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18 Attorneys for State Water Contractors

19 **BEFORE THE**

20 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

21 ENFORCEMENT ACTION ENF01949 -  
22 DRAFT CEASE AND DESIST ORDER  
23 REGARDING UNAUTHORIZED OR  
24 THREATENED UNAUTHORIZED  
25 DIVERSIONS OF WATER FROM OLD RIVER IN  
26 SAN JOAQUIN

27 **STATE WATER CONTRACTORS’  
28 RESPONSE TO WEST SIDE  
IRRIGATION DISTRICT’S  
SEPARATE STATEMENT OF  
UNDISPUTED FACTS IN SUPPORT  
OF ITS MOTION FOR SUMMARY  
JUDGMENT**

In the Matter of ENFORCEMENT ACTION  
ENF01951 -ADMINISTRATIVE CIVIL  
LIABILITY COMPLAINT REGARDING  
UNAUTHORIZED DIVERSION OF WATER  
FROM THE INTAKE CHANNEL TO THE  
BANKS PUMPING PLANT (FORMERLY  
ITALIAN SLOUGH) IN CONTRA COSTA  
COUNTY

Hearing Date: March 21, 2016

State Water Contractors (“SWC”) respectfully submit this response to West Side Irrigation Districts (“WSID”) Separate Statement of Undisputed Material Facts in support of its Motion for Summary Judgment, or Alternatively Summary Adjudication.<sup>1</sup>

<sup>1</sup> SWC preserves all evidentiary objections made below to specific evidence for purposes of the evidentiary hearings in both of the above-referenced proceedings.

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
<p>1. The District holds water right License 1381 (“License”), originally issued on September 29, 1933 and amended on August 19, 2010.</p>	<p>EXHIBIT WSID0158, Declaration of Jack Alvarez at ¶4.</p>	<p><b>Disputed.</b></p> <p>Purported fact lacks evidentiary support.</p> <p>Objections: (a) Lacks evidentiary support/lack of authentication; (b) WSID-0158, the testimony of Jack Alvarez, was excluded pursuant to the Hearing Officer’s procedural ruling dated February 18, 2016, therefore, lack of foundation.</p> <p>See State Water Contractor’s (“SWC”) Objections filed concurrently herewith.</p>
<p>2. License 1381 has a priority date of April 17, 1916, and authorizes the direct diversion of 82.5 cubic-feet per section (“cfs”) from Old River in San Joaquin County from (1) about April 1 to October 31 of each year for irrigation and (2) from April 1 to October 31 of each year for municipal, domestic and industrial uses.</p>	<p>EXHIBIT WSID0005, License 1381, as amended.</p> <p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶4.</p> <p>EXHIBIT WSID0158, Declaration of Jack Alvarez at ¶5.</p>	<p><b>Undisputed for Purposes of this Motion only</b></p> <p>License 1381 also has an annual limit of 27,000 acre-feet.</p> <p><b><u>Supporting Evidence</u></b> Exhibit WSID0005, paragraph 8</p> <p>Objections: (a) Misstates facts; purported fact fails to provide full terms of license. License 1381 has an annual limit of 27,000 acre-feet. (b) License 1381 is a document that speaks for itself and is the best evidence of its content; (c) WSID-0158, the testimony of Jack Alvarez, was excluded pursuant to the Hearing Officer’s procedural ruling dated February 18, 2016, therefore, lack of foundation.</p> <p>See State Water Contractor’s (“SWC”) Objections filed concurrently herewith.</p>
<p>3. In 1929 the Department of Public Works confirmed that the water diverted by WSID pursuant to its license is “largely return flow from diversions farther upstream and water reaching the San Joaquin Delta from</p>	<p>EXHIBIT WSID0158, Declaration of Jack Alvarez at ¶6.</p> <p>EXHIBIT WSID 0006, Department of Public Works Bulletin No. 21-B at p. 157.</p>	<p><b>Disputed</b></p> <p>Evidence cited does not support purported fact.</p> <p>Irrigation Districts in California, Reports of the Division of Engineering and Irrigation (1929) (herein Bulletin No. 21) does not confirm the origin of water at WSID’s point of diversion.</p>

