

1 Charles F. Robinson #113197
2 Anthony O. Garvin #80953
3 University of California
4 Office of the General Counsel
5 1111 Franklin Street, 8th Floor
6 Oakland, CA 94607-5200
7 Telephone: 510-987-9800
8 Facsimile: 510-987-9757

9 Attorneys for Respondent
10 MARK G. YUDOF, PRESIDENT OF THE
11 UNIVERSITY OF CALIFORNIA

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14 NORMAN BROWN; ROBINSON
15 ENTERPRISES, LTD.; NORTH BAY
16 CORPORATION; CALIFORNIA DUMP
17 TRUCK OWNERS ASSOCIATION;
18 SOUTHERN CALIFORNIA
19 CONTRACTORS ASSOCIATION;
20 CONSTRUCTION INDUSTRY AIR
21 QUALITY COALITION; CRANE OF
22 UKIAH, INC.; DIAMOND D GENERAL
23 ENGINEERING, INC.; and MHS
24 CORPORATION COMPACTION
25 RENTALS,

26 Petitioners,

27 v.

28 LINDA ADAMS, in her official capacity
as Secretary, California Environmental
Protection Agency; KAREN BASS, in her
official capacity as Speaker of the
California Assembly; THE CALIFORNIA
SENATE COMMITTEE ON RULES; and
MARK G. YUDOF, in his official capacity
as President of the University of
California,,

Respondents.

CASE NO. 34-2009-80000266

**ANSWER TO PETITION FOR WRIT OF
MANDATE**

Exempt from filing fees pursuant to
Government Code section 6103

COMES NOW, Respondent, MARK G. YUDOF, in his official capacity as
President of the University of California (referred to herein as "Respondent") and answering for

1 himself alone, answers the Verified Petition for Writ of Mandate (“Petition”) filed by Petitioners
2 Norman R. Brown, Robinson Enterprises, Ltd., North Bay Corporation, California Dump Truck
3 Owners Association, Southern California Contractors Association, Construction Industry Air
4 Quality Coalition, Crane of Ukiah, Inc. Diamond D General Engineering, Inc., and MHS
5 Corporation Compaction Rentals (referred to collectively herein as “Petitioners”) as follows:
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7 **RESPONSE TO SPECIFIC ALLEGATIONS**
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9 1. Respondent has no information or belief regarding the truth or falsity of the allegations
10 set forth in Paragraph 1 of the Petition, and therefore denies each and every allegation contained
11 in Paragraph 1 on this ground.

12 2. Respondent has no information or belief regarding the truth or falsity of the allegations
13 set forth in Paragraph 2 of the Petition, and therefore denies each and every allegation contained
14 in Paragraph 2 on this ground.

15 3. Respondent has no information or belief regarding the truth or falsity of the allegations
16 set forth in Paragraph 3 of the Petition, and therefore denies each and every allegation contained
17 in Paragraph 3 on this ground.

18 4. Respondent has no information or belief regarding the truth or falsity of the allegations
19 set forth in Paragraph 4 of the Petition, and therefore denies each and every allegation contained
20 in Paragraph 4 on this ground.

21 5. Respondent has no information or belief regarding the truth or falsity of the allegations
22 set forth in Paragraph 5 of the Petition, and therefore denies each and every allegation contained
23 in Paragraph 5 on this ground.

24 6. Respondent has no information or belief regarding the truth or falsity of the allegations
25 set forth in Paragraph 6 of the Petition, and therefore denies each and every allegation contained
26 in Paragraph 6 on this ground.

27 7. Respondent has no information or belief regarding the truth or falsity of the allegations
28 set forth in Paragraph 7 of the Petition, and therefore denies each and every allegation contained

1 in Paragraph 7 of the Petition on this ground.

2 8. Respondent has no information or belief regarding the truth or falsity of the allegations
3 set forth in Paragraph 8 of the Petition, and therefore denies each and every allegation contained
4 in Paragraph 8 on this ground.

