

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LOS MOLINOS MUTUAL WATER  
COMPANY, et al.,

Plaintiffs,

v.

ERIK EKDAHL, et al.,

Defendants.

No. 2:21-cv-01961-DAD-DMC

ORDER GRANTING THE BOARD  
DEFENDANTS’ MOTION TO DISMISS AND  
GRANTING IN PART AND DENYING IN  
PART THE DEPARTMENT DEFENDANTS’  
MOTION TO DISMISS

(Doc. Nos. 31, 39)

This matter is before the court on the motion to dismiss filed by defendants Erik Ekdahl, Eileen Sobeck, E. Joaquin Esquivel, Dorene D’Adamo, Sean Maguire, Laurel Firestone, and Nichole Morgan (collectively, “Board defendants”) on March 25, 2022, and the motion to dismiss filed by defendants California Department of Fish and Wildlife (the “Department”) and Charlton Bonham (collectively, “Department defendants”) on May 24, 2022. (Doc. Nos. 31, 39.) The pending motions were taken under submission by the previously assigned district judge on April 26, 2022 and June 7, 2022, respectively.<sup>1</sup> (Doc. Nos. 36, 41.) For the reasons explained below, the motion to dismiss brought on behalf of the Board defendants will be granted, and the motion

---

<sup>1</sup> On August 25, 2022, this case was reassigned to the undersigned. (Doc. No. 44.) The undersigned has endeavored to work through a backlog of inherited submitted motions in civil cases as quickly as possible since returning to the Sacramento courthouse just over one year ago.

1 to dismiss brought on behalf of the Department defendants will be granted in part and denied in  
2 part.

### 3 BACKGROUND

4 On February 25, 2022, plaintiffs Los Molinos Mutual Water Company (“Los Molinos”),  
5 Peyton Pacific, LLC (“Peyton”), and Stanford Vina Ranch Irrigation Company (“Stanford Vina”)  
6 filed their operative first amended complaint (“FAC”) in this action challenging emergency  
7 regulations and water curtailment orders promulgated by the California State Water Resources  
8 Control Board (“Board”) in response to extreme drought conditions occurring in 2021. (Doc. No.  
9 16.) Plaintiffs did not name the Board as a defendant but rather brought this lawsuit against the  
10 Board defendants in their official capacities as members of the Board and staff employed by the  
11 Board.<sup>2</sup> (*Id.* at 1.) In addition, plaintiff Stanford Vina is asserting claims against the Department  
12 and its executive director, Charlton Bonham, in his official capacity, for allegedly abandoning  
13 fish ladders and screens intended to protect threatened Central Valley Spring Run Chinook  
14 Salmon (“salmon”) and California Central Valley Steelhead (“steelhead”). (*Id.* at ¶ 165.)  
15 Plaintiffs allege as follows in their FAC.

16 Plaintiffs and their shareholders own land in the vicinity of Mill Creek and Deer Creek in  
17 Tehama County, California, and hold and administer water rights appurtenant to their land  
18 holdings. (*Id.* at ¶¶ 6–8.) Specifically, plaintiffs possess “adjudicated water rights” that permit  
19 them to divert water from Mill Creek (Los Molinos and Peyton) and Deer Creek (Stanford Vina)  
20 that is used for approximately 11,000 acres of irrigated land, including “for permanent plantings,  
21 including orchards, and for irrigated pasture, stock watering, and similar beneficial uses.” (*Id.*)  
22 Los Molinos and Stanford Vina have also invested in water-related infrastructure to divert and  
23 distribute water for the use of their shareholders. (*Id.* at ¶¶ 6, 8.)

24 On April 21, 2021, Governor Gavin Newsom issued a proclamation declaring a drought  
25 state of emergency in California and directed state agencies to take certain actions in response to

---

26 <sup>2</sup> The Board defendants are: Erik Ekdahl, the deputy director of the division of water rights at  
27 the Board; Eileen Sobeck, the executive director of the Board; E. Joaquin Esquivel, the chair of  
28 the Board; Dorene D’Adamo, the vice chair of the Board; and Sean Maguire, Laurel Firestone,  
and Nichole Morgan, members of the Board. (Doc. No. 16 at ¶ 9.)

1 the drought. (*Id.* at ¶ 46.) On May 10, 2021, Governor Newsom issued another proclamation  
2 related to the drought emergency which directed the Board and the Department to work with  
3 water users and other parties on voluntary measures to implement actions needed to protect  
4 salmon, steelhead, and other native fishes. (*Id.* at ¶ 47.)

5         Meanwhile, on or about May 5, 2021, representatives from the Department, the Board,  
6 and the National Marine Fisheries Service (“NFMS”) invited Stanford Vina and Los Molinos to  
7 discuss the 2021 water conditions and fish passage in Deer Creek and Mill Creek. (*Id.* at ¶ 33.)  
8 Plaintiffs allege that during this meeting, Stanford Vina and Los Molinos were given “an  
9 ultimatum”: that they submit a proposal to ensure fish passage in 2021, otherwise the Board  
10 would adopt and impose emergency regulations that would curtail plaintiffs’ water rights. (*Id.*)  
11 In response, Stanford Vina and Los Molinos submitted proposals for implementing “multi-benefit  
12 channel restoration projects” as well as “fishery protection proposals,” which included a request  
13 for compensation for water transferred for instream use. (*Id.* at ¶ 34.) The Board, the  
14 Department, and NFMS allegedly rejected these proposals explaining that they did not have  
15 authority to authorize the measures that plaintiffs had proposed. (*Id.* at ¶ 35.) Despite rejecting  
16 these proposals from Los Molinos and Stanford Vina, “water users on Mill [Creek] and Deer  
17 [Creek] did coordinate with [the Department] and NMFS to voluntarily implement pulse flows in  
18 the Spring of 2021 for benefit of fishery [sic], while minimizing impacts to agricultural beneficial  
19 uses.” (*Id.* at ¶ 37.) The 2021 spring salmon run that followed these voluntary measures was,  
20 according to plaintiffs, “very large” and “excellent.” (*Id.* at ¶¶ 38, 41.)

21         On September 1, 2021, however, plaintiffs allege that all defendants issued a notice of  
22 proposed emergency rulemaking proposing the adoption of emergency regulations to implement  
23 minimum instream flows to protect anadromous fish and provide other public uses. (*Id.* at ¶ 49.)  
24 Plaintiffs allege that the effect of the proposed emergency regulations would require them, and  
25 their shareholders, “to forbear from exercising their vested rights to use water from Deer and Mill  
26 Creeks during irrigation season, thereby eliminating those rights.” (*Id.*) On September 22, 2021,  
27 defendants Esquivel, D’Admo, Maguire, Firestone, and Morgan considered the proposed  
28 emergency regulations at a regularly scheduled meeting of the Board. (*Id.* at ¶ 55.) Plaintiffs

1 allege that at that meeting of the Board, no evidentiary hearing was held regarding the emergency  
2 regulations despite plaintiffs requesting such a hearing and pointing out that if the emergency  
3 regulations were adopted and implemented an “inverse condemnation and taking would occur.”  
4 (*Id.* at ¶ 56.) Plaintiffs also allege that their requests to cross-examine employees of the  
5 Department, the Board, and NMFS who presented on the purported merits of the emergency  
6 regulations at the meeting were denied. (*Id.* at ¶ 57.) At the conclusion of the Board’s September  
7 22, 2021 meeting, defendants Esquivel, D’Admo, Maguire, Firestone, and Morgan approved  
8 Resolution No. 2021-0038, which adopted the proposed emergency regulations, with some minor  
9 modifications. (*Id.* at ¶ 59.) On October 4, 2021, the California Office of Administrative Law  
10 approved the proposed emergency regulations, specifically, California Code of Regulations Title  
11 23, §§ 876.5, 876.7, 878.4 and amended §§ 878.1 and 879 (“emergency regulations”), which then  
12 went into effect. (Doc. No. 16 at ¶ 59.)

13 The emergency regulations declared that any diversions from Deer Creek and Mill Creek  
14 would be deemed an “unreasonable use” if the diversions by water rights holders—no matter the  
15 reason or purpose for the diversions—reduced the flow in those two creeks below a minimum  
16 threshold set forth in the emergency regulation, specifically, California Code of Regulations Title  
17 23, § 876.5. (*Id.* at ¶ 60.) The minimum instream flows set forth in the emergency regulations  
18 were deemed the “bare minimum” to ensure passage for anadromous fish on Deer Creek and Mill  
19 Creek and those flow rates vary based on the time of year and the presence of certain anadromous  
20 fish. *See* Cal. Code Regs. tit. 23, § 876.5(c). As a result of the emergency regulations, plaintiffs  
21 allege that they are prohibited from diverting any water in Deer Creek and Mill Creek if those  
22 diversions would interfere with achieving the minimum instream flows for fish. (Doc. No. 16 at ¶  
23 60.) Importantly, the emergency regulations authorized defendant Ekdahl to issue curtailment  
24 orders if he determined that continued diversions of water would interfere with achieving the  
25 minimum instream flows. (*Id.*) (citing Cal. Code Regs. tit. 23, § 876.5).

26 Plaintiffs allege that, on October 11, 2021, defendants issued Water Rights Orders 2021-  
27 0089 (Mill Creek) and 2021-0090 (Deer Creek) (“curtailment orders”), which ordered the water  
28 rights holders on those creeks, including plaintiffs, to curtail their diversion of water beginning on

1 October 15, 2021. (Doc. No. 16 at ¶ 65.) Plaintiffs allege that the effect of the curtailment orders  
2 and emergency regulations is that their “vested water rights . . . have been damaged and the  
3 reasonable value of the water was taken for public use by defendants.” (*Id.* at ¶ 67.)

4 In addition to plaintiffs’ challenge brought against the emergency regulations and  
5 curtailment orders, plaintiff Stanford Vina asserts several additional claims against the  
6 Department defendants. Specifically, plaintiffs allege that the Department “accessed, operated,  
7 and maintained fish ladders and screens that it designed and installed” on plaintiff Stanford  
8 Vina’s main diversion dam on Deer Creek for over 60 years. (*Id.* at ¶ 87.) Plaintiffs allege that  
9 on June 18, 2021, the Department defendants informed Stanford Vina that they would no longer  
10 operate and maintain the fish ladders and fish screens at Stanford Vina’s diversion dam on Deer  
11 Creek until Stanford Vina executed a “Memorandum of Agreement” detailing the respective  
12 parties’ responsibilities in maintaining the fish ladders and screens. (*Id.* at ¶ 89.) According to  
13 plaintiffs, following the Department’s refusal to maintain its fish ladders and screen, debris  
14 accumulated and blocked the fish ladder located on Stanford Vina’s dam in October 2021, and  
15 although the Department was aware of this situation it refused to clear the blockage due to  
16 Stanford Vina’s failure to sign the memorandum of agreement. (*Id.* at ¶ 90.) Plaintiffs allege that  
17 this “caused harm and a ‘take’ to salmon and steelhead” and that the “imminent risk of mortality  
18 continues through the present so long as the [Department defendants] refuse to fulfill repairs and  
19 maintenance obligations.” (*Id.* at ¶¶ 91–92.) Plaintiffs also allege that the Department defendants  
20 refused to install both “protective shields over the fish screens” for protection when there are  
21 stormflow conditions and “motors necessary for the utilization of the screens and diversion of  
22 water through them.” (*Id.* at ¶¶ 94–95.) These additional failures by Department defendants also  
23 allegedly present an ongoing risk of harm to salmon and steelhead. (*See id.*)

24 Based on the foregoing allegations in their FAC, plaintiffs assert the following nine claims  
25 against the Board defendants: (1) a 42 U.S.C. § 1983 claim for the taking of real property without  
26 compensation in violation of the Fifth and Fourteenth Amendments; (2) a § 1983 claim for a  
27 legislative taking of property without compensation in violation of the Fifth and Fourteenth  
28 Amendments; (3) a § 1983 claim for the taking of real property without compensation through the

1 curtailment orders in violation of the Fifth and Fourteenth Amendments; (4) a § 1983 claim for  
2 the taking of real property without compensation through the emergency regulations in violation  
3 of the Fifth and Fourteenth Amendments; (5) a § 1983 claim for the failure to hold an evidentiary  
4 hearing in violation of plaintiffs’ right to procedural due process under the Fifth and Fourteenth  
5 Amendments; (6) a § 1983 claim for the failure to hold an evidentiary hearing with regard to the  
6 curtailment orders in violation of plaintiffs’ right to procedural due process under the Fifth and  
7 Fourteenth Amendments; (7) a § 1983 claim for the failure to hold an evidentiary hearing with  
8 regard to the emergency regulations in violation of plaintiffs’ right to procedural due process  
9 under the Fifth and Fourteenth Amendments; (8) a claim brought under Article X, Section 2 of  
10 the California Constitution; and (9) a claim for violation of the public trust doctrine. (Doc. No.  
11 16 at ¶¶ 102–62.) Plaintiff Stanford Vina also asserts the following five additional claims against  
12 the Department defendants: (10) a claim brought under § 9 of the Endangered Species Act  
13 (“ESA”); (11) a § 1983 claim for the taking of real property without compensation in violation of  
14 the Fifth and Fourteenth Amendments; (12) a § 1983 claim for the failure to hold an evidentiary  
15 hearing in violation of its right to procedural due process and the Fifth and Fourteenth  
16 Amendments; (13) a claim for declaratory relief; and (14) a state law nuisance claim. (Doc. No.  
17 16 at ¶¶ 163–206.)

