



January 8, 2024

Eric Oppenheimer  
Executive Director  
State Water Resources Control Board  
1001 I Street, 25th Floor  
Sacramento, CA 94814

**RE: 2022 Merced River Dewatering and Protective Year-Round Regulations**

Dear Director Oppenheimer,

Friends of the River (FOR) is committed to being a powerful voice for a climate resilient water future in California, with healthy rivers that support healthy ecosystems, equal access to safe and affordable drinking water, and a thriving, sustainable economy for all Californians. FOR has been working to protect California rivers for over 50 years. Throughout our history, FOR has devoted tremendous organizational resources to protecting the Merced River. Our portfolio of work on the Merced includes leading a successful campaign to designate a stretch of the Merced River as a federal Wild and Scenic River, participating in hydropower relicensings through the Federal Energy Regulatory Commission (FERC), including of the Merced River Hydroelectric Project (P-2179), and litigating related Clean Water Act § 401 certification issues.

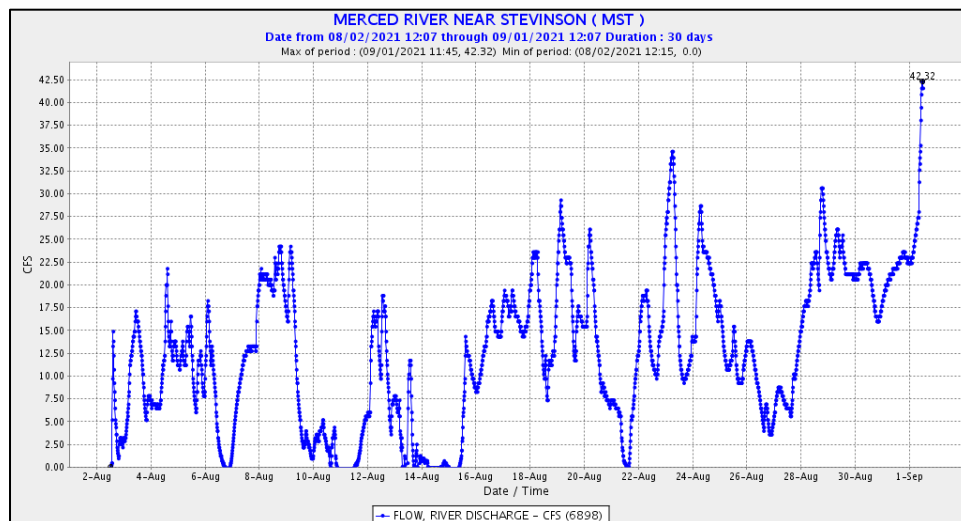
We are writing today in support of the requests by the California Department of Fish and Wildlife (CDFW) and the National Marine Fisheries Service (NMFS) that the State Water Resources Control Board (SWRCB) act urgently to address the Merced River dewatering from bank-to-bank during the dry season in 2022. In letters dated October 27 and November 22, 2022, CDFW and NMFS notified the SWRCB that the Merced River was observed as dewatered from bank-to-bank. According to the California Data Exchange Center (CDEC 2024), the Stevinson (MST) flow gage showed a sharp decline in river flow near zero cubic feet per second (cfs) as early as June 2022 and continued to show flows of near zero cfs until October 6, 2022.

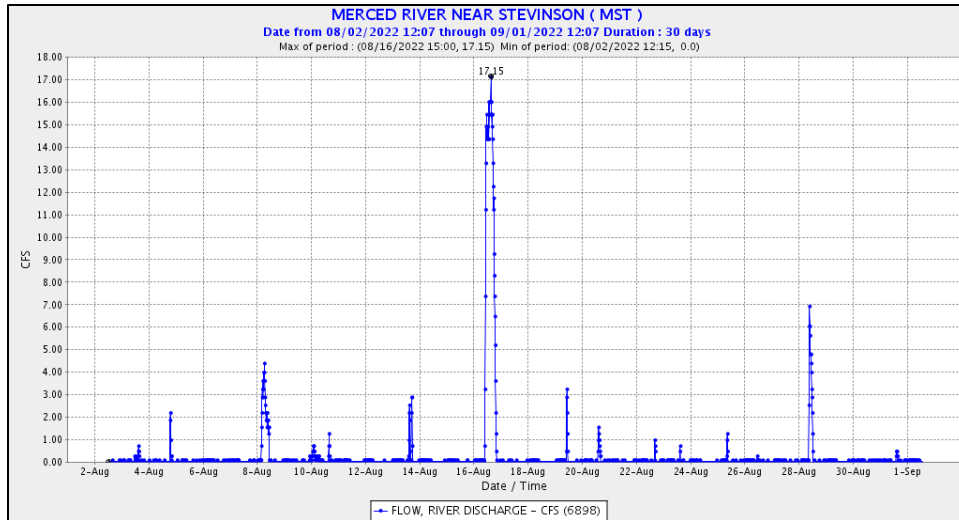


*Photographs taken from Hatfield Bridge (RM 2.5) on May 5, 2022 (left) and September 14, 2022 (right). Photos provided by California Department of Fish and Wildlife in their letter to the Board dated November 22, 2022.*

In a second letter dated March 1, 2023, NMFS encouraged the SWRCB to adopt emergency regulations, or regulations as needed if a drought proclamation is no longer in place and provided a recommendation for dry season baseflow conditions in the lower Merced River down to its confluence with the San Joaquin River. NMFS recommended a baseflow target of 66 cfs at the Stevinson gage (MST) to protect Pacific salmon Essential Fish Habitat (EFH), fish passage, and ecological process in the lower Merced River. The 66 cfs was derived using the California Environmental Flows Framework (CEFF).

In a brief review of recent CDEC data, FOR found that a constant baseflow of 66 cfs or more at the Stevinson gage was achieved in only three of the past ten years (time periods August 2 – September 1 in each year, 2014-2023). However, in four of these ten years, recorded flows dropped to zero cfs (2014, 2016, 2021, 2022), and in an additional two years, flows dropped below ten cfs (2015, 2018) (see Exhibit A). The August time period was chosen to generally examine mid-summer flow conditions on the lower Merced River.





