

January 26, 2021

**VIA HAND DELIVERY & EMAIL**

Orange County Board of Supervisors  
acting as Orange County Flood Control District  
c/o Clerk of the Board  
response@ocgov.com  
333 W. Santa Ana Blvd.  
Santa Ana, California.

Re: **Objection to Adoption of Proposed Amended Resolution of Necessity**

Dear Board of Supervisors:

Our client, Maria Vargas, is the owner of the property addressed as 7673 Hall Avenue, Eastvale, CA, APN 144-070-013 and 144-100-043. Mrs. Vargas objects to this suddenly proposed Amended Resolution of Necessity.

The property has important family significance and history. Mr. Vargas (now passed) bought this property for his family. Even prior to Orange County's initial filing, Mrs. Vargas told Orange County representatives that she did not want to sell or have her property condemned by Orange County.

For the last several years, Orange County informed Mrs. Vargas *and* Riverside Superior Court that her entire property must be taken because it falls below the 566-foot elevation.

Orange County's prior resolution of necessity was adopted on that basis. The whole property was below 566' in elevation. So, it was needed for future potential inundation and was to be put to that use for Prado Dam.

Why is this "amended" resolution suddenly being submitted to this Board? Because last month Mrs. Vargas uncovered that Orange County has not been truthful with the Riverside Superior Court. It also has not been truthful with Mrs. Vargas. Orange County knows and has known that the entire Vargas property is not below 566'. The Vargas property is not all subject to possible inundation.

As is, without any further grading, **acres of the Vargas property are above 566'**. For the last several years, Orange County staff informed the Riverside Superior Court and Mrs. Vargas, under penalty of perjury, that the whole property was needed for future inundation and was needed for the Prado Dam Project. At recent sworn testimony, that was admitted to be false.

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Orange County staff now requests that the Board adopt another resolution that is based on further false assertions. For this hearing, Orange County staff now publicly and tactically asserts that Mrs. Vargas' remaining property is an "uneconomic remnant." That assertion is likewise false. It is unsupported. It does not comply with the Eminent Domain Law or acquisition requirements pertaining to the public acquisition of private property. Orange County staff is requesting this Board to proceed in violation of law.

Within the Prado basin, grading can and should be done to reduce or change the horizontal surface area needed for potential future inundation while maintaining adequate inundation capacity. Value engineering has been performed on numerous properties in the Prado basin to address developability and utility of properties potentially impacted by existing and proposed inundation easement takings for Prado dam. These properties include, among others, The Preserve specific plan area, with its many acres of residential development, industrial developments in Chino and public projects in the Prado area. Mrs. Vargas incorporates by reference and includes as part of the "record" the voluminous planning and other documents prepared showing value engineering of properties in the Prado basin that maximize developability of properties impacted by the 566' line.<sup>1</sup>

Orange County has not demonstrated that it analyzed the need to take any property interest from Mrs. Vargas due to the absence of overall Prado basin value engineering that would result in "take reductions." But, based upon the recently produced document from Orange County concerning 566' survey and assuming a need to acquire further inundation capacity from Mrs. Vargas' property, more than half of Mrs. Vargas' remaining property can be preserved by basic grading of portions of the Vargas property. Submitted herewith, civil engineer Max Vahid, P.E., demonstrates that appropriate grading provides capacity for future inundation and maintains almost two-thirds of the Vargas property for productive use and future development. (Vahid Analysis, January 21, 2021.) The Vahid analysis addresses the Vargas Property. With appropriate grading activity, Orange County avoids inundation of existing habitable dwellings. Appropriate grading also avoids causing the needless, and frankly reckless, displacement of

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<sup>1</sup> Assuming for argument's sake that a "record" applies to this hearing, Mrs. Vargas includes by this reference as part of the "record" the filings in the pending eminent domain action, the depositions in that matter, the historic documents related to the Prado Project such as the EIR and Supplemental EIR, the numerous and voluminous County documents on Prado dam project, such as the General Design Memorandum, Army Corps memorandum, County acquisition lists and related documents including but not limited to those documents showing engineering/cut/fill can satisfy any inundation needs for the Project. We also incorporate planning documents relating to development/use submittals by Prado-impacted properties as appropriate. More documents would be produced but for Orange County withholding requested documents.

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tenants from their homes and businesses during the COVID pandemic. Assuming a take from the Vargas property is demonstrated as necessary, Orange County does not need to take fee. Moreover, a fee take is not required now. There is no need to take a flowage easement now because there is no ability to inundate now. The spillway has not been constructed. It is not projected to be constructed for years.