18 On March 25, 2022, the Board defendants filed a motion to dismiss all claims asserted  
19 against them. (Doc. No. 31.) On April 7, 2022, plaintiffs filed an opposition to the Board  
20 defendants’ pending motion (Doc. No. 32), and the Board defendants filed their reply on April 18,  
21 2022 (Doc. No. 34). On May 24, 2022, the Department defendants file a motion to dismiss all of  
22 the claims asserted against them. (Doc. No. 39.) On June 6, 2022, plaintiffs filed an opposition  
23 to the Department defendants’ pending motion (Doc. No. 40), and the Department defendants  
24 filed their reply on June 16, 2022 (Doc. No. 42).<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>3</sup> On November 22, 2022, the undersigned issued an order giving effect to a stipulation between  
27 the parties in which they agreed that if the court denies either of the pending motions to dismiss  
28 or grants either of them with leave to amend, then plaintiffs will be permitted to include in any  
further amended complaint claims challenging the regulations, resolutions, and curtailment orders  
that were promulgated in 2022. (Doc. Nos. 55, 56.)

1 **LEGAL STANDARD<sup>4</sup>**

2 **A. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction**

3 “Federal courts are courts of limited jurisdiction and are presumptively without  
4 jurisdiction over civil actions.” *Howard Jarvis Taxpayers Ass’n v. Cal. Secure Choice Ret. Sav.*  
5 *Program*, 443 F. Supp. 3d 1152, 1156 (E.D. Cal. 2020) (citing *Kokkonen v. Guardian Life Ins.*  
6 *Co.*, 511 U.S. 375, 377 (1994)), *aff’d*, 997 F.3d 848 (9th Cir. 2021). Federal courts “possess only  
7 that power authorized by Constitution and statute, which is not to be expanded by judicial  
8 decree.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted). Subject matter jurisdiction is  
9 required; it cannot be forfeited or waived. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at  
10 1156. Indeed, “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the  
11 court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

12 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a party may  
13 “challenge a federal court’s jurisdiction over the subject matter of the complaint.” *Nat’l Photo*  
14 *Grp., LLC v. Allvoices, Inc.*, No. 3:13-cv-03627-JSC, 2014 WL 280391, at \*1 (N.D. Cal. Jan. 24,  
15 2014). “A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the  
16 challenger asserts that the allegations contained in a complaint are insufficient on their face to

---

17  
18 <sup>4</sup> Defendants have purportedly brought their respective motions to dismiss under Federal Rule of  
19 Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6), but they have failed to clearly differentiate  
20 between these three different bases in their pending motions. (See Doc. Nos. 31 at 2; 31-1 at 7;  
21 39 at 2–3.) Based on the court’s review of the pending motions, defendants’ mention of Rule  
22 12(b)(2) will be disregarded because neither motion involves a challenge to personal jurisdiction.  
23 Rather, defendants argue that several claims are barred by state sovereign immunity—the Board  
24 defendants contend that plaintiffs’ claims 1–4 and 8–9 are barred, while the Department  
25 defendants contend all of plaintiffs’ claims asserted against the Department (claims 10–14) and  
26 claims 11 and 14 asserted against defendant Bonham are barred. (Doc. Nos. 31-1 at 10–12, 16–  
27 17; 39-1 at 11–12, 17–18, 20.) Because the challenges to the complaint based on state sovereign  
28 immunity under the Eleventh Amendment are deemed “quasi-judicial,” they can be brought  
under Rule 12(b)(1) or 12(b)(6). See *Sato v. Orange Cnty. Dep’t of Educ.*, 861 F.3d 923, 927 n.2  
(9th Cir. 2017). The Board defendants also argue that this court lacks subject matter jurisdiction  
to hear plaintiffs’ procedural due process claims (claims 5–7) under the *Rooker-Feldman*  
doctrine, and the Department defendants contend that this court lacks subject matter jurisdiction  
over plaintiff Stanford Vina’s declaratory judgment claim (claim 13). These challenges to the  
court’s subject matter jurisdiction are properly brought under Rule 12(b)(1) and will be addressed  
before defendants’ arguments raised under Rule 12(b)(6). See Fed. R. Civ. P. 12(b)(1); *Wolfe v.*  
*Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).



1 invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)  
2 (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). A party making a facial attack does  
3 not submit supporting evidence with the motion because jurisdiction is challenged based solely on  
4 the pleadings. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at 1156; *see also Diva*  
5 *Limousine, Ltd. v. Uber Techs., Inc.*, 392 F. Supp. 3d 1074, 1084 (N.D. Cal. 2019) (“[C]ourts do  
6 not consider evidence outside the pleadings when deciding a facial attack.”) (citation omitted).  
7 Important for purposes of resolving the pending motion, it has been recognized that “[t]he district  
8 court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): [a]ccepting the  
9 plaintiff’s allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the  
10 court determines whether the allegations are sufficient as a legal matter to invoke the court’s  
11 jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). However, the court need  
12 not assume the truth of legal conclusions cast in the form of factual allegations. *Warren v. Fox*  
13 *Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

14 “By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by  
15 themselves, would otherwise invoke federal jurisdiction.” *Safe Air for Everyone*, 373 F.3d at  
16 1039. In ruling on a party’s factual attack, district courts “may review evidence beyond the  
17 complaint without converting the motion to dismiss into a motion for summary judgment.” *Id.*  
18 The movant may “rely on affidavits or any other evidence properly before the court,” and the  
19 party opposing the motion must then “present affidavits or any other evidence necessary to satisfy  
20 its burden of establishing that the court, in fact, possesses subject matter jurisdiction.” *St. Clair v.*  
21 *City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) (citing *Thornhill Publ’g Co. v. Gen. Tel. & Elec.*  
22 *Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)).

23 Here, the court construes defendants’ motions as mounting facial attacks under Rule  
24 12(b)(1) because neither motion to dismiss relies on materials outside of the FAC, aside from  
25 documents that are the subject of the Board defendants’ request for judicial notice (Doc. No. 31-

26 ////

27 ////

28 ////



1 2),<sup>5</sup> which are ordinarily considered by the court when analyzing the face of the complaint. *See*  
2 *Carpenter v. OneWest Bank, FSB*, No. 12-cv-00895-MMM-OP, 2012 WL 13012420, at \*2 (C.D.  
3 Cal. Apr. 25, 2012) (“Even when deciding a facial attack, however, a court can look beyond the  
4 complaint to consider documents that are proper subjects of judicial notice.”) (collecting cases).

5 **B. Rule 12(b)(6) – Failure to State a Claim**

6 The purpose of a motion to dismiss brought pursuant to Rule 12(b)(6) is to test the legal  
7 sufficiency of the complaint. *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir.  
8 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
9 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901  
10 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to  
11 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A  
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
13 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*  
14 *Iqbal*, 556 U.S. 662, 678 (2009).

15 In determining whether a complaint states a claim on which relief may be granted, the  
16 court accepts as true the allegations in the complaint and construes the allegations in the light  
17 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However,

---

18  
19 <sup>5</sup> The Board defendants request that judicial notice of four documents be taken: (1) a copy of a  
20 state appellate court’s decision in *Stanford Vina Ranch Irrigation Company v. State*, 50 Cal. App.  
21 5th 976 (2020); (2) a copy of the Board’s Finding of Emergency, Informative Digest, and Revised  
22 Fiscal Impact Statement (Sept. 24, 2021) issued in connection with the adoption of the emergency  
23 regulations; (3) a copy of Water Rights Order 2021-0089 (Oct. 11, 2021); and (4) a copy of Water  
24 Rights Order 2021-0090 (Oct. 11, 2021). The court will take judicial notice of the existence of  
25 these four documents as matters of public record. *See Full Circle of Living & Dying v. Sanchez*,  
26 No. 2:20-cv-01306-KJM-KJN, 2023 WL 373681, at \*2 n.1 & n.2 (E.D. Cal. Jan. 24, 2023)  
27 (taking judicial of “publications, statutes, and regulations related to the funeral industry” as well  
28 as government documents obtained from website run by California state agency); *Holder v.*  
*Holder*, 305 F.3d 854, 866 (9th Cir. 2002) (taking “judicial notice of the California Court of  
Appeal opinion and the briefs filed in that proceeding and in the trial court”). However, as  
plaintiffs correctly point out in their objection to the Board defendants’ request for judicial notice  
(Doc. No. 33), the court will not take judicial notice of any facts contained within these  
documents—to the extent any exist—“that may be ‘subject to reasonable dispute.’” *United States*  
*v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (quoting *Lee v. City of Los Angeles*,  
250 F.3d 668, 689 (9th Cir. 2001)).

1 the court need not assume the truth of legal conclusions cast in the form of factual allegations.  
2 *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not  
3 require detailed factual allegations, “it demands more than an unadorned, the-defendant-  
4 unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers  
5 mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.”  
6 *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the elements  
7 of a cause of action, supported by mere conclusory statements, do not suffice.”). Moreover, it is  
8 inappropriate to assume that the plaintiff “can prove facts that it has not alleged or that the  
9 defendants have violated the . . . laws in ways that have not been alleged.” *Associated Gen.*  
10 *Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

## 11 ANALYSIS

12 The court will first address the Board defendants’ motion to dismiss plaintiffs’ claims  
13 asserted against them (claims 1–9). Then the court will take up the Department defendants’  
14 motion to dismiss the claims asserted against them only by plaintiff Stanford Vina (claims 10–  
15 14).

### 16 A. The Board Defendants’ Motion to Dismiss

17 The Board defendants contend that the Eleventh Amendment bars plaintiffs’ claims 1–4  
18 and 8–9. The court will first address these quasi-jurisdictional arguments and then consider  
19 Department defendants’ arguments for dismissal of plaintiffs’ claims 5–7 under the *Rooker-*  
20 *Feldman* doctrine or, alternatively, for failure to state a cognizable claim for relief.

