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11 BEFORE THE
12 STATE WATER RESOURCES CONTROL BOARD
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14 In Re Draft Cease and Desist Orders against
15 the United States Bureau of Reclamation
16 and the California Department of Water
17 Resources and Reconsider the Conditional
18 Approval of the April 25, 2005 Water
19 Quality Response Plan for use of Joint
20 Points of Diversion by the United States
21 Bureau of Reclamation and the California
22 Department of Water Resources

23 **SUPPLEMENTAL COMMENTS ON**
24 **DRAFT ORDER ADOPTING CEASE AND**
25 **DESIST ORDER AND GRANTING**
26 **PETITIONS FOR RECONSIDERATION**

27 The San Luis & Delta-Mendota Water Authority (Water Authority) and Westlands Water
28 District (Westlands) provide the following supplemental comments on the December 30, 2005
draft "Order Adopting Cease and Desist Order and Granting Petitions for Reconsideration" (Draft
Order). In his December 30, 2005, letter, which transmitted the Draft Order, Lewis Moeller,
Chief of the Hearings Unit, requested comments on "the general acceptability of the [Draft O]rder
or possible technical corrections." In addition to the defects raised in their January 10, 2005
comment letter, the Water Authority and Westlands have since learned of another, potential
defect that would make the Draft Order unacceptable.

As part of the proceedings that lead to the issuance of the Draft Order, a prosecutorial
team comprised of State Water Resources Control Board (Water Board) staff was established.

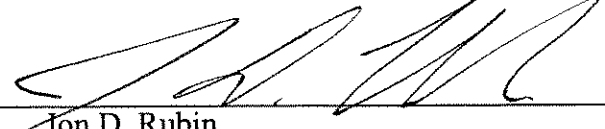
1 The prosecutorial team included Larry Lindsay, Water Resources Control Engineer; Mark
2 Stretars, Senior Water Resources Control Engineer; John O'Hagan, Supervising Water Resources
3 Control Engineer; and Andrew Sawyer and Erin Mahaney, Staff Counsel. See, e.g., August 4,
4 2005, Notice of Public Hearing. The prosecutorial team was a party in the hearing and was the
5 principal party, if not the only party, to present evidence of "threatened violations."

6 If any of the prosecutorial team members, particularly Mr. Sawyer or Ms. Mahaney as
7 counsel, simultaneously acted as an adviser to the Water Board on another matter, even if the
8 other matter is or was unrelated to issues addressed in the Draft Order, it would give the
9 appearance of unfairness and suggest the probability of unfair influence. Indeed, it would be
10 unconstitutional and in violation of the ruling in *Quintero v. City of Santa Ana* (2003) 114
11 Cal.App.4th 810, and possibly under a pending ruling in *Morongo Band Of Mission Indians v.*
12 *State Water Resources Control Board*, Case No. 04CS00535.

13 Thus, if any of the prosecutorial team members simultaneously acted as an adviser to the
14 Water Board on another matter, the Water Board should have but failed to disqualify the
15 prosecutorial team member(s). At this time, if it is the case that a prosecutorial team member
16 acted as an advisor to the Water Board on another matter at the time this matter was before the
17 Water Board, the Water Board must withdraw the Draft Order and hold a new hearing before
18 deciding whether the issue an order (1) against the United States or the Department of Water
19 Resources to cease and desist, or (2) on the petitions for reconsideration of the Water Quality
20 Response Plan.

21 Dated: January 24, 2006

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23 By 
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