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
Sacramento River through Georgiana Slough and other inter-delta channels.		<p>Instead, Bulletin 21 generally characterizes water in the San Joaquin River.</p> <p><b><u>Supporting Evidence</u></b> Exhibit WSID 0006, p. 157.</p> <p>Objections: (a) WSID-0158, the testimony of Jack Alvarez, was excluded pursuant the Hearing Officer's procedural ruling dated February 18, 2016, therefore, lack of foundation, lack of authentication.</p> <p>See SWC's Objections filed concurrently herewith.</p>
4. The License was issued in 1933 documenting the maximum amount of water found to have been put to beneficial use in the years 1930, 1931 and 1932, as documented in the Sacramento San Joaquin Water Surveyor's records.	<p>EXHIBIT WSID0158, Declaration of Jack Alvarez at ¶7.</p> <p>EXHIBIT WSID007, October 9, 1933 letter from State of California Department of Public Works.</p> <p>EXHIBIT WSID0008, 1931 Sacramento-San Joaquin Water Supervisor's Report. Table 39.</p>	<p><b>Disputed</b></p> <p>Objections: (a) WSID-0158, the testimony of Jack Alvarez, was excluded pursuant to the Hearing Officer's procedural ruling dated February 18, 2016, therefore, lack of foundation, lack of authentication; (b) Irrelevant as to whether water was available to WSID during the relevant time period in 2015; (c) October 9, 1933 letter, WSID007, and 1931 Sacramento-San Joaquin Water Supervisor's Report, WSID0008, are documents that speak for themselves and are the best evidence of their content.</p> <p>See SWC's Objections filed concurrently herewith.</p>
5. Water is diverted by WSID through an intake canal about 1.5 miles long, as depicted on the map attached as EXHIBIT A.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶5.	<p><b>Disputed.</b></p> <p>The evidence cited does not support the purported fact as there is no map attached as Exhibit A to the Declaration of Rick Martinez.</p> <p>Objections: (a) Lacks foundation, lacks authentication.</p>

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
<p>6. WSID's point of diversion under its License is located on Old River, within the legal delta.</p>	<p>EXHIBIT WSID0010, DWR Delta ATLAS at p. 10.</p> <p>EXHIBIT BBID384 at pp. 18, 20.</p>	<p><b>Disputed</b></p> <p>Evidence cited does not support the purported fact.</p> <p>Exhibit WSID0010, p. 10, does not show either WSID's point of diversion or the legal boundaries of the Delta.</p> <p>Exhibit BBID0384, pages 18 and 20, similarly do not specifically state or show that WSID's point of diversion is within the legal Delta.</p> <p>Objections: (a) Documents cited lack authentication, lack foundation; (b) Cited report is hearsay.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>7. There is always water in the channels of the Delta because they are below sea level.</p>	<p>EXHIBIT BBID384 at p. 23.</p>	<p><b>Disputed</b></p> <p>Evidence cited does not support the purported fact.</p> <p>SWC disputes that there is always water in unspecified channels in the Delta. BBID384 at p. 23, does not state that all Delta channels are below sea level but rather that "the bottom elevation of most Delta channels is below sea level."</p> <p>SWC further disputes that there is always water of sufficient quality for beneficial use in the south Delta. Absent the CVP and SWP, salinity (measured as specific conductance) would be above 1.0 mS/cm during the irrigation season of many dry and critically dry years.</p> <p><b><u>Supporting Evidence</u></b> (Hutton Decl., SWC0001, ¶¶ 13, 17 and 33.)</p> <p>Objections: (a) Lack of foundation; (b) Document cited lacks authentication; (c) Cited report is hearsay; (d) Irrelevant. Whether water is always</p>

