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10 BEFORE THE
11 STATE WATER RESOURCES CONTROL BOARD

12 PUBLIC WORKSHOPS RE:
13 CONSIDERATION OF POTENTIAL
14 AMENDMENTS OR REVISIONS OF
15 THE WATER QUALITY CONTROL
PLAN FOR THE SAN FRANCISCO
BAY/SACRAMENTO-SAN JOAQUIN
DELTA ESTUARY

Westlands Water District's Memorandum
Providing Comments On The Materials
Presented In The Workshops Re: Consideration
of Potential Amendments or Revisions of the
Water Quality Control Plan For The San
Francisco Bay/Sacramento-San Joaquin Delta
Estuary

16 Westlands Water District ("Westlands" or "District") submits this memorandum pursuant
17 to (1) the revised notice of public workshop ("Revised Notice") issued by the State Water
18 Resources Control Board ("Water Board" or "SWRCB") on September 17, 2004, and (2) the
19 Water Board's April 29, 2005 letter extending the final comment deadline. This memorandum
20 provides Westlands' comments on certain issues addressed by the San Joaquin River Exchange
21 Contractors Water Authority ("Exchange Contractors") and Deltakeeper during the Workshops
22 on Potential Amendments or Revisions to the 1995 Water Quality Control Plan ("1995 Plan" or
23 "1995 WQCP") for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Delta").

24 **I. INTRODUCTION**

25 **A. Westlands Water District**

26 Westlands is a California water district formed pursuant to California Water Code section
27 3400 *et seq.*, with its principal office in Fresno, California. Westlands serves approximately
28

1 540,000 acres of highly productive farmland in the western San Joaquin Valley, including lands
2 in both Fresno and Kings Counties. To supply these farms with critical irrigation supplies,
3 Westlands depends upon water made available by the Central Valley Project ("CVP"). Westlands
4 holds vested rights to receive CVP water from the United States Bureau of Reclamation
5 ("Reclamation").

6 **B. Westlands Concurs With And Incorporates Herein By Reference The**
7 **Information Submitted By The San Luis & Delta-Mendota Water Authority**

8 Westlands is a member of the San Luis & Delta-Mendota Water Authority ("Authority").
9 Westlands has reviewed the information submitted by the Authority during the periodic review
10 and ongoing proceedings relating to the 1995 Plan, including the Authority's "Memorandum
11 Supplementing Information and Providing Final Comments on the Materials Presented in the
12 Workshop Regarding Consideration of Potential Amendments or Revisions of the 1995 Water
13 Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary," dated
14 June 3, 2005. Westlands incorporates herein that information by reference.

15 **II. COMMENTS**

16 **A. Certain Comments Submitted By The Exchange Contractors And**
17 **Deltakeeper Are Beyond The Scope Of The Topics Set Forth In The Water**
18 **Board's Resolution 2004-0062**

19 Under the guise of addressing the Southern Delta Electrical Conductivity objective and
20 the Program of Implementation, the Exchange Contractors and Deltakeeper separately presented
21 comments regarding the need for agricultural drainage in the western San Joaquin Valley
22 ("Westside") region and/or Reclamation's San Luis Unit drainage program. The drainage issues
23 raised by the Exchange Contractors and the Deltakeeper are far beyond the scope of the topics for
24 workshops established through Water Board Resolution 2004-0062. In addition, whether
25 irrigation of the San Luis Unit has effects, and what effects, on the San Joaquin River is very
26 much in dispute.

27 Westside drainage issues were raised during the Periodic Review, when the Exchange
28 Contractors requested that the Water Board amend the Program of Implementation to require
Reclamation to develop a plan for financing and implementing a Westside drainage program.

1 The Staff Report on the Periodic Review noted these comments, but concluded that:

2 The implementation measures contained in the 1995 Plan
3 recommend actions that should be undertaken by certain agencies to
4 improve Bay and Delta conditions for a number of beneficial uses.
5 Because implementation of the 1995 Plan requires independent
6 regulatory actions, the 1995 Plan does not order any specific action
7 be undertaken nor does it provide for funding any actions. Staff
8 believes that the WQCP is not the correct forum for assigning
9 responsibility for certain actions, and funding those actions. This
10 suggestion is more appropriately made during future water right or
11 water quality actions that may occur.

12 (Staff Report on the Periodic Review of the 1995 Water Quality Control Plan for the San
13 Francisco Bay/Sacramento-San Joaquin Delta Estuary, at 56 (emphasis added).) The Staff Report
14 did not recommend any addition of Westside drainage issues in the Program of Implementation.
15 (*Id.*) The Water Board adopted the Staff Report in Resolution 2004-0062 (September 30, 2004).