5 9. Respondent has no information or belief regarding the truth or falsity of the allegations
6 set forth in Paragraph 9 of the Petition, and therefore denies each and every allegation contained
7 in Paragraph 9 on this ground.

8 10. In answer to Paragraph 10 of the Petition, Respondent admits that Linda Adams is the
9 current Secretary of the California Environmental Protection Agency. The remaining allegations
10 set forth in Paragraph 10 of the Petition constitute legal argument for which no response is
11 required. To the extent that a response to the remaining allegations is deemed necessary,
12 Respondent denies each and every remaining allegation contained in Paragraph 10 of the Petition.

13 11. In answer to Paragraph 11 of the Petition, Respondent admits that Karen Bass is the
14 current Speaker of the California Assembly. The remaining allegations set forth in Paragraph 11
15 of the Petition constitute legal argument for which no response is required. To the extent that a
16 response is deemed necessary, Respondent denies each and every remaining allegation contained
17 in Paragraph 11 of the Petition.

18 12. In answer to Paragraph 12 of the Petition, Respondent admits that the California
19 Senate Committee on Rules is one of several standing committees within the State Senate. The
20 remaining allegations set forth in Paragraph 12 of the Petition constitute legal argument for which
21 no response is required. To the extent that a response is deemed necessary, Respondent denies
22 each and every remaining allegation contained in Paragraph 12 of the Petition.

23 13. In answer to Paragraph 13 of the Petition, Respondent admits that he is the President
24 of the University of California and that he is sued in his official capacity. The remaining
25 allegations of Paragraph 13 of the Petition constitute legal argument for which no response is
26 required. To the extent that a response is deemed necessary, Respondent denies each and every
27 remaining allegation contained in Paragraph 13 of the Petition.

28 14. Respondent admits that venue is proper in Sacramento County Superior Court.

1 15. Respondent admits the allegations set forth in Paragraph 15 of the Petition.

2 16. Respondent admits the allegations set forth in Paragraph 16 of the Petition.

3 17. Respondent admits the allegations set forth in Paragraph 17 of the Petition.

4 18. The allegations contained in Paragraph 18 of the Petition quote sections 39661 (b) and
5 (c) of the Health and Safety Code which speak for themselves and require no response. The
6 remaining allegations of Paragraph 18 constitute legal argument for which no response is
7 required. To the extent that a response is deemed necessary, Respondent denies each and every
8 allegation contained in Paragraph 18 of the Petition.

9 19. Respondent has no information or belief regarding the truth or falsity of the allegations
10 set forth in Paragraph 19 of the Petition, and therefore denies each and every allegation contained
11 in Paragraph 19 on this ground.

12 20. The allegations contained in Paragraph 20 of the Petition quote sections 39607 (b)(1)-
13 (3) of the Health and Safety Code which speak for themselves and require no response. The
14 remaining allegations of Paragraph 20 constitute legal argument for which no response is
15 required. To the extent that a response is deemed necessary, Respondent denies each and every
16 allegation contained in Paragraph 20 of the Petition.

17 21. The allegations contained in Paragraph 21 of the Petition quote section 39670 (b)(4) of
18 the Health and Safety Code which speaks for itself and require no response. The remaining
19 allegations of Paragraph 21 constitute legal argument for which no response is required. To the
20 extent that a response is deemed necessary, Respondent denies each and every allegation
21 contained in Paragraph 21 of the Petition.

22 22. Respondent has no information or belief regarding the truth or falsity of the allegations
23 set forth in Paragraph 22 of the Petition, and therefore denies each and every allegation contained
24 in Paragraph 22 on this ground.

25 23. Respondent has no information or belief regarding the truth or falsity of the allegations
26 set forth in Paragraph 23 of the Petition, and therefore denies each and every allegation contained
27 in Paragraph 23 on this ground.