Orange County must have value-engineered the basin prior to this hearing. If it has not, it covertly plans to. If it has value-engineered the basin, it has withheld those plans and documents from Mrs. Vargas. Orange County plans to acquire as much land as it can possibly grab from widows like Mrs. Vargas and other owners and then later make as much money from that land that it possibly can when it becomes the value-engineered seller.

Staff provides inadequate factual or legal support for the proposed take/remnant findings:

- No engineering submitted.
- No value engineering submitted.
- No alternatives submitted.
- No valuation of the remainder submitted to this Board.
- No valuation of the remainder property submitted to Mrs. Vargas or her counsel.
- No approved offer of the remainder submitted.

What has been submitted by Staff:

- Cover-up of prior falsehoods and false statements.
- Ignoring actual history of the project.
- Ignoring legal requirements and duties to Mrs. Vargas.

Prado Dam was elevated by earthwork. Orange County staff provides not one aspect of earthwork analysis concerning maintaining usability of the remainder portions. If this omission were not so serious to Mrs. Vargas, it would almost be humorous. Instead, it is an abandonment of Orange County's duty.

The County has a duty to cause the "least private injury." Had the County been forthright with Mrs. Vargas in 2017, the current situation would not exist.

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Orange County staff feigns emergency in its staff report because of an arbitrary funding “deadline.” It is an incredible assertion that somehow Orange County’s whole Prado Project is at risk because of the Vargas Property—much of which it does not need anyway. Incredible assertions like these require incredibly strong showings of proof.

There is no evidence, let alone an incredibly strong showing, that the Army Corps will not be able to raise the Prado dam spillway because a portion of property on the very fringe of the basin, much of which exceeds 566-foot elevation, has not been acquired by an arbitrary date. The most recent document produced by Orange County shows construction on the spillway starting much later than the outdated “deadline” asserted by Orange County staff.

What should this Board do under the circumstances?

The Board should not adopt this false and improper resolution.

**The False Statements by the County**

- Since at least 2017, County has misrepresented to Mrs. Vargas that it “needs” to take the entire Vargas property.
  - 2017 -- County told Vargas family the Vargas property fell below 566 feet.
  - 2017 – County filed declarations and briefs misinforming the Superior Court that the Vargas property fell below 566 feet and would, therefore, need to be acquired for the Prado Dam project.
  - County knew in 2015 almost half of the Vargas property was not needed and would not be used for the Prado dam project even without any value engineering or regrading— see James Tyler deposition, December 16, 2020, and exhibits thereto submitted.
- The County’s motion currently pending before the Superior Court, repeats and affirmatively asserts the false statement that the County needs the “entire” Vargas property.

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- James Tyler testified in declaration to the Court:

19         6.       The **entire** property located at 7673 Hall Avenue in the City of Eastvale, County of  
20       Riverside, and State of California, 92880, identified as Assessor's Parcel Numbers 144-070-013  
21       and 144-100-043 (the "Subject Property"), is **necessary** for the Project.

- He also testified all improvements must be demolished for the Project.
- Neither is true.
- At deposition, Mr. Tyler admitted the entire property was not needed for the Project. Mr. Tyler admitted that much of the property is above 566 feet and therefore not needed for the Project. (See Tyler Depo. Tr., 33:14-23; 34:1-24; 40:3-13; 66:25-67:9.) He likewise admitted improvements above 566 feet are not needed for the Project. (*Ibid.*)
- The County is currently maintaining this knowing misstatement to the Court in its motion set to be heard on March 4<sup>th</sup> and has refused to withdraw its motion.
- The County's "uneconomic" remnant assertion is factually false.
  - No analysis has been done or provided to the Board showing the portion of Mrs. Vargas property is of "little market value."
  - Value engineering can preserve most of the Vargas property by grading portions of the property to provide capacity. (Vahid Analysis, January 21, 2020).
    - The property has a very gradual grade difference.
    - Practical and typical grading can be done mitigating against damage to the remaining land.
  - The County is doing construction work to demolish and remove improvements – it should instead do construction work that will preserve the improvements at less cost than if it continues to pursue the full take acquisition of Mrs. Vargas' property.

