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California Supreme Court Upholds Water Board Action to Protect the Delta

Largest Penalty to Date for Illegal Water Diversions in the Delta

SACRAMENTO—On Wednesday, February 13, the California Supreme Court upheld \$62,000 in penalties against persons for illegally pumping water in the San Joaquin-Sacramento River Delta. The penalties were assessed by the State Water Resources Control Board in 2004, because the parties were pumping water from the Delta in violation of their water right permits. The permits contain conditions to protect water quality in the Delta for fish, agriculture and drinking water supplies

California's water right system sets up priorities for which users are allowed to take and use water when supplies are not sufficient to meet the needs of all users. When there is insufficient water, more junior water right holders (generally those whose rights were established more recently) are required to curtail their diversions so that more senior water right holders have sufficient water to meet their needs. Water right permits may also be subject to conditions intended to protect fish and water quality.

The permits in question include limitations on the holders' water rights, which require the permit holders to cease pumping when flows are insufficient for senior water rights holders and Delta water quality objectives. Under those circumstances, the state and federal water projects are required to release water from upstream reservoirs to meet those objectives, and some other water users are required to curtail their diversions. The provision (known as Term 91) is designed to protect water used for agricultural irrigation from excessive salinity and to protect Delta water quality for fish and drinking water supplies. The provision is also designed to ensure that the reservoir releases made by the water projects reach the Delta to meet their intended purposes and are not diverted by more junior water right holders.

"I am pleased that the courts have upheld the State Water Board's ability to enforce laws designed to protect water quality and water rights," said Tam Doduc, Chair of the State Water Resources Control Board. "California faces enormous challenges with respect to the Delta. Enforcing existing requirements

is an important component of protecting and ultimately restoring the health of the Delta.”

The California Supreme Court decision leaves in place a unanimous decision of the Third District Court of Appeal, which had affirmed the water board’s enforcement action. (Phelps v. State Water Resources Control Board (2007) 157 Cal.App.4th 89).

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