

TESTIMONY OF MICHAEL GEORGE

I have served as Delta Watermaster since January 5, 2015, when I began a four-year appointed term. Prior to serving as Delta Watermaster, I was actively involved in California's water community for more than 20 years, as an attorney practicing environmental law and as a manager for several private water companies and financial companies. I received my undergraduate degree from the University of Notre Dame, and my law degree from the Georgetown University Law Center. A true and correct copy of my resume is Prosecution Team Exhibit WR-22.¹

My testimony herein identifies my personal knowledge of the evidence, actions and rationale for the Division of Water Rights Prosecution Team's recommendation to issue a Cease and Desist Order (CDO) to the West Side Irrigation District (WSID).

Delta Watermaster Authority

Under authority delegated by the State Water Resources Control Board (State Water Board) pursuant to California Water Code section 85230, the Delta Watermaster is responsible for the day-to-day administration of water rights within the legal boundaries of the Delta as well as working with the State Water Board on strategic initiatives to improve the operation of the water rights system within the Delta. "Day-to-day administration" includes, among other things, conducting investigations and inspections of Delta diversions, and involvement in enforcement actions. The Delta Watermaster may issue enforcement actions directly or, when appropriate, re-delegate such authority to the Deputy Director for the Division of Water Rights or appropriate staff within the Division of Water Rights.

At the time of my appointment, the previous delegation of authority, Resolution No. 2012-0048, had expired. The Board adopted the current delegation of authority, Resolution No. 2015-0058, on September 1, 2015.²

WSID Investigation

In March, 2015, my office became aware of a complaint of diversion prior to the licensed irrigation season lodged by a resident/observer in the City of Tracy, in the vicinity of the WSID irrigation service territory. I made a cursory review of WSID's appropriative water right License 1381 (Exhibit WR-112), which dates to 1916 and includes terms restricting the irrigation season of use to begin "about April 1."

¹ Subsequent references to Prosecution Team Exhibits will be in the form "WR-[exhibit number]."

² Resolution No. 2015-0058 is available at

http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015_0058.pdf

I made a field visit to the WSID service area on Sunday, March 22, 2015. Upon arrival at WSID's Wicklund Road pumping plant, I approached the operator on duty, introduced myself and handed him my business card, and asked for and received permission to look around. I then visually inspected the area. During my visit, I observed that most of the pumps within the pump house were in operation and diverting water from Old River, excluding only those two or three pumps which appeared to be undergoing maintenance. After viewing the operation in the pump house, I returned to the office where the WSID operator responded to my general questions about the (apparently outdated) WSID system schematic posted on the office wall. Next, I drove around the area, crossing back and forth among WSID and neighboring districts and agricultural areas. My observation was that irrigation throughout the area seemed to be in full swing on a warm, sunny day. Exhibit WR-132 includes true and correct copies of photographs taken during my March 22, 2015, site visit.

During the following week, around March 23 through 27, I reviewed my observations from the field visit and review of License 1381 with members of the Division of Water Rights, including John O'Hagan and Kathy Mrowka. Also during that week, I contacted WSID's administrative office and learned that the general manager was traveling. I was referred to WSID's attorney, Karna Harrigfeld.

I reached Ms. Harrigfeld by telephone, related my observations, and told her that, in light of the warm and dry conditions, I concurred that it was reasonable to begin irrigation earlier than April 1 and that WSID's diversion and irrigation activities appeared to be consistent with the "about April 1" season of use provided in License 1381. In light of my concurrence, I informed Ms. Harrigfeld that I intended to take no further action on the complaint.

In the course of my conversation with Ms. Harrigfeld, I referenced the annual 27,000 acre-feet (AF) limitation on total diversion under License 1381, and discussed the potential for dry conditions to force curtailment of diversions under junior appropriative rights later in the year to protect more senior water rights.

In April, 2015, I had a face-to-face conversation with WSID's counsel, Jeanne Zolezzi, and general manager, David Kaiser, during a side-bar in conjunction with a State Water Board meeting. At that side-bar meeting, I suggested that, based on my observations, WSID could present an ideal test case for the lawfulness/unlawfulness of in-Delta diversions during periods when inflow to the Delta watershed is insufficient to service licensed (post-1914) water rights. I asked the WSID representatives to consider—in light of the then-emerging likelihood of such conditions developing—cooperating in the presentation of a factually "clean" test of competing legal theories related to the concept of the so-called "Delta Pool." Neither Ms. Zolezzi nor Mr.

Kaiser seemed receptive to the idea of WSID presenting such a test case for consideration by the SWRCB, and I have had no follow-up conversations with either of them on the subject. I had similar discussions with the Division of Water Rights during April, 2015, but the idea did not progress beyond the discussion stage.

Throughout the spring and early summer of 2015, I participated in both internal and external discussions of the data which the Division of Water Rights proposed to gather, refine and use to evaluate relative supply and demand for water in various tributaries and in the entire Delta watershed.

On May 1, 2015, the State Water Board, acting through its Executive Director, posted notice that water in the Sacramento River watershed, including within the Delta, was insufficient to meet diversion priorities later than 1914. (WR-34.) I observed, privately, that the notice applied to the WSID license rights with which I had recently become familiar. (See, WR-35 [copy of May 1 Unavailability Notice sent to WSID].)

I conducted a drive-by visit of the WSID Wicklund road pumping plant on May 15, 2015. Exhibit WR-133 includes true and correct copies of photographs of that visit. I did not enter WSID property during that site visit, but I was able to observe that at least some of the pumps appeared to be operating. After conferring with staff of the Division of Water Rights, I directed John Collins of my office to make a site visit to WSID's Wicklund Road pumping plant to determine whether the plant was in operation and diverting water from Old River. Mr. Collins conducted the site visit on May 18, 2015, and filed his report (WR-134) confirming that the pumping plant was in limited operation and describing his on-site conversation with the WSID operator.

During May, 2015, I had separate telephone calls with Ms. Zolezzi, representing WSID, and with Martha Lennihan, counsel to the City of Tracy. Through those calls and contemporary correspondence, I became aware that Tracy had entered into contracts to sell treated wastewater to WSID and that WSID proposed to take control of the treated wastewater by pumping it from Old River (into which it is discharged by Tracy from its wastewater treatment plant). I later reviewed copies of the contracts purporting to sell and transfer the treated wastewater from Tracy to WSID. (WR-136 and 139 [2014 and 2015 contracts].)

Following my conversations with Ms. Zolezzi and Ms. Lennihan, I conferred with members of the Division of Water Rights regarding diversions by WSID and rationales for such diversions notwithstanding the notice of insufficient water supply.

Based on procedural arrangements reached during the discussions with the Division of Water Rights, I thereafter monitored (and sometimes offered comments regarding) preparation

and exchanges of emails between Mr. Tauriainen and counsel for WSID and Tracy related to conditions for diverting from Old River water characterized by WSID as wastewater. (See, WR-131 [June 10, 2015, letter to Ms. Lennihan and Ms. Zolezzi].)

Similarly, I have participated, intermittently since May, in discussions and internal email exchanges with members of the Division of Water Rights and enforcement counsel regarding the pending Draft CDO against WSID.

I persist in my opinion that WSID presents a relatively clean fact pattern through which to test competing legal theories related to diversions within the Delta. My personal objective is to use the CDO process not only to determine the lawfulness/unlawfulness of WSID diversions during periods when the Division of Water Rights has determined that there was insufficient water in the Delta to meet WSID's priority of right but also to establish precedent that can be applied more broadly to other in-Delta diversions.