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
		<p>available in Delta Channels is irrelevant to whether water of sufficient quality for beneficial use was available for diversion. WSID must demonstrate there was water available during the time period of the violation that it can put to reasonable and beneficial use. (Cal. Const. Art. X, Sec. 2; Water Code § 1201, 1240)</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>8. At any given time, the Delta holds approximately 1.2 million acre feet of water.</p>	<p>EXHIBIT BBID384 at pp. 5, 38.</p>	<p><b>Disputed</b></p> <p>Purported fact lacks evidentiary support.</p> <p>Objection: (a) Lacks foundation; (b) Document cited lacks authentication; (c) Cited report is hearsay; (d) Irrelevant; amount of acre-feet of water in the Delta is irrelevant as to whether water was available to WSID in 2015.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>9. Water flows into the Delta with the tide from the West as well as from the east side tributary streams.</p>	<p>EXHIBIT BBID384 at pp. 3-5, 20, 22.</p>	<p><b>Undisputed for purposes of this motion only</b> that water flows into the Delta from a variety of sources, including the Pacific Ocean.</p> <p>SWC objects to vague and undefined references to "West" and "east side tributary streams" in the purported.</p> <p>Objections: (a) Document cited lacks authentication; (b) Cited report is hearsay.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>10. Inflow from the tributary streams, once having entered the Delta, will reside in the Delta for up to several</p>	<p>EXHIBIT BBID384 at pp. 5, 38-40.</p>	<p><b>Disputed</b></p> <p>Purported fact lacks evidentiary support.</p>

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
months during dry periods.		<p>SWC objects to vague and undefined reference to “the tributary streams” in the purported fact.</p> <p>Objections: (a) Lacks foundation; (b) Document cited lacks authentication; (c) Cited report is hearsay.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
<p>11. Water moves slowly in WSID’s flat gradient channel which is affected by tides of about 4 feet; the channel is from 4 feet to 8 feet deep depending on tides; and the quality of Old River water diverted by WSID in the intake channel is poor, running from 800 to 1000 total dissolved solids.</p>	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶6.</p> <p>EXHIBIT WSID0158, Declaration of Jack Alvarez at ¶9.</p> <p>EXHIBIT WSID0009, July 18, 1985 Inspection Report</p>	<p><b>Disputed</b></p> <p>Evidence cited does not support the purported fact regarding current water quality diverted by WSID.</p> <p>Objections: (a) WSID-0158, the testimony of Jack Alvarez, was excluded pursuant to the Hearing Officer’s procedural ruling dated February 18, 2016; (b) Irrelevant. Water quality in the 1980s, as reported in Exhibit WSID0009, is not relevant to describe conditions in 2015; (c) July 18, 1985 Inspection Report is a document that speaks for itself and is the best evidence of its contents.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
<p>12. In 1931 the majority of the water at the WSID point of diversion during the irrigation season was from the Sacramento River and had entered the Delta in the prior three months.</p>	<p>EXHIBIT BBID384 at pp. 11-13, 83-87, 91-95.</p>	<p><b>Disputed</b></p> <p>Objections: (a) Lack of foundation; (b) Document cited lacks authentication; (c) Cited report is hearsay; (d) Irrelevant. The source of water at WSID’s point of diversion in 1931 under differing conditions is irrelevant as to whether water was available to WSID in 2015.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
<p>13. In 2015, the majority of the water at the WSID point of diversion during the</p>	<p>EXHIBIT BBID384 at pp. 15-16, 47-49.</p>	<p><b>Disputed.</b></p> <p>Objections: (a) Lacks Foundation; (b)</p>

