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THE WEST SIDE IRRIGATION DISTRICT

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 THE WEST SIDE IRRIGATION DISTRICT;
CENTRAL DELTA WATER AGENCY;
11 SOUTH DELTA WATER AGENCY; and
WOODS IRRIGATION COMPANY,

12 Petitioners/Plaintiffs,

13 vs.

14 CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD;
15 THOMAS HOWARD, EXECUTIVE
DIRECTOR OF CALIFORNIA STATE
16 WATER RESOURCES CONTROL BOARD;
and DOES 1 THROUGH 100, INCLUSIVE.

17 Respondents/Defendants.
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FILED
Superior Court Of California,
Sacramento

06/29/2015

Exempt from Filing Fees
Pursuant to Government

Code Section 6103, Deputy

Case Number:

34-2015-80002121

Case No.:
PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE, WRIT OF
MANDATE, COMPLAINT FOR
DECLARATORY and INJUNCTIVE
RELIEF (Code of Civ. Proc., §§ 526, 1060,
1085, 1094.5)

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1 INTRODUCTION

2 1. Plaintiff/Petitioners THE WEST SIDE IRRIGATION DISTRICT (“**WSID**”),
3 SOUTH DELTA WATER AGENCY (“**SDWA**”), CENTRAL DELTA WATER AGENCY
4 (“**CDWA**”) and WOODS IRRIGATION COMPANY (“**Woods**”) represent water rights holders
5 who divert from the channels of the Sacramento San Joaquin Delta, as defined in Water Code
6 Section 12220 (“**Delta**”). **EXHIBIT A** hereto is a map of the Delta channels with the diversion
7 locations of WSID and Woods denoted.

8 2. Because the bottoms of these channels are generally below sea level, and the
9 channels are influenced by tidal action from the bay and ocean to the west as well as tributary
10 inflow from the east, there is always water in the channels regardless of whether it is a wet or dry
11 year, and regardless of the amount of flow in upstream rivers flowing into the Delta.

12 3. Due to these physical facts, historically, there has never been a dispute about the
13 availability of water in the channels of the Delta. Rather, the dispute over water in the Delta
14 was always over quality - not quantity.

15 4. Despite this history, on May 1, 2015, the State Water Resources Control Board
16 (“**Water Board**”), by letter from the Water Board’s Executive Director, Thomas Howard,
17 curtailed all post-1914¹ appropriative rights in the Delta, including those held by WSID and
18 several landowners in Central and South Delta Water Agencies (“**Post-1914 Curtailment**”).
19 **EXHIBIT B** hereto is a copy of the Post-1914 Curtailment.

20 5. On June 12, 2015, the Water Board issued a similar curtailment notice to holders
21 of pre-1914 appropriative rights in the Delta dating 1903 or later (“**Pre-1914 Curtailment**”).
22 The Pre-1914 Curtailment, attached as **EXHIBIT C**, directs some water users in SDWA and
23 CDWA to “immediately stop diverting water. . . .” The rest of the water users within CDWA
24 and SDWA, including Woods’ shareholder members, have been advised by the Water Board that

25
26 ¹ There are two types of appropriative water rights recognized in California—pre-1914, and post-
27 1914. Pre-1914 rights were obtained under methods in place from 1855 through 1914, hence the
28 name “pre-1914.” These methods did not require the involvement of any State regulatory
agency. On December 19, 1914, the California Legislature fundamentally changed the
procedures for obtaining an appropriative water right, requiring that permits be obtained from a
State administrative agency.

1 their pre-1914 and riparian water rights will be curtailed in the immediate future.

2 6. The Water Board has also stated it intends to later curtail other pre-1914
3 appropriative and riparian rights in the Delta. The scope of these curtailments is unprecedented.

4 7. The 2015 curtailment of pre- and post-1914 rights (collectively, "2015
5 **Curtailments**") were not imposed at or after meetings of the Water Board, nor after
6 administrative hearings. Rather, it was imposed by letter from the Executive Director Thomas
7 Howard directing right holders to "immediately stop diverting under their post-1914 rights. . . .
8 Even if there is water physically available at your point of diversion, that water is necessary to
9 meet senior water right holders' needs or is water released from storage that you are not entitled
10 to divert. If precipitation occurs in the following weeks or months, you should not commence
11 diversion before being notified by the State Water Board that water is legally available for
12 diversion under your priority of right." On or about June 12, 2015, Executive Director Thomas
13 Howard represented that "[e]ach water-right holder has different options available to them."

14 8. The 2015 Curtailments require water right holders to submit certification that they
15 have ceased diverting or face enforcement proceedings. The 2015 Curtailments also threaten
16 fines of \$1,000 per day plus \$2,500 per acre-foot diverted. (Wat. Code, § 1052.)

17 9. For purposes of understanding the magnitude of the potential fines:

18 a. Irrigation of a single 100-acre farm, with 3 acre-feet of water applied over
19 20 days would amount to a potential penalty of **\$770,000.00** [(100 acres x 3 acre-feet/acre x
20 \$2,500/acre-foot) + (20 days x \$1,000/day)] ,

21 b. Continued diversion by WSID of 82.5 cfs per day under its water right
22 license for just one month could result in penalty of **\$12,405,000.00** [82.5 cfs x 2 acre-feet per
23 day = 165 acre-feet per day x 30 days = 4,950 acre feet x \$2,500/acre foot) + (30 days x
24 \$1,000/day)].

