

**KRONICK
MOSKOVITZ
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A PROFESSIONAL CORPORATION

December 12, 2005

Jean McCue
Division of Water Rights
State Water Resources Control Board
P. O. Box 2000
Sacramento, CA 95812-2000

STATE WATER RESOURCES
CONTROL BOARD
2005 DEC 12 PM 1:44
DIV. OF WATER RIGHTS
SACRAMENTO

Re: Delta Salinity Cease and Desist Orders
Closing Statement of State Water Contractors

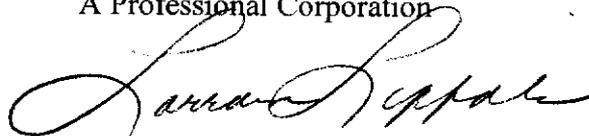
Dear Ms. McCue:

Enclosed please find an original and six copies of State Water Contractors' Closing Statement.

Please call me if you have any questions.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



Lorraine Lippolis
Assistant to Clifford W. Schulz

Enclosure
815059.1

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BEFORE THE CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD

IN THE MATTER OF THE
DEPARTMENT OF WATER
RESOURCES – CEASE AND DESIST
ORDER 262.31-17

CLOSING STATEMENT OF THE STATE
WATER CONTRACTORS

The State Water Contractors file this closing statement to oppose the proposal that the State Water Resources Control Board ("State Board") issue a cease and desist order against the Department of Water Resources ("DWR") based on an alleged "threat" that the State Water Project ("SWP") will violate the terms and conditions of its water rights permits for the three South Delta EC stations.

This closing statement will be brief and to the point, as the Contractors believe that, in spite of the days of testimony and cross-examination, the issues are primarily policy and legal. To the extent there are factual issues, they turn primarily on an analysis of Decision 1641 and its environmental impact report. ("D-1641 EIR")

I. THE STATE BOARD CAN NOT MANDATE THROUGH THE CEASE AND DESIST PROCESS THAT DWR INSTALL PERMANENT BARRIERS

Paragraph 1 of the proposed order states, in part:

The DWR shall ensure the SDIP permanent barriers are installed

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1 and operational, or equivalent measures are implemented, by
2 January 1, 2009.

3 This portion of the proposed cease and desist ordering directly contradicts several of the State
4 Board's findings and rulings in Decision 1641:

5 Although this decision does not order that the barriers be
6 constructed, the benefits of the barriers are integral to the
7 implementation of several of the actions approved in this decision.

8 (D-1641, p. 10)

9 This decision does not require that [certain] measures be
10 implemented since it does not require that the barriers be installed.

11 (D-1641, p. 11)

12 In the absence of a final EIR for the barriers, the SWRCB cannot
13 order their installation. Also, due to the evolving program status
14 and potential for significant adverse impacts, SWRCB action
15 regarding that installation or operation of the temporary or
16 permanent barriers in the southern Delta is not ripe at this time.

17 (D-1641, p. 12)

18 In light of these express determinations, and since the proposed cease and desist order is
19 premised solely on threatened violations of Decision 1641, two central questions must be asked.
20 First, what specific obligation established by Decision 1641 has been or is threatened to be
21 violated with respect to the "permanent barriers?" Second, what has changed so that the State
22 Board can now order that the barriers be constructed "in the absence of a final EIR?" The
23 answers to these questions cannot support issuance of a cease and desist order containing the
24 language recommended by the State Board's enforcement team. Such an order could only be
25 adopted by the State Board after a hearing to amend Decision 1641 to make barrier installation a
26 required act and after completion of an EIR that analyzed all of the potential significant adverse
27 impacts of their installation and operation.

28 Further, the inclusion of language suggesting that equivalent measures can be
selected by DWR is, for several reasons, ineffective to save this ordering language. First,
Decision 1641 and its EIR examined other means and the Decision found:

The benefits of the barriers could be achieved by other means, such
as increased flows through the southern Delta and export

1 restrictions, but these measure could result in an unreasonable use
2 of water and a significant reduction in water supplies south and
west of the Delta.