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
<p>irrigation season was from the Sacramento River and had entered the Delta in the prior three months.</p>		<p>Document cited lacks authentication; (c) Cited report is hearsay.</p> <p>See SWC’s Objections filed concurrently herewith.</p> <p>Modeling simulations as described in Exhibit BBID 384 include the operation of the State Water Project (SWP) and the Central Valley Water Project (CVP). The correct modeling baseline is without the SWP-CVP facilities and diversions.</p> <p><b><u>Supporting Evidence</u></b> Hutton Decl., SWC0001, ¶¶ 13-15, and 24; SWC0005.</p>
<p>14. The State Water Project and Central Valley Project, constructed after 1931, have altered flow patterns in the Delta.</p>	<p>EXHIBIT BBID384 at pp. 9, 24-26.</p>	<p><b>Undisputed for purposes of this motion only.</b></p> <p>Objection: (a) Lack of foundation; (b) Document cited lacks authentication; (c) Cited report is hearsay.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
<p>15. By storing water in the winter and spring and releasing it through the Delta in the summer, the Projects reduce the percentage of Sacramento River water that reaches the Delta in the winter and spring months and increase the percentage of Sacramento River water that reaches the Delta in the summer and fall months.</p>	<p>EXHIBIT BBID384 at pp. 14, 24-26.</p>	<p><b>Disputed.</b></p> <p>SWC objects to vague and undefined reference to the “percentage of Sacramento River water that reaches the Delta.” and the vague and undefined time period in the purported fact.</p> <p>Objection: (a) Lack of foundation; (b) Document cited lacks authentication; (c) Cited report is hearsay; (d) Irrelevant to the issue of whether water was available to WSID in 2015.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
<p>16. Water is always available at WSID’s diversion point during the irrigation season</p>	<p>EXHIBIT BBID384 at p. 4.</p>	<p><b><u>Disputed</u></b></p> <p>SWC dispute that there is always water of sufficient quality for beneficial use in Delta channels, including at WSID’s</p>

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
because of the nature of residence time and tidal influence in the Delta.		<p>diversion point in the south Delta.</p> <p>Absent the CVP and SWP, salinity (measured as specific conductance) would be above 1.0 mS/cm in the south Delta during the irrigation season of many dry and critically dry years, and therefore not available for reasonable and beneficial use. (Cal. Const. Art. X, Sec. 2; Water Code § 1202, 1240.)</p> <p><b>Supporting Evidence</b> (Hutton Decl., SWC0001, ¶¶ 13, 17, 33.)</p> <p>Objection: (a) Document cited lacks authentication; (b) Cited report is hearsay; (c) Irrelevant. Whether water is always available at WSID's point of diversion during the irrigation seasons is irrelevant to whether water is available for reasonable and beneficial use.</p> <p>See SWC's Objections filed concurrently herewith.</p>
17. The Bethany Drain collects irrigation return water through tile drains from landowners within WSID, shallow groundwater from tile drains from landowners within WSID, and municipal drainage from lands within the City of Tracy and discharges that return water directly into WSID's intake channel.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶12.	<p><b>Undisputed for purposes of this motion only.</b></p> <p>The evidence cited, paragraph 12 in the Declaration of Rick Martinez, WSID0060, does not support this purported fact, the correct citation is ¶ 8.</p>
18. The majority of the flow in the Bethany Drain is derived from tile drain discharges installed widely in the district in the late 1950's to drain lands of shallow groundwater	EXHIBIT WSID0158, Declaration of Jack Alvarez at pp. 3-4.	<p><b>Disputed</b></p> <p>The evidence cited, pp. 3-4 of WSID0158, the Declaration of Jack Alvarez does not support the purported fact.</p> <p>Objections: WSID-0158, the</p>