25 10. As a result of the 2015 Curtailments, water right holders in the Delta now face the
26 following choice: (1) continue diverting and face enforcement proceedings and threat of
27 significant monetary penalties that could exceed the entire value of their farms, or (2) refrain
28 from diverting under their water rights and lose their crops and ability to make a living. They

1 face this untenable choice despite the fact that water is available to divert under their water rights
2 and they have never had the opportunity to challenge the Water Board's decision otherwise.

3 11. Plaintiffs need a judicial resolution of the issue of whether or not there is water
4 available in the Delta under their water rights, despite the lack of inflow from upstream
5 tributaries, so that Delta water right holders can exercise their water rights without continued
6 threat of regulatory enforcement and monetary penalties.

7 **PARTIES**

8 12. Plaintiff WSID is a California Irrigation District encompassing approximately
9 6,120 acres of land in San Joaquin County. WSID holds a post-1914 appropriative license to
10 divert 82.5 cubic feet per second of water from Old River with a priority date of April 7, 1916. A
11 true and correct copy of License No. 1381 is attached hereto as **EXHIBIT D** ("WSID License").
12 WSID files this action for itself and for the property owners, voters and taxpayers of the WSID
13 who will individually and collectively be harmed by the challenged action.

14 13. Plaintiff CDWA is a political subdivision of the State of California, created by
15 the Legislature in 1973 to ensure that the lands within its jurisdiction have a dependable supply
16 of water of suitable quality sufficient to meet present and future needs. CDWA's boundaries are
17 specified in Water Code Appendix section 117-9.1 and encompass approximately 120,000 acres,
18 which are located within the western portion of San Joaquin County and the Delta. The lands
19 within the agency's boundaries are primarily devoted to agriculture, but also serve numerous
20 other uses, including recreational, wildlife habitat, open space, residential, commercial, and
21 institutional uses. CDWA is authorized to commence litigation to assure the lands within the
22 agency have a dependable supply of water of suitable quality sufficient to meet present and
23 future needs. (See Wat. Code Appendix, §§ 117-4.3, subd. (b), 117-4.1, subd. (b).) CDWA may
24 also take action to protect the vested water rights of landowners, districts, and water right holders
25 within its boundaries, and may represent the interest of those parties in proceedings before the
26 courts to carry out the agency's purposes. (Wat. Code Appendix, § 117-4.2, subd. (b).) The
27 majority of CDWA's landowners exercise riparian, pre-1914 appropriative and/or permit or
28 license rights to divert water from Delta channels in San Joaquin County.

1 20. Plaintiffs CDWA, SDWA and Woods are not required to exhaust any
2 administrative remedies prior to filing this action as to any of their landowners who have not yet
3 been curtailed by action of the Water Board. Curtailment of the challenged water rights would
4 result in thousands of acres in San Joaquin County becoming fallow, destroy thousands of acres
5 of permanent tree crops, significantly depress property values and property tax revenues received
6 by San Joaquin County and special districts, and cause significant unemployment and
7 underemployment among agricultural workers and vendors who depend upon a vibrant local
8 farm economy.

9 21. The 2015 Curtailments were Water Board decisions against the Petitioners. In
10 order to comply with the requirements of Water Code Section 1126, should it apply here, WSID
11 filed a Petition for Reconsideration with the Water Board on May 8, 2015. Notwithstanding,
12 Petitioners are not required to exhaust any administrative remedies prior to filing this action as to
13 the 2015 Curtailments because:

14 a. The challenged action purports to be an action taken by the Water Board,
15 for which no exhaustion is required (Wat. Code, § 1126(b)); or

16 b. Assuming this Court finds exhaustion of remedies generally applies, the
17 requirement should be waived because pursuit of an administrative remedy would result in
18 irreparable harm. (See *People ex rel. DuFauchard v. U.S. Fin. Mgmt., Inc.* (2009) 169 Cal. App.
19 4th 1502, 1512; *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) Compliance with the
20 requirement to exhaust administrative remedies, requires WSID to file a petition for
21 reconsideration with the Water Board. The Water Board has ninety (90) days before it decides
22 whether to hear the matter, it has discretion whether or not to hear the matter, and if it does
23 decide to hear the matter, has no deadline to issue a decision. (Wat. Code, § 1122.) Waiting
24 indefinitely for a decision will cause WSID irreparable harm in either lack of water for dying
25 crops, or exposure to and compounding of significant monetary penalty liability. Other
26 Petitioners holding pre-1914 rights are not required to exhaust administrative remedies or are
27 otherwise excused from this requirement for the reasons state previously.

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GENERAL ALLEGATIONS and BACKGROUND

A. The Nature of Water in Delta Channels

22. The point of diversion for WSID's License is a location on Old River in the Delta that is tidally influenced.

23. The points of diversion for the majority of the landowners in CDWA and SDWA are located on Delta channels that are tidally influenced.

24. The points of diversion for the Woods diversion facilities are on Middle River in the Delta and are tidally influenced.

25. In tidally influenced Delta channels, the elevation of the bottom of the channel is below sea level.

26. On information and belief, the Delta channels that are tidally influenced, with channel bottoms below sea level, have never been devoid of water, regardless of hydrology, during at least the last one hundred years.

27. The water source in all tidally influenced Delta channels, is a comingled mix of several sources of water including inflows from tributaries to the east (e.g., the San Joaquin River and its tributaries and Mokelumne River), inflows from tributaries to the north (e.g., the Sacramento River), accretions from groundwater, water that is carried into the Delta from the west by tidal action, salvaged and developed water from Delta island reclamation efforts, irrigation return flow from each of these sources, and recirculated and recaptured water from Delta drainage and irrigation operations.

