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BEFORE THE
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

In the matter of)
HEARING TO CONSIDER)
MODIFICATION OF PART A OF) **SAN JOAQUIN COUNTY CLOSING**
ORDER 2006-0006) **BRIEF**

I. INTRODUCTION

San Joaquin County and San Joaquin County Flood Control and Water Conservation District (collectively "County") submits this closing brief in the hearing to determine whether to Modify Part A of Order WR 2006-0006 which, in part, adopted a Cease and Desist Order against the Department of Water Resources ("DWR") and the United States Bureau of Reclamation ("USBR" or "Bureau").

The County submits that substantial evidence does not support the modification of WR 2006-0006 and that WR 2006-0006, the Cease and Desist Order ("CDO"), should not be modified by the State Water Board. DWR and the USBR have failed to meaningfully consider and take actions to meet the salinity standards within the Delta or take action to "obviate the threat of noncompliance"

1 with the salinity conditions in their permits and licenses as required by the CDO. In addition, the
2 State Water Board does not have authority in this proceeding to provide interim measures to
3 alleviate the lack of compliance with the Water Quality Control Plan salinity objective obligations
4 by DWR and USBR. Furthermore, the evidence indicates that DWR and USBR are in violation of
5 the CDO and D 1641 and that the State Water Board should take enforcement action against DWR
6 and USBR.

7 **II. LEGAL ARGUMENT**

8 The CDO is clear. D 1641 is clear. In D 1641 the State Water Board assigned responsibility
9 to DWR and USBR for meeting the EC objectives at Brandt Bridge, Old River near Middle River,
10 and Old River at Tracy Bridge. (Staff Exhibit 1, Page 9, Figure 2.) The applicable standards are
11 specified in D 1641 and reiterated in WR 2006-0006 that after April of 2005 an objective of 0.7 EC
12 applies during April through August and an objective of 1.0 EC applies the remaining portion of the
13 year unless permanent barriers or equivalent measures are completed and a plan to protect
14 agriculture is approved. (The Third Appellate Court concluded in February of 2006 in *State Water*
15 *Resources Control Board Cases* 136 Cal.App.4th 674, 735 that the delayed implementation until
16 April 2005 was invalid, but moot.) The permanent barriers have not been implemented and a plan
17 to protect agriculture has not been developed or approved. Salinity objective exceedences have
18 occurred and are continuing to occur. (DWR-25 through DWR-32, Staff Exhibit 4. Amending the
19 CDO is not warranted, is not proper, and is not supported by substantial evidence. Rather, the State
20 Water Board has an obligation to enforce the water quality control plan through enforcement of D
21 1641 and the CDO.

22 23 **A. Modification of the salinity objective or providing relief from meeting the** 24 **salinity objectives is not permissible in this proceeding.**

25 The Third District Court of Appeals in *State Water Resources Control Board Cases* (2006)
26 136 Cal. App.4th 674 (also referred to as the *Robie* Decision), evaluated whether or not the State
27 Water Board in D 1641 could alter or amend the water quality objectives stating as follows:
28

1 “There is nothing in the 1995 Bay-Delta Plan that allowed the Board to further
2 delay implementation of the 0.7 EC objective . . . or that allowed the Board to
3 replace the objective with a different objective under any circumstances.” “In
4 taking these actions, the Board failed to adequately implement the 1995 Bay-
5 Delta Plan and instead effectively amended the 1995 Bay-Delta Plan without
6 complying with the procedural requirements for amending a water quality control
7 plan.” *State Water Resources Control Board Cases* (2006) 136 Cal. App.4th 674,
8 735.

9 The *Robie* Court concluded that the State Water Board could not amend the water quality
10 control plan in the D 1641 proceedings. Rather to properly modify the water quality standards the
11 State Water Board would have to conduct a proceeding to modify the water quality control plan. D
12 1641 was not properly such a proceeding. The CDO was not such a proceeding and certainly the
13 pending proceeding to consider modifying the CDO is not properly such a proceeding. Thus the
14 water quality standards cannot be properly modified in this proceeding. This also precludes
15 specifying conditions in which enforcement of salinity objective exceedences will not occur.

