IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

No. C073735

SISKIYOU COUNTY FARM BUREAU,
Plaintiff and Respondent,

v.

DEPARTMENT OF FISH AND WILDLIFE,
Defendant and Appellant.

On Appeal from the Superior Court of Siskiyou County
(Case No. SCSCCVCV11418, Honorable Karen L. Dixon, Judge)

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CALIFORNIA CATTLEMEN'S ASSOCIATION IN SUPPORT OF PLAINTIFF-RESPONDENT SISKIYOU COUNTY FARM BUREAU

M. REED HOPPER, No. 131291
ANTHONY L. FRANÇOIS, No. 184100
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Attorneys for Amici Curiae
Pacific Legal Foundation and
California Cattlemen's Association

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Third APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: C073735
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): M. Reed Hopper, No. 131291; Anthony L. Francois, No. 184100 Pacific Legal Foundation 930 G Street Sacramento, California 95814 TELEPHONE NO.: 916-419-7111 FAX NO. (Optional): 916-419-7747 E-MAIL ADDRESS (Optional): mrh@pacificlegal.org; alf@pacificlegal.org ATTORNEY FOR (Name): Amici Curiae Pacific Legal Foundation, et al.	Superior Court Case Number: SCSCCVCV1148 FOR COURT USE ONLY
APPELLANT/PETITIONER: Siskiyou County Farm Bureau RESPONDENT/REAL PARTY IN INTEREST: Department of Fish and Wildlife	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (name): Amici Curiae Pacific Legal Foundation, et al.

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (Explain):
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: May 29, 2014

Anthony L. Francois
(TYPE OR PRINT NAME)

▶ A L Francois
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courtinfo.ca.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Page

Statutes

Rule

Miscellaneous

APPLICATION TO FILE BRIEF AMICUS CURIAE

Pursuant to California Rules of Court 8.200(c),[1] Pacific Legal Foundation (PLF) and California Cattlemen's Association (CCA) respectfully request leave to appear as amici curiae in support of Plaintiff-Appellee Siskiyou County Farm Bureau (Farm Bureau), in support of affirmance.

IDENTITY AND INTEREST OF AMICI CURIAE

Pacific Legal Foundation is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF engages in research and litigation over a broad spectrum of public interest issues in state and federal courts, representing thousands of supporters nationwide, including landowners and water right owners throughout California, who believe in limited government, property rights, and free enterprise. For 41 years PLF has been litigating in support of individuals' rights to make reasonable use of their private property, free from unwarranted government interference. *Sackett v. E.P.A.*, 132 S. Ct. 1367 (2012); *Rapanos v. United States*, 547 U.S. 715 (2006); *Kelo v. City of New London*, 545 U.S. 469 (2005); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302

---

[1] Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

(2002); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

California Cattlemen's Association is a mutual benefit corporation organized under California law in 1923 as an "agricultural and horticultural, nonprofit, cooperative association" to promote the interests of the industry. Membership in the CCA is open to any person or entity engaged in breeding, producing, maturing, or feeding cattle, or who leases land for cattle production. The CCA is the predominant organization of cattle grazers in California and, acting in conjunction with its affiliated local organizations, it endeavors to promote and defend the interests of the livestock industry. CCA has several members who ranch and own water rights in the Scott and Shasta Valleys of Siskiyou County. CCA also has many members who hold water rights throughout California. All of these members have an interest in whether the Department of Fish and Wildlife (Department) has authority to regulate the exercise of their water rights through Lake and Streambed Alteration Agreements when the exercise of these rights causes no change to lake or streambeds.

Amici believe that their expertise in the area of water rights can provide this Court with a unique perspective on the issues presented in this case. In particular, Amici seek to provide the Court with an analysis of the water rights

decrees which adjudicated most of the surface water rights in the Scott and Shasta Valleys of Siskiyou County, and how those decrees demonstrate that notice to the Department under California Fish and Game Code Section 1602 (Section 1602) is not required in order to exercise those water rights.

