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12 **STATE WATER RESOURCES CONTROL BOARD**

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15 PUBLIC HEARING TO DETERMINE
16 WHETHER TO ISSUE A CEASE AND
DESIST ORDER AGAINST WEST SIDE
IRRIGATION DISTRICT

**DECLARATION OF TOM BURKE IN
SUPPORT OF MOTION FOR
CONTUANCE**

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19 I, Tom Burke submit the attached declaration based up on my personal knowledge.

20 1. I am a principal at Hydrologic Systems Inc.

21 2. I am a Water Resources Engineer, licensed as a Civil Engineer in the State of California. I
22 have a Bachelor's and Master's Degree in Civil Engineering with a specialty in Water Resources
23 Engineering. I have been working as a Water Resources Engineer for over 35 years, specializing
24 in hydrologic analysis and hydrodynamic modeling.

25 3. I was retained by the South Delta Water Agency to provide technical expertise in the
26 pending enforcement proceeding. The basis of the enforcement proceeding against WSID is the
27

1 unavailability of water for WSID to divert under its License during 2015 beginning May __,
2 2015.

3 4. I have reviewed the water availability analysis excel spreadsheet and graphs posted by the
4 SWRCB on its website. I have also reviewed the Water Availability file contents produced by the
5 SWRCB to date in response to WSID's public records act (PRA) request.

6 5. Based on my review of the provided information provided in response to the PRA thus far
7 I do not yet have sufficient information to understand how the SWRCB conducted the water
8 availability analysis or to assist WSID with understanding the analysis. Further, although this
9 analysis is common for evaluating a defined stream system or lake, the analysis is unlike any
10 water availability analysis for a tidal estuary that I have ever seen in my professional career. This
11 approach involves the evaluation of thousands of pieces of data, which together form what the
12 state is proposing as a "water budget" for the Delta. The state has provided the final computed
13 data from the water budget, they have not provided the details of the calculations and assumptions
14 that have gone into those numbers. Without that background data, I am unable to evaluate the
15 appropriateness of their results.

16 6. For example, the analysis utilizes as inputs to the demand side, over 16,000 separate water
17 diversions based on varying types of reported information. Review of the information provided
18 by the state has revealed that certain subjective decisions were made regarding these inputs which
19 are not explained in the information provided. These numbers also differ from the demand
20 numbers that the state uses in their DSM2 Delta hydrodynamic model that is used by the state to
21 evaluate water supply and demand within the Delta. I cannot understand their decision making
22 process, and thus the correctness of the estimates that the SWRCB used in developing their water
23 demand without further information that has not yet been provided.

24 7. On the supply side, the analysis appears to use a "Full Natural Flow" (FNF) computation
25 for 12 different computation points that represent tributary inflow to the Delta. However, these
26 flows represent water potentially available miles away from the WSID point of diversion. A
27 review of the spreadsheets provided by the state, show numerous adjustments that were made to
28 the FNF values as well as the percent exceedances for those estimates. They are presented as if
they are stream gage data that is collected at the different streams entering the Delta. They are

1 even presented on the state web site along with 100's of true stream gages around the state. But
2 in reality, they represent a calculated number that is based on numerous assumptions that are
3 made on upstream diversions, storage, return flow, evaporation etc. These assumptions are made
4 for numerous locations upstream of the point on the river where the Full Natural Flow is
5 presented. None of these assumptions, or calculations, have been provided by the state.
6 Therefore, I cannot discern from the information provided from the SWRCB what analysis was
7 conducted regarding water availability at the WSID point of diversion or how the Full Natural
8 Flow information was used or not used to support the curtailment decision for WSID. Given that
9 the state is making their assumption of water availability, based on a water budget that includes
10 all inflow and outflow from the Delta, it is imperative that we understand the individual
11 components and assumptions that went into that budget, not just the final numbers.

12 8. Also, the spreadsheet posted on the SWRCB website differs from the spreadsheets
13 produced thus far pursuant to the PRA request. I cannot discern which information was used or
14 not used as the basis for the enforcement action against WSID.

15 9. I have created an initial list of approximately 20 questions I need to ask SWRCB staff
16 regarding their water availability analysis in order to inform my own understanding of the
17 analysis. I anticipate receiving answers to these questions during the depositions of the SWRCB
18 prosecution team witnesses. I understand these depositions are currently being scheduled, but
19 may not be complete until the end of November, at the earliest.

20 10. I also understand that the SWRCB plans to produce more documents related to the water
21 availability determination, which I have not yet seen.

22 11. I anticipate that it will take me at least 20 working days after the conclusion of the
23 depositions and production of all related SWRCB documents to fully understand the SWRCB
24 analysis. I will then need to perform any adjustments to that analysis that I believe are warranted
25 to correct identified errors and omissions, which I estimate will take another 20 working days. I
26 will need additional time to work with counsel for WSID to prepare written testimony and
27 exhibits for the hearing.

28 12. Given the complexity of the analysis conducted by the SWRCB, the fact that there are still
documents outstanding, and the corresponding pre-hearing testimony and exhibit submittal

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deadlines, the currently scheduled hearing date of January 11, 2016 will make it ~~are~~ impossible for me to develop a coherent and useful technical analysis given the current information available from the SWRCB. The fact that I have had longstanding family trips planned for the Thanksgiving and Christmas holidays only exacerbates the situation.

I declare under penalty of perjury under the laws of the State of California that the above is true to the best of my knowledge and if called as a witness would testify competently thereto.

Date Nov, 5, 2015

Thomas K. Burke

THOMAS K. BURKE, P.E.

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