*Taken as an example, these CDEC plots from August 2021 and August 2022 demonstrate baseflows well below 66 cfs. In 2021, flows frequently dropped to 0 cfs during the observed period. In 2022, flows flatlined at 0 cfs for most of the observed period.*

In response to dry conditions on the Merced River in 2016, Stevinson Water District (SWD), located at the confluence of the Merced and San Joaquin Rivers, filed a formal complaint to the Board requesting investigation of unlawful diversions (*see* Exhibit B). In this letter, SWD provided to the Board a list of APN’s, landowners, mailing addresses, and preliminary research on parcels and acreage, points of diversion, and manner of water rights. The Board responded to this request 5 years later, with a formal letter dated July 23, 2021 (*see* Exhibit C). In its response, the Board stated,

“During the previous drought the Division’s resources were overwhelmed, and we were unable to process your complaint. It is impractical for staff now to investigate alleged violations from the previous drought... For this reason, the Division [of Water Rights] is exercising discretion and will take no further action on this complaint.”

Although it is understandable that Board staff were overwhelmed during the 2012-2016 period, historic and current lack of action leaves the Merced River, its water rights holders, and public trust resources at risk. The 2016 letter, 2021 response, and CDEC plots demonstrate a pattern of drying on Merced. Unreliable flows and dry conditions, can have disastrous consequences on California’s native salmonids, which are highly sensitive to changes in flow and temperature. However, the Water Board can both reduce its workload during drought emergencies *and* reduce risk to the Merced River by implementing permanent dry season baseflow regulations.

The Merced River contains migration, holding, spawning, and rearing habitat for State and Federally threatened Central Valley spring-run Chinook salmon and federally threatened California Central Valley steelhead as well as Central Valley fall-run Chinook salmon. Additionally, the lower Merced River is designated as Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act. Ensuring adequate flows are present for in the lower Merced River during the dry season (and year-round) is critical for salmonid conservation, protection of EFH, and maintenance of ecological processes. Having a bank-to-bank dry river that overlapped with fall-run Chinook salmon migration period likely contributed to very low return numbers for 2022. FOR encourages the SWRCB to adopt permanent, year-round baseflow regulations protective of native species and their habitats in the lower Merced River.

Delays in establishing regulations and protections for instream flow may further harm these species and their habitats. It is imperative to proactively adopt protections for the lower Merced River before the next drought occurs, so that dewatering is not experienced again. Without these protections, we could very well lose these charismatic, important species. We support the interim dry season baseflow targets of 66 cfs that NMFS recommended in the March 1, 2023 letter derived from the CEFF. It is important that interim protections are adopted now while the necessary information is collected to enact permanent protections for the lower Merced River.

FOR requests the SWRCB to adopt baseflow targets in the lower Merced River that will protect valuable habitat for aquatic species. Without action, the Merced River's vulnerable native species and habitat are at risk of further decline and extirpation. We look forward to continuing engagement with the SWRCB to ensure water in California is managed for the sustainability for people and nature in an equitable manner.

Sincerely,



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Keiko Mertz  
Policy Director  
Friends of the River  
[keiko@friendsoftheriver.org](mailto:keiko@friendsoftheriver.org)

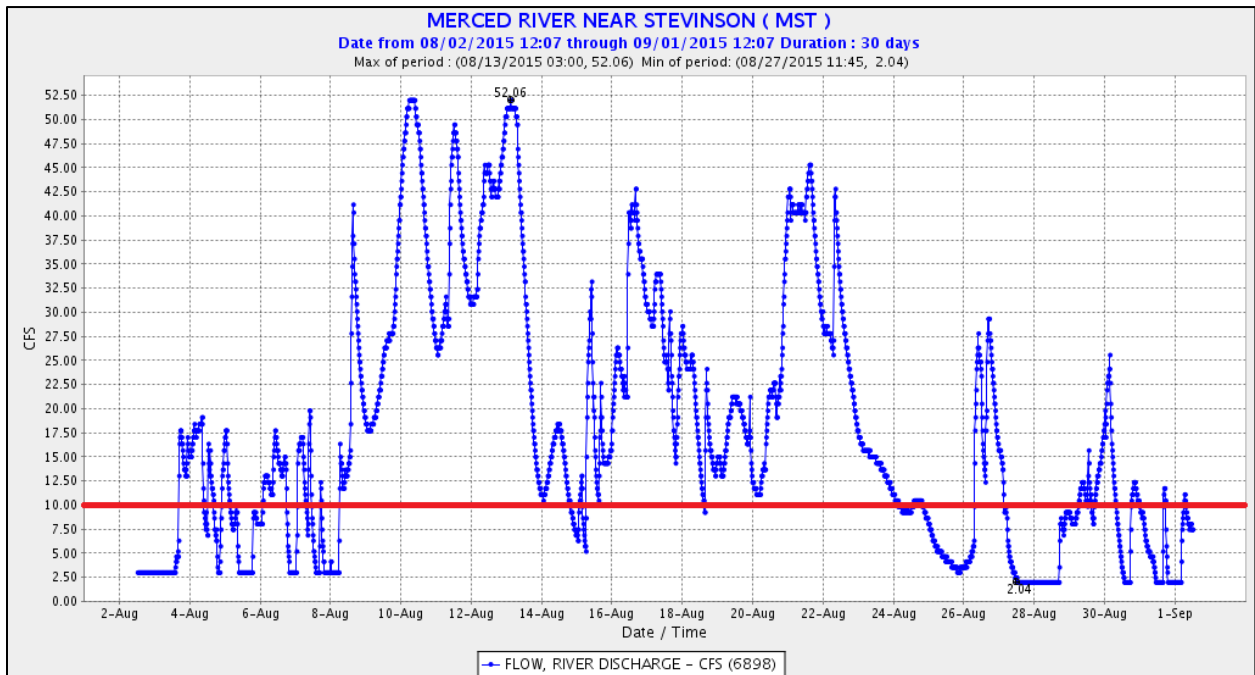
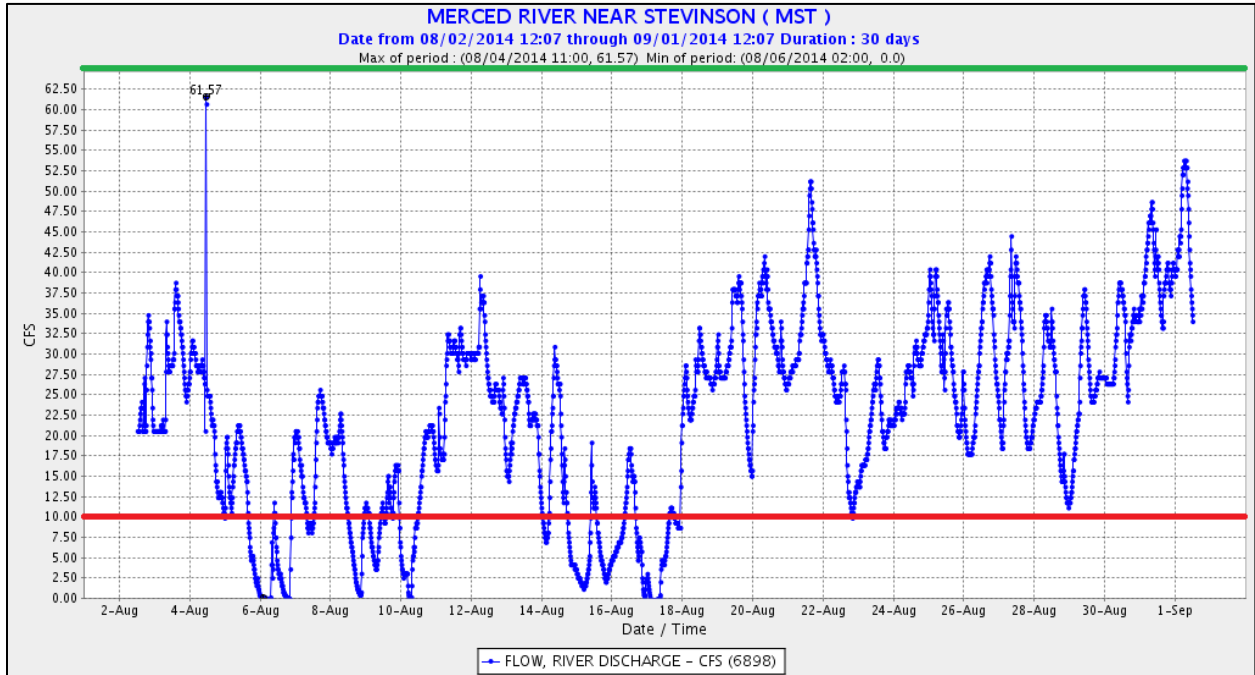