For the foregoing reasons, Amici respectfully request that their application to file this amicus brief, in support of affirmance, be granted.

ISSUE PRESENTED

Whether Fish and Game Code Section 1602 requires water right holders to notify the Department of Fish and Wildlife prior to exercising their water rights, where such exercise does not physically alter a lake or streambed.

INTRODUCTION

Section 1602 requires any person to notify the Department before beginning any activity that will: (1) substantially divert or obstruct the natural flow of any river, stream, or lake; (2) substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Now, for the first time in the history of the State, the Department is demanding notification under this section for virtually any extraction of water from any river, stream, or lake.

Members of Amicus California Cattlemen's Association own ranches and water rights on the Scott and Shasta Rivers and several tributaries in Siskiyou County. Permanent injunctions in basin wide water rights decrees entered by the Siskiyou County Superior Court assign the ongoing supervision of these rights to a watermaster and the State Water Resources Control Board, under the continuing jurisdiction of the superior court. Exhibit 16 at 23-24 ¶¶ 62, 65, CT V:1305-06. These decrees conflict with and undermine the Department's putative claim of authority to require notice of mere water extractions that do not alter or affect lake or streambeds. These decrees assign the very authority claimed by the Department to other agencies, or reserve it to the decree court. *Id.*

Moreover, the practicalities and equities of applying Section 1602 to the mere extraction of water counsel against the Department's overbroad interpretation. Finally, the special legal status of water rights appropriated before 1914 prevents the exercise of authority under Section 1602 to the withdrawal of water under those rights.

The trial court properly held that Section 1602 does not require notice prior to the exercise of a water right where the exercise involves no alteration to a lake or streambed. This Court should therefore affirm.

ARGUMENT

I

APPLICATION OF SECTION 1602 TO THE MERE EXTRACTION OF WATER WOULD IMPOSE IMPRACTICAL AND INEQUITABLE BURDENS ON WATER RIGHT HOLDERS

Section 1602 is not a trivial regulatory scheme. Those who would be required to notify the Department of their water extractions under Section 1602 must provide a multitude of documents "in the manner prescribed by the [D]epartment" as well as "[a]ny other information required by the [D]epartment." Fish & Game Code § 1602(a), (a)(1)(F). Once the Department receives notification, *see id.* § 1602(a), the extraction may only proceed subject to the proviso that it must be conducted "as described in the notification." *Id.* § 1602(a)(4)(A)(i). Thus, even though a formal Lake or Streambed Alteration Agreement with the Department may not be necessary in all cases, there is little room for flexibility once an entity notifies the Department under Section 1602 of a proposed water extraction.

The regulatory hurdles increase if the Department determines, after receiving notification of the intended extraction, that "the activity may substantially adversely affect an existing fish or wildlife resource." *Id.* § 1602(a)(4)(B). Then, the extraction may go forward only when the Department "issues a final agreement to the entity that includes reasonable

measures necessary to protect the resource," and only if "the entity conducts the activity in accordance with the agreement." *Id.*

But the time between notification of an intended water extraction and a final agreement can be months—the Department's *draft* agreement need only be provided to the entity "within 60 days after the notification is complete." *Id.* § 1603(a). *Cf.* Richard A. Epstein, *The Permit Power Meets the Constitution*, 81 Iowa L. Rev. 407, 415 (1995) ("[T]here are no exogenous variables in the perpetual battles between permit provider and permit seeker. The government now finds to its delight that if its objective is to slow development . . . all it need do is extend the due process rights within the system *ad finitum*."). And if the entity has concerns over the draft agreement, the entity must object in writing, meet with the Department, and possibly engage in an arbitration. *See* Fish & Game Code § 1603(a)-(b). Only if the water right owner reaches a final agreement with the Department may an extraction proceed under Section 1602.