#### 21 1. Eleventh Amendment – State Sovereign Immunity

22 The Eleventh Amendment prohibits federal courts from hearing suits brought by private  
23 citizens against state governments without the state’s consent. *Hans v. Louisiana*, 134 U.S. 1, 15  
24 (1890); *Sofamor Danek Grp. v. Brown*, 124 F.3d 1179, 1183 (9th Cir. 1997); *Nat. Res. Def.*  
25 *Council v. Cal. Dep’t of Transp.*, 96 F.3d 420, 421 (9th Cir. 1996). The Eleventh Amendment  
26 specifically provides states with a sovereign immunity from suit, as opposed to a nonwaivable  
27 limit on the federal courts subject matter jurisdiction. *Idaho v. Coeur d’Alene Tribe of Idaho*, 521  
28 U.S. 261, 267 (1997); *see also Wis. Dep’t of Corr. v. Schacht*, 524 U.S. 381, 389 (1998). This

1 state sovereign immunity extends to state agencies and to state officers who act on behalf of the  
2 state regardless of the relief sought. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S.  
3 89, 100 (1984); *Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d  
4 963, 967 (9th Cir. 2010).

5 The Supreme Court has established an important limitation on state sovereign immunity.  
6 *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 254 (2011). Specifically, the Eleventh  
7 Amendment “does not bar claims seeking prospective injunctive relief against state officials to  
8 remedy a state’s ongoing violation of federal law.” *Ariz. Students’ Ass’n v. Ariz. Bd. of Regents*,  
9 824 F.3d 858, 865 (9th Cir. 2016) (citing *Ex parte Young*, 209 U.S. 123, 149–56 (1908)). This  
10 limitation, known as the *Ex parte Young* exception, “rests on the premise . . . that when a federal  
11 court commands a state official to do nothing more than refrain from violating federal law, he is  
12 not the State for sovereign-immunity purposes.” *Stewart*, 563 U.S. at 255; *see also Pennhurst*,  
13 465 U.S. at 102. “In determining whether the doctrine of *Ex parte Young* avoids an Eleventh  
14 Amendment bar to suit, a court need only conduct a ‘straightforward inquiry into whether [the]  
15 complaint alleges an ongoing violation of federal law and seeks relief properly characterized as  
16 prospective.’” *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002)  
17 (quoting *Coeur d’Alene Tribe of Idaho*, 521 U.S. at 296).

18 a. *Federal Takings Clause Claims (Claims 1–4)*

19 In the Board defendants’ pending motion, they argue that plaintiffs’ takings claims  
20 brought under the Fifth and Fourteenth Amendments are barred by state sovereign immunity as  
21 provided for in the Eleventh Amendment. (Doc. No. 31-1 at 9–11.)

22 As an initial matter, the Board defendants argue that the relief sought by plaintiffs in their  
23 takings claims is “disguised” as a claim for monetary damages. (Doc. No. 31-1 at 10.) In  
24 plaintiffs’ FAC, some of their allegations indicate that they seek compensation for the past  
25 diversion of water mandated by the Board’s emergency regulations and curtailment orders. (*See*  
26 Doc. No. 16 at ¶¶ 103, 105, 110–11, 116.) However, it is well established that the Eleventh  
27 Amendment bars inverse condemnation actions brought under the Fifth Amendment’s Taking

28 //

1 Clause in federal court against state officials in their official capacities.<sup>6</sup> *See Seven Up Pete*  
2 *Venture v. Schweitzer*, 523 F.3d 948, 956 (9th Cir. 2008); *Jachetta v. United States*, 653 F.3d 898,  
3 909–10 (9th Cir. 2011); *see also 74 Pinehurst LLC v. New York*, 59 F.4th 557, 570 & n.7 (2d Cir.  
4 2023) (“[T]he overwhelming weight of authority among the circuits . . . have consistently held  
5 that sovereign immunity trumps the Takings Clause where, as here, the state provides its own  
6 remedy for an alleged violation.”) (collecting cases). Thus, it is clear that plaintiffs’ takings  
7 claims asserted against the Board defendants are barred by state sovereign immunity to the extent  
8 that they seek the award of monetary damages for property that has allegedly been taken. *See*  
9 *Schweitzer*, 523 F.3d at 956.

10 Plaintiffs argue in their opposition brief, however, that they are not seeking monetary  
11 compensation, but rather an injunction “requiring the [Board defendants] to comply with  
12 constitutional due process hearing and compensation requirements when undertaking these  
13 actions *in the future*.” (Doc. No. 32 at 14.) As plaintiffs argue, “[t]his is not a case where  
14 injunctive relief is sought to physically stop the underlying actions that are alleged to constitute a  
15 taking”; rather, “the prospective injunctive relief sought through the FAC would allow defendants  
16 to continue taking plaintiffs’ water and property through the regulations and orders . . . so long as  
17 constitutional hearing and compensation requirements were complied with going forward.” (*Id.*  
18 at 15–16.) In advancing this argument, plaintiffs also point to the prayer for relief in their FAC,  
19 which requests the following relief as to their takings claims: “a preliminary and permanent  
20 injunction prospectively prohibiting defendants from adoption, re-adoption, implementation, and  
21 enforcement of the emergency regulations and/or curtailment orders without holding a due  
22 process evidentiary hearing and without payment of just compensation for the taking of real  
23 property and real property rights”; and “[f]or declaratory relief that defendants’ adoption and  
24 implementation of the emergency regulations and/or curtailment orders is unlawful.” (Doc. No.

25 \_\_\_\_\_  
26 <sup>6</sup> “Inverse condemnation is a cause of action against a governmental defendant to recover the  
27 value of property which has been taken in fact by the governmental defendant. Inverse  
28 condemnation stands in contrast to direct condemnation, in which the government initiates  
proceedings to acquire title under its eminent domain authority.” *Knick v. Twp. of Scott,*  
*Pennsylvania*, \_\_\_ U.S. \_\_\_, 139 S. Ct. 2162, 2168 (2019).

1 16 at 57.) In other words, plaintiffs contend that by characterizing the relief sought as an  
2 “injunction *prospectively* prohibiting defendants” from taking their property without just  
3 compensation, they fall within the *Ex parte Young* exception. (Doc. No. 32 at 13–14.)

4         However, the Ninth Circuit has concluded that even if an inverse condemnation claim is  
5 construed “as one seeking injunctive relief against state officers to force them to adhere to the  
6 Constitution, as in *Ex parte Young*,” such claims “cannot qualify as claims for prospective relief,  
7 and *Ex parte Young* consequently does not apply.” *Schweitzer*, 523 F.3d at 956 (reasoning that  
8 inverse condemnation actions seek “in a strict sense . . . not just compensation *per se* but rather  
9 damages for the unconstitutional denial of such compensation”). And although plaintiffs seek to  
10 distinguish the decision in *Schweitzer* by arguing that the remedy they seek is not the same as that  
11 sought in an inverse condemnation action, the court must look to the remedies available in  
12 connection with Fifth Amendment takings claims to determine whether the claims brought here  
13 fall within *Ex parte Young*’s limitation on state sovereign immunity. *See id.* (“The applicability  
14 of the *Ex parte Young* exception turns on whether federal takings actions are properly  
15 characterized as seeking prospective or retrospective relief.”). Here, the injunctive relief sought  
16 by plaintiffs in their FAC—even if alleged to be “prospective”—is not consistent with the  
17 remedies available in connection with their claim asserting Fifth Amendment violations. Indeed,  
18 “[a]s long as an adequate provision for obtaining just compensation exists, there is no basis to  
19 enjoin the government’s action effecting a taking.” *Knick*, 139 S. Ct. at 2176, 2179 (explaining  
20 that “[g]overnments need not fear that our holding will lead federal courts to invalidate their  
21 regulations as unconstitutional” because “[a]s long as just compensation remedies are available . .  
22 . injunctive relief will be foreclosed”). In their FAC, plaintiffs have not alleged that they are  
23 prevented from seeking just compensation for an alleged future taking of their water rights in  
24 state court. Because there are no allegations indicating that plaintiffs will be prevented from  
25 bringing suit to recover just compensation remedies for any alleged future takings, plaintiffs  
26 cannot seek injunctive or declaratory relief for the alleged violations of the takings clause. *See id.*  
27 at 2167–68. When viewed from this remedial perspective, plaintiffs’ FAC does not satisfy the *Ex*  
28 *parte Young* exception because prospective injunctive relief is not available to them based on the

1 allegations in their FAC. *See Laborers’ Int’l Union of N. Am., Loc. 860 v. Neff*, 29 F.4th 325,  
2 334–35 (6th Cir. 2022) (holding that a union could not sue the state to enjoin “future violations of  
3 the Takings Clause” because the union’s allegations in the complaint did not indicate that their  
4 rights could not be vindicated through a remedy at law, such as a breach of contract suit); *EEE*  
5 *Mins., LLC v. State of N. Dakota*, \_\_\_ F.4d \_\_\_, 2023 WL 5600296, at \*5 (8th Cir. Aug. 30, 2023)  
6 (rejecting the argument that an owner of mineral rights could rely on the *Ex parte Young*  
7 exception to pursue a takings claim against the state, in part, because “equitable relief is  
8 unavailable to enjoin an alleged taking of private property where, as here, a remedy at law is  
9 available through a suit for just compensation in state court”); *Culinary Studios, Inc. v. Newsom*,  
10 517 F. Supp. 3d 1042, 1065 (E.D. Cal. 2021) (concluding that the plaintiff’s request for  
11 declaratory and injunctive relief as to their takings claims did not provide a basis for the *Ex parte*  
12 *Young* exception because there was no indication that the plaintiff could not seek just  
13 compensation through state law procedures). At bottom, plaintiffs’ FAC does not plausibly allege  
14 that plaintiffs do not have available to them—now or in the future—California’s mechanism for  
15 recovering just compensation for an alleged taking in violation of the Fifth Amendment.<sup>7</sup>

16 Accordingly, the Board defendants’ motion to dismiss plaintiffs’ takings claims brought  
17 under the Fifth and Fourteenth Amendments will be granted. Although the court is skeptical that  
18 plaintiffs can allege sufficient facts necessary to assert a viable takings claims that can satisfy the  
19 *Ex parte Young* exception given their failure to provide supporting legal authority in connection

---

20  
21 <sup>7</sup> In addition, the court notes that plaintiffs’ FAC does not make clear whether they are alleging  
22 that there is an ongoing violation of federal law, as required under *Ex parte Young*. *See Verizon*  
23 *Md., Inc.*, 535 U.S. at 645. Indeed, plaintiffs argue in their opposition that they “seek injunctive  
24 relief to compel compliance with . . . compensation requirements *when defendants carry out the*  
25 *taking in the future.*” (Doc. No. 32 at 17 (emphasis added); *see also id.* at 14 (“Plaintiffs seek an  
26 injunction requiring the [Board defendants] to comply with constitutional due process hearing and  
27 compensation requirements when undertaking these actions *in the future.*”).) Thus, even if  
28 plaintiffs could plausibly allege facts indicating that they were unable to pursue monetary  
damages for future takings, it remains unclear based on the arguments raised in their opposition  
brief, whether plaintiffs could also satisfy the requirement that there be an ongoing violation of  
federal law for purposes of the *Ex parte Young* exception. *See Merritts v. Richards*, 62 F.4th 764,  
771–72 (3d Cir. 2023) (finding that plaintiff’s takings claim did not qualify for *Ex parte Young*  
exception, in part, because an earlier action that had present effects did not mean that those  
effects constituted an ongoing violation of federal law for purposes of *Ex parte Young*).



1 with the pending motion, the court will nonetheless, in an abundance of caution, grant the Board  
 2 defendants' motion to dismiss these claims with leave to amend. *See Nat'l Council of La Raza v.*  
 3 *Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) ("It is black-letter law that a district court must  
 4 give plaintiffs at least one chance to amend a deficient complaint, absent a clear showing that  
 5 amendment would be futile.").