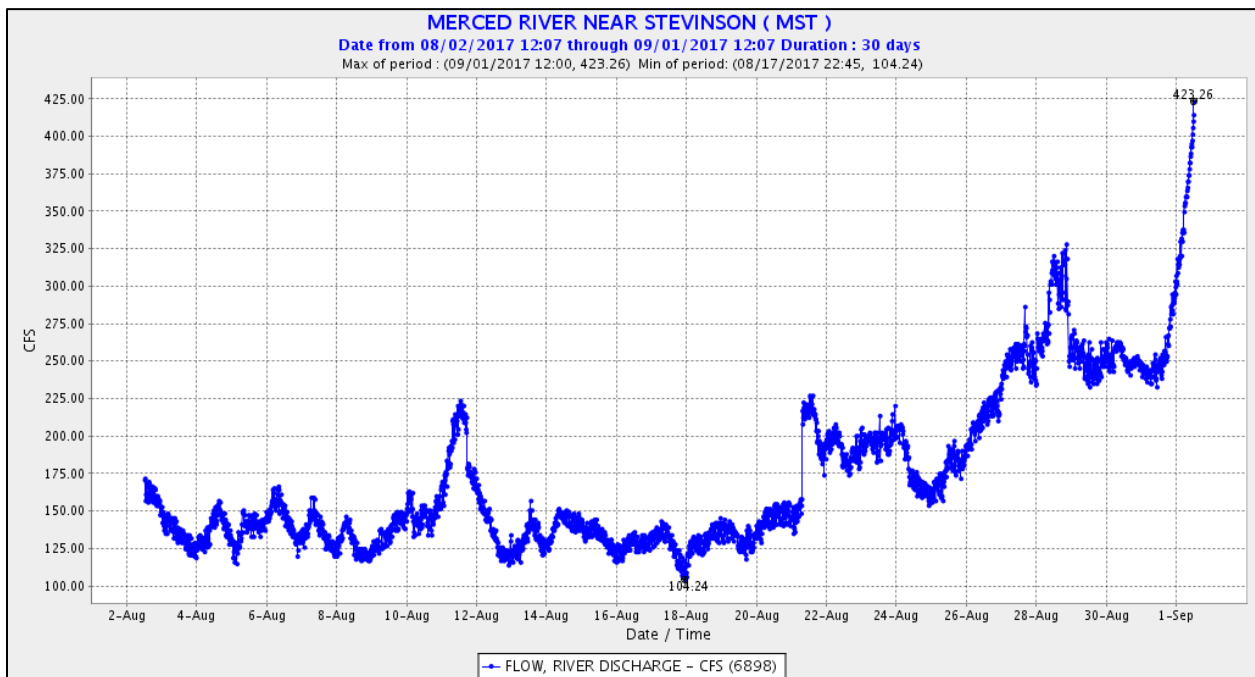
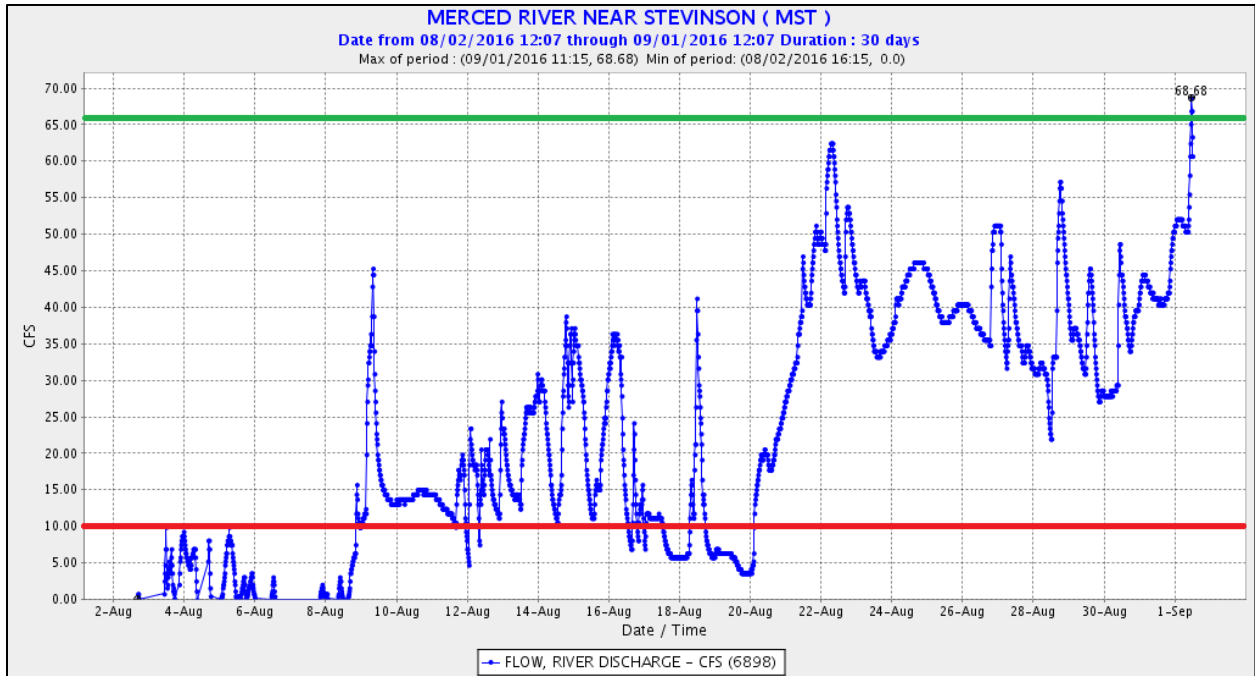
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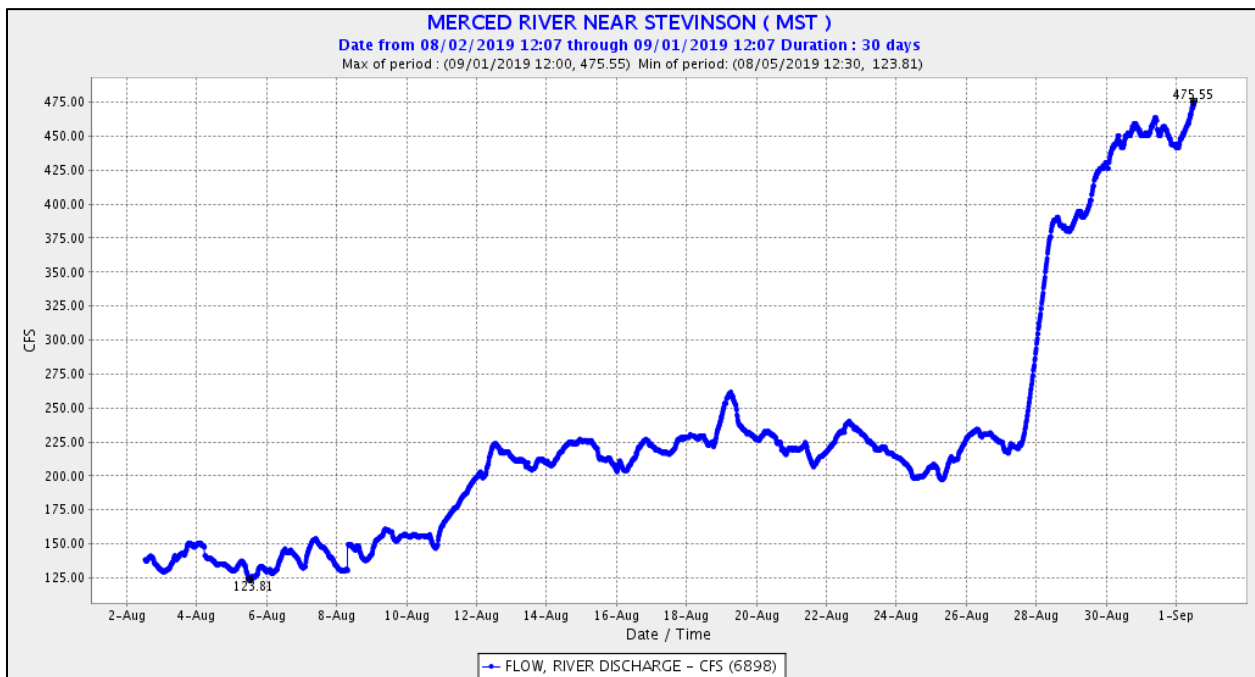
