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April 20, 2011

Tom Howard, Executive Director
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

*Re: Order WR 2010-0032-DWR, Order Authorizing Temporary Changes in
Place of Use*

Dear Mr. Howard:

I am writing on behalf of Westlands Water District (Westlands) and San Luis Water District (San Luis) in regards to State Water Resources Control Board Order WR 2010-0032-DWR (Order) to request that you exercise the State Water Board's reserved jurisdiction and eliminate Condition 5 of the Order.

The Order temporarily changes the place of use under a license and permits held by the United States Bureau of Reclamation (Reclamation) for operation on the Central Valley Project (CVP) and permits held by the California Department of Water Resources (DWR) for operation of the State Water Project (SWP). The change approved by the Order allows for specified transfers and exchanges of water. (Order, p. 7.) Specific to Westlands and San Luis, the Order facilitates an exchange between these districts and Metropolitan Water District of Southern California. (Order, p. 3.) Through Condition 5, the Order limits the total amount of "Delta exports (including CVP deliveries and water transfers)" that can be delivered to Westlands and San Luis in the 2011 calendar year to 871,296 acre-feet and 85,705 acre-feet of water, respectively. (Order, p. 7.) The Order explains that the condition was imposed because the delivery of water to Westlands and San Luis has "the potential to increase salinity within the San Joaquin River." (Order, p. 5.)

At the time of the Order, reasonable forecasts did not project that the quantity of surface water pumped at the Jones Pumping Plant that might be available to Westlands or San Luis in 2011 would exceed the limits imposed by Condition 5. However, the very

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wet hydrology this water year resulted in Reclamation allocating to Westlands and San Luis 75 percent of their CVP allocations. When Westlands' and San Luis' CVP allocations are added to other surface water pumped at the Jones Pumping Plant that Westlands and San Luis expect to deliver, Westlands will have more than 871,296 acre-feet and San Luis will have more than 85,705 acre-feet of water available for delivery. Limiting Westlands' and San Luis' ability to receive and deliver water pursuant to the exchange is supported by neither evidence nor the public interest.

As noted above, the State Water Board imposed Condition 5, because of apparent concerns that deliveries to Westlands and San Luis would increase salinity in the San Joaquin River. (Order, p. 5). However, in the proceedings that resulted in the Order, no one submitted any evidence or made comments regarding this issue. Moreover, as I am certain you are aware, every time the State Water Board has considered this issue during evidentiary water right hearings, it has rejected the assertion that water deliveries to Westlands affect water quality in the San Joaquin River. Indeed, the State Water Board properly concluded in its Final Environmental Impact Report for Implementation of the 1995 Bay-Delta Water Quality Control Plan and Water Right Decision 1641, Westlands does not discharge agricultural drainage water, tailwater, or tile water outside of its boundaries. (FEIR, p. VIII-5; D-1641, p. 110 (copies of which are attached hereto for your convenience).) Similarly, San Luis does not discharge agricultural drainage water, tailwater, or tile water outside of its boundaries. Thus, there is no basis for imposing Condition 5 cannot be supported.

Further, if Condition 5 remains the only impact will be to the environment and negative. Farmers in Westlands, and to a lesser degree in San Luis, will undoubtedly increase groundwater pumping to replace surface water that they otherwise would use. Groundwater within the aquifer underlying the San Joaquin Valley are at low levels, particularly because farmers in Westlands, and to a lesser degree in San Luis, relied heavily on groundwater during the three-year drought that occurred from 2007 through 2009. Wet water years, like the current one, serve to recharge the aquifer, and sound principles of conjunctive use would dictate that farmers rely on available surface supplies, rather than groundwater. The ability to allow that recharge this year will be compromised if Condition 5 deprives Westlands and San Luis of surface water. Such a result is not in the public interest.

For these reasons, Westlands and San Luis respectfully request that you exercise the jurisdiction reserved by Condition 9 and eliminate Condition 5, as elimination of Condition 5 is in "the public interest."

DIEPENBROCK HARRISON

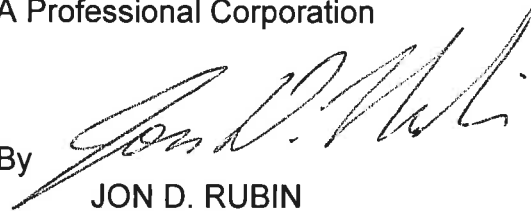
Tom Howard, Executive Director
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I thank you for your consideration of this request. If you have questions or would like additional information, please contact me on behalf of Westlands or Gary Sawyers at (559) 438-5656 on behalf of San Luis.