3 (D-1641, p 10.) Neither the State Board enforcement team nor any other party produced evidence
4 that those kinds of alternatives would now constitute reasonable uses of water. Second, and
5 probably more important, just like the permanent barriers, there is no final EIR on which such
6 equivalent measures could mandated or approved by the State Board. Finally, the State Board is
7 well aware that a draft EIR is now on the street for the permanent operable gates project and that
8 those gates are, in fact, the measure that DWR and the USBR have selected to improve water
9 levels and quality in the south Delta. Thus, the suggestion that there might be a different feasible
10 alternative to the barriers was obviously added by the State Board enforcement team in an attempt
11 to save a flawed ordering paragraph.¹

12 **II. THE EVIDENCE DOES NOT DEMONSTRATE A THREAT THAT THE SOUTH**
13 **DELTA EC REQUIREMENTS AS SET FORTH IN DECISION 1641 WILL BE**
VIOLATED

14 **A. The State Board Prosecution Team Improperly Interpreted Decision 1641**

15 To the State Water Contractors, the most frustrating aspect of the cease and desist
16 hearings was the enforcement team's effort to essentially rewrite the key ordering paragraph of
17 Decision 1641. There is, contrary to the enforcement team's portion, an important substantive
18 difference between "exceeding" a water quality objective and a "violating" the terms of a water
19 rights permit. Only a finding that Decision 1641's requirements have been, or are threatened to
20 be, violated warrants consideration of a cease and desist order.

21 The State Board clearly described the distinction between a water quality objective and a
22 water rights condition in the 1995 Water Quality Control Plan:

23 This plan, however, is not to be construed as establishing the
24 responsibilities of water rights holders. Nor is this plan to be
25 construed as establishing the quantities of water that any particular
water rights holder or group of water rights holders may be required

26 ¹ Alex Hildebrand's suggestion that another alternative would be to install "fish friendly"
27 pumps at several of the temporary barriers simply does not withstand close scrutiny. First, the
28 cost, just for the Old River barrier would be approximately 23 Million Dollars, would require full
environmental review before the could be installed, and would be very inefficient, if not useless,
when porous temporary rock barriers are involved (See DWR Nov. 18, 2005 testimony at pgs.
140, 141).

1 to release or forego to meet objectives in this plan. The SWRCB
2 will consider, in a future water rights proceeding or proceedings,
3 the nature and extent of water rights holders' responsibilities to
4 meet these objectives. Water Code section 1258 charges the
5 SWRCB, when it acts on water appropriations, to consider water
6 quality control plans, and it authorizes the SWRCB to subject the
7 appropriations to terms and conditions that are necessary to carry
8 out the plans. It does not, however, impair the SWRCB's discretion
9 to decide whether to impose such conditions or the conditions to be
10 imposed.

11 (1995 Plan, p. 4)

12 To be consistent with this concise and correct statement of law, the State Board
13 must carefully review Decision 1641 to determine if DWR (in its role as operator of the SWP)
14 was required to guarantee that south Delta EC salinity objectives are fully met at all times or
15 whether a lesser implementation obligation was assigned to the SWP. The enforcement team
16 failed to examine this question and, as a result, seems improperly to have viewed any exceedance
17 of the water quality objectives as an automatic violation of the Decision 1641 terms and
18 conditions.

19 For the State Water Contractors, Decision 1641's approach to implementing the
20 1995 Plan can be best discerned by comparing and contrasting the way the Decision addresses
21 each of the Plan's key water quality objectives. It is not enough to simply look at tables 1, 2, and
22 3 (at pages 181-187 of Decision 1641), for they are essentially lifted from the 1995 Plan and
23 inserted into the Decision for ease of use. It is the ordering paragraphs set out at pages 155-159
24 of Decision 1641 that define the scope of the SWP's obligations. For the purpose of the cease
25 and desist hearings the key obligations are those set forth at pages 158-159:

26 Licensee/Permittee shall ensure that the San Joaquin River salinity;
27 eastern Suisun Marsh salinity; western Suisun Marsh salinity at
28 Chadbourne Slough, at Sunrise Duck Club (station S-21), and
Suisun Slough near Volanti Slough (station S-42); and export limits
for fish and wildlife beneficial uses as set forth in Table 3, attached,
are met.

If any Suisun Marsh salinity objectives at the above locations are
exceeded at a time when the Suisun Marsh Salinity Control Gates
are being operated to the maximum extent, then such exceedances
shall not be considered violations of this permit/license. A detailed
operations report acceptable to the Executive Director of the
SWRCB regarding Suisun Marsh Salinity Control Gate operation
and a certification from the parties that the gates were operated to

1 the extent possible must be submitted to receive the benefit of this
2 exception.

