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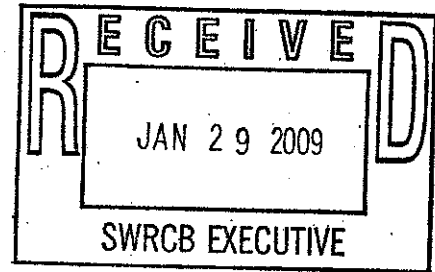
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January 29, 2009

Via Electronic Mail: commentletters@waterboards.ca.gov
and U.S. Mail

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P. O. Box 100
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**Re: Comment Letter -- 02/03/09 Board Meeting: JPOD Petitions for
Reconsideration Draft Order**

Dear Ms. Townsend:

The San Luis & Delta-Mendota Water Authority ("Authority") and Westlands Water District ("Westlands") offer the following comment on the January 6, 2008, State Water Resources Control Board ("State Water Board") draft Order WR 2009-00XX. As you are aware, the draft Order, if adopted, would deny petitions filed by the South Delta Water Agency ("SDWA") and California Sportfishing Protection Alliance for reconsideration of Water Right Order WR-2008-0029-EXEC, an order approving a change in the water rights of the United States Bureau of Reclamation and California Department of Water Resources. Although the Authority and Westlands support the denial of the petitions for reconsideration and generally support draft Order WR 2009-00XX, the Authority and Westlands raise a single, but significant concern: Draft Order WR 2009-00XX improperly characterizes the responsibility for southern Delta salinity objectives.

The Draft Order includes statements that the State Water Board has assigned sole responsible for achieving the southern Delta salinity objectives to the Department of Water Resources ("DWR") and the Bureau of Reclamation ("Reclamation"). (See, e.g., Draft Order, p. 2.) Those statements are inconsistent with the 2006 Water Quality Control Plan for the San Francisco/Sacramento-San Joaquin Delta Estuary ("2006 Bay-Delta Plan").

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In the 2006 Bay-Delta Plan, the State Water Board made clear implementation of the southern Delta salinity objectives would require "water rights and water quality measures by the State Water Board, in concert with actions taken by other agencies." (2006 Bay-Delta Plan, p. 27.) The State Water Board explained:

Elevated salinity in the southern Delta is caused by various factors, including low flows; salts imported to the San Joaquin Basin in irrigation water; municipal discharges; subsurface accretions from groundwater; tidal actions; diversions of water by the SWP, CVP, and local water users; channel capacity; and discharges from land-derived salts, primarily from agricultural drainage. These salinity objectives currently are implemented through a mix of water right actions and salinity control.

* * *

The salinity objectives for the interior southern Delta can be implemented by measures that include state regulatory actions, state funding of projects and studies, regulation of water diversions, pollutant discharge controls, improvements in water circulation, and longterm implementation of best management practices to control saline discharges.

(2006 Bay-Delta Plan, pp. 27-8.) The State Water Board identified one action to achieve the southern Delta salinity objective, which involved the Regional Water Quality Board imposing discharge controls on in-Delta discharges of salts by agricultural, domestic, and municipal dischargers. (*Id.*, p. 28.)

The statements in the Draft Order also contradict State Water Board Decision 1641. In that decision, the State Water Board described the causes of southern Delta salinity, under the heading "Responsibility for Southern Delta Salinity Objectives Downstream of Vernalis". There, the State Water Board explained: "Water quality in the southern Delta downstream of Vernalis is influenced by San Joaquin River inflow; tidal action; diversions of water by the SWP, CVP, and local water users; agricultural return flows; and channel capacity." (D-1641, p. 86.) The State Water Board continued: "Even when salinity objectives are met at Vernalis, the interior Delta objectives are sometimes exceeded. . . . Exceedance of the objectives in the interior Delta is in part due to water quality impacts within the Delta from in-Delta irrigation activities." (D-1641, p. 87.)

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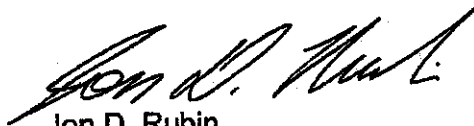
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Indeed, in October 2006, the State Water Board's Executive Director wrote Lester Snow, Director of the Department of Water Resources. In that correspondence, the State Water Board Executive Director explained: "Consistent with D-1641, the State Water Board recognizes that exceedances or potential exceedances of the southern Delta salinity objectives may be caused by actions that are beyond DWR's reasonable contract," and that "the Board's Executive Director will not recommend that the State Water Board, and the Executive Director anticipates that the State Water Board would not[] take an enforcement action . . . against the DWR for an actual exceedance or a potential exceedance of the southern Delta salinity objectives that is or would be caused by actions beyond DWR's reasonable control." (October 13, 2006 letter from Celeste Cantu to Lester Snow.)¹

For all of these reasons, the Draft Order must be revised to ensure its reference to responsibility for southern Delta salinity objectives is consistent with the State Water Board's prior actions. It must reflect the fact that Reclamation and DWR are only partially responsible for southern Delta salinity objectives.

Very truly yours,

DIEPENBROCK HARRISON
A Professional Corporation



Jon D. Rubin
Attorneys for the San Luis & Delta-Mendota Water
Authority and Westlands Water District

cc: SWRCB Members
Daniel Nelson
Thomas Birmingham

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¹ Based in part on the correspondence between the Executive Director and Director Snow, the Authority and Westlands agreed to dismiss without prejudice their suit against the State Water Board challenging Order 2006-0006.