6 b. *State Law Claims (Claims 8–9)*

7 Plaintiffs also assert two state law claims against the Board defendants which they bring  
 8 under Article X, Section 2 of the California Constitution, and the public trust doctrine. (Doc. No.  
 9 16 at ¶¶ 147–62.) The Board defendants argue in their pending motion that these two state law  
 10 claims are also barred under the Eleventh Amendment because state sovereign immunity bars  
 11 state law claims brought in federal court under pendent jurisdiction. (Doc. No. 34 at 6) (citing  
 12 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) ("*Pennhurst*").

13 "[T]he Eleventh Amendment bars the adjudication of pendent state law claims against  
 14 nonconsenting state defendants in federal court." *Raygor v. Regents of Univ. of Minn.*, 534 U.S.  
 15 533, 540–41 (2002) (citing *Pennhurst*, 465 U.S. at 120). The Ninth Circuit has repeatedly cited  
 16 "*Pennhurst* as standing for the proposition that federal courts are barred by the Eleventh  
 17 Amendment from deciding state law claims for injunctive or declaratory relief against state  
 18 officials." *Ass'n of Christian Sch. Int'l v. Stearns*, No. 05-cv-06242-SJO-RZ, 2006 WL 8434678,  
 19 at \*11 & n.6 (C.D. Cal. Aug. 8, 2006) (collecting Ninth Circuit cases). As the Supreme Court  
 20 explained in *Pennhurst*:

21 when a plaintiff alleges that a state official has violated *state law* . .  
 22 . the entire basis for the doctrine of [*Ex parte*] *Young* and *Edelman*  
 23 disappears. A federal court's grant of relief against state officials  
 24 on the basis of state law, whether prospective or retroactive, does  
 25 not vindicate the supreme authority of federal law. On the contrary,  
 26 it is difficult to think of a greater intrusion on state sovereignty than  
 when a federal court instructs state officials on how to conform  
 their conduct to state law. Such a result conflicts directly with the  
 principles of federalism that underlie the Eleventh Amendment.  
 We conclude that [*Ex parte*] *Young* and *Edelman* are inapplicable in  
 a suit against state officials on the basis of state law.

27 *Pennhurst*, 465 U.S. at 106.

28 //



1 Here, in regard to their two state law claims, plaintiffs seek “declaratory relief that  
 2 defendants’ adoption and implementation of the emergency regulations and/or curtailment orders  
 3 is unlawful.” (Doc. No. 16 at 57.) In other words, plaintiffs seek relief under state law against  
 4 the Board defendants, who are state officials sued in their official capacity. “In a suit in which  
 5 relief would run against the state, *Pennhurst* indicates that plaintiffs must go to state court to  
 6 obtain relief based on state law.” *Kollsman v. City of Los Angeles*, 737 F.2d 830, 837 n.18 (9th  
 7 Cir. 1984). Accordingly, the Board defendants’ motion to dismiss will be granted and plaintiffs’  
 8 state law claims asserted against those defendants will be dismissed without leave to amend.<sup>8</sup> *See*  
 9 *Bradley-Aboyade v. Crozier*, No. 2:19-cv-01098-TLN-AC, 2020 WL 4475088, at \*8 (E.D. Cal.  
 10 Aug. 4, 2020) (granting motion to dismiss without leave to amend where plaintiff brought state  
 11 law claim against defendant in his official capacity as the public records coordinator at Mule  
 12 Creek State Prison); *Ransom v. Lee*, No. 14-cv-00600-DSF-KK, 2017 WL 10525951, at \*14, \*16  
 13 (C.D. Cal. Apr. 20, 2017) (dismissing state law claims asserted against state officials in their  
 14 official capacity without leave to amend as barred under the Eleventh Amendment), *report and*  
 15 *recommendation adopted*, 2017 WL 10510170 (C.D. Cal. June 27, 2017).

## 16 2. Federal Procedural Due Process (Claims 5–7)

17 Next, the Board defendants argue in their pending motion that plaintiffs’ due process  
 18 claims brought under the Fifth<sup>9</sup> and Fourteenth Amendments are barred by the *Rooker-Feldman*

19 \_\_\_\_\_  
 20 <sup>8</sup> Plaintiffs also argue that even if their claims are barred under the Eleventh Amendment, they  
 21 are properly heard under 28 U.S.C. § 1367(a). (Doc. No. 32 at 18–19.) This argument has been  
 22 explicitly foreclosed by the Supreme Court which has held “that § 1367(a)’s grant of jurisdiction  
 23 does not extend to claims against nonconsenting state defendants.” *Raygor*, 534 U.S. at 542.

24 <sup>9</sup> Plaintiffs’ three procedural due process claims (claims 5–7) asserted against the Board  
 25 defendants are brought under both the Fifth and Fourteenth Amendments. (Doc. No. 16 at ¶¶  
 26 131, 141, 144.) “The Fifth Amendment’s Due Process Clause applies to the federal government  
 27 while the Fourteenth Amendment’s Due Process Clause applies only to the states.” *Clifton v.*  
 28 *United States Dep’t of Just.*, 615 F. Supp. 3d 1185, 1202 (E.D. Cal. 2022) (citing *Castillo v.*  
*McFadden*, 399 F.3d 993, 1002 n.5 (9th Cir. 2005)). Here, because the Board defendants are not  
 part of the federal government, (Doc. No. 16 at ¶ 9), plaintiffs’ procedural due process claims  
 (claims 5–7) are dismissed without leave to amend to the extent that they are predicated on the  
 Fifth Amendment. *See Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008) (finding that the  
 district court erred in failing to dismiss Fifth Amendment due process claims asserted against a  
 local governmental official).

1 doctrine. (Doc. No. 31-1 at 12–14.) Alternatively, the Board defendants argue that if the court  
2 determines that the *Rooker-Feldman* doctrine does not apply, plaintiffs have failed to state  
3 cognizable procedural due process claims in their FAC. (Doc. No. 31-1 at 12–16.) The court will  
4 address each argument in turn.

5 a. *Rooker-Feldman Doctrine*

6 “The *Rooker-Feldman* doctrine instructs that federal district courts are without jurisdiction  
7 to hear direct appeals from the judgments of state courts.” *Cooper v. Ramos*, 704 F.3d 772, 777  
8 (9th Cir. 2012). The doctrine is limited to “cases brought by state-court losers complaining of  
9 injuries caused by state-court judgments rendered before the district court proceedings  
10 commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil*  
11 *Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 291–92 (2005).

12 In addition, the doctrine “bars a federal district court from exercising subject matter  
13 jurisdiction ‘not only over an action explicitly styled as a direct appeal, but also over the “de facto  
14 equivalent” of such an appeal.’” *Hooper v. Brnovich*, 56 F.4th 619, 624 (9th Cir. 2022) (quoting  
15 *Morrison v. Peterson*, 809 F.3d 1059, 1070 (9th Cir. 2015)). When analyzing whether the  
16 *Rooker-Feldman* doctrine applies, “a district court first must determine whether the action  
17 contains a forbidden de facto appeal of a state court decision.” *Bell v. City of Boise*, 709 F.3d  
18 890, 897 (9th Cir. 2013). “To determine whether an action functions as a de facto appeal, we  
19 ‘pay close attention to the relief sought by the federal-court plaintiff.’” *Cooper*, 704 F.3d at 777–  
20 78 (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003)). As the Ninth Circuit has  
21 explained:

22 A de facto appeal exists when “a federal plaintiff asserts as a legal  
23 wrong an allegedly erroneous decision by a state court, and seeks  
24 relief from a state court judgment based on that decision.” In  
25 contrast, if “a federal plaintiff asserts as a legal wrong an allegedly  
26 illegal act or omission by an adverse party, *Rooker-Feldman* does  
not bar jurisdiction.” Thus, even if a plaintiff seeks relief from a  
state court judgment, such a suit is a forbidden de facto appeal only  
if the plaintiff *also* alleges a legal error by the state court.

27 *Bell*, 709 F.3d at 897 (9th Cir. 2013) (quoting *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003))  
28 (internal citation omitted); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) (“[F]or

1 *Rooker-Feldman* to apply, a plaintiff must seek not only to set aside a state court judgment; he or  
2 she must also allege a legal error by the state court as the basis for that relief.”); *see also Skinner*  
3 *v. Switzer*, 562 U.S. 521, 531 (2011) (explaining that *Rooker-Feldman* is limited to instances  
4 where “[t]he losing party in state court[] filed suit in a U.S. District Court after the state  
5 proceedings ended, complaining of an injury caused by the state-court judgment and seeking  
6 federal-court review and rejection of that judgment”).

7 In other words, “if a plaintiff presents an independent claim in federal court, federal  
8 jurisdiction is not defeated by the fact that the parties litigated the ‘same or a related question’  
9 earlier in state court.” *Morrison*, 809 F.3d at 1070 (quoting *Skinner*, 562 U.S. at 532); *see also*  
10 *Mothershed v. Justs. of Supreme Ct.*, 410 F.3d 602, 606 (9th Cir. 2005) (“The doctrine does not . .  
11 . prohibit a plaintiff from presenting a generally applicable legal challenge to a state statute in  
12 federal court, even if that statute has previously been applied against him in state court  
13 litigation.”); *Noel*, 341 F.3d at 1164 (“The *Rooker-Feldman* doctrine asks: is the federal plaintiff  
14 seeking to set aside a state judgment, or does he present some independent claim, albeit one that  
15 denies a legal conclusion that a state court has reached in a case to which he was a party?”).

16 Finally, “[i]f ‘a federal plaintiff seeks to bring a forbidden de facto appeal, . . . that federal  
17 plaintiff may not seek to litigate an issue that is “inextricably intertwined” with the state court  
18 judicial decision from which the forbidden de facto appeal is brought.’” *Bell*, 709 F.3d at 897  
19 (quoting *Noel*, 341 F.3d at 1158). This “inextricably intertwined” language, however, “is not a  
20 test to determine whether a claim is a de facto appeal, but is rather a second and distinct step in  
21 the *Rooker-Feldman* analysis.” *Id.* “Should the action not contain a forbidden de facto appeal,  
22 the *Rooker-Feldman* inquiry ends.” *Id.*

23 In the Board defendants’ pending motion, they argue that the allegations of plaintiffs’  
24 FAC that they were deprived of evidentiary hearings and the right to cross-examination of  
25 witnesses prior to the Board’s adoption of the emergency regulations and issuance of the  
26 curtailment orders were already fully addressed by the California Court of Appeal in *Stanford*  
27 *Vina Ranch Irrigation Company v. State*, 50 Cal. App. 5th 976 (2020). (Doc. No. 31-1 at 12.)  
28 Specifically, the Board defendants argue that plaintiff Stanford Vina challenged “nearly identical”

1 regulations that were adopted during the 2014–2015 drought in *Stanford Vina Ranch Irrigation*  
2 *Company* and the California Court of Appeal in that case concluded that due process did not  
3 require the Board to hold evidentiary hearings before promulgating emergency drought  
4 regulations. (*Id.*) (citing *Stanford Vina Ranch Irrigation Co.*, 50 Cal. App. 5th at 1003–04). By  
5 challenging the Board’s adoption of emergency regulations and issuance of the curtailment orders  
6 in this action, the Board defendants argue that plaintiffs “essentially ask this court to reverse the  
7 California court of appeal” and that the claims asserted in this action “are inextricably intertwined  
8 with” *Stanford Vina Ranch Irrigation Company*. (*Id.* at 13–14.)