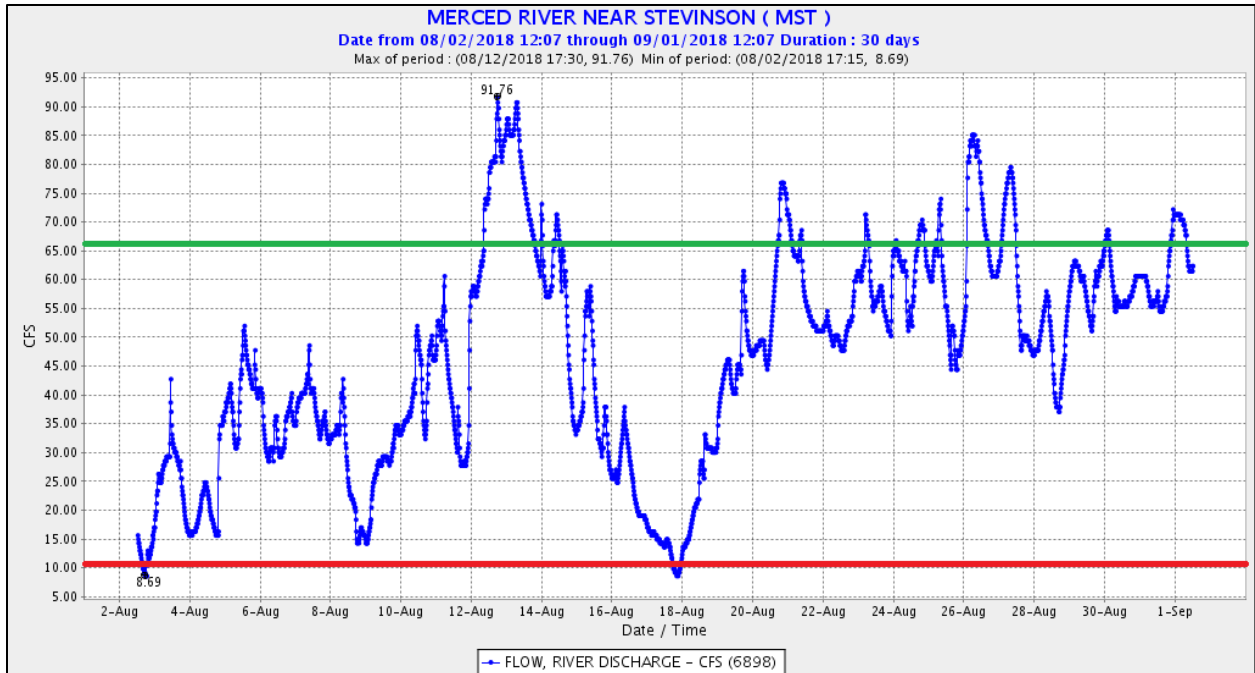
Chris Shutes  
Executive Director  
California Sportfishing Protection  
Alliance  
[Blancapaloma@msn.com](mailto:Blancapaloma@msn.com)