Very truly yours,

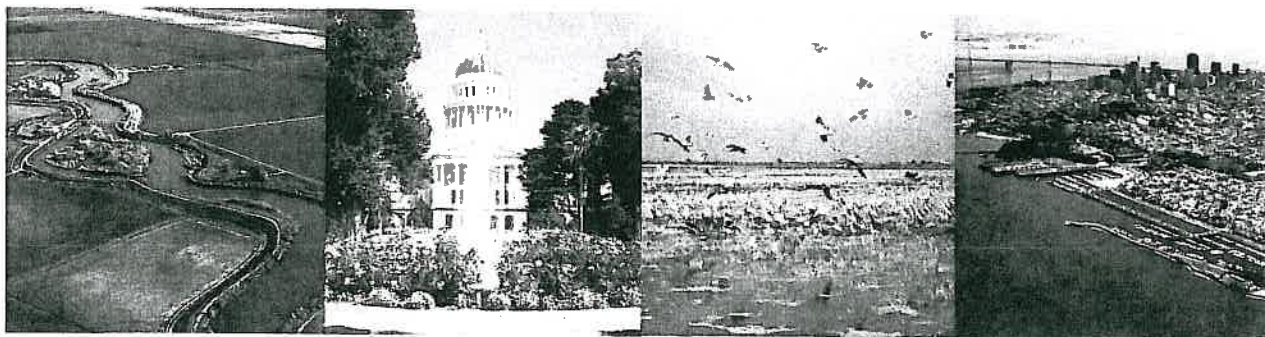
DIEPENBROCK HARRISON,
A Professional Corporation

By

A handwritten signature in black ink, appearing to read "Jon D. Rubin". The signature is written in a cursive, flowing style with a prominent initial "J".

JON D. RUBIN

cc: Thomas W. Birmingham
Martin McIntyre
Gary Sawyers



FINAL ENVIRONMENTAL IMPACT REPORT FOR
IMPLEMENTATION OF THE 1995 BAY/DELTA
WATER QUALITY CONTROL PLAN

State Clearinghouse Number 97-122056

VOLUME 1

November 1999

STATE WATER RESOURCES CONTROL BOARD
California Environmental Protection Agency

CHAPTER VIII. ALTERNATIVES FOR IMPLEMENTING SALINITY CONTROL MEASURES IN THE SAN JOAQUIN RIVER BASIN

The 1995 Bay/Delta Plan contains salinity objectives for the San Joaquin River at Vernalis to protect agricultural beneficial uses of water in the southern Delta. The salinity objectives can be met either through provision of high-quality dilution water or through salinity control measures in agricultural lands and wetlands that drain to the San Joaquin River. The environmental effects of provision of dilution water are described in Chapter VI.

Salinity control measures can be used to achieve the Vernalis salinity objectives either alone or in combination with dilution water releases. The CVRWQCB is principally responsible for implementing salinity control measures in the San Joaquin Valley. The purpose of this chapter is to review the existing salinity control actions in the San Joaquin Valley and to analyze any new salinity control alternatives that are not presently being implemented or analyzed in some other forum. The information in this chapter will be used by the SWRCB to decide whether it should recommend further evaluation and implementation of salinity control measures to the CVRWQCB. A SWRCB decision to recommend evaluation of an action by the CVRWQCB does not require CEQA compliance. Nonetheless, the alternatives in this chapter are analyzed at the programmatic level to provide information to the SWRCB and to interested parties.

The chapter is divided into three sections: (A) background, (B) alternatives for implementing the objectives, and (C) environmental effects of the alternatives.

A. BACKGROUND

The background discussion is divided into three sections: (1) problem description, (2) regulatory history, and (3) existing salinity management programs.

1. Problem Description

The salinity problem in the San Joaquin River Basin is caused both by saline discharges, principally from irrigated agriculture, and by low flows due to water development. Detailed descriptions of the salinity problems in the San Joaquin River Basin were prepared by the SWRCB in a report entitled "Regulation of Agricultural Drainage to the San Joaquin River" (SWRCB 1987) and by the San Joaquin Valley Drainage Program in a report entitled "A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley" (SJVDP 1990). The following discussion summarizes parts of these reports.

The southern portion of California's Central Valley is comprised of two hydrologic basins, the San Joaquin River Basin and the Tulare Lake Basin, which are separate except during extremely high runoff events (Figure VIII-1). This report focuses on agricultural drainage in the San Joaquin River Basin.