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- If it has any economic analysis, County is withholding and has filed a motion to prevent its appraiser's analysis from being provided to Mrs. Vargas. County cannot blow hot and cold. (*Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 525.)
- The "letters" from the Army Corps do not support the proposed resolution and are erroneous.
  - The County, not the Army Corps, is required to determine that the Eminent Domain Law requirements have been met in adopting a resolution of necessity.
  - Staff wants to shift the blame to the Army. The condemnation responsibility stops with the County, not the Army. The Army's policy cannot validate condemning property that is not required for the public project and cannot legal justify taking property that will not be put to the public use.
  - Further, the letters were requests made by the County, not commands from the Army.
  - To the extent staff is asserting the Board must do what the Army says, then that makes this hearing a sham and invalid (see further discussion below).
  - Factually, the 2017 and 2021 Army Corps letters are misleading. Almost half of parcel 144-100-043 is above 566 *without* any grading whatsoever.
  - The portion of the property above 566 has a driveway and access – it is not "landlocked" as the portion of Hall Avenue that may be flooded in the future is further to the south of this driveway.

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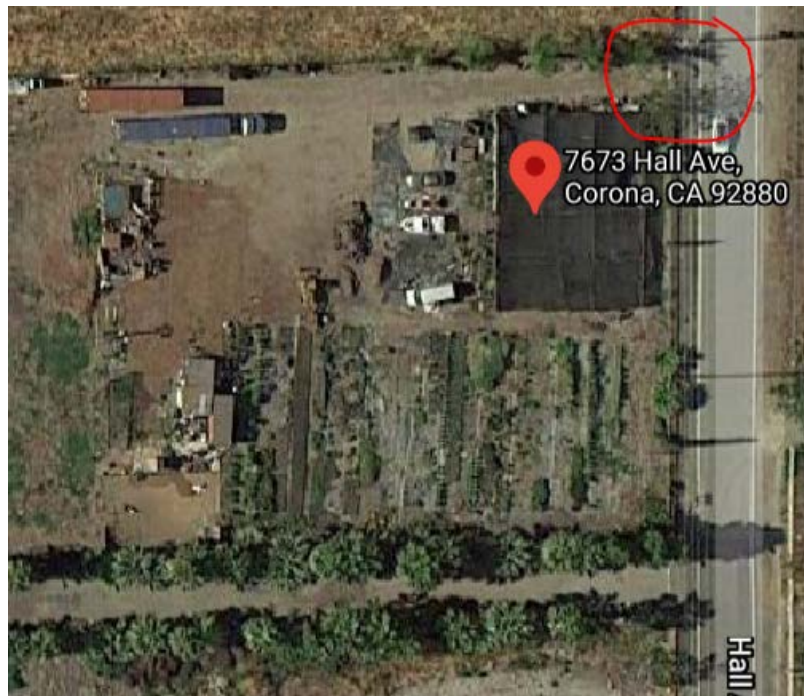


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- Contrary to the most recent letter, the *northerly existing* ingress/egress at Hall Avenue will not be flooded --it is above the “take line” - see below



- In its current condition, this easterly Vargas parcel is accessible.

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- The Army Corps letters provide no analysis of the depth of inundation of the portion of the Vargas property Orange County claims is below 566-feet.
- The topography of the Vargas property slopes gently generally from north to south. While some grading will preserve most of the property, the property generally does not include drastic grade changes as undoubtedly the Orange County knows from its surveys (that have not been provided to Mrs. Vargas). There is no showing of “danger” to occupants on the portions of the Vargas property admittedly above 566-feet. Particularly, as much of the property is in the agricultural holding zone (as the result of project influence – see below), continued agricultural use can be had – see existing Army Corps flowage easements that allow for agricultural use.
- The letters make no analysis or even an attempt to analyze how, with feasible grading efforts, the rear portion of the property (APN 144-100-013) can be graded and bermed to provide both capacity for inundation while maintaining full access and utility.
- The letters are conclusions requested by the Orange County without evidence – they were requested and provided as a bootstrap argument to try and justify the full-take acquisition the Orange County has already filed its full-take condemnation under false statements of fact. The letters do not support taking Mrs. Vargas’ property.
- Orange County does not need to condemn entire Vargas property to carry out the Prado dam project.
  - Orange County does not need to take in fee to accomplish inundation – flowage easements suffice as evidenced by existing flowage easement on small portion of Vargas property.
  - Orange County acquisition documents identify Vargas as easement acquisition, rather than fee interest, conceding fee interest is not necessary and not the least private injury.
  - Assuming any of the property is actually needed, Orange County can take less square footage of the Vargas property with practical value engineering – with grading, most of the property can be elevated/protected against inundation.