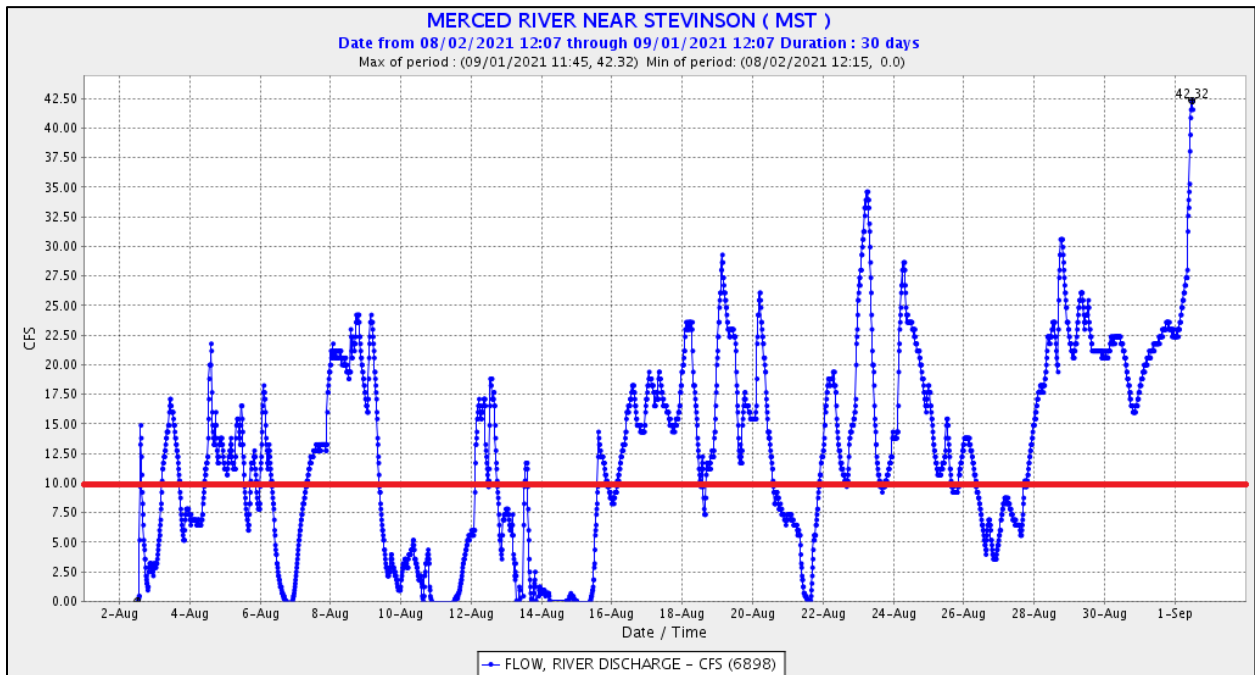
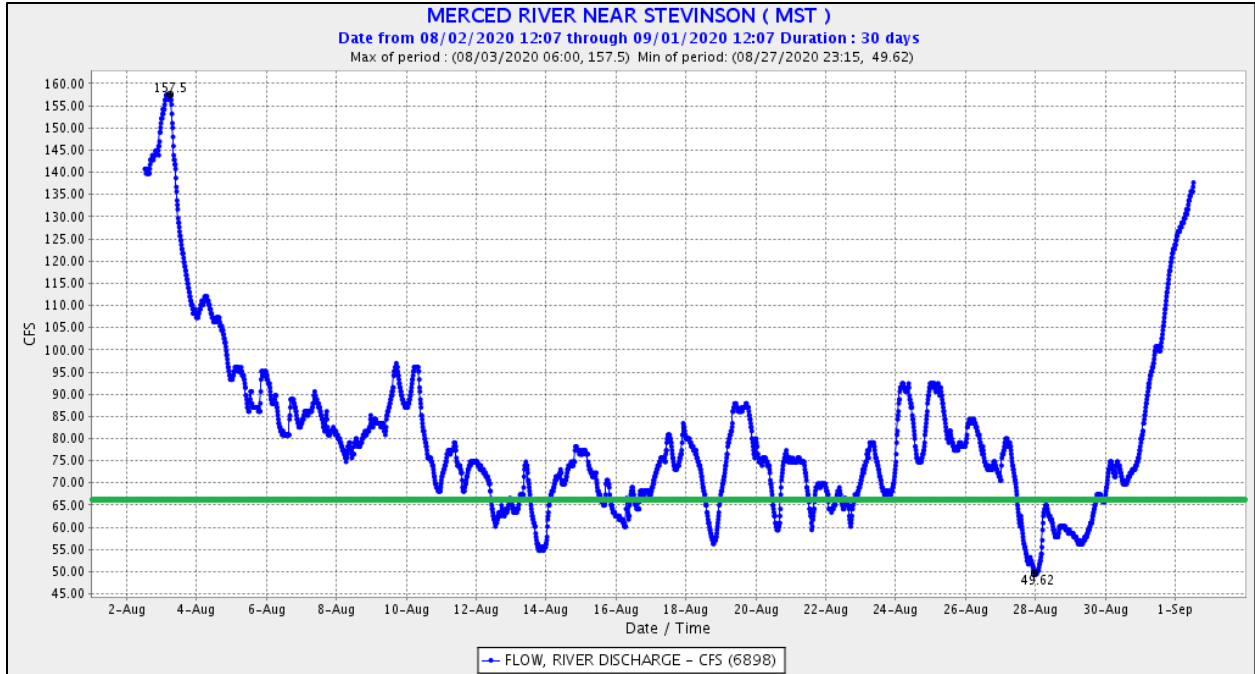
**Exhibit A:**