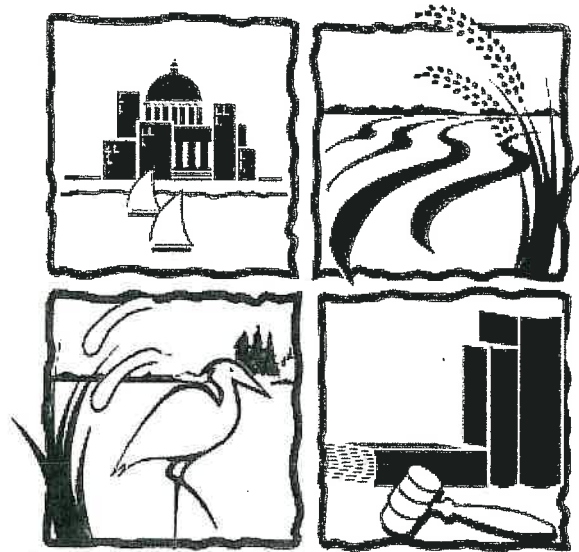
In order to alleviate salt buildup in the soil and high water table conditions, growers in the west-side of the San Joaquin Basin began installing subsurface drainage systems in the 1950s to dispose of accumulated drain water to the San Joaquin River. The location of drainage problem areas and existing tile drained areas in the San Joaquin River Basin are shown in Figure VIII-3 (SWRCB 1987).

In the 1950s, state and federal agencies realized that planned water importation projects would worsen these problems. The authorization for the SWP and the San Luis Unit of the CVP included plans for a master drain to remove subsurface drainage from the San Joaquin Valley. During the 1960s, the USBR and the DWR collaborated on plans for staged construction of a San Joaquin Valley drain that would discharge in the Delta. The DWR eventually withdrew from the planning process because it was unable to develop a method for repayment of reimbursable costs that was acceptable to the future drain users. The USBR continued with plans to build a 188 mile San Luis Interceptor Drain. From 1968 to 1975, an 85 mile segment was built between the town of Five Points and Kesterson Reservoir. San Luis Drain construction was halted in 1975 because of federal funding problems, environmental impact concerns, and uncertainty about a final location for drain discharges. Consequently, the Interagency Drainage Program was formed to develop an economically, environmentally, and politically acceptable plan to handle these issues.

The Interagency Drainage Program's recommendations were published in 1979 (IDP 1979). The preferred plan was a 290 mile long drain extending from the Tulare Basin to the discharge point near Chipps Island in Suisun Bay. In 1981, the USBR requested the SWRCB to issue a permit for discharge of San Luis Drain effluent to Suisun Bay. The SWRCB then specified the information that the USBR would have to submit to support its application. Federal drainage studies began shortly thereafter.

By 1978, subsurface agricultural drainage blended with irrigation water began flowing in the San Luis Drain. This water was discharged into Kesterson Reservoir, which operated as a terminal evaporation facility. By 1981, the entire flow of the drain was subsurface drainage originating from approximately 8,000 acres in the Westlands Water District (5,000 acres with tile drains plus 3,000 acres influenced by the 42,000 acre collector system). Shortly thereafter, waterfowl deaths and embryonic deformities were observed at Kesterson Reservoir. These observations were traced to the presence of selenium at an average concentration of approximately 300 ppb in the drainage water. In response to a complaint from a landowner near Kesterson Reservoir, the SWRCB held a series of evidentiary hearings and, in 1985, adopted Order No. WQ 85-1. Among other provisions, this order established conditions for continued discharge to the reservoir. The USBR, however, announced that it would no longer accept subsurface drainage from Westlands Water District into the San Luis Drain, and Kesterson Reservoir was closed. Since then, the district has not discharged subsurface collector drain water beyond its boundaries.

There has not been substantial progress on construction of a drainage facility since this period. The existing status of the drainage facility is discussed in section A.3 of this chapter.



Water Right Decision 1641

In the Matter of:

**Implementation of Water Quality Objectives for the
San Francisco Bay/Sacramento-San Joaquin Delta Estuary;**

**A Petition to Change Points of Diversion of the
Central Valley Project and the State Water Project in the
Southern Delta; and**

**A Petition to Change Places of Use and Purposes of Use of the
Central Valley Project**

December 29, 1999

**STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

Prior to using the JPOD, the DWR or the USBR will be required to consult⁶¹ with SDWA and prepare and submit to the Chief of the Division of Water Rights a response plan specifying actions the DWR or the USBR will take to ensure that water levels in southern Delta Channels are not lowered to elevations inadequate for diversion of water for agricultural uses because of increased pumping resulting from the use of the JPOD. The DWR or the USBR will not be authorized to divert water using the JPOD until the response plan has been approved by the Chief of the Division of Water Rights. The DWR or the USBR will be required to implement the response plan.