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- The permanent structures can be preserved and occupancy maintained.
- No reliable showing that some or all the property is needed for future possible inundation.
  - Orange County has refused to provide Mrs. Vargas with the actual topographic survey of the property.
  - Orange County has not provided elevations to prove that any of the property is below 566-feet in elevation.
  - Orange County has not shown that value engineering has been undertaken to diminish the acquisition needs.
  - No effort has been made to cause the least private injury – Orange County’s conduct has been the opposite: to seek to exaggerate the injury.
  - No transparency – Orange County has made strenuous efforts to conceal the truth and is still doing so before the Superior Court and now to this Board.
- Orange County has not shown that the Project, as it pertains to the Vargas property, has been planned or located in a manner most compatible with greatest public good and least private injury.
  - No value engineering provided or shown to have been analyzed.
  - Orange County is well aware numerous developments in the Prado basin that have utilized value engineering to reduce the need to take square foot area while providing capacity, among others, The Edgewater planned development, Sares Regis industrial development off of Kimball Avenue and City of Chino Prado Basin Sewer Improvement Project.
  - No topographical surveys or access to the topographical surveys have been provided despite request by Mrs. Vargas.
  - The Project, which is purportedly inundation as it relates to the Vargas property can be relocated or the impacted minimize by value engineering the numerous acres of property adjacent to the Vargas property. Because no effort has been made, or shown to have been made, by the Orange County, the Orange County cannot in good faith and reasonably find that

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Project is planned and located in the manner most compatible with the greatest public good and least private injury.

**Non-compliance with California Government Code 7267 et seq. and federal acquisition requirements**

- No compliance with real estate acquisition requirements, state or federal
  - Acquisition efforts have been coercive throughout and false – Orange County has represented that the entire property is needed to prevent Mrs. Vargas from seeking to keep any of her property.
  - Orange County has falsely told tenants occupying portions of the Vargas property admittedly not needed that they must leave because the area occupied is “needed” for the Project. (Montano Deposition and Exhibits thereto)
  - Orange County was and is obligated to act in good faith. (See Gov. Code, § 7267.1; *Johnston v. Sonoma County Agricultural Preservation & Open Space Dist.* (2002) 100 Cal.App.4th 973.) Seeking to acquire based on false representation is objectively bad faith.
  - Government Code section 7267.2 is a mandatory prerequisite to adopting a resolution of necessity and initiating an eminent domain action. (Code Civ. Proc., §§ 1240.040, 1245.230, subd. (c)(4); *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005.)
  - The offer was based on an *unapproved* appraisal – as testified by Orange County person most qualified, there is no evidence Orange County has that shows the appraisal was approved as required by the Government Code. (See Christine Long Deposition submitted herewith).
  - Orange County did not have authority to approve the appraisal and there is no evidence the appraisal was approved by anyone with authority and the obligation to the property owner to approve the appraisal. The offer was based on an appraisal that has not been approved as required.
  - The appraisal was outdated when made.
  - The appraisal assumptions, fundamental to any appraisal analysis, have not been provided.

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- The Orange County appraisal is based on negative project influence and adopts project-influenced depressed zoning.
  - As confirmed by former Chino Planning Director, Orange County and the Army Corps have retarded development in the Prado Basin for decades. Infrastructure has not been extended. Private development has been delayed or denied and artificially restricted based on the 566-foot “take line.” For decades Orange County has announced the 566-foot elevation as the “take line” for future inundation. This has left local zoning agencies to leave in place “holding” zones such as low-density residential and agricultural zones. Such project influenced zoning directly affects the Vargas property.
  - The Orange County appraisal is based directly and improperly upon project-influenced zoning depressing the value of the Vargas property. Such appraisal violates the mandatory requirements of Government Code section 7267.2 et seq. It violates federal law. It is not a valid appraisal. Thus, even assuming the appraisal had been “approved,” if failed to comply with the Government Code rendering the appraisal and offer invalid. Orange County must re-appraise (based on what is actually needed) and make an offer based upon a compliant, approved appraisal.
  - The appraisal fails to satisfy the highest and best use standard. It fails to consider a denser development that would be probable absent the project. It fails to account for interim holding value and economic return for the property. The appraisal is based on outdated and inapplicable “sales,” some more than four years old when the offer was made. The appraisal and offer are thus invalid.
- Federal acquisition law and regulations do not support coercive conduct or requiring the property owner to waive rights in order to keep property not needed for the project.

