

**Statement of Thomas W. Birmingham
Westlands Water District**
February 1, 2006 SWRCB Board Meeting

Proposed CDO against DWR and USBR

Good morning madam Chairwoman, Board members and staff. I am Thomas W. Birmingham, General Manager/General Counsel of Westlands Water District. I want to take this opportunity to urge that you not adopt the draft Cease and Desist Order.

At the outset, I would like to pose the following question: What problem would be solved or averted by adoption of the Cease and Desist Order. The simple answer is none. Neither the Bureau of Reclamation nor the Department of Water Resources has violated the terms or conditions of their respective water right permits requiring that the projects be operated to meet water quality objectives in the southern Delta, and there is little potential that the terms and conditions of their permits will be violated.

Historically, poor water quality in the southern Delta was caused in large part by poor quality water in the San Joaquin River. However, water quality in the River has improved significantly over the course of the last ten years. This fact is borne out by the conclusion in the draft Cease and Desist Order that there is no potential violation of the water quality objective at Vernalis. This improvement is the result a number of programs, including monumental efforts by farmers on the westside of the San Joaquin Valley to reduce discharges of salts into the River. Adoption of the Cease and Desist Order will only lead to conflict, at a time when our collective effort should continue to be focused on implementing the type of consensus based projects that have lead to dramatic improvements.

When D-1641 was adopted, the Water Board recognized that there are many factors that affect water quality in the southern Delta, most of which are beyond the control of either the Central Valley Project or the State Water Project. These factors include tidal actions, local diversions, local agricultural drainage discharges and return flow, municipal discharges, channel capacity, and upstream development. For this reason, D-1641 provided that if there were an exceedance of a southern Delta salinity standard, an analysis would be conducted by the Water Board to determine if the exceedance were beyond the control of the Projects. In essence, the Cease and Desist Order would amend the Projects' water right permits by making them the guarantor of these objectives, and the Projects would be held responsible for any exceedance, regardless of its cause. Moreover, if the Vernalis standard is being maintained, it is intuitive that a factor or factors downstream of Vernalis caused an exceedance of a downstream water quality objective.

I would like to briefly address the State Water Project's responsibility, or more accurately the lack of responsibility, for water quality on the San Joaquin River. Operations of the State Water Project do not affect the San Joaquin River, and there is no basis for making the State Water Project responsible for water quality degradation caused by poor water quality conditions in the River. Contrary to statements in the draft Cease and Desist Order, the State Water Project did not agree to backstop salinity objectives in lieu of the Board assigning responsibility to other parties to meet the objectives. Rather, through the San Joaquin River Agreement, the State Water Project agreed to backstop Delta outflow standards that otherwise would have been assigned to other parties.

Senator Dianne Feinstein frequently observes that if we are to have any chance of achieving improved conditions in the Delta, we have to stay out of the courtroom. Improvements in water quality have been made, with the active cooperation of Reclamation and DWR, through consensus based programs like the Westside Regional Drainage Program about which you heard through testimony during the hearing on the Cease and Desist Order. Our collective effort and attention should be focused on continued implementation of those programs, particularly the South Delta Improvement Plan. Adoption of the Cease and Desist Order would be a senseless step backwards. Senseless because no violation has occurred, and there is little potential of future violations.

Please do not adopt the Cease and Desist Order.