CDEC plots, in chronological order, for time period August 2 – September 1 in years 2014-2023. Green lines, where present, indicate NMFS's recommended baseflow target of 66 cfs. Red lines, where present, indicate where flows dropped below 10 cfs. Plots without red or green trendlines did not have either value represented on the y-axis.

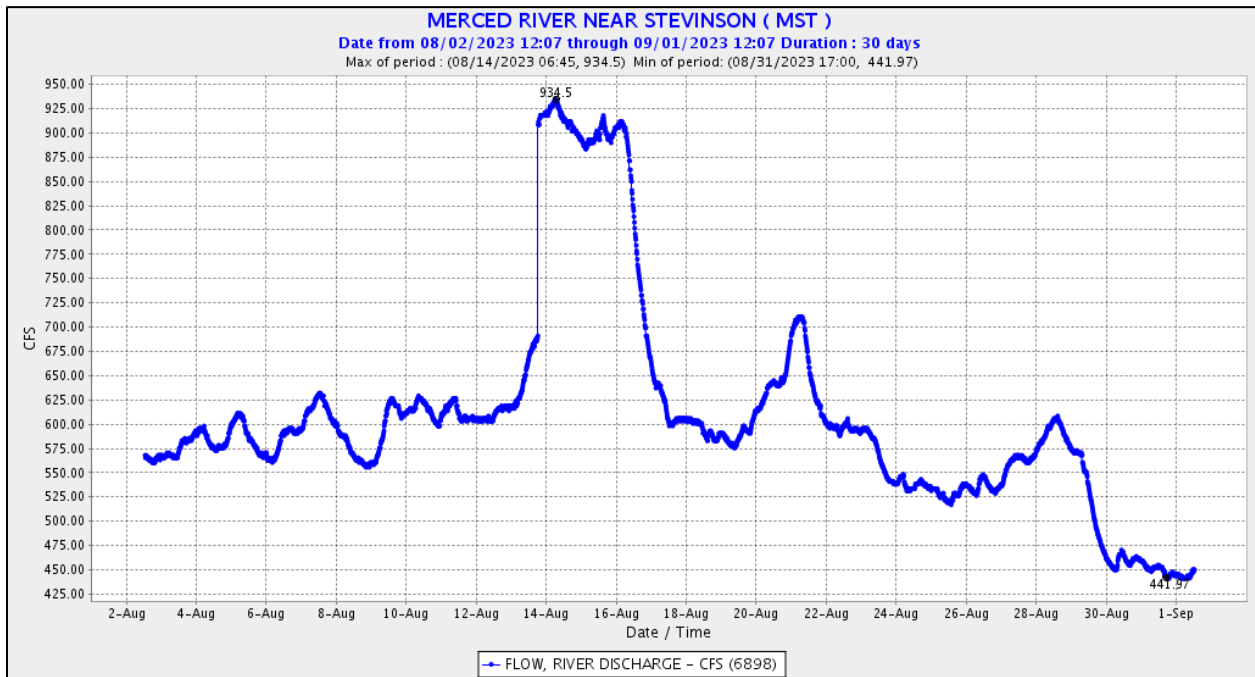
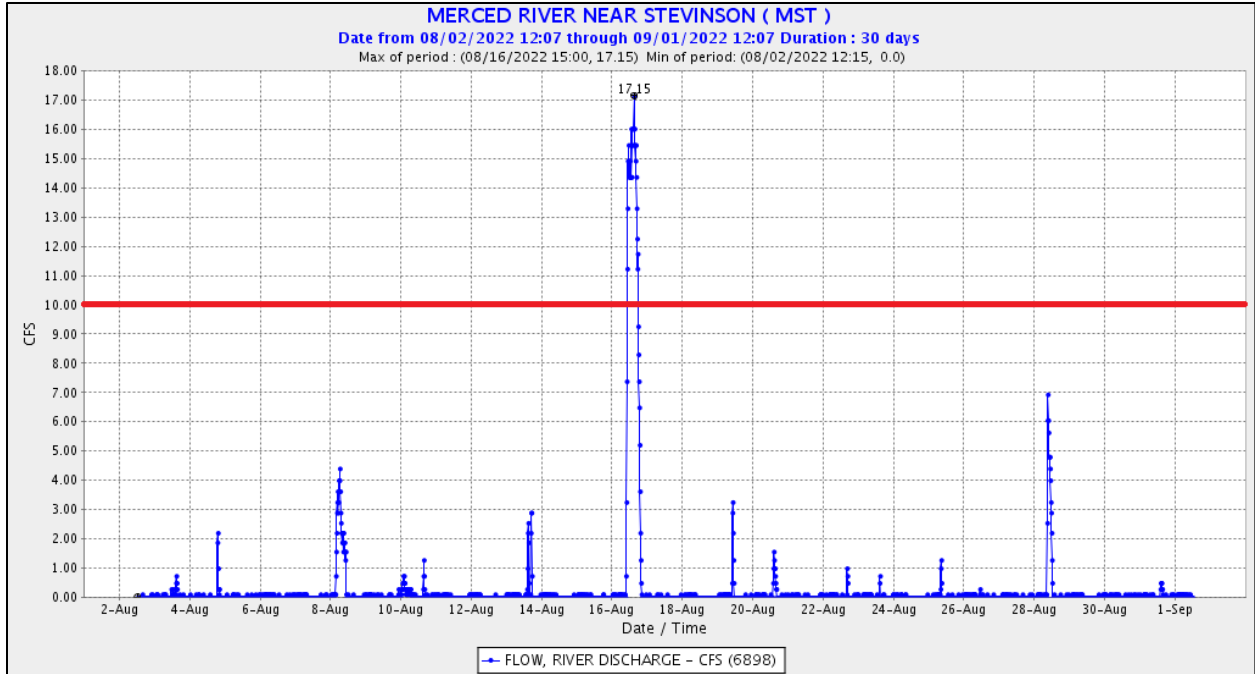






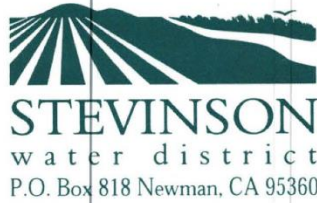






**Exhibit B:**

June 21, 2016 Letter from Stevinson Water District to the State Water Resources Control Board, Division of Water Rights



Ms. Janelle Heinzler  
 SWRCB, Division of Water Rights  
 Enforcement Section  
 P O Box 2000,  
 Sacramento, CA 95812-2000