28. The water carried into the Delta from the west by tidal action is a combination of water that has originated in the watersheds that drain into the Bay Area, water that has flowed out of the Delta in prior months, and some water from the ocean that has entered the Bay.

29. Because of the nature of the Delta, its physical characteristics, and water sources and tidal action, the specific make-up of the water at a point of diversion in a Delta channel changes from hour to hour, day to day, month to month, and year to year.

1 30. During drought, when inflows from the San Joaquin River are negligible, the
2 other sources of water dominate the make-up of the water in Delta channels, but the elevation of
3 the water present in the Delta channels at these points of diversion changes very little.

4 31. Due to these physical facts and the constant presence of water in the Delta
5 channels, the lack of inflow from the San Joaquin River during a drought is irrelevant to the
6 exercise of the riparian water rights in the Delta because a riparian right can attach to “any body
7 of water, whether flowing or not.” (*Turner v. James Canal Co.* (1909) 155 Cal. 82, 87-88, 91-
8 92.)

9 32. Similarly, the lack of inflow from the San Joaquin River during a drought is
10 irrelevant to the exercise of an appropriative right in the Delta because an appropriator may
11 divert both naturally available water and return flows available at its point of diversion. (Wat.
12 Code, § 1201.)

13 33. The Water Board and its legal predecessors have acknowledged that the
14 availability of water in the Delta is not dependent on inflow from the San Joaquin River. The
15 Division of Water Rights, predecessor to the Water Board, stated in Decision 100 in 1926:

16 These delta channels form a network of waterways through which the water flows
17 sometimes one way and sometime another, depending upon the percentages of the
18 various main tributaries – Sacramento, San Joaquin and Mokelumne Rivers – and
19 the influence of the tides. It is difficult if not impossible to estimate the influence
20 of a diversion at any one point in these delta channels upon the available water
21 supply at other points or the influence of a diversion from one of the tributary
22 streams upon the available water supply at any particular point in the delta. The
23 fact is that the delta channels form a vast reservoir through which the drainage
24 from Sacramento and San Joaquin Rivers pours to form a barrier in the upper end
25 of San Francisco Bay, Suisun Bay and the lower delta against the salt water
26 which would otherwise enter through Golden Gate and San Francisco Bay.

27 D. 100 at p. 11.

28 34. The Water Board has also acknowledged that there is never a water shortage in
the Delta, even in the absence of river inflow. In Decision 1379, for example, the Water Board
found “that the quantity needs of almost all of the Delta users are met almost all the time and
depletion of inflow will not affect this availability. With the exception of periods during

1 extraordinary low tides, at which time the southeast portion of the Delta is particularly affected,
2 water is generally available at the intakes of the numerous pumps of Delta users (DWR 519).”
3 (D. 1379 at p. 21.) For these reasons, the Board concluded, “quantitative determinations of the
4 extent of vested rights [in the Delta] are meaningless.” (*Ibid.*)

5 35. The California Department of Water Resources (“DWR”) similarly concluded in
6 a 1969 report, entitled *The Delta and The State Water Project*, that “in the Delta, the question of
7 quantity is of little concern, since the Delta is never short of water. If flow from the tributary
8 streams were insufficient to meet Delta use water from the Pacific Ocean would flow through the
9 San Francisco Bay system and fill the Delta channels.” (*The Delta and The State Water Project*
10 at pp. 35-36.)

11 **B. Conveyance of Stored Water Through the Delta**

12 36. The 2015 Curtailments warn that water physically available in the channel is not
13 available to divert, because it is either water “necessary to meet senior water right holders’
14 needs” or water “released from storage.”

15 37. The State Water Project (“SWP”) and Central Valley Project (“CVP”)
16 (collectively the “Projects”) hold water rights to store water in reservoirs north of the Delta.
17 The Projects release and convey this stored water through the Delta channels to pump in the
18 south Delta, which export the water for delivery south of the Delta.

19 38. On information and belief, one of the reasons the Water board imposed the 2015
20 Curtailment was to protect water from the Projects from being diverted by water users in the
21 Delta, such as Petitioners.

22 39. It is impossible for the Projects’ export pumps to actually pump and export the
23 same molecules of water that are released from storage. Rather, the stored water is comingled
24 with water from other sources as its flows through the Delta channels such that any water
25 exported represents this comingled mix.

26 40. Plaintiffs do not dispute that the Projects may use Delta channels for conveyance
27 of stored water, provided they do so without injuring other legal users of water along those
28

1 channels: "Water which has been appropriated may be turned into the channel of another stream,
2 mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by
3 another shall not be diminished." (Wat. Code, § 7075.)

4 41. Plaintiffs do dispute that the Water Board can curtail more senior water right
5 holders in the Delta in order to protect "stored water" moving through the Delta channels
6 because absent the presence of this stored water, there would still be water available in the Delta
7 channels for in-Delta water right holders. Curtailing water right holders who would have water
8 available in the absence of the operation of the projects, in order to protect "stored water"
9 moving through the Delta channels pursuant to Water Code Section 7075 violates Water Code
10 Section 7075 because it diminishes the water already appropriated by the senior water right
11 holders.

12
13 **FIRST CAUSE OF ACTION**
14 **(All Plaintiffs against all Defendants - Declaratory Relief - Code of Civil Procedure section**
15 **1060 - Water Available for Diversion from Delta Channels for In-Delta Water Rights)**

16 42. Plaintiffs incorporate all prior paragraphs as though set forth in full here.

