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9 The West Side Irrigation District

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENFO1949)
12 DRAFT CEASE AND DESIST ORDER) WRITTEN TESTIMONY
13 REGARDING UNAUTHORIZED) OF KARNA E. HARRIGFELD
14 DIVERSIONS RO THREATENED)
15 UNAUTHORIZED DIVERSIONS OF)
16 WATER FROM OLD RIVER IN SAN)
17 JOAQUIN COUNTY)
18 Hearing Date: March 21, 2016
19 Hearing Officer: Frances Spivy-Weber

20 **INTRODUCTION**

21 1. My name is Karne E. Harrigfeld, and I am an attorney licensed to practice law in
22 the State of California. I submit this written testimony on behalf of The West Side Irrigation
23 District (“**WSID**” or “**District**”).

24 2. I am currently the General Counsel for WSID. I have served as General Counsel
25 for WSID since 1995 and am very familiar with its jurisdictional area, facilities, water right and
26 operations. I have attended the majority of the WSID board meetings during that time period,
27 toured the facilities with WSID staff at least ten (10) times and actively worked on all matters
28 related to the WSID water rights and diversion facilities during that time period of twenty (20)
years. Part of my role as General Counsel is to maintain important business records of the
District that relate to property rights and water rights. My testimony refers to several of those
records.

3. WSID is a California irrigation district, located in San Joaquin County, and
includes 6,345.86 acres of agricultural land within its boundaries.

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**WSID CDO/BBID ACL
WSID0099**

1 4. The District holds water right License 1381, originally issued on September 29,
2 1933 and amended on August 19, 2010 (“**License**”). A true and correct copy of the License is
3 provided as **EXHIBIT WSID0005**.

4 5. License 1381 has a priority date of April 17, 1916, and authorizes the direct
5 diversion of 82.5 cubic feet per second (“**cfs**”) from Old River in San Joaquin County from (1)
6 about April 1 to October 31 of each year for irrigation and (2) from April 1 to October 31 of each
7 year for municipal, domestic and industrial uses.

8 6. In 1929 the Department of Public Works confirmed that the water diverted by
9 WSID pursuant to its License is “largely return flow from diversions farther upstream and water
10 reaching the San Joaquin delta from Sacramento River through Georgiana Slough and other
11 inter-delta channels.” I obtained a copy of the report from the Department of Water Resources
12 (“**DWR**”), the successor of the Department of Public Works. DWR posts historic reports on its
13 website at <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>. A true and
14 correct copy of Department of Public Works Bulletin No. 21 dated 1929 is provided as
15 **EXHIBIT WSID0006**, see pages 166-168.

16 7. The License was issued in 1933 documenting the maximum amount of water
17 found to have been put to beneficial use in the years 1930, 1931 and 1932, as documented in the
18 Sacramento San Joaquin Water Supervisor’s records, as acknowledged in that October 9, 1933
19 letter to WSID from the State of California Department of Public Works. A true and correct
20 copy of the October 9, 1933 letter is provided as **EXHIBIT WSID0007**. A true and correct copy
21 of Table 38 of the Sacramento San Joaquin Water Supervisor’s Report, Department of Public
22 Works Bulletin No. 23 dated August 1932 is provided as **EXHIBIT WSID0008**. I obtained a
23 copy of the Water Supervisor’s Report from DWR’s website at
24 <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>.

25 8. WSID and its diversion facilities on Old River are located in the Sacramento-San
26 Joaquin Delta. A true and correct copy of the Sacramento-San Joaquin Delta Atlas prepared by
27 the California Department of Water Resources is provided as **EXHIBIT WSID0010**. I obtained
28 a copy of the Delta Atlas from DWR’s website at

1 <http://baydeltaoffice.water.ca.gov/DeltaAtlas/index.cfm>. See page 4 for a map of the Delta,
2 showing the location of Old River. See also **EXHIBITS WSID0001, WSID0002, WSID0003**
3 and **WSID0004** for maps of the WSID boundaries. These maps accurately reflect the District's
4 boundaries and diversion facility location.