11.6.3.2 DELTA SALINITY

CCWD, SDWA, and CDWA argued that approval of the JPOD petition could adversely affect salinity in the Delta to their detriment.

CCWD asserted that JPOD pumping could impact water quality at its Rock Slough intake and at the intake for the Los Vaqueros system on Old River, and that these impacts could occur when water is available for refilling Los Vaqueros Reservoir. CCWD also argued that CCWD's customers who have their own diversion points could suffer an impact in terms of water quality if joint point operations cause a change in the location of X2. No evidence was submitted regarding these customers or the potential for impact. Dr. David Briggs, on behalf of CCWD, testified that use of the JPOD could cause increased sea water intrusion, which would affect the quality of water available to CCWD, and could affect refill operations under CCWD's biological opinion under the ESA. (R.T. p. 12221.)

The biological opinion restricts CCWD from refilling Los Vaqueros Reservoir during the months of February through May if a salinity level known as X2⁶² is east of Chipps Island. In January, June, and August, CCWD is restricted from filling Los Vaqueros if X2 is east of Collinsville. Further restrictions apply in December if Delta smelt are present at the intake on Old River and X2 is east of Collinsville. (R.T. pp. 12222-12223.) On average, X2 is always to the west of those stations during those months. (SWRCB 1e, Table XIII-16; SWRCB 75a, 75b, 75k-75q.) Average

⁶¹ Such consultation does not require the approval of SDWA before the response plan is submitted to the Chief of the Division of Water Rights.

⁶² See Part 5, above, for an explanation of X2.

TABLE 8

SHIFTS IN X2 UNDER JPOD THAT AFFECT CCWD'S DIVERSION

Assumed JPOD Export Conditions	Month	Number of Occurrences (Water Years in which impact occurs)
JPOD to CVCC only (JPOD Alternative 3)	January	2 (1947, 1961)
SWRCB order WR 95-6 (JPOD Alternative 4)	December	3 (1954, 1959, 1981)
	January	3 (1937, 1947, 1961)
	February	2 (1947, 1976)
PN 5820-A and SJRA (JPOD Alternative 9)	December	2 (1954, 1981)
	January	1 (1947)
	February	2 (1947, 1976)
	March	1 (1964)
PN 5820-A Amended (JPOD Alternative 5)	December	3 (1954, 1959, 1981)
	January	3 (1937, 1947, 1961)
	February	1 (1947)
Physical Capacity of Pumping Plants (JPOD Alternative 7)	December	8 (1922, 1927, 1928, 1947, 1954, 1964, 1981, 1994)
	January	4 (1926, 1937, 1947, 1961)
	February	1 (1988)
	March	1 (1955)
	May	1 (1945)
	August	1 (1958)
Physical Capacity of Pumping Plants at 2020 demand level (JPOD Alternative 8)	December	4 (1922, 1927, 1947, 1954)
	January	5 (1926, 1937, 1947, 1961, 1990)
	February	1 (1988)
	March	1 (1955)
	May	1 (1945)
	August	1 (1958)

Unlimited approval of the JPOD petition is likely to affect the ability of CCWD to divert water at Old River to Los Vaqueros Reservoir because of restrictions under the biological opinion for Los Vaqueros Reservoir. Approval of the JPOD at the pumping rate currently authorized by the USCOE (JPOD Alternatives 5 and 9) would cause no additional injury to CCWD compared to the salinity impacts caused by operation under Order WR 95-6 (JPOD Alternative 4). This is because the biological opinion would restrict CCWD diversions in more months under JPOD Alternative 4. Approval of the JPOD up to the physical capacity of the pumping plants (JPOD Alternatives 7 and

8) could result in additional impacts to CCWD. To prevent injury to CCWD as a result of these restrictions, this decision requires the DWR and the USBR to determine when X2 will shift solely as a result of use of the JPOD, preventing CCWD from diverting water at Old River. At those times, use of the JPOD will be junior to diversions by CCWD to Los Vaqueros Reservoir.