9 In opposition, plaintiffs argue that the *Rooker-Feldman* doctrine is inapplicable because  
10 the plaintiffs “are not complaining of injuries caused by the state court judgment in *Stanford Vina*  
11 *Ranch Irrigation Company*.” (Doc. No. 32 at 8–9.) Rather, plaintiffs contend that they are  
12 challenging the Board defendants’ adoption and implementation of emergency regulations and  
13 curtailment orders on Mill Creek and Deer Creek occurring in 2021, which are “separate and  
14 distinct” from the 2014–2015 emergency regulations that were the subject of the state appellate  
15 court decision in *Stanford Vina Ranch Irrigation Company*—indeed, they note that the 2021  
16 regulations were adopted six years later and cover fewer watersheds. (*Id.*)

17 In reply, plaintiffs reiterate that this case is “inextricably intertwined” with *Stanford Vina*  
18 *Ranch Irrigation Company* and that this court should focus on the relief sought by plaintiff Vina,  
19 which shows that “the present suit collaterally attacks the state appellate court’s interpretation of  
20 Article X, section 2 of the California Constitution in the context of due process requirements.”  
21 (Doc. No. 34 at 5.)

22 Here, the court need only address whether plaintiff Stanford Vina is pursuing a de facto  
23 appeal from the California Court of Appeal’s judgment in *Stanford Vina Ranch Irrigation*

24 ////

25 ////

26 ////

27 ////

28 ////

1 *Company*.<sup>10</sup> The court concludes that it is not. To begin with, plaintiffs’ FAC does not even  
2 mention the state appellate court’s decision in *Stanford Vina Ranch Irrigation Company*; rather, it  
3 alleges that the Board “adopted nearly identical *but also distinct* emergency regulations curtailing  
4 nearly all off-stream diversions on Mill, Deer, and Antelope Creeks” in 2014–2015. (Doc. No. 16  
5 at ¶ 68) (emphasis added); (*see also id.* at ¶ 70) (alleging that “[t]he record preceding the 2021  
6 emergency regulations and orders is far different from the 2014 and 2015 regulations and  
7 orders”). Notably, plaintiff Stanford Vina does not allege that the California Court of Appeal  
8 judgment issued in *Stanford Vina Ranch Irrigation Company* regarding those 2014–2015  
9 regulations or curtailment orders harmed it in some way or that it is seeking relief from the  
10 judgment in that case. Nor does it assert that the state appellate court erred as a matter of law in  
11 that earlier case. Instead, plaintiff Stanford Vina challenges the Board defendants’ adoption and  
12 implementation of the emergency regulations and curtailment orders in 2021 and contends that  
13 those actions are unconstitutional. (Doc. No. 16 at ¶¶ 59–60, 65, 131–40.) The specific relief  
14 plaintiff Stanford Vina seeks is an injunction prospectively prohibiting defendants from adopting,  
15 readopting, and enforcing the emergency regulations and curtailment orders without a due process  
16 hearing, and a declaration that defendants’ failure to provide due process in conjunction with  
17 those actions is unconstitutional. (*Id.* at 57.) As such, the legal wrong alleged in this action by  
18 plaintiff Stanford Vina is one purportedly perpetrated by defendants, not the California Court of  
19

---

20 <sup>10</sup> As an initial matter, plaintiffs correctly point out that the *Rooker-Feldman* doctrine could not  
21 apply to plaintiffs Los Molinos and Peyton because they were not parties—nor appear to have had  
22 any involvement—in *Stanford Vina Ranch Irrigation Company*, and defendants do not contest  
23 this point in their reply brief. (Doc. Nos. 32 at 8; 34 at 5); *see Lance v. Dennis*, 546 U.S. 459, 466  
24 (2006) (recognizing that “*Rooker-Feldman* [is] inapplicable where the party against whom the  
25 doctrine is invoked was not a party to the underlying state-court proceeding” and rejecting the  
26 argument that a third-party who is in privity with the losing party from the state court proceeding  
27 can be barred under *Rooker-Feldman*); *Bennett v. Yoshina*, 140 F.3d 1218, 1223–24 (9th Cir.  
28 1998) (“Since the *Rooker-Feldman* doctrine applies only when the federal plaintiff was a party to  
the state case and is challenging an adverse decision by the state court, it follows that mere  
participation in the state case as amici does not invoke the *Rooker-Feldman* bar.”) (internal  
citation omitted). Thus, the court need only determine whether plaintiff Stanford Vina is barred  
from bringing its suit under the *Rooker-Feldman* doctrine because it is the only plaintiff that was  
a party in the *Stanford Vina Ranch Irrigation Company* case before the California Court of  
Appeal.

1 Appeal. *See Bell*, 709 F.3d at 897 (finding the *Rooker-Feldman* doctrine inapplicable where the  
2 plaintiffs “sought relief designed to remedy injuries suffered from a state court judgment” but  
3 “did not allege before the court that the state court committed legal error, nor did they seek relief  
4 from the state court judgment itself”); *id.* (“Without a direct challenge to a state court’s factual or  
5 legal conclusion, Plaintiffs’ suit is not a forbidden de facto appeal, and *Rooker-Feldman* is  
6 inapplicable.”).

7 Moreover, the Board defendants also do not articulate how plaintiff Stanford Vina’s  
8 success in this action would somehow reverse the state appellate court’s decision in *Stanford Vina*  
9 *Ranch Irrigation Company*. To the contrary, the allegations of the FAC indicate that plaintiff  
10 Stanford Vina’s procedural due process claims are independent legal claims that do not challenge  
11 a state court judgment, even if those claims might touch upon a legal conclusion reached by the  
12 state appellate court in *Stanford Vina Ranch Irrigation Company*.<sup>11</sup> *See Hooper*, 56 F.4th at 624  
13 (“*Rooker-Feldman* does not preclude a plaintiff from bringing an independent claim that, though  
14 similar or even identical to issues aired in state court, was not the subject of a previous judgment  
15 by the state court. . . . [A] statute or rule governing the [state court’s] decision may be challenged  
16 in a federal action.”) (internal citations and quotation marks omitted).

17 For these reasons the court concludes defendants have not shown that plaintiffs are  
18 presenting a de facto appeal of a state court judgment based on the allegations in the FAC.  
19 Accordingly, the Board defendants’ motion to dismiss plaintiffs’ procedural due process claims as  
20 barred by the *Rooker-Feldman* doctrine will be denied.

21 /////  
22 /////  
23 \_\_\_\_\_

24 <sup>11</sup> In *Stanford Vina Ranch Irrigation Company*, the state appellate court analyzed whether the  
25 promulgation of the 2014–2015 emergency regulations and curtailment orders were within the  
26 Board’s authority under California law. *See* 50 Cal. App. 5th at 1004–05, 1008. Although the  
27 court briefly mentioned due process in passing when concluding that the Board was not required  
28 to hold an evidentiary hearing to promulgate the 2015 emergency regulations because doing so  
was a legislative function under state law, the court did not specify if it was referring to federal or  
state procedural due process, and the California case cited by the state appellate court in support  
of its conclusion did not address federal or state procedural due process at all. *Id.* at 1003–04  
(citing *Cal. Trout, Inc. v. State Water Res. Control Bd.*, 207 Cal. App. 3d 585 (1989)).



1           b.       *Procedural Due Process*

2           Plaintiffs allege in their FAC that they were denied procedural due process under federal  
3 law because they did not receive individualized evidentiary hearings before the Board issued  
4 emergency regulations and curtailment orders. (Doc. No. 16 at ¶¶ 130–46.) In their pending  
5 motion, the Board defendants argue that plaintiffs have failed to state a cognizable due process  
6 claim because the promulgation of the emergency regulations and curtailment orders, as alleged,  
7 are legislative acts and plaintiffs’ own allegations show that the process owed in connection with  
8 such acts was provided to plaintiffs. (Doc. No. 31-1 at 14–15.)

9           Whether plaintiffs were accorded procedural due process when the emergency regulations  
10 and curtailment orders were enacted by the Board “depends on the nature of the decision leading  
11 to” the Board’s emergency regulations and curtailments orders. *See Hotel & Motel Ass’n of*  
12 *Oakland v. City of Oakland*, 344 F.3d 959, 968–69 (9th Cir. 2003). “Ordinarily, due process of  
13 law requires an opportunity for some kind of hearing prior to the deprivation of a significant  
14 property interest.” *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012)  
15 (quoting *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 19 (1978)) (internal quotation  
16 marks omitted). “However, [w]hen the action complained of is legislative in nature, due process  
17 is satisfied when the legislative body performs its responsibilities in the normal manner  
18 prescribed by law.” *Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1260 (9th Cir. 1994) (citation and  
19 internal quotation marks omitted). As the Ninth Circuit has explained:

20                           In seeking to define when a particular governmental action is  
21 legislative in nature we have eschewed the formalistic distinctions  
22 between legislative and adjudicatory or administrative government  
23 actions and instead focused on the character of the action, rather  
24 than its label . . . . In doing so, our cases have determined also that  
governmental decisions which affect large areas and are not  
directed at one or a few individuals do not give rise to the  
constitutional procedural due process requirements of individual  
notice and hearing; general notice as provided by law is sufficient.

25 *Id.* 1260–61 (9th Cir. 1994) (internal quotation marks and citations omitted); *Hotel & Motel Ass’n*  
26 *of Oakland*, 344 F.3d at 969.

27       ////

28       ////



1 Here, plaintiffs allege that the emergency regulations and curtailment orders affected all  
2 22 water rights holders on Mill Creek and Deer Creek.<sup>12</sup> (Doc. No. 16 at ¶¶ 78, 136.) The text of  
3 the emergency regulations and curtailment orders are consistent with plaintiffs’ allegation that  
4 they affected “[a]ll water right holders” in the Deer and Mill creek watersheds, which cover  
5 approximately 239 and 134 square miles, respectively, and run for 60 miles each before their  
6 confluences with the Sacramento River. (Doc. No. 31-2 at 30–31, 45, 59); Cal. Code Regs. tit.  
7 23, § 876.5(c)(1)–(2). The allegations of plaintiffs’ FAC indicate that the Board’s promulgation  
8 of the emergency regulations and issuance of curtailment orders were legislative acts because  
9 those regulations and orders affected large areas (i.e., the entirety of the Deer Creek and Mill  
10 Creek watersheds) and were directed at all water right holders in both watersheds, as opposed to  
11 one or only a few water rights holders. *See Hotel & Motel Ass’n of Oakland*, 344 F.3d at 969–70  
12 (finding that the plaintiffs failed to plausibly allege a procedural due process claim against the  
13 city’s promulgation of an ordinance affecting all hotels, even though the ordinance was motivated  
14 by a subcategory of bad actors, because the ordinance did not “specifically target[] a single  
15 individual’s property for a zoning change” nor “exceptionally affect[] . . . [the plaintiffs] on an  
16 individual basis”); *see also Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1056–1060 &  
17 n.10 (9th Cir. 2012) (holding that an emergency ordinance imposing a moratorium on shoreline  
18 development that was enacted without a public hearing did not run afoul of procedural due  
19 process because it “applied generally to all owners of shoreline property on Bainbridge Island”);  
20 *Flint v. Cnty. of Kauai*, 521 F. Supp. 3d 978, 994 (D. Haw. 2021) (finding that a temporary  
21 emergency rule enacted to limit access to an area on the island of Kauai to allow road repairs  
22 following “devastating flooding” was legislative in character because it “affected the ‘entire  
23 class’ of [transient vacation rental] owners in the disaster area—approximately 80 properties” and  
24 thus did not violate procedural due process). Importantly, plaintiffs have not plausibly alleged in

---

25 <sup>12</sup> Plaintiffs’ allegation that 22 water rights holders were affected appears consistent with the  
26 curtailment orders themselves, which the court has judicially noticed. Although the Board  
27 defendants contend in their pending motion that 65 water rights holders were affected, the  
28 curtailment orders indicate that there are actually 65 *claims* on water rights on Mill Creek and  
Deer Creek, though certain water rights holders have more than one claim, and that in total, there  
are 22 water rights holders. (*See* Doc. No. 31-2 at 45, 59.)

