U.S. Bureau of Reclamation
Statement

State Water Board Meeting

February 1, 2006
Amended Proposed CDO
Against U.S. Bureau of Reclamation and Department of Water Resources

The U.S. Bureau of Reclamation (Reclamation) appreciates the opportunity to comment on the Amended Proposed Cease and Desist Order circulated on January 27, 2006. Governmental agencies are at their best when working toward common goals, not trying to force another governmental entity into an adversarial role. Hopefully, this hearing will get us working together, not towards opposition.

Reclamation stands by its comment letter submitted to the Board on January 6, 2006, and as stated, believes that the Board is exceeding its authority by making the U.S. a scapegoat for salinity degradation that occurs beyond the control of the U.S., at points in the interior Delta where reservoir releases, or export pumping, are not likely to have a reasonable impact. As we stated in our comment letter, Reclamation is willing to accept responsibility for matters within its control, but not to become an open checkbook for matters beyond its control. Reclamation believes that protracted and adversarial litigation on these issues is not in the public interest and hopes the Board takes seriously Reclamation's request for nonbinding arbitration or mediation. However, if the Board does adopt the Amended Proposed Cease and Desist Order, which we believe is wrong, Reclamation cannot stand by and allow the Board to exceed its authority and make the U.S. liable for water quality degradation not caused by the U.S.

Even the Board admits that, "... no actual violation is alleged in the draft CDOs ..."

(Amended CDO, p. 20). So, there's no problem but we're liable? The Board's insistence that the provision in Reclamation's water rights requiring a finding of causation does not apply to "threatened violations," cannot withstand rational scrutiny. Likewise, the evidence relied upon by the Board to establish a "threatened violation" is inadequate and also not likely to withstand rational scrutiny. By all measures, adoption of the Amended CDO will deny the U.S. the fundamental due process and fairness originally written in its water rights by the Board.

Reclamation believes the Board would benefit from further analyses of the southern interior Delta salinity issues, rather than racing to entrench itself into complicated legal battles. A rational resolution for Delta salinity conditions, to the extent caused by the U.S., is within the authority of the Board and could result from nonbinding arbitration or mediation, or further discussions and communications between our state and federal agencies.

However, because Reclamation has no information to believe the Board will accept such an offer, Reclamation must make the following objections which are in addition to the issues and objections raised by Reclamation in its closing brief and its January 6, 2006 comment letter:

1. Reclamation objects to new record evidence presented in the most recent Amended CDO, which mis-characterizes evidence not presented in this hearing – and which has not been subject to cross-examination or other verification by the parties. Inclusion of Figure 2, "History of Southern Delta Salinity Issues" is as if the Board is saying, "the CDO is not supported by the evidence of record, so we'll just go outside the record and create evidence that supports our pre-intended result." This is but another example of how this process has been fundamentally unfair.

2. Reclamation objects to, and finds disconcerting, the Board's characterization of events from "1998 to 1999" and its description of a "backstop" agreement. Although not clear, if the

Board is referring to the San Joaquin River Agreement, those provisions are solely for Delta outflow at Vernalis and were never tied to the salinity standards, or the three interior Delta stations. The Board's characterization of these events is after-the-fact creation of history – and you got it wrong. Reclamation further denies, or has no information to verify or not to verify, all the other statements of "history" as alleged in the Board's order.

3. Reclamation believes that the adoption of the CDO will modify D-1641 in a way that has never had proper analysis under the state's California Environmental Quality Act (CEQA). The Board has not analyzed implementation of the 0.7 EC standard at the three interior Delta stations in Reclamation's permits (especially absent the causation provision). The Board's CEQA analysis for D-1641 looks only at meeting a 0.7 EC salinity standard at Vernalis. Therefore, the Board has never made the appropriate balance between the 0.7 standard at the three south Delta stations, and other beneficial uses which rely on federal facilities and San Joaquin waters.

Conclusion, Reclamation has no qualms about being responsible for water quality degradation that it has caused, however, the U.S., and the projects built by the U.S., cannot be an open line of credit from which the Board makes withdrawals to correct water quality degradation caused by other factors, or other persons. Reclamation projects are more like a cash account, and the more you spend today, the less you have tomorrow. The Board has not fully analyzed the ramifications of making Reclamation fully responsible for the 0.7 EC standard, either from a practical, or legal, perspective.