17 43. WSID, Woods, and many CDWA and SDWA landowners have valid water rights
18 to divert from Delta channels that are below sea and tidally influenced.

19 44. Plaintiffs contend the source of water in these tidally influenced Delta channels is
20 from numerous sources, including eastside tributaries to the Delta, the San Joaquin River, the
21 Sacramento River, flows from the west that are carried into the channel by the action of the tide,
22 salvaged and developed water from Delta island reclamation efforts, accretions from
23 groundwater, recirculated and recaptured water from Delta drainage and irrigation operations,
24 and return flows from each of these sources.

25 45. The lack of inflow from the San Joaquin River or other tributaries to the Delta at
26 any given point in time does not materially impact the amount of water available for diversion
27 under the point of diversion specified in the WSID License, the Woods points of diversion, or the
28 points of diversion for CDWA and SDWA landowners who divert from tidally influenced
channels.

1 46. Regardless of the amount of inflow from the San Joaquin River, there is always
2 water present at these points of diversion due to the geography of the channel and its various
3 sources of water.

4 47. Therefore, WSID has a right to continue to divert water from its licensed point of
5 diversion even when there is little to no inflow to the Delta from the San Joaquin River or other
6 tributaries to the Delta.

7 48. WSID, Woods and the other CDWA and SDWA water right holders have a right
8 to divert water from their points of diversion on tidally influenced channels when there is little to
9 no inflow to the Delta from the San Joaquin River or other tributaries to the Delta.

10 49. The fact that stored water or transfer water is also being conveyed through the
11 Delta cannot and does not diminish the right of WSID to divert under the WSID License.

12 50. The fact that stored water or transfer water is also being conveyed through the
13 Delta cannot and does not diminish the right of Woods or other SDWA and CDWA landowners
14 to divert pursuant to valid riparian and pre-1914 appropriative rights

15 51. Conversely, the Water Board and Executive Director Howard contend:

16 a. For purposes of determining whether or not WSID may divert under the
17 WSID License, or Woods or other SDWA and CDWA landowners may divert pursuant to their
18 claimed rights, the only relevant sources of water in any Delta channel is the inflow from the San
19 Joaquin River, Sacramento River, and a small factor for return flows. The inflow to the Delta
20 from the West is not relevant.

21 b. When there is insufficient water from these three sources, as determined
22 internally by the Water Board, in-Delta water right holders have no right to divert.

23 c. Any diversion by an in-Delta water right holder, after the Water Board has
24 determined no water is available for diversion, is an unlawful diversion and would interfere with
25 stored water being conveyed through the Delta by the Projects.

26 52. An actual controversy concerning the respective rights and duties of the WSID,
27 Woods, and the other SDWA and CDWA landowners, and the Water Board has arisen.

28 53. Each party disputes the other parties' contentions.

1 63. In order to determine that no water was available for diversion at WSID's point of
2 diversion under the WSID License, the Water Board is required by law to make legal and factual
3 determinations to support its decision.

4 64. The Water Board or Executive Director Howard have not notified or presented to
5 WSID any such legal or factual determinations it made in connection with issuing the Post-1914
6 Curtailment, if any legal or factual determinations were actually made. Furthermore, neither the
7 Water Board nor Executive Director Howard have provided WSID with data, information and
8 evidence that either each or both of them relied upon to justify issuing the Post-1914
9 Curtailment. WSID was not provided with notice or the opportunity to be heard to refute test or
10 explain the evidence relied upon by Defendants or to challenge any Water Board determinations
11 prior to the issuance of the Post-1914 Curtailment. Nor has WSID been provided an opportunity
12 to challenge the 2015 Curtailment in a prompt post-deprivation hearing.

13 65. Failing to provide WSID with notice and a meaningful opportunity to be heard
14 regarding the factual and legal basis for the Post-1914 Curtailment decision concerning WSID's
15 License deprived WSID of due process and constitutes a failure to proceed in a manner required
16 by law.

17 66. According to Water Code section 1126 all Water Board decisions are subject to
18 judicial review under Code of Civil Procedure section 1094.5.

19 67. A court shall enjoin any decision where a fair trial was not provided or the Water
20 Board has not proceeded in the manner required by law. (Code of Civ. Proc., § 1094.5(b), (f).)

21 68. Here, there was no hearing and, therefore, no fair trial by the Water Board prior to
22 curtailing the WSID License. Nor has the Water Board provided an opportunity for a prompt
23 post-deprivation hearing. Nor has WSID been afforded a reasonable opportunity to confront the
24 evidence relied upon by Defendants to justify the Post-1914 Curtailment

25 69. Also, the Water Board failed to proceed in the manner required by law by
26 depriving WSID of due process.

27 70. Therefore, WSID requests that the Court rescind the Post-1914 Curtailment and
28 remand the matter to the Water Board for further proceedings.

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THIRD CAUSE OF ACTION
(WSID against Water Board, Executive Director Howard: Writ of Administrative
Mandate - Decision not supported by findings, findings not supported by evidence –
Code of Civ. Proc. 1094.5)

71. WSID incorporates all prior paragraphs as though set forth in full here.

72. Neither the Water Board nor Executive Director Howard has supported the Post-1914 Curtailment with any findings or with any evidence to support findings, nor can they.

73. The point of diversion for the WSID License is in Old River, a tidally influenced channel in the Delta with a bottom elevation below sea level.

74. Regardless of inflow from the San Joaquin River, Sacramento River, or other tributaries flowing into the Delta, there is always water available to divert at the WSID point of diversion pursuant to the WSID License.