16 The *Robie* Court ordered that the State Water Board “must either fully implement the
17 southern Delta salinity objectives as set forth in the 1995 Bay-Delta Plan or must duly amend the
18 plan.” *Ibid*. This Appellate Court decision was considered in the final CDO Order. The CDO
19 states in footnote 7 regarding the Appellate Court decision as follows: “In its recent opinion in State
20 Water Resources Control Board Cases (C044714, JCCP No 4118) issued February 9, 2006, the
21 Court of Appeal, Third Appellate District, opined that the State Water Board cannot now replace the
22 0.7 EC objective with a 1.0 EC objective as envisioned in footnote 5 on page 182 of D-641.” In fact,
23 subsequent to the Appellate Court decision and the CDO, the State Water Board modified the
24 requirements of the Water Quality Control Plan to delete footnote 5.” See Staff Exhibit 8. WQCP at
25 p. 13, table 2. DWR and USBR have a clear obligation to meet the salinity objectives throughout
26 the Delta as measured at the three southern Delta salinity measurement locations.

27 **B. The State Water Board has an obligation to comply with the water quality**
28 **control plan and its salinity objectives.**

The *Robie* Court indicated that the State Water Board has an obligation to comply with the
water quality control plan and take action on salinity objective violations. When evaluating the legal
ability to deviate from the water quality control plan standards and implement the alternative flows

1 provided in the San Joaquin River Agreement, the Third Appellate Court reviewed the applicable
2 law stating “Section 13247-part of the Porter-Cologne Act- provides that ‘[s]tate offices,
3 departments, and boards, in carrying out activities which may affect water quality, *shall* comply with
4 water quality control plans approved or adopted by the state board unless otherwise directed or
5 authorized by statute. . . .” (Italics added in original.) *Id.* at p. 730. The Court continued that “the
6 Board was compelled by section 13247 to comply with the 1995 Bay-Delta Plan unless another
7 statute authorized the Board *not* to comply with the plan.” (Italics in original) *Ibid.* The Court
8 concluded that no authority existed to authorize the Board not to comply with the plan.

9 This rule is relevant to the pending State Water Board proceeding in two respects. First, the
10 State Water Board has no authority in this proceeding to amend the water quality objectives and plan
11 of implementation to allow interim measures to replace the requirement to meet the salinity
12 objectives; and second the State Water Board must “comply with its own water quality control plan”
13 and take action regarding the salinity objective violations.

14 Interim measures cannot be properly approved to provide alleged equivalent compliance with
15 the existing water quality objectives or to provide additional conditions on the obligations to meet
16 the water quality objectives. Hearing Officer Baggett asked specific questions during the hearing for
17 discussion in the closing briefs including: (1) Should the date of the CDO of July 1, 2009 be
18 extended? and; (2) If extended, what are the appropriate alternatives or interim measures? These are
19 simply not proper questions or items to be considered in this proceeding, as each would be a
20 modification of the water quality control plan and D 1641 and a direct and clear violation of the
21 holding of the *Robie* Decision.

22 In addition, it is also not proper in this proceeding to reassign the obligation to meet the water
23 quality objectives or to share the burden of meeting such or implementing interim measures. D 1641
24 determined that obligation was imposed on DWR and USBR (Staff Exhibit 1, Page 9.) Sharing the
25 burden of meeting the salinity objectives on other dischargers is not proper in this proceeding and
26 should not be entertained by the hearing officers or the State Water Board.

1 **C. Modification of the CDO is a de facto modification of the Water Quality Control**
2 **Plan, which is not permissible in this proceeding.**

3 The *Robie* Decision indicated that the principle mechanism of the State Water Board to
4 enforce compliance with water quality control plans is “its regulation of water rights.” *State Water*
5 *Resources Control Board Cases* (2006) 136 Cal. App. 4th 674, 732. citing the *Racanelli* Court at
6 *United States v. State Water Resources Control Bd.*, (1986) 182 Cal. App. 3d 82, 125. The *Robie*
7 Court indicates as follows:

8 “It would be strange if the Board, having determined in a water quality control
9 plan that a water rights proceeding was necessary to achieve the water quality
10 objectives in that plan, could simply decide *not* to take action in that proceeding
11 and thereby refuse to enforce its own plan. Fortunately, the Legislature has not
12 authorized the Board to do any such thing. Thus, the Board cannot – as it
 attempted to do here- make a de facto amendment to a water quality objective in a
 water quality control plan by simply refusing to take action that it has identified as
 necessary to achieve that objective.” *Ibid.*

13 This is exactly what the State Water Board is attempting to do again by considering modifying the
14 CDO and requesting information on “interim measures” and by failing to take action enforcing the
15 water quality plan’s salinity objectives in the South Delta.