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- Orange County cannot justify a full-take by requesting a “waiver” and release by Mrs. Vargas.
  - Orange County’s assertion that Mrs. Vargas must release the Army Corps and Orange County in order to keep property the County does not need is coercive.
  - Irrespective of what the Army Corps may purport to want, California law does not permit a condemnor to put the property owner to a Hobson choice as the County proposes here.
  - It is patently unreasonable conduct to tell Mrs. Vargas that she must release the condemning agency in order to keep her own property not needed for the public project. The Army Corps letters are not California eminent domain law and cannot shield unreasonable conduct in demanding a release.
  - Mrs. Vargas has responded to the County’s inquiry and informed Orange County she continues to object to the County’s taking of property not required for the project. Orange County inappropriately seeks to hide behind the Army Corps letters to force a concession from Mrs. Vargas she is not required to give. It is Orange County’s duty to take only what it needs and, if allowed to take, pay just compensation. Mrs. Vargas has no duty and the County has no right to demand a release before it decides to *not* take property Orange County has no right to condemn.
- Once the portion of the Vargas property actually needed is determined, if any, Orange County must reappraise and negotiate in good faith as required by state and federal law. Failure to do so renders the resolution invalid.

**Violation of due process**

- With the power to condemn private property, comes the responsibility to exercise it appropriately and to seek impartial justice for both the government and private property owner. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871.) Here, Orange County is ignoring its *affirmative* obligation to be fair. Rather, the Orange seeks to force the property owners to litigate. Orange County has not been honest and is still being disingenuous. It seeks to have Mrs. Vargas accept a knowingly inadequate offer or be involved in a lawsuit.

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- Mrs. Vargas has requested documents including both surveys and Orange County's Real Estate Group file for her property.
- Orange County has not provided. Orange County has refused to provide the topographic surveys of Mrs. Vargas' property. It has not provided all of the witnesses for deposition directly relevant to this hearing. It has not provided its file on the Vargas property.
- Orange County purports to have done an economic analysis of the remainder in 2017 – over three years ago.
- If it has such analysis, Orange County has refused to provide it to Mrs. Vargas rendering this hearing a sham and the resolution invalid.
- If Orange County does not have any such analysis, it lacks support to make the asserted finding likewise rendering this hearing a sham and resolution invalid.
- Orange County cannot insist on “exhaustion” as its notice purports to do while, at the same time, withholding information and witnesses directly relevant to the objections to be raised.
- Mrs. Vargas objects to the fundamentally unfair process that Orange County is undertaking. No exhaustion or record limitation applies. (See *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 720-723 [where information made available only short time before hearing and staff's presentation was misleading, brief comments sufficient to put agency on notice].)
- Substantively, Orange County's action has been coercive and violative of Mrs. Vargas' constitutional rights. The County has withheld the truth and misrepresented fact to seek to take land and demolish improvements it does not need. The County has asserted a need for a waiver from Mrs. Vargas where none can be required. Such conduct is patently unreasonable.
- Orange County is a sophisticated entity. It is aware of the increasing value of residential land. The Project needs capacity, not gross square footage. There is no showing the County cannot carry out the Project without acquiring the Vargas property. By acquiring land it does not need, Orange County can, post-acquisition, value engineer and sell or convey Mrs. Vargas' property for development to highest and best use. Orange County is fundamentally depriving Mrs. Vargas of her property for something other than the stated public use.

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- Orange County's conduct falls below its affirmative duty imposed under the Government Code and higher ethical duty to seek impartial justice. (See *Decker, supra*, 18 Cal.3d at p. 871; see also Gov. Code, §§ 7267.1, *et seq.*)

#### **Noncompliance with CEQA**

- The environmental documents are two decades old. Significant development has occurred in the Prado basin since 2001. The environmental documents fail to assess changes in water quality, air quality, noise, land use, biological resources, and transportation that have occurred since 1989 and 2001.
- Both the environmental standards and the environmental circumstances have substantially changed over the last two decades. Development in and around the Prado basin has occurred over the last two decades. Mitigation measures can be implemented, such as value engineering, that dramatically lessen the environmental impact of the Project to, for example, surrounding land uses. Such mitigation should and must be evaluated as part of a supplemental or new EIR.
- Significant, substantial changes in circumstances require further CEQA review. (Pub. Res. Code, § 21166, subs. (a)-(c) [requiring preparation of a subsequent or supplemental environmental impact report if that are substantial changes].)
- Failure to comply with CEQA would result in invalid resolution of necessity.

