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May 18, 2009

Jeanine Townsend
Clerk to the Board
Executive Office
State Water Resources Control Board
Cal/EPA Headquarters
1001 I Street, 24th Floor
Sacramento, CA 95814-2828

Re: COMMENT LETTER - 05/19/09 BOARD MEETING: Reclamation/ DWR CPOU Draft Order

Dear Ms. Townsend:

On behalf of the San Luis & Delta-Mendota Water Authority ("Authority") and each of its members, including Westlands Water District ("Westlands"), Diepenbrock Harrison writes to express support for the "Draft Order Approving A Change In The Place Of Use Of License And Permits Of The United States Bureau Of Reclamation (Reclamation) And California Department Of Water Resources (DWR) In Response To Drought" ("Draft Order"). In total, we believe the Draft Order presents a well-reasoned decision.

Notwithstanding, the Authority and Westlands respectfully request the State Water Resources Control Board ("State Water Board") to make the below nine changes to the Draft Order prior to its adoption. To assist the State Water Board and its staff, we identify our suggested deletions in bold strikethrough, and suggested additions in bold italics.

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1. To correct what appears to be a typographical error in section 4.1, page 7, first paragraph:

> ". . . Similarly, ~~**CSAA**~~ ***CSSA*** and CSPA alleged that increased pumping would adversely affect fishery resources. . . ."

2. To more accurately reflect the record, add to section 4.1, page 7, second paragraph:

> ***"Many of the allegations are unsupported by evidence. Further,*** ~~**A**~~all of these concerns are misplaced ~~**, however,**~~ because they are predicated on the assumption that approval of the petition will cause an increase in transfers through the Delta. . . ."

3. To more accurately reflect the record and provide additional support for the proposed decision, revise section 4.2, page 8, second paragraph:

> "Notwithstanding C-WIN and CSPA's testimony, however, the record contains no evidence that approval of this petition will in fact cause water to be delivered to drainage-impaired lands, ~~**or**~~ cause an increase in agricultural discharges***, or cause an adverse impact to the environment or a legal user of water***. (See R.T. at pp. 145,296-297.) . . ."

4. To more accurately reflect the testimony, revise section 4.2, page 9, second paragraph:

> ". . . In light of these facts and the low allocation to CVP contractors this year, we find that approval of the petition will not cause a significant impact to water quality ~~**as a result of increased agricultural drainage**~~. Similarly, we find that ~~**any**~~ ***an*** increase in agricultural drainage***, if any,*** will not cause injury to any legal user of water, and any impacts to fish, wildlife, or other instream beneficial uses would not be unreasonable, particularly when taking into consideration the need for the petition to address the significant economic and other impacts of the drought."

5. To provide additional support for the proposed decision to accept into evidence CEQA documents, insert into section 5.0, page 11, last paragraph:

> ". . . For the foregoing reasons, CSPA's, C-WIN's, CSSA's and PTA's objections to the admission of the CEQA documents into evidence are overruled, and the CEQA documents are hereby admitted into evidence. **[Insert new footnote, to read:** ***In the alternative, we take official notice of the CEQA documents. Official notice is taken pursuant to California Code of Regulations, title 23, section 648.2 (authorizing the State Water Board to take official notice of matters that may be judicially noticed) and Evidence Code section 452, subidivision (c) and (h) (authorizing judicial notice of official acts of the legislative, executive, or judicial departments of the State, and authorizing judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy).***]"

6. To accommodate an immediate need to initiate operations as soon as possible, modify Ordering Paragraph 3, page 12:

> "3. DWR and Reclamation shall submit detailed monthly reports of all water transferred or exchanged under the provisions of this order in accordance with a reporting plan developed by DWR and Reclamation. The plan must be approved by the Deputy Director ~~**prior to**~~ ***within 30 days of*** initiating operations under this order. The report for each transfer or exchange shall include . . ."

7. To allow flexibility in the event court action is taken or formal consultation is re-initiated, modify Ordering Paragraph 5, page 13:

> "DWR and Reclamation shall operate the SWP and CVP in accordance with the 2008 Delta smelt biological opinion~~.~~***, as may be affected by court order and/or subsequent biological opinion.***"

8. To accommodate an immediate need to initiate operations as soon as possible, modify Ordering 10, page 14:

> "10. . . . The monitoring plan must be approved by the Deputy Director ~~prior to~~ ***within 30 days of*** initiating operations under this order. DWR and Reclamation shall consult with Division of Water Rights staff to develop the plan, including selection of appropriate monitoring locations, reporting frequency and data reporting formal."

9. To more accurately reflect potential legal obligations, modify Ordering 12, page 14:

> "12. . . . If a "take" will result from any act authorized under this order ***that was not previously authorized***, DWR and Reclamation shall obtain authorization for an incidental take prior to commencing the transfer or exchange of water. DWR and Reclamation shall be responsible for meeting all ***applicable*** requirements of the state and***/or*** federal Endangered Species Acts for the transfers and exchanges authorized under this order."

Thank you for your consideration of these comments.

Respectfully submitted,

DIEPENBROCK HARRISON
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BRAD JOHNSON FOR

By _____
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JDR/jvo

cc: Daniel Nelson
Thomas Birmingham