Heritage Riparian Parcel.** It is undisputed between the Settling Parties that (i) the land now known as Walker Ranch was part of a much larger parcel of land on Roberts Island in San Joaquin County acquired by The Glasgow California Land Company (Glasgow) in 1877; and (ii) Glasgow's larger parcel was contiguous to several natural watercourses existing at the time, including the San Joaquin River, Burns Cutoff, Whiskey Slough, Trapper Slough, Duck Slough and Middle River.
- 26. Separation of Walker Ranch from Natural Watercourses.** The Settling Parties have mutually identified the transaction which separated the land which is now Walker Ranch from the San Joaquin River, Burns Cutoff, and Middle River, which is evidenced by a deed from Glasgow to Herd in January of 1897; and the subsequent transaction which separated the land which is now Walker Ranch from Whiskey Slough and Trapper Slough, which is evidenced by a deed from Herd to Gillis in October of 1897. The deeds both include standard language conveying the real property along with "tenements, hereditaments

and appurtenances" thereto; the deeds do not explicitly convey "riparian water rights." The language in the relevant deeds is the same as the language involved in the deeds analyzed in the *Tanaka* decision.

- 27. Extrinsic Evidence of Intent to Convey Riparian Rights.** The Prosecution Team agrees that the extrinsic evidence Vierra proffered supports Vierra's contention that the parties to the successive 1897 deeds intended that the separated parcels would retain proportional and undivided riparian rights theretofore attaching to Glasgow's larger parcel under common law.
- 28. Walker Ranch Access to Burns Cutoff.** At all times relevant to the CDO and the Revised CDO, Walker Ranch has accessed irrigation water from Burns Cutoff via the Natali Pump and a conveyance ditch therefrom.
- 29. No Determination of Pre-1914 Claim.** The Prosecution Team agrees for purposes of this settlement agreement that the evidence submitted by Vierra is sufficient to support the riparian claim by Vierra for the Walker Ranch, but contends that Vierra's claim of pre-1914 appropriative rights is inconsistent with the riparian claim and unnecessary in light of the conclusion regarding the riparian claim. Vierra disputes the Prosecutions Team's position regarding the pre-1914 claim and does not waive and continues to claim a pre-1914 appropriative right to serve the Walker Ranch. With regard to the pre-1914 claim, the Settling Parties agree that (i) Vierra shall, without prejudice to otherwise asserting the pre-1914 claim, not indicate diversion or use pursuant to a claim of a pre-1914 right when filing a Statement of Diversion and Use for the Walker Ranch without first providing supporting evidence of such claim to the Watermaster; (ii) the Watermaster reserves the right to contest and take any appropriate action challenging such claimed pre-1914 right; and (iii) the Settling Parties acknowledge and agree that Vierra does not, either generally or by this Settlement, waive or forego its claim of pre-1914 rights to serve the Walker Ranch or any other colorable claim to divert and use water on the Walker Ranch that may be allowed by law. Vierra's agreement not to assert a claim of a pre-1914 right on any Statement of Diversion and Use for the Walker Ranch shall not be construed by the State Water Resources Control Board, or any reviewing court, as a prejudice, forfeiture, waiver or relinquishment, nor shall it be considered evidence of non-use of that right.
- 30. Enforcement of this Settlement Agreement.** The Settlement Order approving this Settlement Agreement shall constitute a cease and desist order pursuant to Water Code section 1831 for purposes of any subsequent violations of this Settlement Agreement, which would, accordingly, be enforceable by the Watermaster pursuant to Water Code section 1845.
- 31. Waiver of Reconsideration of Settlement Order.** The Settling Parties waive their respective rights to request reconsideration of the Settlement Order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements

of this Settlement Agreement are included in the Settlement Order approving it.

- 32. Walker Ranch Successors Bound.** This Settlement Agreement is binding on the successors or assigns of Vierra's ownership of Walker Ranch.
- 33. Independent Judgment.** Each Settling Party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them. In exercising its independent judgement to enter into this Settlement Agreement, Vierra has engaged qualified counsel to represent it in the confidential settlement negotiations leading to this Settlement Agreement.
- 34. No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
- 35. Additional Documents.** Each Settling Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
- 36. Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between the Settling Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each of the Settling Parties represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
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43. **Authorization.** Each Settling Party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
44. **No Waiver of Other Requirements.** Nothing in this Settlement Agreement or the Settlement Order approving it shall excuse Vierra from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board.

Dated: October 29, 2020



Michael Patrick George
Delta Watermaster

Dated: 10/30 2020



Diane Yelland
Eddie Vierra Farms, LLC