16 Despite this clear direction, on March 14, 2005, Chris White, General Manager of the
17 Central California Irrigation District, presented testimony on behalf of the Exchange Contractors,
18 ostensibly in support of the testimony of Dr. Burt, regarding the Southern Delta Electrical
19 Conductivity objective. Among other things, Mr. White argued that the San Joaquin River “is
20 being utilized by the Bureau of Reclamation as a drainage system instead of the San Luis Drain,”
21 and that “Reclamation’s current use of the San Joaquin River as a stealth drain is the major cause
22 of water quality degradation.” (SJEC – EXH – 02.) Mr. White further contended that drainage
23 water from the San Luis Unit exacerbates, either directly or indirectly, drainage problems within
24 the Exchange Contractors’ service area. (*Id.*) Based on those assertions, Mr. White requested
25 that the Water Board find that Reclamation uses the San Joaquin River as a “stealth drain” and
26 order Reclamation to present evidence that it is taking steps to develop and implement a drainage
27 plan. (*Id.*) For its part, Deltakeeper sought a fundamental change in California’s water system.
28 Deltakeeper proposed a scheme involving retirement of significant amounts of agricultural lands
on the Westside of the San Joaquin Valley.¹ (*See, e.g.,* DK – EXH – 24 through 26.) Deltakeeper
proposes to cut off long-established beneficial uses, with devastating consequences.

¹ For a detailed response to the assertions of Deltakeeper, *see* the memorandum submitted by the Authority, which, as provided above, is incorporated herein by reference.

1 In addition, as the Exchange Contractors, and presumably Deltakeeper, are well aware, a
2 separate process is underway to address drainage issues in the San Luis Unit. On June 2, 2005,
3 Reclamation released for public review its draft "Environmental Impact Statement regarding the
4 San Joaquin Drainage Feature Re-Evaluation," as part of the process leading to the provision of
5 drainage for the San Luis Unit which was ordered by the trial court following the Ninth Circuit's
6 decision in *Firebaugh Canal Co. v. United States*, 203 F.3d 568 (9th Cir. 2000). That draft
7 document incorporates many aspects of the "Westside Regional Drainage Plan," which was
8 developed jointly by the water districts within the San Luis Unit, including Westlands, and the
9 Exchange Contractors. Any interested party has the opportunity to submit comments on
10 Reclamation's draft Environmental Impact Statement regarding the San Joaquin Drainage Feature
11 Re-Evaluation. The comment deadline is August 1, 2005. Reclamation's analysis of the San
12 Joaquin Valley Drainage Feature Re-Evaluation should continue, at least for now, without
13 interference by the Water Board.

14 In sum, the submissions by the Exchange Contractors and Deltakeeper are beyond the
15 scope of issues set forth in Resolution 2004-0062. They raise a host of legal and technical issues
16 that cannot and should not be bound up with proposed revisions to the Plan, particularly since the
17 principal issue is being addressed in the ongoing San Joaquin Drainage Feature Re-Evaluation.
18 Simply put, they have nothing to do with what level of water quality is reasonably needed to
19 protect beneficial uses of Delta water.

20 **B. It Is Beyond Reasonable Dispute That Irrigation Water Applied In Westlands**
21 **Water District Does Not Reach The San Joaquin River Nor Otherwise**
22 **Exacerbate The Drainage Discharge Problems Suffered By The Exchange**
Contractors

23 Even if Westside drainage issues were within the scope of the consideration of
24 amendments or revisions to the 1995 Plan, the Water Board should not adopt any findings in
25 favor of the arguments made by either the Exchange Contractors or Deltakeeper. Although their
26 proposed solutions differ tremendously, both Deltakeeper and the Exchange Contractors implicate
27 Westlands in their arguments regarding the cause and effect of agricultural drainage discharges
28 into the San Joaquin River. These implications are without merit. Irrigation water applied in

1 Westlands does not reach the San Joaquin River either as surface or groundwater drainage, nor
2 does irrigation in Westlands exacerbate the Exchange Contractors' own drainage problems.

3 **1. Westlands Does Not Discharge Surface Drainage Beyond Its**
4 **Boundaries, And Lateral Groundwater Migration From Westlands, If**
5 **Any, Is Negligible**

6 Deltakeeper argues that water delivered through the Delta-Mendota Canal to the San Luis
7 Unit ultimately drains as "water flows into the San Joaquin [River] via the San Luis Drain,
8 groundwater accretions & sloughs." (DK - EXH - 24.) Through diagrams, as well as through
9 discussion of the development of the San Luis Act, Deltakeeper strongly implies that Westlands
10 and "Westlands area farms" create drainage water which ultimately reaches the San Joaquin
11 River. (*Id.*) There is absolutely no evidence to support that assertion. The Exchange Contractors
12 present as fact their argument that "poor-quality drainage water from the San Luis Unit seeps in
13 the underground aquifers downslope into Central California Irrigation District and Firebaugh
14 Canal Water District, and that water is extremely poor-quality." (SJEC - EXH - 02.) These
15 arguments are without merit.² Irrigation water applied in Westlands does not reach the San
16 Joaquin River.