1 their FAC—beyond conclusory claims that their rights were impaired—how the temporary  
2 emergency regulations and curtailment orders “exceptionally affected [them] . . . on an individual  
3 basis” when the limitations on water diversion were imposed on all water rights holders in the  
4 Mill Creek and Deer Creek watersheds. (See Doc. No. 16 at ¶ 67); cf. *Harris v. Cnty. of*  
5 *Riverside*, 904 F.2d 497, 502 (9th Cir. 1990) (finding that a due process violation occurred  
6 because within the county’s general plan amendment process the county “specifically targeted  
7 Harris’ property for a zoning change after notice had been published” and the result of the change  
8 in zoning effectively put the plaintiff out of business, absent paying “a substantial nonrefundable  
9 fee”); see also *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 542  
10 (1978) (explaining that “in a rulemaking proceeding when an agency is making a quasi-judicial  
11 determination” additional procedures may be required in some circumstances when “very small  
12 number of persons are exceptionally affected, in each case upon individual grounds”) (internal  
13 quotation marks omitted). Finally, plaintiffs have not presented any persuasive legal authority  
14 supporting their argument that they have plausibly alleged that the Board acts were not legislative  
15 in nature. Cf. *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915) (“Where  
16 a rule of conduct applies to more than a few people, it is impracticable that everyone should have  
17 a direct voice in its adoption.”).

18 Because the allegations of plaintiffs’ FAC indicate that the emergency regulations and  
19 curtailment orders were legislative in nature, “due process is satisfied when the legislative body  
20 performs its responsibilities in the normal manner prescribed by law.” *Halverson v. Skagit Cnty.*,  
21 42 F.3d at 1260. In this regard, plaintiffs allege in their FAC that they received notice of the  
22 Board’s promulgation and issuance of the emergency regulations and curtailment orders,  
23 “participated orally and in writing in the meetings at which defendants voted to adopt the  
24 emergency regulations and curtailment orders,” and after adoption, plaintiffs “sought  
25 reconsideration of the curtailment order[s].” (Doc. No. 16 at ¶¶ 13, 54.) Given these allegations,  
26 plaintiffs have not plausibly alleged a cognizable federal procedural due process claim. See *Free*  
27 *Spirit Organics, NAC v. San Joaquin Cnty. Bd. of Supervisors*, No. 2:17-cv-02271-KJM-JDP,  
28 2022 WL 902834, at \*7 (E.D. Cal. Mar. 25, 2022) (finding that the plaintiffs had failed to

1 plausibly allege a procedural due process claim where “plaintiffs do not allege the County  
2 departed from its normal procedure for enacting an emergency moratorium” ordinance  
3 temporarily limiting the production of industrial hemp).

4 Accordingly, the motion to dismiss plaintiffs’ federal procedural due process claims  
5 brought on behalf of the Board defendants’ will be granted, with leave to amend. In this regard,  
6 the court is also skeptical that plaintiffs can allege sufficient facts in support of a cognizable claim  
7 that the Board’s actions were not legislative in nature or that the requisite process due was not  
8 provided to plaintiffs. Nevertheless, plaintiffs will be granted one opportunity to amend their  
9 allegations in support of their federal due process claims should they wish to continue to pursue  
10 that claim. *See Nat’l Council of La Raza*, 800 F.3d at 1041.

11 **B. The Department Defendants’ Motion to Dismiss**

12 The court will first address the arguments advanced by the Department defendants that  
13 several of plaintiff Stanford Vina’s claims should be dismissed as barred by the Eleventh  
14 Amendment. The court will then consider the Department defendants’ argument that plaintiffs  
15 have failed to state cognizable ESA and procedural due process claims. Finally, the court will  
16 consider the Department defendants’ arguments urging dismissal of plaintiff Stanford Vina’s  
17 claim for declaratory relief.

18 1. Eleventh Amendment – State Sovereign Immunity

19 In the Department defendants’ pending motion, they seek dismissal of all claims asserted  
20 against the Department, along with claims 11 and 14 asserted against defendant Bonham, as being  
21 barred by the Eleventh Amendment.

22 a. *All Claims Asserted Against the Department (Claims 10–14)*

23 The Department defendants move to dismiss all claims asserted against the Department,  
24 contending that they are barred by state sovereign immunity under the Eleventh Amendment and  
25 that these claims cannot fall within the *Ex parte Young* exception to state sovereign immunity  
26 because they are asserted against a state agency rather than a state official. (Doc. No. 39-1 at 11–  
27 12.) In its opposition, plaintiff Stanford Vina argues that its ESA claim against the Department is  
28 not barred by state sovereign immunity but does not appear to contest that the other three claims

1 asserted against the Department are so barred. (Doc. No. 40 at 9–10.) Plaintiff Stanford Vina  
2 further argues in its opposition that the Department can be sued under the ESA because Congress  
3 abrogated state sovereign immunity for such claims and the Department has impliedly consented  
4 to be sued under the ESA by “operating, maintaining, and repairing fish ladders and fish screens  
5 on Deer Creek.” (*Id.* at 10–11) (citing *Palila v. Haw. Dep’t of Land & Nat. Res.*, 471 F. Supp.  
6 985, 997 (D. Haw. 1979), *aff’d*, 639 F.2d 495 (9th Cir. 1981)). In reply, and as preemptively  
7 addressed in their motion, the Department defendants contend that the decision in *Palila* must not  
8 be relied upon because the district court in that case relied on Supreme Court precedent that has  
9 now been expressly overruled. (Doc. Nos. 39-1 at 12–13; 42 at 8.)

10 Having reviewed the decision in *Palila* closely, it is apparent that the key precedent  
11 underpinning that district court’s Eleventh Amendment holding—and upon which plaintiff  
12 Stanford Vina relies—is the Supreme Court’s decision in *Parden v. Terminal Railyard of*  
13 *Alabama State Docks Department*, 377 U.S. 184, 190 (1964), which has indeed been expressly  
14 overruled. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666,  
15 680 (1999) (“*Parden* stands as an anomaly in the jurisprudence of sovereign immunity, and  
16 indeed in the jurisprudence of constitutional law. . . . Whatever may remain of our decision in  
17 *Parden* is expressly overruled.”); *Welch v. Tex. Dep’t of Highways & Pub. Transp.*, 483 U.S. 468,  
18 478 (1987) (holding that there was “no doubt that *Parden*’s discussion of congressional intent to  
19 negate Eleventh Amendment immunity is no longer good law” and to the extent *Parden* “is  
20 inconsistent with the requirement that an abrogation of Eleventh Amendment immunity by  
21 Congress must be expressed in unmistakably clear language, it is overruled”). Because plaintiff  
22 Stanford Vina’s argument—that Congress abrogated state sovereign immunity for the ESA and  
23 that the Department impliedly consented to suit under the ESA—is based solely on the overruled  
24 reasoning underpinning the decision in *Palila*, the court finds Stanford Vina’s argument in this  
25 regard is unsupported and unavailing. *See Coll. Sav. Bank*, 527 U.S. at 678 (explaining that a  
26 state’s waiver of its sovereign immunity will be found only “where stated by the most express  
27 language or by such overwhelming implications from the text as will leave no room for any other  
28 reasonable construction”). Plaintiff Stanford Vina also does not identify any allegations in the

1 FAC suggesting that the Department expressly waived state sovereign immunity. Moreover, in a  
2 similar case in which ESA claims have been brought against several California officials and  
3 agencies, the Ninth Circuit held that “two state agencies [were] . . . immune from suit because  
4 they are state entities, not individual state officers” but that “the Eleventh Amendment [did] not  
5 bar suit against the Director of the California Department of Fish & Game.” *Nat’l Audubon*  
6 *Soc’y, Inc. v. Davis*, 307 F.3d 835, 847 (9th Cir. 2002).

7 Accordingly, the Department defendants’ motion to dismiss all claims asserted against the  
8 Department will be granted. Plaintiff Stanford Vina will not be granted leave to amend to assert  
9 claims against the Department because amendment of such claims would be futile. *See*  
10 *Pennhurst*, 465 U.S. at 100 (“It is clear . . . that in the absence of consent a suit in which the State  
11 or one of its agencies or departments is named as the defendant is proscribed by the Eleventh  
12 Amendment.”).

13 b. *Federal Takings Claims Against Defendant Bonham (Claim 11)*

14 Plaintiff Stanford Vina asserts a § 1983 claim against defendant Bonham (the executive  
15 director of the Department) for taking real property without just compensations in violation of the  
16 Fifth and Fourteenth Amendments based on the alleged “abandonment of operation, maintenance,  
17 and repair obligations of the fish ladders and screens” by the Department defendants as  
18 constituting “a taking of [plaintiff Stanford Vina’s] property for public purposes and to implement  
19 a public project.” (Doc. No. 16 at ¶¶ 180–82.) The Department defendants move to dismiss this  
20 claim against defendant Bonham as barred by the Eleventh Amendment’s state sovereign  
21 immunity. (Doc. No. 39-1 at 17.)

22 In their respective briefing, plaintiff Stanford Vina and the Department defendants dispute  
23 whether the *Ex parte Young* exception to state sovereign immunity applies to plaintiff Stanford  
24 Vina’s takings claim, and the parties have essentially repeated the legal arguments nearly  
25 verbatim that they advanced in their briefing on the Board Defendants’ motion. (*See* Doc. Nos.  
26 39-1 at 17–18; 40 at 15–16; 42 at 12–13.) In addressing that motion above, the court has already  
27 analyzed the applicability of the *Ex parte Young* exception to takings claims brought against  
28 individual state officials. That same analysis applies to plaintiff Stanford Vina’s takings claim

1 asserted against defendant Bonham. In short, the Eleventh Amendment bars inverse  
2 condemnation actions brought under the Fifth Amendment’s Taking Clause in federal court  
3 against state officials in their official capacities even if the claim is construed “as one seeking  
4 injunctive relief against state officers to force them to adhere to the Constitution, as in *Ex parte*  
5 *Young*.” *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 956 (9th Cir. 2008); *see also*  
6 *Jachetta v. United States*, 653 F.3d 898, 909–10 (9th Cir. 2011); *74 Pinehurst LLC v. New York*,  
7 59 F.4th 557, 570 & n.7 (2d Cir. 2023). Although plaintiff Stanford Vina purportedly seeks  
8 prospective injunctive relief as stated in the FAC, it has not alleged facts indicating that it would  
9 be prevented from bringing suit in state court to recover just compensation for any alleged future  
10 takings caused by the Department’s alleged abandonment of fish ladders and screens on its  
11 property. As a result, plaintiff Stanford Vina cannot seek injunctive or declaratory relief for its  
12 asserted violation of the takings clause, and in turn, it cannot satisfy the requirements of the *Ex*  
13 *parte Young* exception for purposes of bringing suit against defendant Bonham in light of the  
14 availability of an adequate legal remedy under state law. *See Laborers’ Int’l Union of N. Am.,*  
15 *Loc. 860 v. Neff*, 29 F.4th 325, 334–35 (6th Cir. 2022) (finding state sovereign immunity barred  
16 takings claim against state official where allegations did not indicate that legal remedy available  
17 under state law was not adequate); *EEE Mins., LLC v. State of N. Dakota*, \_\_\_ F.4d \_\_\_, 2023 WL  
18 5600296, at \*5 (8th Cir. Aug. 30, 2023) (same); *Culinary Studios, Inc. v. Newsom*, 517 F. Supp.  
19 3d 1042, 1065 (E.D. Cal. 2021) (same).

20 For these reasons, the court concludes that plaintiff Stanford Vina’s takings’ claim is  
21 barred by the Eleventh Amendment’s state sovereign immunity. Accordingly, the court will grant  
22 the Department defendants’ motion to dismiss this claim brought against defendant Bonham, with  
23 leave to amend.