Yet, so-called Lake and Streambed Alteration Agreements issued by the Department are only valid for five years. *See* Fish & Game Code § 1605(a)(1). As a result, in the case of ongoing operations like water extractions, the entire process would repeat every five years. This affords the Department the opportunity to demand new terms and conditions every five years for water extractions which have never before been subject to notice under Section 1602.

An unending escalation of demands would seriously compromise the certainty and value of water rights while also presenting an enormous burden on water users. *Cf.* Warren G. Lavey, *Making and Keeping Regulatory Promises*, 55 Fed. Comm. L.J. 1, 59 (2002) ("Regulatory uncertainties can harm consumers and be contrary to the public interest. Regulators should more frequently recognize the large efficiency enhancements of decreasing the uncertainty surrounding future regulations and strive to adopt well-defined sequences of regulatory changes with clear timing.").

Likewise, Lake and Streambed Alteration Agreements and other permitting schemes constitute "a dramatic shift of power to regulators who face few constraints on the exercise of their power, and often use their power in a way to advance their private ideological interests or the interests of special interests." Todd J. Zywicki, *Environmental Externalities and Political Externalities: The Political Economy of Environmental Regulation and Reform*, 73 Tul. L. Rev. 845, 899 (1999). Indeed, once the permitting process is triggered, as under Section 1602, "[n]o longer can one be confident of going before a judge who is selected not solely for his views on the question of . . . environmental damages," as "the ostensible expertise of agency personnel is little more than a pretext for a strong one-sided commitment which results in a complete inversion of the proper distribution of power within a legal system." Epstein, *supra*, at 413. No matter what benefits may accrue from

productive activity, "in the environmental area, the perimeters of state action are pushed back such that any alteration of the earth is regarded as a potential source of harm which has to be reviewed and scrutinized before it can occur." *Id.* at 417.

When the exercise of a water right does not physically alter a streambed, the Department's stretch to invoke Section 1602 will diminish the value of water rights and lead to costly takings litigation. This is because, "[i]n the context of water rights, a mere restriction on use—the hallmark of a regulatory action—completely eviscerates the right itself since [water rights holders'] sole entitlement is to the use of the water." *Tulare Lake Basin Water Storage Dist. v. United States*, 49 Fed. Cl. 313, 319 (2001) (citing *Eddy v. Simpson*, 3 Cal. 249, 252-53 (1853) ("[T]he right of property in water is usufructuary, and consists not so much of the fluid itself as the advantage of its use."). Further, "[u]nlike other species of property where use restrictions may limit some, but not all of the incidents of ownership, the denial of a right to the use of water accomplishes a complete extinction of all value." *Tulare Lake*, 49 Fed. Cl. at 319.

These potentially unconstitutional consequences would result from the Department's overbroad approach to Section 1602. Courts should avoid interpretations of statutes that raise serious constitutional questions. *Myers v. Philip Morris Cos., Inc.*, 28 Cal. 4th 828, 846 (2002) ("An established rule of

statutory construction requires us to construe statutes to avoid 'constitutional infirmit[ies].' " (citations omitted)); *see also Ass'n for Retarded Citizens v. Dep't of Developmental Services*, 38 Cal. 3d 384, 394 (1985) ("When faced with a statute reasonably susceptible of two or more interpretations, of which at least one raises constitutional questions, we should construe it in a manner that avoids *any* doubt about its validity.") (emphasis in original).