17 **a. Westlands does not discharge any surface drainage beyond its**
18 **boundaries.**

19 Deltakeeper's arguments that irrigation water applied in Westlands reaches the San
20 Joaquin River as surface drainage are factually impossible. Westlands does not use the San Luis
21 Drain to convey drainage water to the San Joaquin River. The tile drains that were installed in
22 some areas were plugged in 1986 to comply with prior orders of the Water Board regarding
23 Kesterson Reservoir, and there is no way for District drainage water to even reach the San Luis
24 Drain. Similarly, Mud Slough and Salt Slough are far from the District's boundaries, there is no

25 ² Westlands does not dispute the primary thrust of Mr. White's testimony, namely, that
26 Reclamation has heretofore failed to provide drainage to the San Luis Unit as required under the
27 San Luis Act. However, the Exchange Contractors and Westlands vehemently disagree as to the
28 effect of Reclamation's failure to provide drainage. It is important for the Water Board to
understand that certain allegations by the Exchange Contractors have not been proven as fact, and
indeed are the subject of ongoing litigation. The Water Board should not adopt or assume as fact
the Exchange Contractors' theories regarding the effects of San Luis Unit irrigation on the
Exchange Contractors' drainage problems.

1 way for District surface drainage to reach them.

2 b. **Horizontal migration of groundwater from the District does not**
3 **reach the San Joaquin River.**

4 Both Deltakeeper and the Exchange Contractors argue that irrigation water applied in
5 Westlands travels as groundwater until it reaches the San Joaquin River. These arguments are
6 without merit. The "downslope" migration of poor quality drainage water is the subject of
7 pending litigation in *Firebaugh Canal Company and Central California Irrigation District v.*
8 *United States*, Case No. CIV-F-91-048 OWW (consolidated with CIV-F-88-634-022) (E.D. Cal.).
9 The plaintiffs, both of whom are Exchange Contractor districts, have repeatedly alleged that large
10 quantities of poor quality drainage water migrate from Westlands and other San Luis Unit
11 contractors downslope into the Exchange Contractors' boundaries. Those allegations are refuted
12 by studies showing that the soils in Westlands and the surrounding area are generally highly
13 compacted and do not allow for high rates of groundwater migration, and that because the "slope"
14 alleged by the Exchange Contractors is generally measured in inches per mile, it contributes
15 nothing to the groundwater migration in the area.

16 Furthermore, in the proceedings leading to D-1641, the Water Board received evidence
17 confirming that Westlands does not discharge drainage water outside of its boundaries and there
18 is no lateral movement of groundwater from Westlands to the San Joaquin River. Some of this
19 evidence came in the form of testimony by Steven Deverel, Ph.D., the expert witness called by
20 the Exchange Contractors. Among other things, Dr. Deverel testified that:

21 MR. NOMELLINI: Can these flows that we talked about that go
22 across the boundary of Westlands into the Firebaugh Canal Water
23 District find their way to the San Joaquin River?

24 DR. DEVEREL: No.

25 MR. NOMELLINI: What happens to those flows, and why is it
26 that they do not get to the river?

27 DR. DEVEREL: Well, the primary reason is that the hydraulics
28 gradients are such that flow shifts tend to flow downward once you
 get past or somewhere in Firebaugh Canal Water District. So,
 somewhat of a complicated hydraulic or hydrologic situation.

 At the boundary of Firebaugh and Westlands and into Firebaugh
 you have upward flow at some depth to the surface to drainage

1 laterals. But there is a point in Firebaugh and beyond Firebaugh
2 where, as you move closer to the river, water starts flowing
3 downward and to the east. Flows in a manner that goes underneath
4 the river. There is not accretion; at least the data I have seen does
5 not indicate that there is accretion of groundwater to river in that
6 area.

7
8 MR. NOMELLINI: Could you show us on Westlands 97 where
9 that area is.

10
11 DR. DEVEREL: One would look at this area here that we just
12 talked about. This is the four-mile boundary of Firebaugh with
13 Westlands.

14
15 As you can see, water can flow across that boundary. But, in
16 general, it does not flow to the river here. Because of pumping that
17 takes place on the east side of the river, groundwater flows
18 downward and towards the pumping trough that tends to exist over
19 here.

20
21 MR. NOMELLINI: So there is a gradient that would take the water
22 to the low point of that pumping trough or hole, and that is below
23 the flow line to the river?

