

TESTIMONY OF RICHARD SATKOWSKI

My name is Richard Satkowski. I am a professional engineer, registered in California, and a Senior Water Resource Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). I have over 23 years of water rights experience working for the Division in programs dealing with water right permitting, licensing, protest and hearing actions, petitions for change and transfers of water, compliance actions, San Francisco Bay-Delta Hearings, the Mono Lake Hearings and the Salinas Valley Management Plan. I am currently the Chief of the Licensing Unit. A copy of my resume is attached as WR-4.

My testimony, herein provided, identifies my personal knowledge of the evidence, actions, and rationale for the Division's recommendation to issue a Cease and Desist Order (CDO) and Administrative Civil Liability (ACL) Complaint against the North San Joaquin Water Conservation District (District).

Rationale for the Draft CDO and ACL Complaint

Mr. Marquez of my staff has provided testimony about the February 2, 2006 licensing inspection of the District's diversion and history of water Permit 10477 (Application 12842) (WR-7). The inspection performed by Mr. Marquez found that diversion was occurring from the Mokelumne River in violation of Permit 10477, that those diversions constituted an unauthorized and threatened unauthorized diversion and use of water, and that enforcement action was appropriate. I concur that the District's violations of the fish screen requirement and the fishery flow requirement of Permit 10477 constitute a trespass against the State as defined by Water Code section 1052, subdivision (a), since Permit Terms 15 and 23 expressly prohibits diversions absent compliance with those terms. The inspection findings led to the Division's issuance of Notice of CDO No. 262.31-XX (WR-5) and ACL Complaint No. 262.5-46 (WR-6) against the District.

The draft CDO is based on the violation and threat of violation of the terms of Permit 10477, and the potential future threat of unauthorized diversion of water. In assessing the amount of civil liability, the Prosecution staff, pursuant to Water Code section 1055.3 considered the relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurred, and corrective action taken by the violator, if any. In addition, staff considered economic advantage from the violations and staff costs. To address the unauthorized diversion and use of water from the Mokelumne River, the ACL Complaint directs the District to pay administrative civil liability in the amount of \$66,400.

The maximum ACL amount authorized by statute is \$500 for each day in which the unauthorized diversion or use of water occurred. Assuming 150 days of irrigation each year from 2003 through 2005,¹ the District had 450 days of unauthorized diversion or use of water. 450 days at \$500 per day equates to \$225,000. Since the maximum civil liability of \$225,000 can be considered for the trespass, the ACL complaint discounts the maximum civil liability by \$158,600 or approximately 70 percent. The \$66,400 ACL amount is equivalent to (1) discounting the daily liability from \$500 per day to \$148 per day for the 450 days of violation, or (2) 133 days of violation at the maximum rate of \$500 per day.

The District's history of diverting water from the Mokelumne River in violation of Terms 15 and 23 of their permit dates back at least 13 years. Although the Division has not quantified the precise harm cause by the District's unauthorized diversions, Terms 15 and 23 were added to the permit to protect salmon, steelhead, and other aquatic resources.

¹ The 150 day assumption is based on the lower end of the range of historical use per year by the District, as recorded in EBMUD records. (WR-8, p. 5.)

Prosecution staff found that the District has received an economic advantage over other legal users of water by foregoing the costs of constructing fish screens and bypassing flows. We used a conservative cost for replacement water of \$50 per acre-foot. This is the average of the cost in nearby areas for State Water Project and Central Valley Project water rates, according to the 2005 State Water Plan, rounded to the nearest 5 acre-feet. Using this conservative replacement water cost of \$50 per acre-foot, the District's diversion amount of 8,200 acre-feet over the 2003 through 2005 irrigations seasons provided the District with an estimated avoided cost for water of \$410,000. In addition, the Division estimates its staff cost to conduct the field inspection, and prepare an inspection report and the enforcement documents, to be approximately \$9,400.

A liability amount of \$66,400 was the minimum liability recommended by the Division when the ACL complaint and CDO were issued. As stated in Paragraph 8 of the ACL complaint, the recommended liability amount discounted the maximum liability to achieve settlement with the District, streamline the enforcement process, and avoid the expense of a hearing. Since we are now at a hearing, Prosecution staff recommend that the State Water Board consider reducing this discount and increasing the liability amount by at least \$10,000 to cover the additional staff costs due to the hearing.

This concludes my testimony.