24 c. *State Law Nuisance Claim Against Defendant Bonham (Claim 14)*

25 Plaintiff Stanford Vina also asserts a state law nuisance claim against defendant Bonham.  
26 (Doc. No. 16 at ¶¶ 147–62.) The Department defendants argue that this claim is barred under the  
27 Eleventh Amendment pursuant to *Pennhurst*. (Doc. No. 39-1 at 20.) For the same reasons that  
28 the court has found plaintiffs’ state law claims asserted against the Board defendants to be barred

1 under the Eleventh Amendment, the court likewise concludes that this state law nuisance claim—  
2 asserted against defendant Bonham in his official capacity as the Department’s executive  
3 director—is also barred. *See Spoklie v. Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005) (finding  
4 state law claim asserted against the state was barred under the Eleventh Amendment as explained  
5 in *Pennhurst*). Accordingly, the Department defendants’ motion to dismiss plaintiff Stanford  
6 Vina’s state law nuisance claim asserted against defendant Bonham will be dismissed without  
7 leave to amend because amendment of that claim would be futile. *See Bradley-Aboyade v.*  
8 *Crozier*, No. 2:19-cv-01098-TLN-AC, 2020 WL 4475088, at \*8 (E.D. Cal. Aug. 4, 2020)  
9 (dismissing state law claim asserted against the defendant state official in his official capacity  
10 without leave to amend as barred by the Eleventh Amendment); *Ransom v. Lee*, No. 14-cv-  
11 00600-DSF-KK, 2017 WL 10525951, at \*14, \*16 (C.D. Cal. Apr. 20, 2017) (same), *report and*  
12 *recommendation adopted*, 2017 WL 10510170 (C.D. Cal. June 27, 2017).

13 2. Endangered Species Act § 9 Claim Against Defendant Bonham (Claim 10)

14 Plaintiff Stanford Vina next asserts a claim against defendant Bonham under § 9 of the  
15 ESA alleging that the Department defendants abandoned fish screens and ladders that they have  
16 historically maintained at plaintiff Stanford Vina’s dam on Deer Creek. (Doc. No. 16 at ¶¶ 90–  
17 92.) This abandonment has allegedly allowed debris to build up and block the fish ladder; the  
18 buildup has also allegedly caused a take of threatened salmon and steelhead and continues to  
19 present an “imminent risk of mortality” to these threatened species according to plaintiff Stanford  
20 Vina. (*Id.* at ¶¶ 91–92.) In moving to dismiss this claim against defendant Bonham, the  
21 Department defendants argue both that plaintiff Stanford Vina has failed to allege that defendant  
22 Bonham had a legal duty to operate, maintain, and repair the fish ladders and screens and that  
23 plaintiff Stanford Vina has failed to plausibly allege that there is an ongoing or imminent  
24 violation of § 9 of the ESA. (Doc. No. 39-1 at 13.)

25 a. *ESA Statutory Scheme*

26 Congress enacted the ESA “to provide a means whereby the ecosystems upon which  
27 endangered species and threatened species depend may be conserved” and “to provide a program  
28 for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531



1 (a)(3). The ESA “contains a variety of protections designed to save from extinction species that  
2 the Secretary of the Interior designates as endangered or threatened.” *Babbitt v. Sweet Home*  
3 *Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 690 (1995). One such protection is § 9 of the  
4 ESA. *See id.* Section 9 of the ESA, along with its implementing regulations, makes it unlawful  
5 for “any person” to “take” any threatened or endangered species of fish or wildlife, or for any  
6 person “to attempt to commit, solicit another person to commit, or cause to be committed” any  
7 such “take.” 16 U.S.C. § 1538(a)(1)(B), (g); 50 C.F.R. §§ 17.21, 17.31; *see also Ctr. for*  
8 *Biological Diversity v. Bureau of Land Mgmt.*, 833 F.3d 1136, 1141–42 (9th Cir. 2016)  
9 (describing the ESA’s statutory scheme).

10 “Take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect,  
11 or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). “Harm” means “an act  
12 which actually kills or injures wildlife,” which may include “significant habitat modification or  
13 degradation where it actually kills or injures wildlife by significantly impairing essential  
14 behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3; *see also*  
15 *Marbled Murrelet v. Babbitt*, 83 F.3d 1060, 1067 (9th Cir. 1996) (“[A] habitat modification  
16 which significantly impairs the breeding and sheltering of a protected species amounts to ‘harm’  
17 under the ESA.”). “Harass” “means an intentional or negligent act or omission which creates the  
18 likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal  
19 behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50  
20 C.F.R. § 17.3. The “take” prohibition of the ESA applies to all persons, including any officer,  
21 employee, agent, department, or instrumentality of any state. 16 U.S.C. § 1532(13). The species  
22 allegedly at issue in this action, the Central Valley Spring Run Chinook Salmon and the Central  
23 Valley Steelhead, are listed as threatened species. (Doc. No. 16 at ¶ 166); *see also* 50 C.F.R.  
24 § 17.11 (listing both species as threatened). As threatened species, these salmon and steelhead  
25 are protected under § 9 of the ESA. 50 C.F.R. §§ 17.21(a), 17.31(a).

26 b. *Whether Plaintiff Stanford Vina Has Plausibly Alleged a § 9 Violation*

27 In their pending motion, the Department defendants first argue that plaintiff Stanford  
28 Vina’s conclusory allegation that the Department is under a mandatory legal duty to operate,

1 maintain, and repair fish ladders and screens on Deer Creek is an insufficient basis upon which to  
2 plausibly allege that defendant Bonham is subject to liability under § 9 of the ESA. (Doc. No. 39-  
3 1 at 13.) In making this argument, Department defendants argue that Stanford Vina has not  
4 identified any “legal document or provision to support the existence of such duty.” (*Id.* at 14.) In  
5 its opposition, Stanford Vina points to its allegation in the FAC that the Department has operated,  
6 maintained, and repaired these fish ladders and screens for over 60 years and did so pursuant to  
7 “written licenses, easements, and contractual agreements executed by [the Department], and  
8 pursuant to California Fish and Game Code Section 6021, et se[q]” and references an  
9 encroachment permit from 1958 to install and maintain a fish screen and ladder on Stanford  
10 Vina’s main diversion dam. (Doc. Nos. 40 at 12–13; 16 at ¶¶ 87–89, 190–95.) In reply, the  
11 Department defendants correctly point out that California Fish and Game Code § 6021, which  
12 only addresses fish screens, does not impose a mandatory obligation on the Department to  
13 operate, maintain, or repair fish screens. (Doc. No. 42 at 10.) Indeed, § 6021 provides, in  
14 relevant part, that the Department “*may* install, maintain, repair, and replace fish screens,  
15 bypasses, or other devices to prevent the passage of fish through a conduit, when in the opinion of  
16 the department such a screen or device is practical and necessary.” Cal. Fish & Game Code §  
17 6021; *see also Dep’t of Fish & Game v. Anderson-Cottonwood Irrigation Dist.*, 8 Cal. App. 4th  
18 1554, 1566 (1992) (holding that the Department’s duty under § 6021 “is plainly discretionary”).

19 Notably, however, the Department defendants have failed to present any legal authority  
20 for the proposition that plaintiff Stanford Vina must plausibly allege the existence of some legal  
21 document obligating the Department to maintain the fish screens and ladders in order to state a  
22 cognizable claim under § 9 of the ESA.<sup>13</sup> *See ReOpen San Diego v. City of San Diego*, No. 22-  
23 cv-208-GPC-BGS, 2022 WL 3371340, at \*2 (S.D. Cal. Aug. 16, 2022) (“While a plaintiff must  
24 plead sufficient factual allegations and present a plausible legal theory to *survive* a 12(b)(6)

---

25  
26 <sup>13</sup> Department defendants cite a single district court opinion for the proposition that “a plaintiff  
27 must allege the specific provisions in the contract creating the obligation the defendant is said to  
28 have breached.” *Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110, 1117 (N.D. Cal. 2011).  
However, that district court decision involved a breach of contract claim brought under California  
law and would appear to have little applicability to plaintiff Stanford Vina’s ESA § 9 claim.

1 motion to dismiss, in bringing the motion, ‘it is the defendant’s burden to demonstrate that  
2 plaintiff has failed to state a claim.’”) (citation omitted). Rather, to state a cognizable ESA § 9  
3 claim, the challenged action or omission by the Department defendants need only be the  
4 proximate cause of an alleged taking of a threatened species in order to constitute a prohibited  
5 taking under § 9 of the ESA. *See Cascadia Wildlands v. Kitzhaber*, 911 F. Supp. 2d 1075, 1084  
6 (D. Or. 2012) (explaining that “[i]t is well accepted that proximate cause is an element of ESA  
7 Section 9 claims”) (collecting cases). Under this standard, plaintiff Stanford Vina need only  
8 allege that the imminent taking of a threatened species be “fairly traceable” to the Department  
9 defendants’ action (or inaction), not that the Department defendants have a legal obligation to act  
10 pursuant to a written agreement. *See id.* (“In the context of the ESA, proximate cause issues  
11 entail determining whether the alleged injury—here, take of [the threatened species]—is fairly  
12 traceable to the challenged action of Defendants.”).

13 The Department defendants also argue both that plaintiff Stanford Vina has failed to  
14 allege sufficient facts indicating that there is “an ongoing or imminent” § 9 violation and that  
15 Stanford Vina’s allegations “fail to rise above the speculative level” of harm to the salmon and  
16 steelhead. (Doc. No. 39-1 at 15.) Specifically, the Department defendants contend that the  
17 alleged buildup of debris “can” harm fish, which does “not establish that a take will result  
18 because of [the Department’s] alleged failure to operate, maintain, and repair” the fish screens  
19 and ladders. (*Id.* at 16.) But plaintiff Stanford Vina has alleged facts regarding how the  
20 Department’s ongoing failure to maintain fish ladders has already led to the direct take of salmon  
21 and steelhead in or around October 2021, and how a similar lapse in the Department’s  
22 maintenance in 2010 also led the death of 21 salmon. (Doc. No. 16 at ¶¶ 88, 90–91.)  
23 Specifically, plaintiff Stanford Vina alleges that a “fish counter camera apparatus” installed by  
24 the Department at the fish ladder located at its dam has “caused debris to fill up and block the fish  
25 ladder, leaving present fish unable to utilize the ladder for passage purposes.” (*Id.* at ¶ 90.) The  
26 Department defendants are allegedly aware of the ongoing blockage, including as a result of a site  
27 visit to the blockage in October 2021, but the Department defendants allegedly “declined to take  
28 action” to address the blockage despite acknowledging in a February 8, 2022 letter that their

1 operation and maintenance of the fish ladders and screens protects the fish in Deer Creek—a  
2 letter that plaintiffs have attached as an exhibit to their FAC. (*Id.* at ¶¶ 90, 168; Doc. No. 16-1.)

3 Although the Department defendants contend that past incidents cannot form the basis of a  
4 claim under § 9 of the ESA, plaintiff Stanford Vina alleges that the Department’s abandonment of  
5 its fish ladders and screens is ongoing. (Doc. No. 16 at ¶ 165) (alleging that “[t]his abandonment  
6 of facilities and duties continues through the present”); (*id.* at ¶ 92) (alleging that “[t]his imminent  
7 risk of mortality continues through the present so long as the [Department defendants] refuse to  
8 fulfill repair and maintenance obligations”). Moreover, the allegations regarding the October  
9 2021 blockage, when read in the light most favorable to plaintiff Stanford Vina as the court must  
10 at this stage of the litigation, suggest that the blockage has not been cleared and the threat it poses  
11 remains ongoing. A reasonable inference can be drawn from the facts alleged that a continued  
12 failure to maintain the fish screens and ladders represents a “definitive threat of future harm” as  
13 opposed to a speculative one, *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803,  
14 819 (9th Cir. 2018) (citation omitted), particularly in light of the allegations that previous failures  
15 to clear debris from fish ladders (including the ongoing failure to do so) have directly led to the  
16 taking of salmon and steelhead. *See Nat. Res. Def. Council v. Norton*, No. 1:05-cv-01207-LJO-  
17 EPG, 2016 WL 6135858, at \*23–26 (E.D. Cal. Oct. 20, 2016) (finding the plaintiff had  
18 sufficiently stated a § 9 ESA claim where the plaintiff alleged that the defendant’s past diversion  
19 of water led a federal government agency to lose control of water temperatures, which in turn, led  
20 to the take of threatened salmon, and that similar diversions by the defendant were likely to  
21 continue in the future “should drought conditions persist”).