24
25 DR. DEVEREL: That's right.

26
27 Dr. Deverel's testimony is described at length at pages 8 through 14 of Westlands' "Reply Brief
28 of Westlands Water District For Phases Two Through Seven" dated July 12, 1999, which was
submitted as part of the proceedings leading to D-1641. A copy of that brief is attached hereto as
Exhibit 1.

2. The Exchange Contractor's "Groundwater Pressure" Theory Is Baseless

Perhaps recognizing the limited viability of their "downslope migration" argument, the plaintiffs in the *Firebaugh Canal Co.* litigation developed an additional theory, which the Exchange Contractors presented to the Water Board during the workshops:

[T]he failure to have a drainage system results in groundwater pressures being transmitted downslope to our service areas [and that these] increases in groundwater pressures in the downslope areas are causing the drainage of poor quality water to eventually reach the San Joaquin River either as surface drainage or as groundwater accretion flows.

(SJEC - EXH - 02.) In essence, the Exchange Contractors here argue that the application of irrigation water in Westlands "forces" groundwater levels to rise in the Exchange Contractors' service area as a result of increased groundwater pressure. This is only a theory, not an

1 established fact. This theory has not yet been fully vetted in the pending litigation, although
2 Westlands' own investigation has revealed that the tight soil conditions and the extremely low
3 gradient of slope in the region make such "groundwater pressure" highly unlikely to occur at all,
4 much less be a contributing factor to the Exchange Contractors' drainage problems. Further,
5 piezometer readings of groundwater wells in the region contradict the "pressure" theory.

6 Drainage and salinity problems in the Exchange Contractors' service area predate the San
7 Luis Unit.³ Given the soil conditions in the region, Westlands believes that the Exchange
8 Contractors themselves are responsible for most of the San Joaquin River salinity problems.
9 Nevertheless, Westlands does not ask that the Water Board to find that, as logic suggests, the
10 application of water by irrigators in the Exchange Contractors' service area is the cause of its
11 problems. The relative impacts of irrigation in the San Luis Unit and irrigation in the Exchange
12 Contractors' service area are the subject of ongoing litigation. The Water Board should take care
13 to avoid making any findings or comments that would appear to adopt or approve the Exchange
14 Contractors' theories regarding either downslope migration of poor quality groundwater, or the
15 "groundwater pressure" theory, or contrary theories of Westlands and others.

16 If the Water Board were inclined to entertain these theories, it must do so as part of an
17 evidentiary proceeding addressing, among other things, the relative water quality impacts of
18 irrigation in the San Luis Unit and irrigation in the Exchange Contractors' service area.
19 Westlands respectfully submits that the Water Board would need to review evidence relating to

21 ³ As the final "Report of the San Joaquin Drainage Program" notes:

22 [C]onditions associated with agricultural drainage in the San Joaquin Valley are not
23 new to the region. Inadequate drainage and accumulating salts have been persistent
24 problems in parts of the valley for more than a century, making some cultivated land
25 unusable as far back as the 1880s and 1890s. . . . [by the 1890s,] [p]oor natural
26 drainage conditions, coupled with rising ground-water levels and increasing soil
27 salinity, meant that land had to be removed from production and some farms
28 ultimately abandoned.

26 ("A Management Plan for Agricultural Subsurface Drainage and Related Problems on the
27 Westside of the San Joaquin Valley: Final Report," U.S. Department of Interior and California
28 Resources Agency, 1990, at 15-16, relevant excerpts of which are attached hereto as Exhibit 2.)

1 the use of water within the Exchange Contractors' service area, and compare that use to the water
2 usage (measured in acre-feet per acre) in the San Luis Unit service area. Only after that
3 comparative evaluation could the Water Board appreciate the relative impacts to the San Joaquin
4 River of water used in each respective area. Such an evaluation would be critical because water
5 usage in the Exchange Contractors' service area is substantially higher than that in the San Luis
6 Unit. Irrigators in Westlands are among the most efficient in the world. The District's
7 distribution system is fully enclosed (piped), and most, if not all, irrigators have implemented
8 water use reducing management practices such as drip irrigation. These practices minimize the
9 amount of water needed per acre, and as a result reduce the amount of drainage water. There is
10 little, if any, irrigation water left to move horizontally towards the San Joaquin River. By
11 contrast, some Exchange Contractors apply nearly twice the amount of irrigation water per acre as
12 that applied in the San Luis Unit.

13 **III. CONCLUSION**

14 For these reasons, Westlands requests that the Water Board decline to make any findings
15 in favor of the arguments presented by Deltakeeper or the Exchange Contractors relating to
16 Westside drainage issues as part of the amendment or revision of the Program of Implementation
17 for the 1995 Plan.

18 Dated: June 3, 2005

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