75. No facts or law could support a finding by the Water Board that there is no water available to divert the WSID License, or that the water flowing at the diversion point under the WSID License is not available for diversion by WSID.

76. Further, neither Executive Director Howard nor the Water Board can curtail diversions under the WSID License to protect the movement of comingled "stored" or "transfer" water through the Delta Channels, because doing so would enable one using a natural channel for conveyance to unlawfully diminish WSID's right to divert from the natural channel of those rights in violation of Water Code section 7075.

77. Because neither the Water Board nor Howard has or can make findings, or supply evidence, to support the Post-1914 Curtailment, WSID requests that this Court rescind the Post-1914 Curtailment and remand the matter to the Water Board for further proceedings.

FOURTH CAUSE OF ACTION
(WSID against Water Board, Howard: Writ of Mandate - Code of Civ. Proc. 1085)

78. WSID incorporates all prior paragraphs as though set forth in full here.

79. A court may issue a writ of mandate to any board that is unlawfully depriving a party of the use and enjoyment of a right to which the party is entitled. (Code of Civ. Proc., § 1085.)

1 88. It is highly unlikely that pecuniary compensation could afford complete relief, and
2 certain that ascertaining the amount of compensation that would afford complete relief would be
3 extremely difficult.

4 89. Injunctive relief is necessary to prevent a multiplicity of additional lawsuits
5 involving the 2015 Curtailment.

6 90. WSID requests that the Court immediately and permanently enjoin the Water
7 Board and Executive Director Howard from maintaining the Post-1914 Curtailment against
8 WSID or taking any further action without satisfying due process requirements, including
9 providing a fair hearing and an evidentiary record.

10
11 **SIXTH CAUSE OF ACTION**
12 **(CDWA and SDWA against Water Board, Executive Director Howard: Writ of**
13 **Prohibition – Acting in Excess of Jurisdiction - Code of Civ. Proc. 1102)**

13 91. Plaintiffs incorporate all prior paragraphs as thought set forth herein.

14 92. The Water Board lacks authority to regulate pre-1914 appropriative water rights.

15 93. The Water Board nonetheless has exercised regulatory authority over pre-1914
16 rights by issuing a curtailment notice prohibiting landowners in CDWA and SDWA, and others
17 from exercising their pre-1914 rights.

18 94. CDWA and SDWA lack a plain, speedy, or adequate remedy in the ordinary
19 course of law.

20
21 **SEVENTH CAUSE OF ACTION**
22 **(CDWA and SDWA against Water Board, Executive Director Howard:**
23 **Writ of Administrative Mandate - Lack of Fair Trial and Failure to Proceed in**
24 **Manner Required by Law - Violation of Due Process –**
25 **Code of Civ. Proc. 1094.5, Cal. Constitution art. 1, section 7)**

24 95. Plaintiffs incorporate all prior paragraphs as thought set forth herein.

25 96. CDWA and SDWA landowners hold vested pre-1914 water rights. These rights
26 are subject to procedural due process protections, including the right to notice and opportunity to
27 be heard.

28

1 97. The Pre-1914 Curtailment curtailed the pre-1914 rights of CDWA and SDWA
2 landowners. On information and belief, CDWA and SDWA assert the Pre-1914 Curtailment was
3 issued internally at the Water Board and did not involve a meeting of the Water Board or any
4 other notice, hearing, or administrative proceeding. On information and belief, CDWA and
5 SDWA further assert that Defendant Howard communicated with a majority of the State Board
6 members *ex parte* and/or *in seriatim* before issuing the curtailment letter.

7 98. The Pre-1914 Curtailment directs CDWA and SDWA landowners to cease
8 diverting and warns that any diversion pursuant to their pre-1914 water rights after the
9 curtailment effective date is an unlawful diversion of water subject to enforcement and monetary
10 penalties.

11 99. The Water Board was required by law to make legal and factual determinations to
12 support its decision to curtail the pre-1914 rights of CDWA and SDWA landowners.

13 100. The Water Board or Executive Director Howard have not notified or presented to
14 CDWA and SDWA landowners any such legal or factual determinations it made in connection
15 with issuing the curtailment decision, if any legal or factual determinations were actually made.
16 Furthermore, neither the Water Board nor Executive Director Howard have provided CDWA and
17 SDWA landowners with data, information and evidence that either each or both of them relied
18 upon to justify issuing the curtailment. CDWA and SDWA landowners were not provided with
19 notice or the opportunity to be heard to refute test or explain the evidence relied upon by
20 Defendants or to challenge any Water Board determinations prior to the issuance of the
21 curtailment. Nor have CDWA and SDWA been provided an opportunity to challenge the
22 curtailment in a prompt post-deprivation hearing.

23 101. Failing to provide CDWA and SDWA landowners with notice and a meaningful
24 opportunity to be heard regarding the factual and legal basis for the curtailment decision
25 concerning their pre-1914 rights deprived them of due process and constitutes a failure to
26 proceed in a manner required by law.

27 102. According to Water Code section 1126 all decisions Water Board decisions are
28 subject to judicial review under Code of Civil Procedure section 1094.5.

1 landowners cannot divert, pursuant to their pre-1914 rights, water flowing at their tidally
2 influenced diversion points.

3 113. Further, neither Executive Director Howard nor the Water Board can curtail
4 diversions under the pre-1914 rights of CDWA and SDWA landowners to protect the movement
5 of comingled "stored" or "transfer" water through the Delta Channels, because doing so would
6 enable one using a natural channel for conveyance to unlawfully diminish the rights of others to
7 divert in violation of Water Code section 7075.