II

THE DEPARTMENT'S OVERBROAD INTERPRETATION OF SECTION 1602 CONFLICTS WITH PROVISIONS FOR SUPERVISION OF WATER RIGHTS UNDER SISKIYOU COUNTY SUPERIOR COURT WATER RIGHT DECREES

The trial court accepted Siskiyou County Superior Court water right decrees for the Scott and Shasta Rivers into evidence. RT 207:12; Exhibits 15, 16 (Shasta River Decree, Exhibit 15, CT IV:948; Scott River Decree, Exhibit 16, CT V:1266). These decrees adjudicate most of the surface water rights on the Scott and Shasta Rivers, and on significant tributaries. Exhibit 15, CT IV:953 (Shasta River Decree); Exhibit 16, CT V:1284 (Scott River Decree). These two decrees alone include hundreds of pages listing hundreds of specific adjudicated water rights in Siskiyou County. Exhibit 15, CT IV:0954-1172, V:1173-90 (Shasta River Decree table of water rights, listing 506 separate water rights); Exhibit 16, CT V:1273-82 (Scott Creek decree, alphabetical index of claimants), 1307-47 (Schedule 1 showing places

of use), 1348-56 (Schedule 2 showing places of diversion), 1357-1413 (Schedules A through B40, listing rights on various tributaries and reaches).[2] These are the precise water rights that the Department is seeking to regulate.

The Scott River Decree allocates the authority claimed by the Department in this case to other agencies, not to the Department. The Scott River Decree was adopted by the Siskiyou County Superior Court in 1980.[3] At least two state agencies participated in the adjudication: the State Water Resources Control Board, and the Division of Forestry. Exhibit 16; CT V:1283-84, 1310. The Decree adjudicates all surface water rights on the Scott River. Exhibit 16 at 2, ¶ 1; CT V:1284. Under the Decree, the Siskiyou County Superior Court retains jurisdiction over the water rights and all of the parties. *Id.* at 23 ¶ 62, CT V:1305. The Decree includes provisions for changing the use of water rights, *id.* at 23-24 ¶ 64, CT V:1305-06, and resolution of disputes over the distribution of water by an appointed watermaster, whose actions are appealable to the State Water Resources Control Board, *id.* at 24 ¶ 65, CT V:1306. None of these provisions for

---

[2] The Department's Opening Brief ignores this encyclopedic compilation of decreed water rights in both of the County's major watersheds, and focuses instead on testimony that it characterizes as "minimal indicia of water rights for four members of the [Farm Bureau] . . . ." AOB at 35.

[3] This is two decades after the Legislature adopted the precursor to Section 1602 in 1961, and two decades before the Legislature re-adopted Section 1602 in 2003. *See* Respondent's Brief at 26-34 (legislative history of Section 1602).

ongoing supervision of water rights or for modification or enforcement of the decree involve the Department in any way.

The Decree establishes instream flow requirements for fish and wildlife within the Klamath National Forest, in the name of the U.S. Forest Service. *Id.* at 12-14, ¶¶ 45-47, CT V:1294-96. These flow requirements include monthly minimum flows measured in cfs at the United States Geologic Survey gauge below Fort Jones on the Scott River. *Id.* at 12 ¶ 45, CT V:1294. The flows also include high pulse flows at five-year intervals to maintain fishery resources, *id.* at 13-14 ¶ 46, CT V:1295-96, and instream flows in tributaries to the Scott River, *id.* at 14 ¶ 47, CT V:1296. The Decree provides authority to the State Water Resources Control Board to modify the pulse flow provisions, and expressly reserves the court's jurisdiction to implement the paragraph's provisions. *Id.* at 14 ¶ 46, CT V:1296. None of these provisions, for protection of fishery resources through ongoing minimum flows and periodic pulse flows, involve the Department in any way.

But the Decree is not silent on the Department:

> Diversion *structures* must meet the requirements of the State Department of Fish and Game as provided by applicable Fish and Game Code Sections. The claimants shall breach gravel diversion dams at the end of the irrigation season each year to allow adult fish to ascend to their spawning grounds. Diversion *structures* shall be constructed and operated so as to pass stream flow in excess of the diversion allotment directly to the stream channel to allow passage by fish during the irrigation season prior to about June 1.

Id. at 5 ¶ 16, CT V:1287 (emphasis added). This provision evidently references Section 1602, and it comports with the trial court and Farm Bureau's interpretation of Section 1602 as applying only to alterations of streambeds.