5 9. The WSID License file at the State Water Resources Control Board contains a
6 copy of the State Water Resources Control Board staff's July 18, 1985 Report of Inspection of
7 the WSID Facilities on file with the State Water Resources Control Board, a true and correct
8 copy of which is provided here as **EXHIBIT WSID 0009**. In that inspection report, the State
9 Board explained:

- 10 a. water moves slowly in the flat gradient channel which is affected by tides
11 of about 4 feet;
- 12 b. the channel is from 4 feet to 8 feet deep depending on tides; and
- 13 c. the quality of Old River water diverted by WSID in the intake channel is
14 poor, running from 800 to 1000 total dissolved solids.

15 **BETHANY DRAIN**

16 10. There is a drainage canal located in WSID called the Bethany Drain. The location
17 of the Bethany Drain is accurately depicted on **EXHIBITS WSID0001, WSID0002, WSID0003**
18 and **WSID0004**.

19 11. The Bethany Drain collects irrigation return water through tile drains from
20 landowners within WSID, shallow groundwater from tile drains, and municipal drainage from
21 lands within the City of Tracy and discharges that return water directly into WSID's intake
22 channel. My understanding of the operation of Bethany Drain is based on personal experience
23 over the last 20 years negotiating the agreements related to the operations of the Bethany Drain
24 on behalf of WSID.

25 12. The Bethany Drain is exclusively owned, operated and maintained by WSID, and
26 WSID maintains exclusive control over the Bethany Drain from its origination within the District
27 boundaries along its entire course, until it discharges into the WSID intake canal. Title to the
28 Bethany Drain was obtained by WSID over time, from the 1930's and 1940's. True and correct

1 copy of three deeds to portions of the Bethany Drain that exemplify the deeds held by WSID for
2 the Bethany Drain are attached hereto as **EXHIBITS WSID0014, WSID0015 and WSID0016**.
3 These deeds are official records of the district and are true and correct copies of public records
4 recorded in San Joaquin County.

5 13. The history and original purpose of the Bethany Drain is explained in a WSID
6 business record obtained from Naglee-Burk Irrigation District, maintained by the district since
7 1924, and produced here as **Exhibit WSID0011**, which contains a true and correct copy of an
8 August 1924 Report on Drainage prepared by Thomas H. Means Engineering for the Naglee-
9 Burk Irrigation District ("**Drainage Report**").

10 14. The Drainage Report confirms that drainage is needed within WSID to protect
11 lands from high water tables, and notes that in 1924 water stood at less than 4 feet from the
12 surface within WSID. See **EXHIBIT WSID0011** at pages 14 - 19.

13 15. Municipal discharges into the Bethany Drain are allowed pursuant to a contract
14 between the City of Tracy and WSID, as well as other similar contracts between WSID and other
15 municipal and industrial properties. A true and correct copy of the 2010 Drainage Agreement
16 between the City of Tracy and The West Side Irrigation District is provided as **EXHIBIT**
17 **WSID0012**. The other drainage agreements between WSID and others are similar in form.

18 16. A map of the City's drainage system, its relationship to WSID drains, and other
19 drainage information is included in the City of Tracy November 2012 Citywide Storm Drainage
20 Master Plan, a true and correct copy of which is provided as **EXHIBIT WSID0013**, see pages
21 1.15, 1.18, 2.1 and 2.3, and Figures 1.4 and 2.3. This Master Plan document was officially
22 adopted by the City of Tracy City Council, is maintained by the City as an official document and
23 business record of the City, and was obtained from the City of Tracy website at
24 http://www.ci.tracy.ca.us/documents/Final_Storm_Drainage_Master_Plan.pdf.

25 17. WSID discharges its drain water from the Bethany Drain into the WSID intake
26 channel with the express intention of recapturing the water at its diversion pumps. This practice
27 has continued for many years with the full knowledge of the State Water Resources Control
28 Board.

1 18. By letter dated September 21, 1998, WSID notified State Water Board that it
2 “obtains a substantial amount of water through recycled tail water from district irrigation, and
3 from neighboring districts.” A true and correct copy of that September 21, 1998 letter is
4 provided as **EXHIBIT WSID0017**. This letter is maintained as a business record of WSID.

5 19. By letter dated September 25, 1998, WSID again notified the State Water Board
6 that “it is our position that this [Bethany Drain] water is not subject to appropriation because it
7 does not reach a natural watercourse. The water is pumped from a man-made canal.
8 Consequently, WSID has the right to use this water without a permit from the State Water
9 Resources Control Board. As such, WSID does not need to divert such water under the terms of
10 its License, it does not need to file a new appropriation, and it does not need to provide the Board
11 with copies of agreements entitling it to use this water.” A true and correct copy of that
12 September 25, 1998 letter is provided as **EXHIBIT WSID0018**. This letter is maintained as a
13 business record of WSID.