8 114. Because neither the Water Board nor Howard has or can make findings, or supply
9 substantial evidence, to support the Pre-1914 Curtailment, CDWA and SDWA request this Court
10 rescind the curtailment notice and remand the matter to the Water Board for further proceedings
11 consistent with the law.

12
13 **NINTH CAUSE OF ACTION**
14 **(CDWA and SDWA against Water Board, Howard:**
15 **Writ of Mandate - Code of Civ. Proc. 1085)**

16 115. Plaintiffs incorporate all prior paragraphs as though set forth here.

17 116. A court may issue a writ of mandate to any board unlawfully depriving a party of
18 the use and enjoyment of a right to which the party is entitled. (Code of Civ. Proc., § 1085.)

19 117. In the event the Water Board or Executive Director Howard argues, or this Court
20 finds, that the Pre-1914 Curtailment was not a "decision" subject to review under Code of Civil
21 Procedure section 1094.5, CDWA and SDWA requests this Court issue a writ of mandate
22 preventing the Water Board and Executive Director Howard from unlawfully depriving CDWA
23 and SDWA landowners of the use and enjoyment of their pre-1914 rights pursuant to California
24 Code of Civil Procedure section 1085.

25 118. The Pre-1914 Curtailment deprives CDWA and SDWA landowners of the right to
26 use their property - specifically their pre-1914 rights to divert water from Delta channels -
27 without a hearing and in violation of its due process rights.
28

1 PRAYER FOR RELIEF

2 Wherefore, Plaintiffs pray for:

3 1. A declaratory judgment that:

4 a. Water is always available for diversion at WSID's License point of
5 diversion due to the geography of the Old River channel and the nature of the water sources at
6 that point of diversion.

7 b. Water is always available for diversion at riparian and pre-1914 points of
8 diversion on tidally influenced Delta channels due to the geography of the channels and the
9 nature of the water sources at those points of diversion.

10 c. Regardless of the amount of inflow from the San Joaquin or Sacramento
11 Rivers, WSID and landowners with valid water rights in CDWA and SDWA do not need to
12 cease or reduce diversions under their respective rights in order to protect the conveyance of
13 stored or transfer water through the Delta because such an action would improperly result in an
14 injury or adverse impact to a legal diverter of water in the Delta to benefit a party using the Delta
15 for conveyance of water.

16 d. A writ directing Respondents to set aside the Post-1914 Curtailment of
17 WSID License 1381.

18 e. A writ directing Respondents to set aside the Pre-1914 Curtailment of the
19 rights held by landowners in CDWA and SDWA.

20 f. Immediate and permanent injunctive relief.

21 g. An award of costs and attorney fees as allowed by law; and

22 h. Such other relief as the Court deems just and proper.

23 Respectfully submitted,

HERUM\CRABTREE\SUNTAG

24 Dated: June 29 2015

25
26 By: Steven A. Herum
STEVEN A. HERUM
Attorneys for
The West Side Irrigation District
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28

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VERIFICATION

I, TIMOTHY GRUNSKY, am the President of the Board of Director's of WOODS IRRIGATION COMPANY, a Plaintiff/Petitioner in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

Executed this 19th day of May, 2015 at Stockton, San Joaquin County, California.

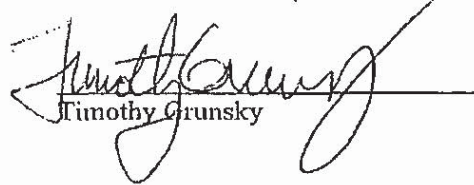

Timothy Grunsky

Exhibit A

Exhibit B



State Water Resources Control Board

May 1, 2015

WEST SIDE IRRIGATION DISTRICT
PO BOX 177
TRACY, CA 95378

In Regards to Water Right(s) (ID (password)): A000301.(778166)

NOTICE OF UNAVAILABILITY OF WATER AND IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED WITH A POST-1914 APPROPRIATIVE RIGHT

On January 23, 2015 and again on April 2, 2015, the State Water Resources Control Board (State Water Board) issued a Notice of Surface Water Shortage and Potential for Curtailment due to dry conditions throughout the State. On April 1, 2015, the Governor issued an executive order, order B-29-15, continuing the state of emergency, initially enacted on January 17, 2014, due to drinking water shortages, diminished water for agriculture production, degraded habitat for fish and wildlife, increased wildfire risk and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Delta.

Curtailment of Post-1914 Water Rights:

Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the State Water Board has determined that the existing water supply in the Sacramento River watershed is insufficient to meet the needs of all water rights holders. With this notice, the State Water Board is notifying all holders of post-1914 appropriative water rights within the Sacramento River watershed of the need to immediately stop diverting under their post-1914 water rights, with the exceptions discussed below. Please be advised that, if you continue to divert under a claim of pre-1914 right, most or all pre-1914 rights in the Sacramento River watershed are likely to be curtailed later this year due to the extreme dry conditions. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at your point of diversion, that water is necessary to meet senior water right holders' needs or is water released from storage that you are not entitled to divert. If precipitation occurs in the following weeks or months, you should not commence diversion before being notified by the State Water Board that water is legally available for diversion under your priority of right.