#### **Invalid hearing**

- To validly exercise the power of eminent domain, the County was and is required to hold a public hearing to the public interest and necessity requirements are met as set forth in the Eminent Domain Law. The Board must hold a fair and impartial hearing with its decision to take buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure section 1240.030. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1125-1126.) In the absence of a fair and impartial hearing, the resolution of necessity is void.
- County witnesses have asserted the County has no discretion: it must do what the Army Corps says. The staff report makes that same assertion as justification to push this proposed amended resolution through to approval.



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- Orange County has informed the Court it contracted with Army Corps to condemn land below 566-feet in elevation. Orange County has announced this as the “take line” to the public since at least the early 1990’s.
- Orange County’s position is that it has no discretion to not acquire renders this hearing a rubberstamp and an abuse of discretion.
- Orange County’s attempt to justify a taking based on a “rush” for funding is speculative – no evidence of loss of funding has been presented – particularly as the latest Army Corps document shows construction occurring after the supposed cutoff for construction completion.
- To the extent the County claims that it “must” adopt this resolution because the Army said so, it is further evidence that the County has contracted away its discretion contrary to the requirements of law.

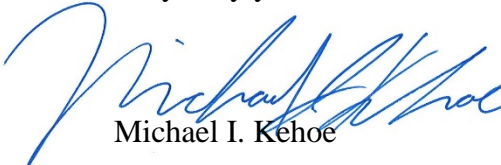
### **Conclusion**

Even now, with staff admitting that the entire property is not needed for the Prado Dam project, Orange County is *still* asserting to Riverside Superior Court that the entire property is needed for the project.

This current resolution does not correct a “technical deficiency.” That assertion is as false and misleading as the prior false and misleading statement which Orange County staff seeks to have this Board gloss over.

Orange County is wielding the awesome power of eminent domain. “[P]ublic entities should exemplify equitable conduct. ‘A public office is a public trust created in the interest and for the benefit of the people.’” (*City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 630.) That trust has been violated by Orange County’s treatment of Mrs. Vargas to date. The action proposed now is likewise improper. The Board should not adopt the proposed invalid and unlawful resolution.

Very truly yours,



































Michael I. Kehoe

Enclosures: Flashdrive & Index  
cc: Client

**VARGAS – OCFC**

Amended Resolution of Necessity Hearing  
January 26, 2021

\* USB on file  
in the office  
of the Clerk  
of the Board

-  Coe Decl 07 31 09
-  Complaint 08-11-2020
-  Corps Guidance Letter - Vargas (12-6-17) [Produced 2020 12 16 via email]
-  Depo Transcript - Long, Christine (PMQ) 2021 01 12
-  Depo Transcript = Montano, Mona (Rough Transcript) 2021 12 14
-  Depo Transcript - Tyler, James 2020 12 15
-  Exhibit 1
-  Exhibit 2
-  Exhibit 3
-  Exhibit 4
-  Exhibit 8
-  Exhibit 9
-  Exhibit 13
-  Exhibit 16
-  Letter from Max Vahid 2021 01 21
-  Motion for Possession - Proposed Order for Certification of Taxes
-  Motion for Possession - Proposed Order for Prejudgment Possession
-  Motion for Prejudgment Possession - Declaration of Alfonso Vega
-  Motion for Prejudgment Possession - Declaration of Guerrero
-  Motion for Prejudgment Possession - Declaration of Josefina de Jesus Gallardo
-  Motion for Prejudgment Possession - Declaration of Lilia Vargas
-  Motion for Prejudgment Possession - Declaration of Michael Kehoe
-  Motion for Prejudgment Possession - Declaration of Mona Montano
-  Motion for Prejudgment Possession - Declaration of Ofelia Vargas
-  Motion for Prejudgment Possession - Declaration of Tyler
-  Motion for Prejudgment Possession - Notice of Motion and Motion
-  Motion for Prejudgment Possession - Objection to Declaration of Brenda Aguilar Guerrero
-  Motion for Prejudgment Possession - Objection to Declaration of James Tyler
-  Motion for Prejudgment Possession - Objection to Declaration of Joyce Riggs
-  Motion for Prejudgment Possession - Objection to Declaration of Mona Montano
-  Motion for Prejudgment Possession - Opposition
-  Motion for Prejudgment Possession - P&As
-  Motion to Quash Depo of Riggs - Opposition - conformed
-  Motion to Quash Depo of Riggs - Opposition Declaration of Michael Kehoe - conformed
-  Motion to Quash Depo of Riggs - Opposition Declaration of Ofelia Vargas - conformed
-  Motion to Quash Depo of Riggs - Opposition to Separate Statement - conformed
-  pgl32 - Memo for Major Subordinate Commands and District Commands