



California's Court of Appeal for the Third Appellate District recently upheld the State Water Resources Control Board's temporary emergency drought response regulations—enacted in 2014-15—as well as related curtailment orders the Board issued to specific water users to implement those regulations. In doing so, the Water Board rejected a legal challenge agricultural water users brought against the Board seeking to elevate private water rights over other interests—like protection of environmental values—the Board is obligated under California law to consider in its water rights decisions.

The Court of Appeal's decision in [*Stanford Vina Ranch Irrigation Company v. State of California*](#) represents an important vindication of the Water Board's broad authority to take emergency action limiting the exercise of private water rights when compelling and urgent circumstances such as severe drought require.

The *Stanford Vina* litigation arose out of California's 2011-2017 drought, the most severe in recorded state history. Beginning in 2014, then-Governor Jerry Brown issued several declarations of state emergency in response to the protracted drought conditions in California. Brown noted in those declarations that "animals and plants that rely on California's rivers, including many species in danger of extinction, will be threatened" by the "significantly reduced surface river flows in the state's river systems." He specifically directed the Water Board to notify California water rights holders of the need to reduce their water diversions. The state Legislature similarly enacted new laws in 2014 to facilitate the Board's adoption of emergency regulations to address the drought.

The Water Board responded to these directives by taking two administrative actions that led directly to the *Stanford Vina* litigation. First, the Board adopted emergency regulations establishing minimum in-stream flow requirements for several Sacramento River tributaries

in the northern Sacramento Valley including Deer Creek. It did so at the urging of federal and state wildlife officials, who warned that unrestricted water diversions from those creeks in the midst of the drought would endanger migratory salmon and steelhead trout that inhabit those tributaries and are listed under both the federal and California Endangered Species Acts. Declaring that unrestricted diversion of water from the creeks would be “unreasonable” under Article X, section 2 of the California Constitution, the Board’s emergency regulations set minimum flow standards for those waterways to protect the survival of the fish that depend on them.

Second, the Board implemented those regulations by adopting “curtailment orders” temporarily limiting individual water rights holders’ diversion of water from the affected creeks.



Deer Creek, Tehama County,
California—Focus of Stanford
Vina Case (photo:Wikipedia)

Two Sacramento Valley irrigation companies whose owners hold riparian water rights to one of the affected waterways sued the Board to challenge both the emergency regulations and the curtailment orders restricting their water diversions. The companies argued that the Board could not adopt the regulations mandating minimum in-stream flows without first convening lengthy evidentiary hearings to assess their need and propriety. They also contended that the Board’s regulations and curtailment orders constituted an unconstitutional “regulatory taking” of the companies’ vested rights for “fishery

enhancement purposes” and that the Board was required to pay them monetary compensation.

The Court of Appeal rejected both arguments in a unanimous opinion authored by Justice Andrea Hoch. The court concluded that:

[T]he Board possesses broad authority to regulate the unreasonable use of water in this state by various means, including the adoption of regulations establishing minimum flow requirements protecting the migration of threatened fish species during drought conditions and declaring diversions of water unreasonable where such diversions would threaten to cause the flow of water in the creeks in question to drop below required levels.

The justices similarly concluded that the companies' regulatory takings argument was without merit. Citing the California Constitution's proscription of unreasonable use of water, the court held that the companies have no vested right to divert water in contravention of the Board's emergency regulations. Specifically, their unfettered diversion of water in the face of unprecedented drought conditions is patently unreasonable, in violation of the California Constitution.

In reaching this conclusion, the Court of Appeal also rejected the water users' claim that Article X, section 2's "reasonable use" mandate does not apply to California's riparian water rights holders, or to state appropriative water rights claimants whose rights were created before California created a statewide permit system in 1914. The *Stanford Vina* court based that holding on a number of earlier California water rights decisions—most prominently [Light v. State Water Resources Control Board](#), a 2014 appellate ruling that I profiled in [an earlier Legal Planet post](#).

The recent *Stanford Vina* decision is a critically-important judicial validation of the State Water Resources Control Board's broad authority to adjust private water rights in the face of drought conditions and similar emergencies. The Court of Appeal's reliance on the constitutional rule that *all* water use must be reasonable builds on past California water rights decisions. The court recognized that water uses which are reasonable in "normal" water years can be patently unreasonable in times of drought and water scarcity.

Stanford Vina vindicates the regulatory decisions the State Water Resources Control Board made in the face of the most severe drought in California history. The Court of Appeal

properly notes in its opinion that the role of the Board has steadily evolved from “the narrow role of deciding priorities between competing appropriators to the charge of comprehensive planning and allocation of waters.” And the court’ opinion makes plain that consideration of environmental values, ecosystem protection and preservation of threatened and endangered species are all proper components of that planning and allocation process.

Finally, scientists warn that California and the entire American Southwest are likely to experience more frequent and severe droughts in the future as a result of climate change. The *Stanford Vina* decision will help insure that the State Water Resources Control Board has the regulatory tools and legal authority needed to confront that looming challenge.