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
standing less than 4 feet from the surface, to allow irrigation.		testimony of Jack Alvarez, was excluded pursuant to the Hearing Officer's procedural ruling dated February 18, 2016, therefore lack of foundation.  See SWC's Objections filed concurrently herewith.
19. Municipal discharges into the Bethany Drain are made by various contracts with the City of Tracy and other landowners within the City.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶13.	<b>Disputed</b>  The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 13 does not support the purported fact.  Objections: lack of foundation .
20. There are no sources of water into the Bethany Drain from outside of the WSID.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶14.	<b>Disputed.</b>  The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 14 (¶ 9) does not provide support for the purported fact.  Objections: lack of foundation.
21. The Bethany Drain is owned by WSID, and WSID maintains control over the Bethany Drain from its origination within the district boundaries along its entire course until it discharges into the intake canal.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶15.	<b>Disputed.</b>  The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 15, does not support the purported fact.  Objections: lack of foundation.
22. WSID does not intend to abandon water discharge from the Bethany Drain into the intake channel; rather the intention of the discharge is to enable WSID to pump the water at its diversion pumps.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶16.	<b>Undisputed for purposes of this motion only.</b>  The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 16, does not support the purported fact, therefore statement is without foundation.  Objections: lack of foundation.

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
23. Because the District's intake channel is open to Old River, drain water from the Bethany Drain may commingle with Old River water in the intake channel.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶17.	<b>Undisputed for purposes of this motion only.</b>
24. Discharges of water from the Bethany Drain into the intake channel are measured by a weir which is four feet in height concrete wall installed approximately 340 feet upstream of the Bethany Drain outfall into the intake channel.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶18.	<b>Undisputed for purposes of this motion only.</b>
25. At no time after May 1, 2015 did WSID's diversions from the intake channel exceed the inflow into the intake channel from the Bethany Drain.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶19.	<b>Disputed</b>  The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 19 (¶ 14), does not provide support for the purported fact, therefore statement is without foundation.  There is no paragraph 19 in the Declaration of Rick Martinez.
26. WSID staff did not observe any change in flow in Old River at any time in 2014 when diversions of City of Tracy wastewater were being made under contract.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶19.	<b>Undisputed for purposes of this motion.</b>  There is no paragraph 19 in the Declaration of Rick Martinez.
27. The City of Tracy ("City") operates a wastewater treatment plant and discharges treated wastewater effluent to Old River, a water of the United States, pursuant to Order R5-2012-0115 (NPDES Permit	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶23.  EXHIBIT WSID0019, Order R5-2012-0115 (NPDES Permit CA0079154) issued by the Central Valley Regional Water Quality Control Board.	<b>Disputed</b>  The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 23, does not support the purported fact, therefore statement is without foundation. There is no paragraph 23 in the Declaration of Rick Martinez.  Objections: (a) WSID0019 lacks authentication; (b) Lacks foundation;

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CA0079154) issued by the Central Valley Regional Water Quality Control Board.	EXHIBIT WR-1, Draft Cease and Desist Order at ¶2.	<p>the statements in WR-1 are not supported by evidence in the record; (c) Order R5-2012-0115 (NPDES Permit CA0079154) is a document which speaks for itself and is the best evidence of its contents.</p> <p>See SWC's Objections filed concurrently herewith.</p>
28. The City discharges approximately 9 million gallons per day ("mgd"), which is equivalent to 14 cfs, on a substantially continuous basis into Old River upstream from the District's point of diversion under License 1381.	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶24.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶2.</p>	<p><b>Disputed</b></p> <p>The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 24, does not support the purported fact, therefore statement is without foundation. There is no paragraph 24 in the Declaration of Rick Martinez.</p> <p>Objections: (a) Lacks foundation; there is no paragraph 24 in the Declaration of Rick Martinez; (b) Lacks foundation; statements in WR-1 are not supported by evidence in the record.</p> <p>See SWC's Objections filed concurrently herewith.</p>
29. The City obtains water supplies from three sources: (1) South San Joaquin Irrigation District water delivered from the Stanislaus River (typically the majority of the City's supply); (2) United States Bureau of Reclamation water delivered from the Delta-Mendota Canal; and (3) local groundwater wells (typically the smallest portion of the City's supply).	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶25.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶3.</p>	<p><b>Disputed</b></p> <p>The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 25, does not support the purported fact, therefore statement is without foundation. There is no paragraph 25 in the Declaration of Rick Martinez.</p> <p>Objections: (a) Lacks foundation; there is no paragraph 25 in the Declaration of Rick Martinez; (b) Lacks foundation; statements in WR-1 are not supported by evidence in the record.</p> <p>See SWC's Objections filed concurrently herewith.</p>