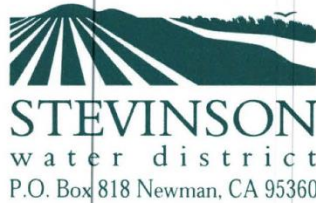
June 21, 2016

RE: Unlawful Riparian Diversions on Merced River

Dear Ms. Heinzler,

We have corresponded earlier this year about diversions upstream on the Merced River. Our district is at the confluences of the Merced and San Joaquin Rivers. Our landowners in our district hold appropriative water licenses on 5 POD's (License No. 3459, 1661, 5397) and riparian rights. We are suffering now from a practically dead river near the confluences of the Merced and San Joaquin Rivers in a year that is above normal rainfall. It is clear that there are many riparian diverters that are placing water on ground that is not riparian. As difficult as it is to inform on your neighbors I am now doing so. I will give you specific details as to where this unlawful diversion is taking place. While I have not researched on the title deeds to the listed property, I have a good understanding of the nature of riparian rights and feel strongly that much of these non-riparian lands are using riparian water. While I am not aware of all that is happening farther upstream, this practice is now becoming more wide spread. On 6/21/2016, CDEC information showed the Merced River go from 45 cfs to 22 cfs and back to 35 cfs on 6/22/2016 at Cressy, 20 miles upstream. The Merced River in Stevinson is zero, according to CDEC. Lawful diverters we can no longer allow this when the river is not flowing by the time it hits our district. I realize it is difficult for you to observe this practice, however I can provide specific knowledge to assist you in enforcement. I will begin with a list of APN's, landowners, mailing address and possible status riparian or non-riparian. All lands listed are receiving Merced River water. I will include in a separate file assessor parcel maps with POD's and conveyance facilities marked on them.

APN	Owner	Address	City & Zip	Acres	Riparian	Non-Riparian	POD
055-090-024	John R Baptista	4505 McCullaugh Rd.	Stevinson, CA 95374-9707	198	198		B
055-090-004	John R Baptista	4505 McCullaugh Rd.	Stevinson, CA 95374-9707	75		75	B
055-090-020	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	127	127		C
055-090-021	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	86		86	C
055-090-030	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	213			
<small>(this parcel was recently combined from 055-090-020 &amp; 021)</small>							
055-090-007	Gregory Vierra	20872 River Rd.	Stevinson, CA 95374-9778	48		48	C
055-090-009	John R Baptista	4505 McCullaugh Rd.	Stevinson, CA 95374-9707	26		26	C
055-090-012	John R Baptista	4505 McCullaugh Rd.	Stevinson, CA 95374-9707	68		68	C
055-090-027	John R Baptista	4505 McCullaugh Rd.	Stevinson, CA 95374-9707	33	33		C
055-090-013	Colleen Manak	9206 Fieldwood Ln.	Fair Oaks, CA 95628-4107	112		112	D
055-120-003	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	71		71	C
055-120-004	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	71		71	C
055-120-005	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	41		41	C
055-120-019	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	39		39	C
055-120-022	Gregory Vierra	21304 River Rd.	Stevinson, CA 95374-9778	39		39	C
055-090-006	John & Joe Souza	3325 McCullaugh Rd.	Stevinson, CA 95374-9707	29		29	A
055-090-005	John & Joe Souza	3325 McCullaugh Rd.	Stevinson, CA 95374-9707	28		28	B
055-100-011	John & Joe Souza	3325 McCullaugh Rd.	Stevinson, CA 95374-9707	31		31	A
055-120-001	John & Joe Souza	3325 McCullaugh Rd.	Stevinson, CA 95374-9707	75		75	A
055-120-042	John & Joe Souza	3325 McCullaugh Rd.	Stevinson, CA 95374-9707	213		213	B
				Total	358	1052	



Page 2

June 22, 2016

Clearly, there is not just our immediate upstream neighbors who are possibly illegally diverting. If Merced Irrigation District is correct when they tell us they are releasing the required flows and only 22 cfs was in the river 20 miles from the confluences of the San Joaquin River yesterday; something is very wrong. I do not want to become a very unpopular whistle blower with my neighbors, many of whom are in my church every Sunday, something must be done. I believe a letter to them stating you are investigating this dead river in a normal water year. Their lands appear to have the following characteristics. Number 1, they are not in a water district that delivers surface water. Number 2, these lands appear to be disconnected from the river according to Assessor Parcel maps of Merced County. Therefore they should first demonstrate with a deed that there is a reservation of riparian rights. If not they should show the State Board what groundwater is being used on them by identification of an irrigation well and PG&E billing that shows use and the conveyance of this groundwater to these questioned lands. This should take place all the way upstream. Please look into this right away as we are being injured right now.

Thank you for your attention to this serious current situation.

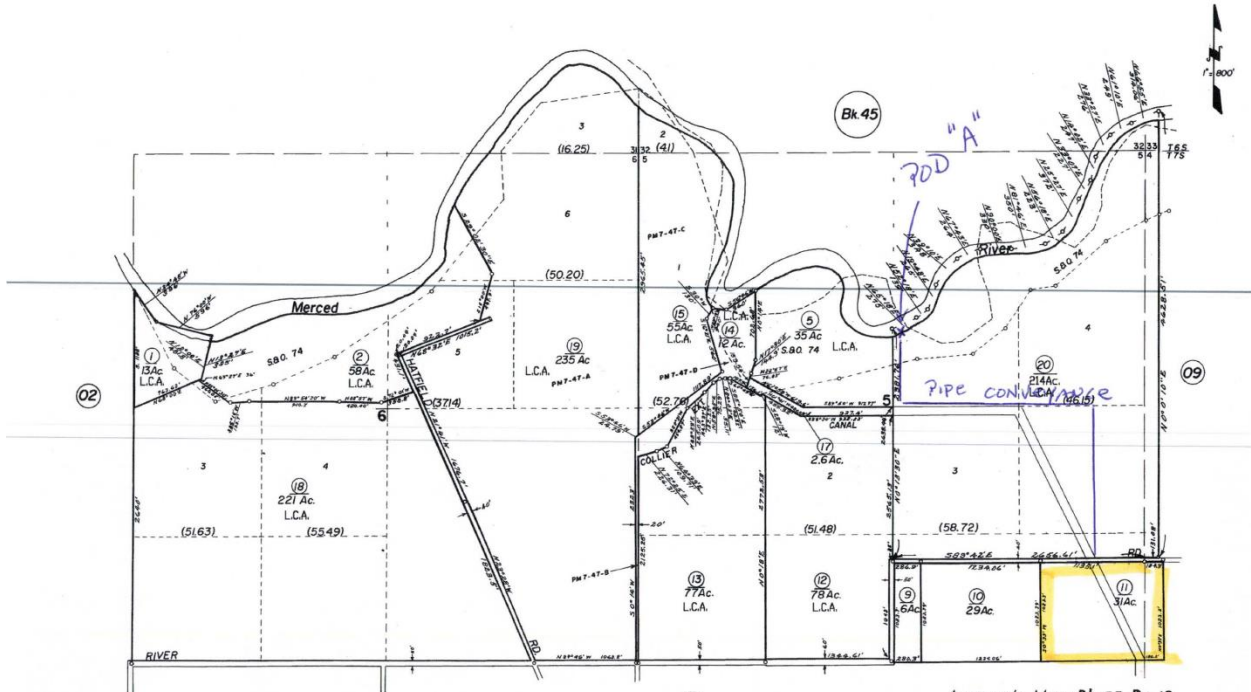
Yours Truly,

Robert D Kelley  
General Manager  
Stevinson Water District

Yours Truly,

Mike Borba  
5297 Kelley Rd.  
Hilmar, CA 95324

Cc: Kathryn Bare, SWRCB Water Rights  
Cc: Dorene D'Adamo, State Water Resource Control Board