The Department's new assertion of broad authority to regulate extractions of water from the Scott River absent physical alteration of the streambed is inconsistent with the narrow authority over structures assigned to it in Paragraph 16 of the Decree. The decree court did not direct or authorize the Department to collect notices under Section 1602 for the mere exercise of the decreed rights, or to condition that exercise on a Lake or Streambed Alteration Agreement. Instead of assigning any such authority to the Department, the Decree reserves that authority to the court by retaining the court's jurisdiction over the parties and subject matter, and delegates that authority to a watermaster and the State Water Resources Control Board.

The Decree also limits the requirement to "pass stream flow . . . directly to the stream" to amounts "in excess of the diversion allotment." *Id.* at 5 ¶ 16, CT V:1287. This aspect of the Decree specifically addresses protection of fishery flows in the Scott River, and expressly allows the full use of the decreed right. The court's limit on the operation of diversion structures is that they not impound more water than is allotted in the decree. This provision

cannot be reasonably read to direct or authorize the Department to limit extractions to less than the decree's allotments through Section 1602.

The Department argues repeatedly that it has the power not just to require notice of the exercise of water rights in Siskiyou County, but to limit the exercise of those rights through Section 1602 and Lake and Streambed Alteration Agreements. "While the [State Water Resources Control Board] regulates the issuance of a water right, the Department regulates activities carried out in exercise of that right. The Department exercises this regulatory authority through statutes like Section 1602." AOB at 4. The Department offers similar statements at pages 24 and 31 of its Opening Brief, and makes all of them without any pertinent supporting legal authority. In its only effort to provide legal authority for this sweeping grant of power to itself, the Department cites *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82, 106, 147 (1986). AOB at 30. But this case addresses the authority of the State Water Resources Control Board, *not* the Department. 182 Cal. App. 3d at 113.

In sum, the Department claims, under Section 1602, the broad power to determine when and to what extent water right holders may exercise their decreed rights, without regard to whether any streambed is altered by that exercise. But the Department fails to even acknowledge, let alone address, the fact that the Scott River Decree assigns precisely that power to the watermaster

and to the State Water Resources Control Board, both under the continuing jurisdiction of the decree court. Exhibit 16 at 24 ¶ 65; CT V:1306.

The Department's new assertion of broad authority over the exercise of decreed Siskiyou County water rights is at odds with the superior court's allocation of the same authority to other officials in the 1980 Scott River Decree. The Department and the Legislature are presumed to have been aware of the Scott River Decree when Section 1602 was re-enacted in 2003, and the legislative history provides no evidence of any intent to expand the Department's authority to regulate mere extractions of water under that provision.

III

THE DEPARTMENT MAY NOT DISTURB PRE-1914 WATER RIGHTS THROUGH SECTION 1602

Even absent court orders like the Scott River Decree that rebut the Department's new interpretation of Section 1602, water rights law protects those in Siskiyou County and elsewhere that acquired a right to divert water from a watercourse prior to 1914 and have exercised that right ever since.[4]

---

[4] For a general background on pre-1914 water rights and the significance of this time demarcation, *see* The California Environmental Protection Agency, *The History of the California Environmental Protection Agency* ("Although pre- and post-1914 appropriative rights are similar, post-1914 rights are subject to a much greater degree of scrutiny and regulation by the [State Water Resources Control] Board."), *available at* http://archive.today/Fgyu (last (continued...)