3 4. Permittee is jointly responsible with the USBR for
4 providing Delta flows that otherwise might be allocated to
5 Mokelumne River water right holders.

6 5. Permittee shall provide water to meet any responsibility of
7 water right holders within the North Delta Water Agency to provide
8 flows to help meet the 1995 Bay-Delta Water Quality Control Plan
9 objectives as long as the 1981 contract between North Delta Water
10 Agency and the DWR is in effect.

11 6. This permit is conditioned upon implementation of the
12 water quality objectives for agricultural beneficial uses in the
13 southern Delta, as specified in Table 2, attached, at the following
14 locations in the southern Delta:

- 15 a. San Joaquin River at Brandt Bridge (Interagency Station
16 No. C-6);
- 17 b. Old River near Middle River (Interagency Station No. C-8;
18 and
- 19 c. Old River at Tracy Road Bridge (Interagency Station No. P-
20 12).

21 Permittee has latitude in its method for implementing the water
22 quality objectives at Stations C-6, C-8, and P-12, above; however, a
23 barrier program in the southern Delta may help to ensure that the
24 objectives are met at these locations. If Permittee exceeds the
25 objectives at stations C-6, C-8, or P-12, Permittee shall prepare a
26 report for the Executive Director. The Executive Director will
27 evaluate the report and make a recommendation to the SWRCB as
28 to whether enforcement action is appropriate or the noncompliance
is the result of actions beyond the control of the Permittee.

The State Water Contractors set forth these provisions in full to enable one to easily contrast the way Decision 1641 distinguishes the range of obligations from none, to conditional, to absolute.

For example, one immediately notices that, contrasted to a similar provision regulating the CVP, the SWP is not required to do anything to meet the salinity objective at Vernalis. In stark contrast, the obligation to provide flows that otherwise might be allocated to Mokelumne River water rights holders, is absolute, without any conditions (see quote, at paragraph 4). Next, a review of paragraph 3 of the quoted material, discloses that the obligation to meet the Suisun Marsh salinity objectives is absolute – except when “the Suisun Marsh Salinity Control Gates are being operated to the maximum extent.” In that circumstance an “exceedance”

1 of the water quality objective is not a violation of the permit.

2 Finally, paragraph 6 of the quotation sets forth the rules for complying with the
3 three internal south-Delta EC objectives. Just like the Suisun Marsh language, this ordering
4 paragraph uses both the term "exceed" and the term "violation," in a context that can only be read
5 as distinguishing these two concepts. For both Suisun Marsh and the three interior south-Delta
6 EC stations, a factual determination must be made before one can ascertain if an exceedance of
7 the salinity objective constitutes a violation of the water rights permit terms and conditions.

8 The State Board enforcement team's testimony completely overlooked this
9 conditional element that had been clearly and intentionally included in Decision 1641. As a
10 result, the information it provided at the hearings addressed only the potential of possible future
11 exceedances. The enforcement team apparently made the fatal error of treating the words
12 "exceedance" and "violation" as synonyms – which Decision 1641 makes clear they are not. By
13 so limiting its evidence, the enforcement team totally failed to meet its burden of proving a threat
14 of future "violation", as required by Water Code section 1831(a). That failure, without more,
15 should require that the State Board deny the request for a cease and desist order.

16 The February 14, 2005, letter to the State Board from DWR and the USBR (DWR
17 Exh. 18B, Attachment 2) does not cure this defect in the enforcement team's case. While that
18 letter clearly describes the possibility of future exceedances of an 0.7 EC salinity objective, it just
19 as clearly takes the position that such exceedances would not necessarily constitute violations. At
20 page 4, the letter states:

21 If the water quality objectives are not met, DWR and Reclamation
22 *could* be subject to enforcement action by the SWRCB. The
23 SWRCB acknowledges, consistent with the premise that the
24 permanent barriers are integral to implementing the southern Delta
25 objectives, *that it could find that "the noncompliance is the result
26 of action beyond the control of [DWR and Reclamation]"* (D-1641
27 p. 159, 160, and 161). In such case the SWRCB *might* not take
28 enforcement actions against DWR and Reclamation. (*Id.*) *Although
DWR and Reclamation recognize the Board's discretion to not
pursue enforcement actions, DWR and Reclamation request that the
SWRCB approve a delay in the effective date to avoid placing
DWR and Reclamation in a position where they are forced to
choose between making an unreasonable use of water or be subject
to an enforcement resulting from conditions beyond their control
when no permanent barriers are in place.*