28 24. In answer to Paragraph 24 of the Petition, Respondent admits that it received a copy of

1 the letter attached to the Petition as Exhibit C, which letter speaks for itself and requires no
2 response. The remaining allegations of Paragraph 24 constitute legal argument for which no
3 response is required. To the extent that a response is deemed necessary, Respondent denies each
4 and every remaining allegation contained in Paragraph 24 of the Petition..

5 25. Respondent admits the allegations contained in Paragraph 25 of the Petition.

6 26. Respondent admits the allegations contained in Paragraph 26 of the Petition.

7 27. Respondent has no information or belief regarding the truth or falsity of the allegations
8 set forth in Paragraph 27 of the Petition, and therefore denies each and every allegation contained
9 in Paragraph 27 on this ground.

10 28. Respondent has no information or belief regarding the truth or falsity of the allegations
11 set forth in Paragraph 28 of the Petition, and therefore denies each and every allegation contained
12 in Paragraph 28 on this ground.

13 29. In response to the allegations contained in Paragraphs 29-35 of the Petition,
14 Respondent hereby incorporates by reference the responses set forth above in Paragraphs 1-28 of
15 the Response as though fully set forth herein.

16 30. Respondent denies each and every allegation contained in Paragraph 30 of the
17 Petition.

18 31. Respondent denies each and every allegation contained in Paragraph 31 of the
19 Petition.

20 32. Respondent denies each and every allegation contained in Paragraph 32 of the
21 Petition.

22 33. Respondent denies each and every allegation contained in Paragraph 33 of the
23 Petition.

24 34. Respondent denies each and every allegation contained in Paragraph 34 of the
25 Petition.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Petition, and each claim therein, fails to state a claim against the Respondent upon which relief may be sought.

SECOND AFFIRMATIVE DEFENSE

(Standing)

The Petitioners lack standing to raise the claims stated in the Petition.

THIRD AFFIRMATIVE DEFENSE

(Actions Authorized by Law)

The acts and/or omissions complained of in the Petition were authorized by statute, regulation or other law.

FOURTH AFFIRMATIVE DEFENSE

(Compliance with Laws)

Respondent is not liable to Petitioners because Respondent's acts and/or omissions were in accordance with all applicable statutes, regulations or other applicable laws.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Petition, and each claim alleged therein, is barred by the applicable statute of limitations.

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SIXTH AFFIRMATIVE DEFENSE

(Laches)

The Petition, and each claim therein, is barred by the equitable doctrine of laches because of the unreasonable and prejudicial delay by Petitioners in filing this action.

SEVENTH AFFIRMATIVE DEFENSE

(Discretionary Action)

Respondent is not subject to mandamus because the acts and/or omissions alleged in the Petition are discretionary actions and not ministerial actions contrary to the allegations stated in the Petition.

EIGHTH AFFIRMATIVE DEFENSE

(Reliance upon Co-Respondents Defenses)

Respondent intends to rely upon and hereby asserts any defenses asserted by its named co-Respondents, or any other presently unnamed co-Respondent.

WHEREFORE, this answering Respondent prays for judgment as follows:

- 1. That Petitioners take nothing by way of the Petition in this action;
- 2. That judgment in this action is entered in favor of this answering Respondent;
- 3. That the Petition for Writ of Mandate be denied;;
- 4. That this answering Respondent be awarded costs of suit incurred herein; and

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5. For such other relief as this Court may deem just and proper.

Dated: August 21, 2009

CHARLES F. ROBINSON
ANTHONY O. GARVIN

By: *Anthony O. Garvin*
Anthony O. Garvin

Attorneys for Defendant
MARK G. YUDOF, PRESIDENT OF THE
UNIVERSITY OF CALIFORNIA

192303.1

2 DECLARATION OF SERVICE BY MAIL
3 (Code Civ. Proc., § 1013)

4 I, the undersigned, say: I am over 18 years of age, employed in Alameda County,
5 California, in which county the within-mentioned mailing occurred, and not a party to the subject
6 cause. My business address is Office of the General Counsel, 1111 Franklin Street, 8th Floor,
7 Oakland, California 94607-5200.