Permission to initiate diversions during or following significant rainfall events may be posted at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml/notices. You can get immediate email updates from the State Water Board about these notices by subscribing to "Drought Updates" at: http://www.waterboards.ca.gov/resources/email_subscriptions/

Compliance Certification Required:

Curtailed post-1914 diverters are required to document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific post-1914 water right, and, if applicable, identifies the alternate water supply you will use in lieu of the curtailed water right. Completion of the Form is mandatory to avoid unnecessary potential enforcement proceedings. You are required to complete the Form for each post-1914 water right identified through this curtailment at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/2015curt_form.php

Letter Received from Thomas Howard, Executive Director

May 1, 2015

Exceptions to Curtailment:

If your diversion is for hydroelectric generation by direct diversion only and all water diverted is returned to the same stream system, you may continue to divert under your post-1914 permit or license. If you continue to divert under the above circumstances, you must identify that on the Form and provide the information requested. If you have previously collected water to storage in a reservoir covered by a post-1914 right prior to this curtailment notice, you still may beneficially use that previous stored water consistent with the terms and conditions of your post-1914 water right. However, you must bypass all inflow into the reservoir at all times during the curtailment.

No Exception for Health and Safety:

There is no exception to the curtailment notice for health and safety needs. However, we are aware that some water users must comply with directives issued by the Division of Drinking Water (DDW), or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. Should you continue to divert water under a curtailed water right to meet human health and safety needs, you must complete the Form identifying your health and safety needs, whether there is an applicable DDW, state or local regulation and your attempts at securing an alternate water supply. The State Water Board will carefully analyze the non-exempted continued diversions for minimum health and safety needs on a case-by-case basis.

Potential Enforcement:

Those who are found to be diverting water beyond what is legally available to them may be subject to administrative fines, cease and desist orders, or prosecution in court. The State Water Board may levy fines of \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of a valid water right. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board issues a Cease and Desist Order against an unauthorized diversion, violation of any such order can result in a fine of \$10,000 per day. (See Water Code, §§ 1831, 1845.)

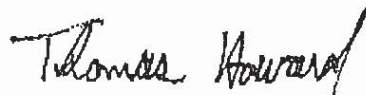
The State Water Board is encouraging diverters to work together to reach local voluntary agreements that not only provide solutions that help local communities with water shortages, but also prevent impacts to other legal users of water and do not cause unreasonable effects on fish and wildlife. If you have any questions, please call our Curtailment Hotline at (916) 341-5342, contact us by email at: SWRCB-Curtailment-Certification@waterboards.ca.gov, or review our drought year webpage at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml

The State Water Board also encourages water right holders to assist in the prevention of unlawful diversion of water and in discouraging any waste or unreasonable use of water.

To assist the State Water Board, you may file a complaint at: http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm.

We recognize the burden and loss this notice creates for you during the drought, and want to assure that others do not illegally benefit from your curtailments.

Sincerely,



Thomas Howard
Executive Director

Exhibit C



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

June 12, 2015

ZUCKERMAN-MANDEVILLE, INC.
C/O RECLAMATION DISTRICT NO 2030
3425 BROOKSIDE ROAD, SUITE A
STOCKTON, CA 95219

In Regards to Claim of Right(s) [ID (password)]: S020481 (745068), S020485 (146388), S020488 (553213), S020492 (665565), S020493 (715933)

NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO-SAN JOAQUIN WATERSHEDS AND DELTA WITH A PRE-1914 APPROPRIATIVE CLAIM COMMENCING DURING OR AFTER 1903

On January 23, 2015 and again on April 2, 2015, the State Water Resources Control Board (State Water Board) issued a Notice of Surface Water Shortage and Potential for Curtailment due to dry conditions throughout the State. On April 1, 2015, the Governor issued an executive order, order B-29-15, continuing the state of emergency, initially enacted on January 17, 2014, due to drinking water shortages, diminished water for agriculture production, degraded habitat for fish and wildlife, increased wildfire risk and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Delta (Delta).

On April 23, 2015 and May 1, 2015, the State Water Board issued curtailment notices to all post-1914 appropriative water rights in the Sacramento and San Joaquin River watersheds, inclusive of the Delta, due to insufficient projected water supplies. Based on updated water supply projections provided by the Department of Water Resources in early May, the State Water Board is now notifying pre-1914 claims of right, with a priority date of 1903 and later for the Sacramento-San Joaquin watersheds and the Delta, that, due to ongoing drought conditions, there is insufficient water in the system to service their claims of right.

Curtailment of Certain Pre-1914 Claims of Right Commenced During or After 1903:

Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the existing water supply in the Sacramento-San Joaquin watersheds and Delta watersheds is insufficient to meet the needs of some pre-1914 claims of right. With this notice, the State Water Board is notifying pre-1914 appropriative claims of right with a priority date of 1903 and later within the Sacramento -San Joaquin watersheds and Delta of the need to immediately stop diverting water with the exceptions discussed below. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at your point of diversion, that water is necessary to meet more senior water right holders' needs or the water may be released previously stored water which must continue instream to serve its intended beneficial use. If precipitation occurs in the following weeks or months, you should not commence diversion before being notified by the State Water Board

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

that water is legally available for diversion under your priority of right. Evaluations for additional curtailments of more senior rights will be made every two weeks through September.

Compliance Certification Required:

Holders of pre-1914 water right claims with priority dates equal to or later than 1903 are required to document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific pre-1914 claim of right. Completion of the Form is mandatory to avoid unnecessary potential enforcement proceedings. You are required to complete the Form for each pre-1914 claim of right identified through this notice at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/2015curt_form.php

Exceptions to Curtailment:

If your diversion is for hydroelectric generation by direct diversion only and all water diverted is returned to the same stream system, you may continue to divert under your pre-1914 claim of right. If you continue to divert under the above circumstances, you must identify that on the Form and provide the information requested. If you have previously collected water to storage in a reservoir covered by a pre-1914 claim of right prior to this curtailment notice, you still may beneficially use that previously stored water. However, you must bypass all inflow into the reservoir at all times during the period this notice remains in effect.