1 (Italics added.) What the February letter, in fact, explained is that DWR and the USBR wanted to
2 delay implementation of the 0.7 EC objective to avoid the need to go through the reporting and
3 State Board consideration process set forth the Decision 1641. This should not be surprising
4 when all modeling studies on which Decision 1641 was premised indicated that without the
5 permanent operable gates it was a virtual certainty in certain year types that 0.7 EC would be
6 exceeded, particularly in the downstream areas of Old River. While acknowledging the reality of
7 possible future exceedances, this letter is a far cry from an admission of future water right
8 violations, which is the way it was treated by the State Board's enforcement team.

9 Based on the plain language of Decision 1641, and the enforcement team's effort to
10 change its meaning, the State Water Contractors urge the State Board to clearly reaffirm Decision
11 1641's intent to avoid placing the unreasonable, if not impossible, burden on the SWP of meeting
12 the interior south-Delta salinity objectives at all times, particularly when the SWP has no
13 obligation to control the salinity levels on the San Joaquin River at Vernalis that are central to
14 improving salinity in the interior channels. A cease and desist order hearing should not be used,
15 through strained interpretations, to essentially amend the compliance requirements of a water
16 rights decision as important as Decision 1641.

17 **B. The EIR And Specific Language In Decision 1641 Show Clearly That The**
18 **SWP Obligations Were Intended To Be Conditional.**

19 The ordering language from Decision 1641 calls for the State Board's executive officer to
20 determine whether an exceedance of a south Delta salinity objective "is the result of actions
21 beyond the control of the Permittee" – in this case DWR as the operator of the SWP. Therefore,
22 the two critical questions for this aspect of this cease and desist proceeding are (a) what
23 constitutes "actions beyond the control" and (b) can that term be defined precisely enough to
24 allow the State Board to conclude that there is a "threat" that the a future salinity exceedance will
25 not be caused by an "action beyond the control" of the SWP.

26 Looking first at Brandt Bridge, the State Water Contractors do not believe there is any
27 circumstance where exceedance of that salinity objective could be found to be within SWP
28 control.

1 First, the evidence is clear that in almost all circumstances, the salinity of the water at
2 Brandt Bridge is a combination of San Joaquin River salinity at Vernalis plus degrading
3 discharges and drainage that primarily occur between Vernalis and Mossdale.² (DWR Exh. 20,
4 pp. 3-6) One of these degrading discharges was recently authorized by the Central Valley
5 Regional Water Quality Control Board, which allowed the City of Manteca to discharge
6 municipal waste with an EC of 1.0.

7 Second, the State Board has found that "the actions of the CVP are the principal cause of
8 the salinity concentrations exceeding the objectives at Vernalis" (D-1641, p. 83), and that,
9 therefore, the SWP is not required to help meet the Vernalis salinity objective.

10 These two facts demonstrate that exceedances at Brandt Bridge, when they occur, are
11 caused by actions within the control of others who should bear the responsibility for their
12 impacts. It is undisputed that, due to in-Delta drainage and discharges, salinity at Brandt Bridge
13 is from 0.05 to 0.10 EC higher than it is at Vernalis, and that none of the increase is caused by
14 actions within the control of the SWP. Thus, neither good policy nor the law calls for DWR to be
15 summoned before the State Board because the Brandt Bridge salinity objective may not be
16 exceeded sometime in the future. The circumstances at play at Brandt Bridge explain perfectly
17 why Decision 1641 made the south Delta salinity requirements conditional upon a finding by the
18 State Board executive officer that an SWP "action" caused the problem.