Courts recognize the unique position that pre-1914 water rights occupy in California's regulation of water rights. *Brewer v. Murphy*, 161 Cal. App. 4th 928, 937 n.5 (2008). The emphasis on the common law tradition of pre-1914 water rights supports the right of their holders to continue historical diversions without providing notice to the Department under Section 1602. *North Kern Water Storage Dist. v. Kern Delta Water Dist.*, 147 Cal. App. 4th 555, 559 n.1 (2007). Pre-1914 water rights were established according to common law procedures prior to the enactment of the Water Commission Act in 1914. That act established an application procedure which has since been the exclusive regulatory means for establishing appropriative water rights in California. *See* Water Code § 1225. The owner of a pre-1914 water right may transfer the place and purpose of use so long as the change causes no injury to other rights on the same stream. *North Kern Water Storage Dist.*, 147 Cal. App. 4th at 559. Pre-1914 rights are also freely transferable, subject to the no-injury rule. *Id.*

The court of appeal in *People v. Murrison*, 101 Cal. App. 4th 349 (2002), likewise acknowledged the special place "rights . . . commonly referred to as 'pre-1914 rights'" hold in California water law. *Id.* at 359 n.6.

---

[4] (...continued)
visited May 23, 2014). This backgrounder supports that the State Water Resources Control Board, not the Department, has jurisdiction over pre-1914 water rights.

However, the appellant in *Murrison* constructed a rock diversion dam in 1998, well after his alleged pre-1914 water right would have to have been established. *See id.* at 353.[5] Thus, the court held that former Section 1603 (now Section 1602) was applicable to the appellant's substantial alteration of Big Creek in Trinity County due not to the existence of any alleged pre-1914 water right, but because the diverter constructed a recent rock dam that redirected 95% of the flow of Big Creek to a ditch. *See id.* at 355. This is a substantial alteration of a watercourse by altering a streambed that was meant to be covered by Section 1602, compared to the application of this provision that the Department seeks to enforce. *Cf. id.* at 358 n.4 ("We are not confronted with the question of whether the trial court erred in determining Murrison substantially altered the bed of Big Creek, a factual finding Murrison did not challenge on appeal."). In other words, *Murrison* is consistent with the proposition that for those who exercise unaltered pre-1914 water rights, Section 1602 is inapplicable.

---

[5] Notably, the diverter in *Murrison* "failed to establish a prima-facie pre-1914 appropriative right." *Id.* at 364. Thus, the court's conclusion that pre-1914 water rights are not immune from reasonable regulation under the Fish and Game Code is dictum. *See id.*

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the trial court.

DATED: May 29, 2014.

Respectfully submitted,

M. REED HOPPER
ANTHONY L. FRANÇOIS

By _____
ANTHONY L. FRANÇOIS

Attorneys for Amici Curiae
Pacific Legal Foundation and
California Cattlemen's Association

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CALIFORNIA CATTLEMEN'S ASSOCIATION IN SUPPORT OF PLAINTIFF-RESPONDENT SISKIYOU COUNTY FARM BUREAU is proportionately spaced, has a typeface of 13 points or more, and contains 3,763 words.

DATED: May 29, 2014.

ANTHONY L. FRANÇOIS

DECLARATION OF SERVICE BY MAIL

I, Tawnda Elling, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On May 29, 2014, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CALIFORNIA CATTLEMEN'S ASSOCIATION IN SUPPORT OF PLAINTIFF-RESPONDENT SISKIYOU COUNTY FARM BUREAU were placed in envelopes addressed to:

David Ivester
Briscoe Ivester & Bazel LLP
155 Sansome Street, Seventh Floor
San Francisco, CA 94104
Counsel for Plaintiff and Respondent Siskiyou County Farm Bureau

Darrin W. Mercier
Law Office of Darrin W. Mercier
409 West Center Street
Yreka, CA 96097
Counsel for Plaintiff and Respondent Siskiyou County Farm Bureau

Deborah L. Barnes
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Counsel for Defendant and Appellant Department of Fish and Wildlife

Clerk of the Court
Siskiyou County Superior Court
311 4th Street, Room 5
Yreka, CA 96097

Court Clerk (4 copies)
Supreme Court of California
350 McAllister Street, Room
San Francisco, CA 94102

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 29th day of May, 2014, at Sacramento, California.

TAWNDA ELLING