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7 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

8 ENFORCEMENT ACTION ENFO1949)
DRAFT CEASE AND DESIST ORDER) WRITTEN TESTIMONY
9 REGARDING UNAUTHORIZED) OF RICK MARTINEZ
DIVERSIONS RO THREATENED)
10 UNAUTHORIZED DIVERSIONS OF)
WATER FROM OLD RIVER IN SAN)
11 JOAQUIN COUNTY)
Hearing Date: March 21, 2016
Hearing Officer: Frances Spivy-Weber
12)

13 **INTRODUCTION**

14 1. I am Rick Martinez, appearing today on behalf of The West Side Irrigation
15 District ("WSID"). I was originally hired by the District in 1995 as a ditch tender. I am
16 currently the Supervising General Foreman for WSID and have been in that position since 2011.

17 2. My responsibilities as General Foreman are to operate the irrigation and drainage
18 facilities of the district to provide irrigation water and drainage services to landowners within
19 WSID.

20 3. WSID is located in San Joaquin County, and includes 6,345.86 acres of
21 agricultural land within its boundaries.

22 4. The District holds water right License 1381, with a priority date of April 17,
23 1916, which authorizes the direct diversion of 82.5 cubic-feet per section ("cfs") from Old River
24 in San Joaquin County from (1) on or about April 1 to October 31 of each year for irrigation and
25 (2) from April 1 to October 31 of each year for municipal, domestic and industrial uses.

26 5. Water is diverted by WSID through an intake canal about 1.5 miles long, as
27 depicted on the map attached as **WSID EXHIBIT WSID0001**.
28

1 6. Water moves slowly in the flat gradient intake canal, which is affected by tides of
2 about 4 feet; the depth in the channel varies from 4 feet to 8 feet deep depending on the tide.

3 **BETHANY DRAIN**

4 7. On May 18, 2015, I met staff from the Office of the Delta Watermaster at the
5 WSID pump station, and told him that WSID was pumping captured tail water runoff from the
6 Bethany Drain at an estimated 8 cfs to provide that tail water to farmers within the WSID
7 boundaries.

8 8. The Bethany Drain collects irrigation return water through tile drains from
9 landowners within WSID, shallow groundwater from tile drains, and municipal drainage from
10 lands within the City of Tracy and discharges that return water directly into WSID's intake
11 channel. Maps prepared by WSID depicting the various tile drains within the district and their
12 location in relation to the Bethany Drain are attached as **WSID EXHIBIT WSID0002** and
13 **WSID0004**.

14 9. There are no sources of water into the Bethany Drain from outside of the WSID.

15 10. The Bethany Drain is exclusively operated and maintained by WSID, and WSID
16 maintains exclusive control over the Bethany Drain from its origination within the District
17 boundaries along its entire course, until it discharges into the intake canal.

18 11. WSID discharges its drain water from the Bethany Drain into the intake channel
19 with the express intention of recapturing the water at its diversion pumps.

20 12. Because the District's intake channel is open to Old River, drain water from the
21 Bethany Drain may commingle with Old River water in the intake channel.

22 13. WSID measures discharges of drain water from the Bethany Drain into the intake
23 channel by a weir that has been constructed in the Bethany Drain. The weir is a four-foot high
24 concrete wall with a 70-inch wide opening that allows for the installation of boards that are about
25 six feet long. The weir is installed approximately 340 feet upstream of the Bethany Drain outfall
26 into the intake channel.

27 14. After diversions under WSID's License were curtailed, it was my job to insure
28 that diversions from the WSID diversion pumps did not exceed the inflow into the intake channel

1 from the Bethany Drain. I made daily measurements at the weir during low tides. I measured
2 the depth of the water flowing over the top of the weir boards and calculated the flow of water
3 over the weir and into the intake channel from the Bethany Drain in units of cubic feet per
4 second. At no time after May 21, 2015 did WSID's diversions from the intake channel exceed
5 the inflow into the intake channel from the Bethany Drain.

6 **CITY OF TRACY WASTEWATER**

7 15. The City operates a wastewater treatment plant and discharges treated wastewater
8 effluent to Old River, upstream of the WSID intake canal and point of diversion, as accurately
9 depicted on the map attached hereto as **WSID EXHIBIT WSID0003**.

10 16. In May of 2014, WSID entered into a Wastewater Revocable License Agreement
11 with the City ("**2014 Agreement**") for the purchase of treated wastewater from the City's
12 wastewater treatment plant. The 2014 Agreement provided that WSID may divert all of the
13 City's wastewater discharges from April 1, 2014 through October 31, 2014, estimated to be
14 approximately 14 cfs, equivalent to 27.8 acre-feet per day, on a continuous basis. Minor
15 amounts of diversion were made by WSID under the 2014 Agreement from June 17, 2014
16 through September 19, 2014.

17 17. In March of 2015, WSID entered into a Wastewater Revocable License
18 Agreement with the City ("**2015 Agreement**") for the purchase of treated wastewater from the
19 City's wastewater treatment plant. The 2015 Agreement provided that WSID may divert all of
20 the City's wastewater discharges from April 1, 2015 through October 31, 2015, estimated to be
21 approximately 14 cfs, equivalent to 27.8 acre-feet per day, on a continuous basis. I was never
22 directed by WSID to make diversion pursuant to the 2015 Agreement, and did not operate the
23 WSID pumping facilities at any time in 2015 so as to divert treated wastewater from the City.

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18. At the time diversions of wastewater from the City of Tracy were made in 2014, I observed water levels in the intake channel as well as Old River, and did not notice any change in levels of water in Old River or the WSID intake channel.

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

Executed this 15th day of January, 2016 in Tracy, California.



RICK MARTINEZ