19 Further, the salinity issues at Brandt Bridge have nothing to do with the existence or non-
20 existence of permanent, operable gates. The State Board has been aware for over six years that
21 salinity levels at Brandt Bridge will not be improved by operation of permanent gates. In
22 Decision 1641, at page 88, the State Board found that:

23 The modeling studies indicate that even when the barriers do not
24 result in attainment of the standards, the water quality generally
25 improves as a result of the permanent barriers. The exception is
26 Brandt Bridge where water quality may worsen slightly at times
due to barrier operations. ... Barriers may result in slightly worse
water quality in the mainstem of the San Joaquin River in the Delta,

27 ² The only exception of to this statement occurs in the unusual circumstance where San
28 Joaquin River flows are so low that reverse flows in the San Joaquin draw Sacramento River
water all the way to Brandt Bridge. This condition has not occurred since the higher flow
requirements of Decision 1641 went into effect. DWR Exh. 20, p. 3

1 but the more saline water is quickly diluted.³

2 Turning to the internal Old River salinity stations, the State Board recognized throughout
3 the Decision 1641 process that all of the tools reasonably available to the SWP and the CVP
4 could not ensure full compliance with the 1995 Basin Plan's objectives for south Delta salinity.
5 At page IX-30 of the Decision 1641 EIR, the State Board summarized the results of model studies
6 as follows:

7 Salinity conditions in the three interior stations are worse than
8 salinity conditions at Vernalis. Because the salinity objective at
9 Vernalis is just met about half the time during the summer,
substantial noncompliance with the objective at the interior
southern Delta are expected *even with barrier operation*.

10 (D-1641 EIR at IX-30, italics added.) Figure IX-25, at page IX-35 of the EIR, proves the truth of
11 this statement. It shows that the frequency and severity of exceedances at Old River at Tracy
12 Bridge improves slightly with the temporary barriers in place and substantially with the
13 permanent operable gates. But even with the operable gates in place, this graph shows that
14 exceedances will occur in dryer year-types during the April through August season.

15 The State Board repeated this conclusion in Decision 1641, at page 88. It went on to find
16 that DWR and the USBR are "partially" responsible for salinity problems in the south Delta
17 because of hydrologic changes caused by export pumping. The Decision then continues:

18 Therefore this order amends the export permits of the DWR and of
19 the USBR to require the projects to take actions that will achieve
20 the benefits of the permanent barriers in the southern Delta to *help*
21 meet the 1995 Bay-Delta Plan's interior Delta salinity objectives by
April 1, 2005. Until then, the DWR and the USBR will be required
to meet a salinity requirement of 1.0 mmhos/cm. If, after actions
are taken to achieve the benefits of the barriers, it is determined that

22 ³ Since the State Board in the mid- and late-90s was aware that the barriers would not
23 improve salinity conditions at Brandt Bridge and also knew that degradation occurred between
24 Vernalis and Brandt Bridge, the State Water Contractors have always been confused as to why
25 implementation of these two San Joaquin River objectives were handled the way they were in
26 Decision 1641. Since Brandt Bridge would not benefit from the barrier program, there was no
27 discernable reason for treating Brandt Bridge the same way the Old River stations were treated
28 with respect to a April 2005 deadline to achieve the benefits of the permanent operable barriers.
For some time, it has also been recognized that there is no way to meet the Brandt Bridge salinity
objective through water project operations other than pretending that the salinity objective at
Vernalis was 0.6 instead of 0.7 EC. For the SWP, however, there was nothing that could be done
about that since the USBR was solely responsible for meeting the Vernalis requirement. Rather
than issue a cease and desist order for this station, the State Board needs to carry out a thorough
review of these San Joaquin River salinity objectives and the plan for their implementation.

1 it is not feasible to fully implement the objectives, the SWRCB will
2 consider revising the interior Delta salinity objectives when it
3 reviews the 1995 Bay-Delta Plan.

4 This quotation shows the depth of the understanding that even with the full system of operable
5 barriers there was a significant risk that the 1995 Plan's south Delta objectives could not be
6 achieved at all times. There was enough doubt that the Board decided to inform the world that it
7 might have to consider revising the south Delta salinity objectives in order to ensure the
8 objectives were reasonable considering all demands being made and to be made on the Delta's
9 waters and the total values involved, beneficial and detrimental, economic and social, tangible
10 and intangible. (Water Code section 13000)

11 Given the uncertainty that the South Delta salinity objectives can be met, under the best of
12 circumstances (operable gates installed and functioning), and without knowing what factual
13 circumstances may cause the Old River objectives to be exceeded in the near future with only the
14 temporary barriers (e.g., flooded island, extreme tides, weather conditions that increase irrigation
15 diversions, unexpected rains that wash salts from irrigated fields, pumping curtailments under
16 federal or state endangered species acts, system outages, USBR failure to meet the Vernalis
17 salinity objective), the State Contractors cannot fathom how one can today predict that a near-
18 future exceedance will result from actions within the control of the SWP. Yet unless the State
19 Board can make such a categorical finding, a cease and desist order should not issue.