14 **CITY OF TRACY WASTEWATER**

15 20. The City of Tracy operates a wastewater treatment plant and discharges treated
16 wastewater effluent to Old River, a water of the United States, pursuant to Order R5-2012-0115
17 (NPDES Permit CA0079154) issued by the Central Valley Regional Water Quality Control
18 Board. A true and correct copy of NPDES Permit CA0079154, obtained from the State Water
19 Board website at [http://www.waterboards.ca.gov/rwqcb5/board decisions/ adopted orders/
20 san_joaquin/r5-2012-0115.pdf](http://www.waterboards.ca.gov/rwqcb5/board%20decisions/adopted%20orders/san_joaquin/r5-2012-0115.pdf) is provided as **EXHIBIT WSID0019**.

21 21. The City discharges approximately 9 million gallons per day ("**mgd**"), which is
22 equivalent to 14 cfs, on a substantially continuous basis into Old River upstream from the
23 District’s point of diversion under License 1381. A true and correct copy of an excel spreadsheet
24 submitted by the City of Tracy to the State Water Resources Control Board summarizing
25 discharges from its wastewater treatment plant, as provided by the State Water Board
26 Prosecution Team in its November 3, 2015 response to a Public Records Act Request submitted
27 by WSID is provided as **EXHIBIT WSID0020**.

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1 22. The City obtains water supplies from three sources: (1) South San Joaquin
2 Irrigation District water delivered from the Stanislaus River (typically the majority of the City's
3 supply); (2) United States Bureau of Reclamation water delivered from the Delta-Mendota
4 Canal; and (3) local groundwater wells (typically the smallest portion of the City's supply). The
5 City's treated wastewater discharges are foreign in source and/or foreign in time to the Old River
6 flow. These sources are explained in the April 2011 City of Tracy Urban Water Management
7 Plan, a copy of which is provided as **EXHIBIT WSID0021**. This Plan was formally adopted by
8 the City of Tracy and is an official record and business record of the City of Tracy, and was
9 obtained from the City of Tracy website at [http://www.ci.tracy.ca.us/documents/
10 Urban_Water_Management_Plan_2011.pdf](http://www.ci.tracy.ca.us/documents/Urban_Water_Management_Plan_2011.pdf).

11 23. On May 6, 2014, the City Council adopted Resolution 2014-165, authorizing the
12 City to enter into a Wastewater Revocable License Agreement with WSID ("**2014 Agreement**")
13 for the sale of treated wastewater from the City's wastewater treatment plant. The 2014
14 Agreement provided that WSID may divert all of the City's wastewater discharges from April 1,
15 2014 through October 31, 2014, estimated to be approximately 14 cfs, equivalent to 27.8 acre-
16 feet per day, on a continuous basis. A true and correct copy of Resolution 2014-165 is provided
17 as **EXHIBIT WSID0022**. A true and correct copy of the 2014 Agreement is provided as
18 **EXHIBIT WSID0023**.

19 24. On March 3, 2015, the Tracy City Council adopted Resolution 2015-033,
20 authorizing the City to enter into a Wastewater Revocable License Agreement with WSID
21 ("**2015 Agreement**") for the sale of treated wastewater from the City's wastewater treatment
22 plant. The 2015 Agreement provided that WSID may divert all of the City's wastewater
23 discharges from April 1, 2015 through October 31, 2015, estimated to be approximately 14 cfs,
24 equivalent to 27.8 acre-feet per day, on a continuous basis. A true and correct copy of Resolution
25 2015-033 is provided as **EXHIBIT WSID0024**. A true and correct copy of the 2015 Agreement
26 is provided as **EXHIBIT WSID0025**.

27 25. WSID did not provide the City with a written Commencement Notice and WSID
28 did not purchase or divert wastewater from the City under the 2015 Agreement. On July 7, 2015

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the City terminated the 2015 Agreement. A true and correct copy of the July 8, 2015 Letter from the City of Tracy notifying WSID of the termination is PROVIDED as **EXHIBIT WSID0026**.

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 Modesto, California.


KARNA E. HARRIGFELD