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March 13, 2008

Ms. Jeanine Townsend, Clerk
State Water Resources Control Board
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, California 95814

Re: **3/18/08 BOARD MEETING: Consideration Of A Proposed Order To Modify Three Water Right Permits And Approve A Long-Term Water Transfer Agreement For Yuba County Water Agency**

Dear Ms. Townsend:

This letter respectfully transmits the comments of the San Luis & Delta-Mendota Water Authority ("Authority") and Westlands Water District ("Westlands") on the proposed order following a hearing on Yuba County Water Agency's ("YCWA") petition to modify water right permits by making changes to revised Decision 1644 ("Rd-1644") for the Lower Yuba River, and petition for long-term transfer of water, both related to the Lower Yuba River Accord ("Proposed Order").

The Authority and Westlands commend the staff of the State Water Resource Control Board ("State Water Board") for analyzing and distilling the evidence before the State Water Board into a well written Proposed Order. The Authority and Westlands provide the following four comments, the latter two of which are largely editorial.

1. Provisions Of The Proposed Order Limiting The Ability Of The United States Bureau Of Reclamation And The California Department Of Water Resources To Convey YCWA Water South Of The Delta Are Unnecessary

The Proposed Order seeks to include in the permit of YCWA terms and conditions that limit the ability of the United States Bureau of Reclamation

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Most recent, in the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, the State Water Board established:

[W]ater quality objectives which, in conjunction with the water quality objectives for the Bay-Delta Estuary that are included in other State Water Board adopted water quality control plans and in water quality control plans for the Central Valley and San Francisco Bay Basins, when implemented, will: (1) provide for reasonable protection of municipal, industrial, and agricultural beneficial uses; (2) provide reasonable protection of fish and wildlife beneficial uses at a level which stabilizes or enhances the conditions of aquatic resources; and (3) prevent nuisance.

(2006 Bay-Delta Plan, p. 10). The State Water Board achieved that level of protection, in part, through amendments and/or supplements to the water rights held by Reclamation and DWR. (See State Water Board Revised Decision 1641). Nothing in the Yuba Accord or the requested change to the YCWA permit would cause action to be taken that usurps the level of protection established by the 2006 Bay-Delta Plan.

2. The State Water Board Should Not Reserve Its Jurisdiction To Address Changes In The Biological Opinion For The Central Valley Operations Criteria And Plan Or Interim Remedial Order In *NRDC V. Kempthorne*

The Proposed Order would also reserve the State Water Board's jurisdiction over the permit of YCWA, allowing the State Water Board to affect the water rights of YCWA, in part, upon:

1. Issuance of any new Biological Opinion for the Central Valley Operations Criteria and Plan or, possibly, if the Interim Remedial Order in *NRDC v. Kempthorne* is stayed or overturned on appeal, and
2. A change in listing status of any species in the Delta.

(Proposed Order, pp. 51, 58-59).

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Similar to the terms and conditions that could limit conveyance, the terms and conditions quoted above are not needed. The water rights of Reclamation and DWR contain a provision that require them to operate the Central Valley Project and State Water Project in compliance with the federal Endangered Species Act. Their water rights contain Standard Term 14, which provides:

This permit 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 2097) 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 permittee/licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee/Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit/license.

Thus, the water rights held by Reclamation and DWR contain provisions to address a circumstance where there is a change in either: (1) the regulation of the Central Valley Project and State Water Project under the federal Endangered Species Act, or (2) the status of any protected species affected by the Central Valley Project or State Water Project.

3. Specific, Editorial Changes

Section 4.3 Other Factors In Determining Whether The Petitions Are Reasonable

This section discusses changes from the Draft Water Purchase Agreement evaluated in the Draft EIR/EIS to YCWA Ex. 11(a). The discussion mischaracterizes the changes. It is suggested that, rather than attempt to describe the changes, the Order should simply quote the language from the Draft Water Purchase Agreement and YCWA Ex. 11(a).

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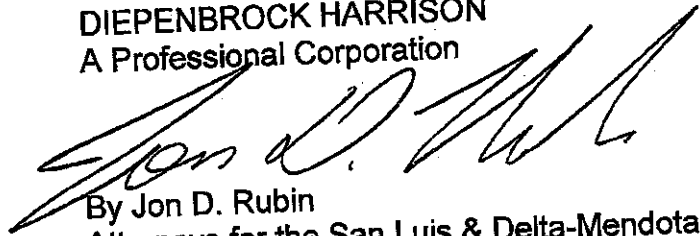
Order On Long-Term Transfer Petition, Operative Paragraph 4

This paragraph references the "Tracy Pumping Plant." The references should be to the "Jones Pumping Plant."

Thank you for your consideration of these comments.

Very truly yours,

DIEPENBROCK HARRISON
A Professional Corporation



By Jon D. Rubin
Attorneys for the San Luis & Delta-Mendota
Water Authority and Westlands Water District

cc: Daniel Nelson
Ara Azhderian
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Jason Peltier