20 In closing this section of the Contractors' Closing Statement, it should be noted that
21 ordering paragraph 6 of Decision 1641 requires the State Board's executive office to determine if
22 "noncompliance" was caused by "actions" outside the control of the SWP. The State Water
23 Contractors interpret this language, as our arguments above indicate, as asking the executive
24 officer answer the question - "did the SWP operations cause the noncompliance," rather than
25 does the SWP have the assets, water or otherwise, to cure an exceedance caused by others. We
26 firmly believe that his is the correct interpretation of the ordering language, particularly the word
27 "action," as for years the State Board has rejected interpretations that would require one who is
28 not responsible for pollution to clean up someone else's mess. The Board should not deviate

1 from this policy in this cease and desist hearing. Assuming, arguendo, that the State Board would
2 ever consider modifying that policy, it should only be considered in a much broader context, such
3 as an amendment of Decision 1641.

4 **III. CONCLUSION**

5 This closing statement intentionally has not dwelled on the testimony presented during the
6 hearings. Most of that testimony strayed far from the critical, central issue of whether the
7 enforcement team met its burden of proving that there is a threat of a future violation of ordering
8 paragraph 6 of Decision 1641.

9 While the State Water Contractors do believe that the potential for injury to third parties is
10 relevant once a threat of a violation has been demonstrated, very little evidence was produced
11 that would demonstrate that the production of beans and alfalfa (the two somewhat salt sensitive
12 crops that were used to establish the south Delta salinity objectives) over the last five years has
13 been anything less than the San Joaquin average.⁴

14 Therefore, the State Water Contractors have concentrated on what it believes is most
15 important -- the legal/policy issues. In summary, the State Water Contractors ask that the State
16 Board not issue a cease and desist order against the SWP for two primary reasons.

17 First, Decision 1641 explicitly states that it did not require construction of the permanent
18 operable gates/barriers. Therefore, the SWP has not violated any term of Decision 1641 that
19 would support a cease and desist order requiring such construction today. Further, given that
20 DWR has selected the permanent operable gates as its preferred method for achieving the benefits
21 they would provide, and has an EIR on the street to that effect, there is no basis for an order that
22 references "equivalent measures."

23 Second, the State Board should clearly rule that there is no violation of Decision 1641's
24 ordering paragraph 6 unless the State Board's executive officer finds that SWP operations were
25 the cause of a South Delta salinity exceedance. With that basic interpretation in place the State
26 Board should find that the prosecution team did not meet its burden of proving that future
27 exceedances are likely to be caused by actions within the control of the SWP, and that, therefore,

28 ⁴ See for example SDWA testimony Nov. 7, 2005 at pgs. 161-163.)

1 no threat has been demonstrated that would warrant deviating from the process spelled out in
2 ordering paragraph 6. Such a ruling will not, in any way, prejudice the State Board's authority to
3 consider an enforcement in the future if its executive officer makes the necessary findings. These
4 hearings were and remain speculative and premature, and the State Board should so rule.

5 Dated: December 12, 2005

6 Respectfully submitted,

7 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
8 A Professional Corporation

9 By Clifford W. Schulz
10 Clifford W. Schulz
11 Attorneys for State Water Contractors

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PROOF OF SERVICE

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I, Lorraine Lippolis, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814-4416. On December 12, 2005, I served the within documents:

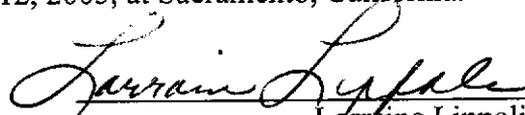
CLOSING STATEMENT OF THE STATE WATER CONTRACTORS

- by transmitting via facsimile from (916) 321-4555 the above listed document(s) without error to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmittal/confirmation sheet is attached.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below. Patrick Porgans, P.O. Box 60940, Sacramento, CA 95860
- by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- X Email per attached

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 12, 2005, at Sacramento, California.


Lorraine Lippolis

SECOND AMENDED LIST OF PARTICIPANTS TO EXCHANGE INFORMATION
Delta Salinity Draft CDO and WQRP Hearing, Sacramento River, San Joaquin River, and
Sacramento-San Joaquin Delta Channels, San Joaquin County

(Note: the participants whose e-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the Revised Notice of Public Hearing.)

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