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
<p>30. The City's treated wastewater discharges are foreign in source and/or foreign in time to the Old River flow.</p>	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶25.</p> <p>EXHIBIT WSID0158, Declaration of Jack Alvarez at ¶22.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶3.</p>	<p><b>Disputed.</b></p> <p>Purported fact lacks evidentiary support.</p> <p>There is no paragraph 25 in the Declaration of Rick Martinez, therefore statement is without foundation.</p> <p>Objections: (a) Lacks foundation; (b) Lacks foundation; statements in WR-1 are not supported by evidence in the record; (c) WSID-0158, the testimony of Jack Alvarez, was excluded pursuant to the Hearing Officer's procedural ruling dated February 18, 2016, therefore, lack of foundation</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>31. On May 6, 2014, the City Council adopted Resolution 2014-165, authorizing the City to enter into a Wastewater Revocable License Agreement with the District ("2014 Agreement") for the sale of treated wastewater from the City's wastewater treatment plant.</p>	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶27.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶8.</p> <p>EXHIBIT WSID 0022, Resolution 2015-165</p>	<p><b>Disputed</b></p> <p>Purported fact lacks evidentiary support.</p> <p>WSID0060, Declaration of Rick Martinez at ¶ 27, does not support the purported fact, therefore statement is without foundation. There is no paragraph 27 in the Declaration of Rick Martinez.</p> <p>Objections: (a) WSID0022 lacks authentication; (b) Resolution 2014-165 is a document which speaks for itself and is the best evidence of its contents. (c) Lacks foundation; the statements in WR-1 are not supported by evidence in the record.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>32. The 2014 Agreement provides that the District may divert all of the City's wastewater discharges from April 1, 2014 through October 31, 2014, estimated to be</p>	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶27.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶8.</p> <p>EXHIBIT WSID0023,</p>	<p><b>Disputed</b></p> <p>Purported fact lacks evidentiary support.</p> <p>WSID0060, Declaration of Rick Martinez at ¶ 27, does not support the purported fact, therefore statement is without foundation. There is no</p>

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
<p>1 approximately 14 cfs, 2 equivalent to 27.8 acre- 3 feet per day, on a 4 continuous basis.</p>	<p>2014 Agreement</p>	<p>paragraph 27 in the Declaration of Rick Martinez.</p> <p>Objections: (a) WSID0023 lacks authentication; (b) the 2014 Agreement is a document which speaks for itself and is the best evidence of its contents. (c) Lacks foundation; the statements in WR-1 are not supported by evidence in the record; (d) lacks foundation.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>10 33. On March 3, 2015, 11 the Tracy City Council 12 adopted Resolution 13 2015-033, authorizing 14 the City to enter into a 15 Wastewater Revocable 16 License Agreement with 17 the District ("2015 18 Agreement") for the sale 19 of treated wastewater 20 from the City's 21 wastewater treatment 22 plant.</p>	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶28.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶14.</p> <p>EXHIBIT WSID0025, 2015 Agreement</p>	<p><b>Disputed</b></p> <p>Purported fact lacks evidentiary support.</p> <p>WSID0060, Declaration of Rick Martinez at ¶ 28, does not support the purported fact, therefore statement is without foundation. There is no paragraph 28 in the Declaration of Rick Martinez.</p> <p>Objections: (a) WSID0025 lacks authentication; (b) Resolution 2015-033 and the 2015 Agreement are documents which speaks for itself and are the best evidence of its contents. (c) Lacks foundation; the statements in WR-1 are not supported by evidence in the record.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>22 34. The 2015 23 Agreement provides that 24 the District may divert 25 all of the City's 26 wastewater discharges 27 from April 1, 2015 28 through October 31, 2015, estimated to be approximately 14 cfs, equivalent to 27.8 acre- feet per day, on a continuous basis.</p>	<p>EXHIBIT WSID0060, Declaration of Rick Martinez at ¶28.</p> <p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶14.</p> <p>EXHIBIT WSID0025, 2015 Agreement</p>	<p><b>Disputed</b></p> <p>Purported fact lacks evidentiary support.</p> <p>WSID0060, Declaration of Rick Martinez at ¶ 28, does not support the purported fact, therefore statement is without foundation. There is no paragraph 28 in the Declaration of Rick Martinez.</p> <p>Objections: (a) WSID0025 lacks</p>