No Exception for Health and Safety:

There is no exception to this notice for health and safety needs. However, we are aware that some water users must comply with directives issued by the Division of Drinking Water (DDW), or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. Should you continue to divert water under a claim of right subject to this notice to meet human health and safety needs, you must complete the Form identifying your health and safety needs, whether there is an applicable DDW, state or local regulation and your attempts at securing an alternate water supply. The State Water Board will carefully analyze the non-exempted continued diversions for minimum health and safety needs on a case-by-case basis.

Potential Enforcement:

Those who are found to be diverting water beyond what is legally available to them may be subject to administrative penalties, cease and desist orders, or prosecution in court. If the State Water Board finds following an adjudicative proceeding that a person or entity has diverted or used water unlawfully, the State Water Board may assess penalties of \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of a valid water right. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board issues a Cease and Desist Order against an unauthorized diversion, violation of any such order can result in a fine of \$10,000 per day. (See Water Code, §§ 1831, 1845.)

The State Water Board is encouraging diverters to work together to reach local voluntary agreements that not only provide solutions that help local communities with water shortages, but also prevent injury to other legal users of water and do not cause unreasonable effects on fish and wildlife. If you have any questions, please call our Curtailment Hotline at (916) 341-5342, contact us by email at: SWRCB-Curtailment-Certification@waterboards.ca.gov, or review our drought year webpage at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml#notices

To Water Right Users in the
Sacramento-San Joaquin Delta,
Sacramento & San Joaquin River Watersheds

-3-

June 12, 2015

The State Water Board also encourages water right holders to assist in the prevention of unlawful diversion of water and in discouraging any waste or unreasonable use of water. To assist the State Water Board, you may file a complaint at:

http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm

We recognize the burden the drought creates, and want to assure that others do not illegally benefit from your curtailments.

Sincerely,



Thomas Howard
Executive Director

Exhibit D



STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

LICENSE 1381

PERMIT 270

APPLICATION 301

THIS IS TO CERTIFY, That The West Side Irrigation District of Tracy,

California, *has* made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of Old River in San Joaquin County

tributary of San Joaquin River

for the purpose of irrigation under Permit 270 of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from April 17, 1916,

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed eighty-two and one-half (82.5) cubic feet per second from about April 1st to about October 31st of each season. In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

The point of diversion of such water is located on the South bank of Old River, bearing North twenty-eight degrees fifty-three minutes twenty seconds (28° 53' 20") East, four thousand four hundred sixty-six and six tenths (4466.6) feet from the South quarter corner of Section 3, T 2 S, R 4 E, M.D.B.&M., being within the Rancho El Pescadero and the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 3.

A description of the lands or the place where such water is put to beneficial use is as follows:

11,993.76 acres within the boundaries of the West Side Irrigation District, as shown on map filed with the Division of Water Rights, March 21, 1929.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

Sec. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purposes for which said water was appropriated, but no longer, and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; provided, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such instance as it now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission, shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; provided, that any action brought to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent thereto unless otherwise in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the service or the price of the water to be received by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time provided, however, that such application for a permit or the granting hereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; and provided, further, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs thereof, then pending the application of the state appropriation permit, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; and provided, further, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal use of the entire appropriation permitted; and provided, further, that where such municipality shall desire to use the additional water granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water, and such compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness my hand and the seal of the Department of Public Works of the State of California, this 29th day of September, 1933.

EDWARD HYATT
State Engineer

By Harold Conkling
Disty

[SEAL]



LICENSE 1381
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RESOURCES

LICENSE
TO APPROPRIATE WATER

ISSUED TO The West Side Irrigation District

DATED September 29, 1933

FORM 6-23 IN CALIFORNIA STATE PRINTING OFFICE



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 301
Page 1 of 3

PERMIT 270

LICENSE 1381

THIS IS TO CERTIFY, That

West Side Irrigation District
P.O. Box 177
Tracy, CA 95378-0177

has the right to the use of the waters of Old River in San Joaquin County

tributary to San Joaquin River

for the purpose of Municipal, Domestic, Industrial, and Irrigation uses.

Amended License 1381 supersedes the license originally issued on September 29, 1933, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (State Water Board), or its predecessor, and the terms of Permit 270. The priority of this right dates from April 17, 1916. Proof of maximum beneficial use of water under this license was made as of August 22, 1933 (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed eighty-two and five tenths (82.5) cubic-feet per second from (1) about April 1 to October 31 of each year for Irrigation use, and (2) from April 1 to October 31 of each year for Municipal, Domestic, and Industrial uses. The maximum amount diverted under this license shall not exceed 27,000 acre-feet per year.

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time for Irrigation use provided there is no interference with other rights and instream beneficial uses and provided further that all terms of conditions protecting instream beneficial uses are observed.

(0000027)

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 3, North 2,111,904 feet and East 6,268,367 feet, being within SE¼ of NE¼ of Section 3, T2S, R4E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

11,993.76 acres within the boundaries of the West Side Irrigation District as shown on amended map dated March 21, 1929, filed with the State Water Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2089) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

James W. Kassel for:

Victoria A. Whitney

Deputy Director for Water Rights

Dated:

AUG 19 2010