16 In 2006 the State Water Board understood its need and ability to enforce D 1641. The CDO
17 clearly indicates the consequences of violating the CDO. The CDO states on page 4 as follows:

18 “If USBR or DWR violates this CDO, the State Water Board may proceed
19 pursuant to Water Code section 1845(a). Under section 1845, the penalties for a
20 violation of a CDO are injunctive relief issued by a superior court and liability
21 for a sum not to exceed \$1,000 for each day in which the violation occurs. Either
 the court or the State Water Board may impose civil liability against a violator of
 a CDO.” Staff Exhibit 1.

22 In the *Robie* Decision the Court indicated that approving the San Joaquin River Agreement in
23 lieu of the water quality control plan’s Vernalis pulse flow objective, even on a temporary basis, was
24 a “de facto amendment of that plan without complying with the procedural requirements for
25 amending a water quality control plan.” *State Water Resources Control Board Cases* (2006) 136
26 Cal. App. 4th 674, 734. The same applies to the CDO proceeding. By amending the CDO and
27 providing interim measures to address water quality the State Water Board would be undertaking a
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1 de facto amendment of the water quality plan without following the proper procedure. The
2 contemplated enforcement is necessary and required by law. The evidence at the hearing is clear
3 that violations of the salinity objectives are occurring. The State Water Board has not made any
4 determinations if this is a violation of the CDO and D 1641. This is a failure to implement the Water
5 Quality Control Plan. By failing to enforce the salinity objective violations of the Water Quality
6 Control Plan, as identified in the CDO, the State Water Board is providing a “de facto amendment
7 to a water quality objective in a water quality control plan by simply refusing to take action that it
8 has identified as necessary to achieve the objective.”

9 **D. DWR and USBR have not demonstrated due diligence to take action to obviate**
10 **the threat of noncompliance**

11 The CDO states on page 17 as follows: “The purpose and effect of this CDO is to require
12 DWR and USBR to implement measures to obviate the threat of violation that is caused by their
13 failure to carry out measures that would improve salinity levels in the southern Delta.” (Emphasis
14 added.) The testimony and evidence presented in the pending proceeding make it clear: DWR and
15 USBR have not yet implemented anything different since 2006 to change the circumstances or
16 alleviate the threatened violations of the objectives or improve the salinity levels in the south Delta.
17 There are a variety of measures that can be implemented to address water quality within the South
18 Delta as presented on numerous occasions by the South Delta Water Agency. (SDWA12.) The
19 proposed new modifications of temporary barriers is currently under review and have not yet been
20 implemented. (SDWA 12, Testimony of Mark Holderman.) The temporary barrier culverts have
21 been tied open differently recently; however, this is essentially the only change indicated in the
22 hearing; hardly an action to obviate the threat of violations.

23 Footnote 12 of the CDO on page 18 states: “Even in the absence of this CDO, DWR and
24 USBR must, under the permits and license, meet the 0.7 EC objective.” The footnote continued after
25 discussing the construction of the barriers or equivalent measures as follows: “**The DWR and the**
26 **USBR would take substantial risk if they failed to act promptly to enable themselves to meet**
27 **the objectives.**” (Emphasis added.) Now 3 years later when DWR and USBR have failed to act
28 promptly the State Water Board is considering amending the CDO and requiring “interim measures.”

1 Even as DWR has not enabled themselves to meet the objectives let alone acted promptly. This is
2 directly inconsistent with the CDO which indicates that DWR and USBR must comply with the
3 objectives and act promptly to implement measures to ensure compliance with the objectives and is
4 inconsistent with the evidence presented in this proceeding.

5 The CDO continues that further delay will not be tolerated stating on page 22 as follows:
6 "The existence of recently pending actions does not excuse DWR and USBR from having failed to
7 take adequate steps to comply with their permit/license conditions by the required date of April 1,
8 2005. In addition, even if the State Water Board were to modify the EC objectives in the 1995 Plan,
9 subsequent changes would have to be made to DWR's and USBR's water rights in order to change
10 the water right permits and licenses." Staff Exhibit 1.

11 The CDO indicates that "The State Water Board will not extend the date for removing the
12 threat of non-compliance beyond July 1, 2009." CDO p. 27, Paragraph number 5. We are now
13 beyond July 1, 2009.