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>	<b>SWC RESPONSE AND SUPPORTING EVIDENCE</b>
		<p>authentication; (b) The 2015 Agreement is a document which speaks for itself and is the best evidence of its contents; (c) Lacks foundation; the statements in WR-1 are not supported by evidence in the record.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>35. On May 1, 2015, the State Water Board issued a "Notice of Unavailability of Water an Immediate Curtailment for Those Diverting Water in the Sacramento River Watershed and Sacramento-San Joaquin Delta with a Post-1914 Appropriative Right" ("May 21 Unavailability Notice").</p>	<p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶17.</p> <p>EXHIBIT WR-34, May 1, 2015 Unavailability Notice</p>	<p><b>Disputed.</b></p> <p>SWC disputes that on May 1, 2015, the State Water Board issued a "Notice of Unavailability of Water an Immediate Curtailment for Those Diverting Water in the Sacramento River Watershed and Sacramento-San Joaquin Delta with a Post-1914 Appropriative Right"</p> <p>W-34, dated May 1, 2015, is a "NOTICE OF UNAVAILABILITY OF WATER AND IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED WITH A POST-1914 APPROPRIATIVE RIGHT."</p> <p>Objections: (a) WR-34 lacks authentication; (b) Lacks foundation; the statements in WR-1 are not supported by evidence in the record.</p> <p>See SWC's Objections filed concurrently herewith.</p>
<p>36. The May 1 Unavailability Notice notified all holders of post-1914 appropriative water rights within the Sacramento River and Sacramento-San Joaquin Delta watershed of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions</p>	<p>EXHIBIT WR-1, Draft Cease and Desist Order at ¶17.</p> <p>EXHIBIT WR-34, May 1, 2015 Unavailability Notice</p>	<p><b>Disputed</b></p> <p>Evidence cited does not support that the May 1 Unavailability Notice (WS-34) notified all holders of post-1914 appropriative rights within the Sacramento-San Joaquin Delta watershed.</p> <p>Objections: (a) WR-34 lacks authentication; (b) WR-34 is a</p>