22 Accordingly, the Department defendants’ motion to dismiss plaintiff Stanford Vina’s § 9  
23 ESA claim brought against defendant Bonham will be denied.

24 ////

25 ////

26 ////

27 ////

28 ////

3. Federal Procedural Due Process Claim Against Defendant Bonham (Claim 12)

Plaintiff Stanford Vina also asserts a § 1983 claim against defendant Bonham for violation of its procedural due process rights under the Fifth and Fourteenth Amendments.<sup>14</sup> (Doc. No. 16 at 184–86.) Specifically, plaintiff Stanford Vina alleges that defendant Bonham’s “decision to abandon operation, maintenance, and repair obligations of the fish ladders and screens . . . ha[s] also interfered with and taken real property of [plaintiff Stanford Vina] without providing for a due process evidentiary hearing.” (Doc. No. 16 at ¶ 185.)

Without citation to any legal authority, the Department defendants move to dismiss this claim, contending that paragraph 185 of the FAC is insufficient to state a cognizable claim because it is “impossible to determine from this conclusory paragraph what life, liberty, or property interest [plaintiff Stanford Vina] alleges was taken without due process” or how the Department defendants deprived them of that interest. (Doc. No. 39-1 at 19–20.) In opposition, Stanford Vina points to its allegations that its water rights are private property which cannot be infringed without due process of law and that the Department defendants’ abandonment of the fish ladder and fish screens physically prevented water from entering Stanford Vina’s diversion and canal. (Doc. No. 40 at 19) (citing Doc. No. 16 at ¶¶ 105, 177, 185). In reply, the Department defendants argue that these allegations somehow reflect a “causation gap” because plaintiff Stanford Vina does not actually allege that it was denied its right to divert water. (Doc. No. 42 at 17.) Further, the Department defendants argue that plaintiff Stanford Vina has not offered any legal authority for the process it contends was due to it and was not provided. (*Id.*)

The Department defendants’ arguments in support of dismissing this claim lack citation to any relevant legal authority. Indeed, their motion is unsupported by any coherent argument explaining how the allegations of the FAC fail to state a cognizable procedural due process claim. Plaintiff Stanford Vina has alleged that it has a protected property interest in its water rights on

---

<sup>14</sup> As noted above, to the extent plaintiff Stanford Vina’s procedural due process claim asserted against defendant Bonham, a state official, is brought under the Fifth Amendment, that aspect of its procedural due process claim will be dismissed without leave to amend. *See Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008); *Clifton v. United States Dep’t of Just.*, 615 F. Supp. 3d 1185, 1202 (E.D. Cal. 2022).

1 Deer Creek, that the Department defendants’ abandonment of operating, maintaining, and repair  
2 fish screens have denied them of that protected property interest, and that no due process was  
3 provided to it beforehand. (Doc. No. 16 at ¶¶ 105, 114, 177, 184–86.) For example, plaintiff  
4 Stanford Vina alleges that the Department defendants’ failure to operate motors related to the fish  
5 screens that have “blocked water from entering [plaintiff Stanford Vina’s] diversion and canal.”  
6 (*Id.* at ¶ 177.) These allegations are sufficient to plausibly allege a claim for a procedural due  
7 process violation. *See Bateson v. Geisse*, 857 F.2d 1300, 1305 (9th Cir. 1988) (explaining that  
8 procedural due process requires a protectible property interest and denial of that property right  
9 without process due under the circumstances); *Parks v. Watson*, 716 F.2d 646, 656 (9th Cir.  
10 1983) (“A property interest in a benefit protected by the due process clause results from a  
11 ‘legitimate claim of entitlement’ created and defined by an independent source, such as state or  
12 federal law.”) (citation omitted); *United States v. State Water Res. Control Bd.*, 182 Cal. App. 3d  
13 82, 101 (1986) (“It is equally axiomatic that once rights to use water are acquired, they become  
14 vested property rights. . . . [T]hey cannot be infringed by others or taken by governmental action  
15 without due process . . .”).

16 The Department defendants’ have failed to meet their burden as the movant to explain  
17 how plaintiffs’ allegations do not allege a plausible due process claim against defendant Bonham.  
18 *See Miller v. Ford Motor Co.*, 620 F. Supp. 3d 1045, 1063 (E.D. Cal. 2022) (“On a motion to  
19 dismiss, it is Defendant’s burden to demonstrate Plaintiffs have failed to state a claim upon which  
20 relief can be granted.”); *Welchen v. Cnty. of Sacramento*, No. 2:16-cv-00185-TLN-KJN, 2016  
21 WL 5930563, at \*10 (E.D. Cal. Oct. 11, 2016) (“[S]ince it is Defendants’ burden at the motion to  
22 dismiss juncture, the Court cannot find that Defendants’ motion is meritorious.”); *Leshner v. City*  
23 *of Anderson*, No. 2:21-cv-00386-WBS-DMC, 2021 WL 2682161, at \*6 (E.D. Cal. June 30, 2021)  
24 (denying motion to dismiss a particular claim where the defendants failed to conduct a relevant  
25 analysis because the defendants “bear the burden of persuasion on their motion to dismiss and  
26 have failed to carry it here”).

27 Accordingly, the Department defendants’ motion to dismiss plaintiff Stanford Vina’s  
28 procedural due process claim against defendant Bonham will be denied.

1           4.       Declaratory Relief Claim Against Defendant Bonham (Claim 13)

2           Lastly, plaintiff Stanford Vina asserts a declaratory relief claim against the Department  
3 defendants seeking a court order declaring that their actions with respect to fish screens and  
4 ladders on plaintiff Stanford Vina’s main diversion dam have violated the ESA, the Takings  
5 Clause of the Fifth and Fourteenth Amendments, and procedural due process guarantees under the  
6 Fifth and Fourteenth Amendments. (Doc. No. 16 at ¶¶ 187–97.) The Department defendants  
7 seek to dismiss this declaratory relief claim for lack of subject matter jurisdiction, arguing that  
8 plaintiff Stanford Vina has failed to state any of its federal claims against defendant Bonham and  
9 that as a result the court lacks subject matter jurisdiction over this declaratory relief claim. (Doc.  
10 No. 39-1 at 20.)

11           The Declaratory Judgment Act provides that “[i]n a case of actual controversy within its  
12 jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations  
13 of any interested party seeking such declaration, whether or not further relief is or could be  
14 sought.” 28 U.S.C. § 2201(a). “However, declaratory relief is a remedy, not a freestanding cause  
15 of action, and Plaintiffs’ action for declaratory relief survives only to the extent that Plaintiffs’  
16 other causes of action state a claim for relief.” *Darling v. Green*, No. 12-cv-00362-PSG-CW,  
17 2013 WL 12132058, at \*9 (C.D. Cal. Apr. 18, 2013); *see also City of Reno v. Netflix, Inc.*, 52  
18 F.4th 874, 878 (9th Cir. 2022) (“We agree with our sister circuits that have considered the issue  
19 that the Declaratory Judgment Act does not provide an affirmative cause of action where none  
20 otherwise exists.”); *Hammerling v. Google LLC*, 615 F. Supp. 3d 1069, 1097 (N.D. Cal. 2022)  
21 (“The Declaratory Judgment Act does not provide an independent theory for recovery; if the  
22 underlying claims are dismissed, . . . then there is no basis for any declaratory relief.”); *Lorona v.*  
23 *Ariz. Summit L. Sch., LLC*, 151 F. Supp. 3d 978, 997 (D. Ariz. 2015) (“The Second Amended  
24 Complaint lists declaratory and injunctive relief as separate counts. . . . These are remedies, not  
25 independent causes of action.”).

26           Here, the court has determined that plaintiff Stanford Vina has plausibly alleged an ESA  
27 claim and a procedural due process claim against defendant Bonham. Accordingly, the court will  
28 deny the Department defendants’ motion to the extent it seeks dismissal of plaintiff Stanford



1 Vina's request for declaratory relief as to these two plausibly pled claims. The court will,  
2 however, grant the Department defendants' motion to dismiss plaintiff Stanford Vina's request  
3 for declaratory relief as to plaintiff Stanford Vina's takings claim.

4 **CONCLUSION**

5 For the reasons explained above:

- 6 1. The Board defendants' request for judicial notice (Doc. No. 31-2) is granted;
- 7 2. The Board defendants' motion to dismiss (Doc. No. 31) is granted as follows:
  - 8 a. Plaintiffs' first, second, third, and fourth claims are dismissed with leave to  
9 amend;
  - 10 b. Plaintiffs' fifth, sixth, and seventh claims—to the extent those claims are  
11 predicated on the Fifth Amendment—are dismissed without leave to  
12 amend;
  - 13 c. Plaintiffs' fifth, sixth, and seventh claims—to the extent those claims are  
14 predicated on the Fourteenth Amendment—are dismissed with leave to  
15 amend; and
  - 16 d. Plaintiffs' eighth and ninth claims are dismissed without leave to amend;
- 17 3. The Department defendants' motion to dismiss (Doc. No. 39) is granted in part and  
18 denied in part as follows:
  - 19 a. Plaintiff Stanford Vina's tenth, eleventh, twelfth, thirteenth, and fourteenth  
20 claims brought against defendant California Department of Fish and  
21 Wildlife are dismissed without leave to amend;
  - 22 b. Plaintiff Stanford Vina's eleventh claim brought against defendant  
23 Charlton Bonham is dismissed with leave to amend;
  - 24 c. Plaintiff Stanford Vina's thirteenth claim brought against defendant  
25 Charlton Bonham—to the extent that claim seeks declaratory relief for  
26 plaintiff Stanford Vina's eleventh claim—is dismissed;
  - 27 d. The Department defendants' motion to dismiss plaintiff Stanford Vina's  
28 tenth and twelfth claims brought against defendant Charlton Bonham is

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

denied;

e. The Department defendants’ motion to dismiss plaintiff Stanford Vina’s thirteenth claim brought against defendant Charlton Bonham—to the extent that claim seeks declaratory relief for plaintiff Stanford Vina’s tenth and twelfth claims—is denied; and

f. Plaintiff Stanford Vina’s fourteenth claim brought against defendant Charlton Bonham is dismissed without leave to amend;

4. Within twenty-one (21) days from the date of entry of this order, plaintiffs shall file either a second amended complaint, or a notice of their intent not to file a second amended complaint and to proceed only on the claims found to be cognizable in this order;


5. Consistent with this court’s order adopting the parties’ stipulation (Doc. No. 56), plaintiffs may assert “challenges to the 2022 Regulations, Resolution, and/or any 2022 Curtailment Orders” in any second amended complaint that plaintiffs elect to file (*id.* at 2);

6. Because all of the claims brought against defendant California Department of Fish and Wildlife have been dismissed without leave to amend, defendant California Department of Fish and Wildlife is hereby terminated as a named defendant in this action; and

7. The Clerk of the Court is directed to update the docket to reflect that defendant California Department of Fish and Wildlife has been terminated as a named defendant from this action.

IT IS SO ORDERED.

Dated: September 28, 2023

  
\_\_\_\_\_  
DALE A. DROZD  
UNITED STATES DISTRICT JUDGE