14 It was anticipated with the first quarterly status report dated May 31, 2006 that the permanent
15 operable barriers would not be installed and operating by the CDO required July 1, 2009 deadline.
16 As late submitted exhibit by DWR marked as DWR -13 indicates "operable gates are expected by
17 April 2009, Construction (including automated systems) will be complete by fall 2009." These dates
18 were confirmed in the quarterly report dated August 31, 2006. (DWR -14.) However, in November
19 of 2006 the quarterly report dated November 29, 2006 indicated that "completion of the permanent
20 operable gates will be correspondingly delayed." DWR-15. Thus as early as November 2006, DWR
21 and USBR expected that the permanent operable gates would not be installed by the CDO July 1,
22 2009 deadline. This was just 8 months after the CDO Order. The February 2007 quarterly status
23 report indicates that the permanent facilities would clearly not be completed in accordance with the
24 initial time schedule and that a new date for construction of the gates was unknown. The report
25 indicated that "DWR intends to continue to install temporary barriers to improve water levels and
26 circulation in the south Delta." DWR- 16. The temporary barriers were the only measures being
27 considered by DWR or USBR to address the threat of salinity violations.

1 In DWR-17, the May 31, 2007 Quarterly State Report the State Water Board is clearly
2 notified that the permanent operable gates would not be installed and operable by April 2009 as
3 anticipated and described in the schedule submitted to the State Water Board pursuant to Condition
4 A.2 of the CDO. DWR- 17, page 2. Thus over 2 years prior to this expedited hearing, it was known
5 that the time period established in the CDO would not be met, but nothing was done. DWR and
6 USBR have failed to present evidence that during this period they were taking any meaningful action
7 to establish any alternative mitigation measures (SDWA-12.) This does not demonstrate due
8 diligence by DWR or USBR. Instead it indicates delay and lack of serious regard for the
9 consequences of not meeting the CDO deadline and CDO requirements or another words DWR and
10 USBR simply ignored the orders of the Board.

11 **E. Violations of salinity objectives have occurred and continue to occur.**

12 California Water Code section 1831 authorizes the State Board to issue a cease and desist
13 order if the Board determines that a licensee or permittee is violating or “threatening to violate” any
14 term or condition of a permit or license. Water Right Decision 1641 (“D 1641”) requires
15 Reclamation and DWR, pursuant to their water right permits and licenses, to meet the salinity
16 objective at the three southern interior Delta compliance locations (located on (1) the San Joaquin
17 River at Brandt Bridge, (2) Old River near Middle River, and (2) the San Joaquin River at Tracy
18 Road Bridge) between April 1 and August 31. D 1641 provides that if the permanent barriers are
19 not constructed, or equivalent measures are implemented, the 0.7 EC interior delta salinity objective
20 must be met by Reclamation and DWR. (D 1641 p. 182, Table 2, Staff Exhibit 2.)

21 The reports by DWR and USBR indicate that violations of salinity objective have occurred
22 and are occurring this year. DWR and the Bureau have reported at various times since the original
23 2006 CDO Order water quality objective violations have occurred. The following is a review of a
24 portion of this information.

25 By letter dated April 16, 2008 DWR submitted information indicating exceedences from
26 March 11 through March 26, 2008 and indicated in the letter that violations occurred between March
27 16 and March 22, 2008. DWR-25. DWR asserted at this time that “DWR did not take corrective
28 actions, as salinity at this station was not within DWR’s control.” (DWR-25.)

1 By letter dated July 14, 2008 DWR advised that salinity objective exceedences began on
2 June 14, 2008 and were continuous through the date of the letter. On June 21, 2009 salinity
3 violations were occurring at all three measuring locations within the south Delta and these violations
4 at all three measuring locations were continuing through the date of the letter and exceeded one
5 objective by almost one-third. (DWR-27, attached table.) However, this letter indicated that DWR
6 and USBR "are not proposing any corrective actions at this time." (DWR-27, p.2.) Therefore,
7 despite significant water quality violations DWR and USBR did nothing. In addition, DWR and
8 USBR failed to provide any further reports regarding the continuation of these salinity objective
9 violations after July 14, 2008 as the next letter regarding exceedences was dated December 22, 2008
10 and addressed an exceedence that commenced on December 19, 2008. (See DWR Exhibits DWR-27
11 and DWR-28.) DWR just failed to report the continued violations after July 14, 2008 and it is
12 reasonable to assume that violations after July 13, 2008 continued as on that date the measuring
13 locations experienced an EC of 0.79, 0.95 and 0.81 EC, with a required objective of 0.7 EC.