8 I served the attached: ANSWER TO PETITION FOR WRIT OF MANDATE
9 by placing a copy thereof in a separate envelope for each addressee named hereafter,
10 addressed to each such addressee respectively as follows:

11 *See attached Service List*

12 Following ordinary business practices, the envelope was sealed and placed for collection
13 and mailing on this date, and would, in the ordinary course of business, be deposited with the
14 United States Postal Service on August 21, 2009.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on August 21, 2009, at Oakland, California.

18
19
20 _____
Barbara L. Bray

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL



1111 Franklin Street, 8th Floor • Oakland, California 94607-5200 • (510) 987-9800 • FAX (510) 987-9757

Charles F. Robinson
VICE PRESIDENT AND GENERAL COUNSEL

Writer's direct line: (510) 987-9933
E-mail: barbara.bray@ucop.edu

August 21, 2009

VIA FEDEX

Clerk of the Court
Superior Court of the State of California
County of Sacramento
720 9th Street
Sacramento, CA 95814

Re: Norman Brown, et al. v. Linda Adams, et al., Case No. 34-2009-80000266

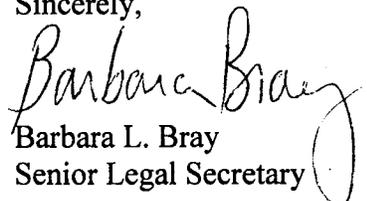
Dear Sir or Madam:

Enclosed are the original and two copies of Respondent Mark G. Yudof's Answer to Petition for Writ of Mandate in the above-referenced action. Please file the original and return a file-endorsed copy to me in the enclosed, self-addressed stamped envelope. I am resubmitting the Answer for filing because the Answer I originally sent for filing had the case number incorrect. I was told the Answer with the incorrect case number would be returned to me.

The Respondent is exempt from filing fees pursuant to Government Code section 6103 since Respondent is sued in his official capacity as President of the University of California.

Thank you for your attention to this matter.

Sincerely,


Barbara L. Bray
Senior Legal Secretary

blb

Encs.

Clerk of the Court
August 21, 2009
Page 2

cc: S. Aanestad
L. Adams
K. Bass
P. J. Beard, II
E. G. Brown, Jr.
G. Cedillo
R. Dutton
K. Graham
D. M. Schiff
J. P. Thompson
D. Steinberg
J. Oropeza
G. Schmidt

192567.1

SERVICE LIST

3	Paul J. Beard, II. Damien M. Schiff Joshua P. Thompson Pacific Legal Foundation 3900 Lennane Drive, Suite 200 Sacramento, CA 95834	Ms. Linda Adams Secretary California Environmental Protection Agency 1001 I Street Sacramento, CA 95814-2828
7	Ms. Karen Bass Speaker of the California Assembly 47 th Assembly District 5750 Wilshire Boulevard, Suite 565 Los Angeles, CA 90036	Mr. Gregory Schmidt Secretary of the Senate State Capitol, Room 400 Sacramento, CA 95814
10	Senator Darrell Steinberg California Senate Committee on Rules State Capitol, Room 205 Sacramento, CA 95814	Senator Samuel Aanestad California Senate Committee on Rules State Capitol, Room 3063 Sacramento, CA 95814
12	Senator Gilbert Cedillo California Senate Committee on Rules State Capitol, Room 5100 Sacramento, CA 95814	Senator Robert Dutton California Senate Committee on Rules State Capitol, Room 5094 Sacramento, CA 95814
15	Senator Jenny Oropeza California Senate Committee on Rules State Capitol, Room 5114 Sacramento, CA 95814	Mr. Edmund G. Brown, Jr. Office of the Attorney General 1300 I Street P.O. Box 94244-2550
17	Kimberly Graham Deputy Attorney General Government Law Section California Department of Justice 1300 I Street Sacramento, CA. 95814	

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