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
for non-consumptive diversions.		document that speaks for itself and is the best evidence of its content; (c) Lacks foundation; the statements in WR-1 are not supported by evidence in the record.  See SWC's Objections filed concurrently herewith.
37. The May 1 Unavailability Notice was intended to apply to License 1381.	EXHIBIT WR-1, Draft Cease and Desist Order at ¶17.  EXHIBIT WR-34, 35, May 1, 2015 Unavailability Notice	<b>Undisputed for purposes of this motion only.</b>  Objections: (a) WR-34 and WR-35 lack authentication; (b) WR-34 and WR-35 are documents that speaks for itself and are the best evidence of its content; (c) Lacks foundation; the statements in WR-1 are not supported by evidence in the record.  See SWC's Objections filed concurrently herewith.
38. The May 1 Unavailability Notice was based upon a spreadsheet methodology that compared supply and demand on a watershed wide basis.	EXHIBIT WSID0152 at p. 33 ¶¶2-4, p. 45, ¶¶1-8.	<b>Disputed</b>  The evidence cited, WSID0152, pp. 33 ¶¶2-4 and 45 ¶¶1-8, does not support the purported fact.  Objections: (a) WSID0152 lacks authentication; (b) Lacks foundation.  See SWC's Objections filed concurrently herewith.
39. This spreadsheet methodology did not consider water available to WSID at its point of diversion, the tidal effect in the Delta, or the fact that tributary flow from prior months was still present in the Delta and available for WSID to divert due to Delta hydrodynamics and residence time.	EXHIBIT WSID0152 at p. 32 ¶¶23-25, p. 33 ¶¶1-25, p. 34 ¶¶1-3, p. 46 ¶¶10-24, p. 91 ¶¶6-16.	<b>Disputed</b>  The evidence cited, WSID0152 p. 32 ¶¶23-25, p. 33 ¶¶1-25, p. 34 ¶¶1-3, p. 46 ¶¶10-24, p. 91 ¶¶6-16, does not support the purported fact.  Objections: (a) WSID0152 lacks authentication; (b) Lacks foundation.  See SWC's Objections filed concurrently herewith.

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
40. The District did not provide the City with a written Commencement Notice or purchase wastewater from the City under the 2015 Agreement.	EXHIBIT WSID0060, Declaration of Rick Martinez at ¶29.	<p><b>Disputed</b></p> <p>The evidence cited, WSID0060, Declaration of Rick Martinez at ¶ 29, does not support the purported fact, therefore statement is without foundation. There is no paragraph 29 in the Declaration of Rick Martinez.</p> <p>Objections: (a) Lacks foundation</p>
41. The Prosecution Team did not take any measurements of flow at the WSID point of diversion, or downstream in either direction.	EXHIBIT WSID0152 at p. 92 ¶¶1-22, p. 93 ¶¶15-20.	<p><b>Disputed.</b></p> <p>Evidence cited does not support purported fact.</p> <p>Objections: (a) WSID0152 lacks authentication; (b) Lacks foundation.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
42. Instead the Prosecution Team simply assumed that a diversion of 14 cfs by WSID resulted in a corresponding reduction in flow.	EXHIBIT WSID0152 at p. 92 ¶¶1-22, p. 93 ¶¶15-20.	<p><b>Disputed</b></p> <p>Evidence cited does not support purported fact.</p> <p>Objections: (a) WSID0152 lacks authentication; (b) Lacks foundation.</p> <p>See SWC’s Objections filed concurrently herewith.</p>
43. By contrast, WSID’s expert conducted a scientific study using scientifically accepted Delta modeling tools to determine that no measurable decrease in flow or water levels results from WSID’s diversion of 8 to 14 cfs.	EXHIBIT WSID0123 at ¶12. EXHIBIT WSID0125 at p. 2.	<p><b>Disputed</b></p> <p>Evidence cited does not support purported fact, therefore, lack of foundation.</p> <p>Evidence does not establish that Mr. Burke’s analysis constitutes either a “scientific study” or used “scientifically accepted” Delta modeling tools.</p>
44. Section (b) of Water Code Section 1211 was added to State Water Code in 2001 at the request of the State Water Board, which asserted: “Where there is no threat to instream flows or third party	EXHIBIT WSID 0027, September 6, 2001 Enrolled Bill Report at p. 557.	<p><b>Disputed</b></p> <p>Evidence cited does not support purported fact.</p> <p>Objection: (a) WSID-0027 lacks authentication; (b) Misstates facts; (c) hearsay. The quote is taken out of context and is an incomplete excerpt of the language in the Enrolled Bill</p>

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UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE	SWC RESPONSE AND SUPPORTING EVIDENCE
water-right holders, requiring [State Water Board] review is an unnecessary burden on wastewater reclamation.”		Report, a document that speaks for itself and is the best evidence of its content.  See SWC’s Objections filed concurrently herewith.

Dated: February 22, 2016

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