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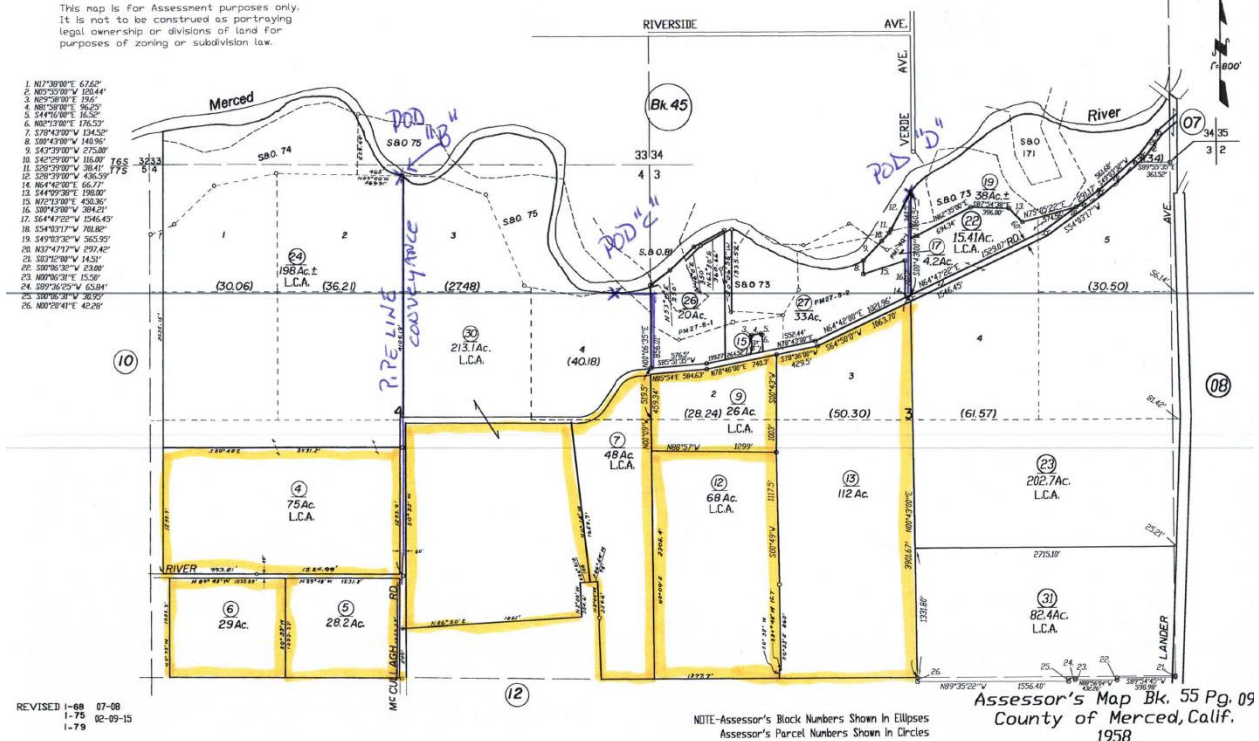
Assessor's Map Bk. 55 - Pg. 10  
County of Merced, Calif.

NOTE - Assessor's Block Numbers shown in Ellipses  
Assessor's Parcel Numbers shown in Circles

1958

-NOTE-  
This map is for Assessment purposes only.  
It is not to be construed as portraying  
legal ownership or divisions of land for  
purposes of zoning or subdivision law.

- 1. N7°30'00"E 67.62'
- 2. N0°50'00"W 158.44'
- 3. N0°28'00"E 136.1'
- 4. N0°10'00"E 164.52'
- 5. S44°16'00"E 16.52'
- 6. N0°17'00"E 181.33'
- 7. S70°43'00"W 134.52'
- 8. S08°43'00"W 148.96'
- 9. S45°03'00"W 275.80'
- 10. S45°03'00"W 16.80'
- 11. S28°03'00"W 38.41'
- 12. S28°03'00"W 438.59'
- 13. S64°03'00"E 65.77'
- 14. S44°03'00"E 198.80'
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- 16. S08°43'00"W 58.25'
- 17. S64°03'00"E 546.45'
- 18. S54°03'00"W 308.82'
- 19. S49°03'00"E 565.95'
- 20. S07°17'00"E 297.42'
- 21. S07°00'00"E 14.51'
- 22. S07°00'00"E 23.80'
- 23. N0°00'00"E 15.50'
- 24. S30°36'00"W 63.84'
- 25. S08°03'00"E 30.95'
- 26. N0°00'41"E 42.28'



REVISED 1-68 07-08  
1-76 02-09-15  
1-78

NOTE-Assessor's Block Numbers Shown In Ellipses  
Assessor's Parcel Numbers Shown In Circles

Assessor's Map Bk. 55 Pg. 09  
County of Merced, Calif.  
1958



Exhibit C:

July 23, 2021 response letter from State Water Resources Control Board, Division of Water Rights, to Stevinson Water District





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## State Water Resources Control Board

July 23, 2021

Robert Kelley  
Stevinson Water District  
P.O. Box 818  
Newman, CA 95630

Dear Mr. Kelley,

The Division of Water Rights (Division) received your complaint (CID 5538) regarding the potential unlawful riparian diverters upstream of Stevenson Water District on June 22, 2016.

During the previous drought the Division's resources were overwhelmed, and we were unable to process your complaint. It is impractical for staff now to investigate alleged violations from the previous drought, and the Division is committed to focusing our limited resources on current drought activities.

For this reason, the Division is exercising discretion and will take no further action on this complaint. This is not a determination on the merits of the complaint, and if you have information suggesting violations are ongoing during the current drought, you may resubmit a complaint with updated information. If you have any questions, please direct them to Damon Hess at [Damon.Hess@waterboards.ca.gov](mailto:Damon.Hess@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert P. Cervantes".

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Robert P. Cervantes, P.E.  
Program Manager - Enforcement  
Division of Water Rights

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E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)