Approval of the JPOD petition is not expected to adversely affect water quality at either CCWD's Rock Slough intake or at its intake on Old River. At Rock Slough, water quality generally improves substantially during the summer months and worsens during the winter months as a result of implementing the 1995 Bay-Delta Plan. Use of the JPOD somewhat reduces the salinity improvements resulting from the Bay-Delta Plan. (SWRCB 1e, Figures [XIII-12]-[XIII-21]; SWRCB 75; SWRCB 76.) However, chloride levels at CCWD's intakes are less than the objective of 250 mg/l in every month. (SWRCB 75k-q.) The SWRCB's EIR shows that the municipal water quality objective at Rock Slough is exceeded in December. This is due, however, to differences between methods used to calculate salinity in the models used for the EIR's preparation. (R.T. p. 12249; SWRCB 1e, p. VI-11; SWRCB 75; SWRCB 76.) In actuality, the projects are operated to meet salinity objectives at Rock Slough as well as at the export pumps, and the objective should not be exceeded. Therefore, there should be no significant adverse effect on water quality at CCWD's Pumping Plants as a result of approving the petition.

Water users in the SDWA also asserted that approval of the JPOD would adversely impact them due to salinity increases. The evidence does not support this conclusion. Under average flow conditions, exceedances of the southern Delta salinity objective that occur as a result of the JPOD in June, July and August would also have occurred under D-1485 conditions. Furthermore, salinity generally is improved as a result of implementing the 1995 Bay-Delta Plan. Where conditions have worsened, they worsen due to implementation of the 1995 Bay-Delta Plan or due to restrictions on New Melones Reservoir releases for salinity control (JPOD Alternatives 6 and 9), not due to JPOD. (SWRCB 1e, Figures [XIII-57]-[XIII-72]; SWRCB 75; SWRCB 76.) A minor exception occurs at Brandt Bridge. During above normal years in August at Brandt Bridge, salinity is slightly higher under SWRCB Order WR 95-6 conditions (JPOD Alternative 4). (SWRCB 1e, Figure XIII-62; SWRCB 75; SWRCB 76.) In July and August of dry years, salinity at Brandt Bridge increases as a result of allowing exports to increase to the physical capacity of the pumping plant. However, the resulting exceedance of the objective is so slight as to be within modeling error. (SWRCB 1e, Figure XIII-63, SWRCB 76.)

Trinity Co. argues that approving the JPOD petition may exacerbate drainage and water quality problems in the western San Joaquin Valley. Trinity Co. alleges that increased deliveries to the San Luis Unit of the CVP, and particularly to WWD, result in increased discharges to the San Joaquin River of saline and contaminant-laden drainage water. However, exports are not expected to increase over the levels authorized under D-1485 as a result of the JPOD. (SWRCB 1e, Table XIII-12; SWRCB 75; USDI 10d.) Furthermore, a significant portion of the water delivered as a result of the JPOD is served to the CVCC. (USDI 10d.) Drainage resulting from the CVCC service area does not return to the San Joaquin River except under flood conditions. The remaining water will normally be delivered to the WWD. (WWD 7, p. 4.) Lands within WWD's service area do not discharge drainage water, tailwater, or tile water outside the boundary of WWD. (R.T. pp. 7232-7233, 7245, 7302-7305.)

11.7 Effects on Fish, Wildlife, and Other Instream Beneficial Uses of the Water

11.7.1 Effect on Refuges

The USDI argued that approval of the JPOD petition will benefit wildlife refuges in the San Joaquin Basin. A USBR witness testified that “[T]o the extent that we use Banks, we use it first to meet the Cross Valley Canal contract. The remaining use of the joint point of diversion in our studies was used to reduce whatever deficiencies there would be on our deliveries south of the Delta as a whole. And those deliveries are for water supply purposes and for environmental purposes on refuges in the San Joaquin Valley.” (R.T. pp. 10970-10971.)

11.7.2 Effects on Aquatic Resources

The DWR presented testimony that the JPOD will not have an unreasonable effect on the environment and may be used to benefit fish by adjusting pumping so that it occurs during seasons that avoid or reduce impacts. (R.T. pp. 10984, 11056-11059; DWR 35, pp. 3-4; DWR 36, pp. 2-4.) Shifting pumping from one point of diversion to the other can also benefit fish if the fish are not uniformly distributed or if predators are present at one facility and not the other. (R.T. pp. 10984, 11055, 11059-11061; DWR 35, p. 2; DWR 36, pp. 1-2, 4-6.) Lastly, the JPOD can be used by the projects as a tool to avoid impacts to the fish screens that occur as a result of aquatic weeds or mitten crabs. (R.T. pp. 11378, 11061; DWR 36, pp. 6-7.)