14 The evidence indicates that DWR and USBR have an expectation that the State Water Board
15 will do nothing to enforce DWR and USBR to meet their obligations imposed by the water quality
16 control plan and D 1641 and the CDO Order. By allowing such violations and not enforcing the
17 water quality control plan, the State Water Board is "de facto" amending the water quality control
18 plan in clear violation of the law.

19 Expected southern delta salinity objective exceedences were also reported to the State Water
20 Board by DWR by letter dated April 28, 2009. (DWR-29.) Actual exceedences were confirmed and
21 additional prior exceedences reported by letter dated May 28, 2009. Based on DWR rounding of
22 numbers, DWR and USBR indicated that exceedences occurred continuously from December 19,
23 2008 through March 10, 2009 and then from March 23, 2009 through April 20, 2009. Almost 4
24 months of continuous water quality exceedences. (DWR-30.) Additional exceedences were
25 reported by letter dated June 19, 2009 indicating exceedences however the information provided is
26 incomplete and does not indicate the complete periods of violations (before May 1, 2009) and it
27 contains rounded numbers that camouflage the actual dates in which exceedences commence.
28 (DWR-31, Attachment 1.) By letter dated July 3, 2009, DWR and USBR reported continued

1 exceedence since June 24, 2009. (DWR-32.) All of this amounts to an open and intentional
2 violation of the applicable permits and licenses.

3
4 **F. Substantial evidence does not support that the salinity objective exceedences are
5 beyond the reasonable control of DWR and USBR.**

6 DWR and USBR represent that the salinity violations are beyond their control and represent
7 that "Degradation is due almost exclusively to the numerous agricultural and municipal discharges
8 that occur downstream of Vernalis." (DWR-27, p. 2.) This is simply not supported by substantial
9 evidence. The hearing testimony by Department of Water Resources witness and employee Tara
10 Smith indicated that violations are in an area of a null zone or stagnant water. South Delta Water
11 Agency expert Alex Hildebrand also testified to this fact that the water quality exceedences are in
12 areas of null zones. Thus an area where there is poor circulation. D 1641 indicates that part of the
13 problem with poor water quality in the South Delta is due to circulation issues caused by the export
14 pumps. (Staff Exhibit 2, D 1641, p.87.) Thus the export pumps are the main cause of the null zones,
15 which create the water quality violations. The pumps are within the control of the Department of
16 Water Resources and the Bureau. Thus the violations are within the control of the parties. In
17 addition South Delta Water Agency expert witness Alex Hildebrand testified that actions to improve
18 water quality within the South Delta were recommended by the South Delta Water Agency as early
19 as 2006 and for the large part none of these actions have been implemented by the Department of
20 Water Resources or the Bureau. (SDWA-12.) The Department witness Mark Holderman testified
21 during cross examination that the South Delta proposed pumps at the temporary barriers "can
22 increase circulation" which "may improve water quality" and "may help meet the salinity
23 objectives." Mr. Holderman also testified that the decision to implement the pumps on the
24 temporary barriers was within his control. In addition Mr. Holderman indicated that except for a
25 slight modification of the temporary barriers culverts or flap gates, that DWR has not done anything
26 further since 2006, the time the CDO was issued, to improve water quality within the Southern
27 Delta.

28 In addition, DWR and USBR's arguments that the current salinity objectives are not within
their control and that "DWR and Reclamation are not required to initiate corrective actions when no

1 additional reasonable control measures exist that the SWP or CVP could take.” DWR-27, p. 2.)
2 Again, these arguments are not supported by substantial evidence and are disingenuous. The DWR
3 witness Mark Holderman testified that he the proposed modification of the temporary barrier
4 program could improve water quality. In addition, recirculation can improve water quality. In
5 addition, the export pumps in large part cause the null zones and reverse flows and DWR and USBR
6 control the operation of the export pumps. South Delta Water Agency has presented on numerous
7 occasions additional actions that can be reasonably implemented by DWR and USBR, short of
8 altering the export pumps, which would improve circulation and water quality within the south
9 Delta. DWR and USBR have not implemented these measures, thus there is more that DWR and
10 USBR could do and reasonable control measures do exist to address salinity in the south Delta.
11 DWR and USBR need to be motivated, by an enforcement action if necessary, to implement
12 measures to address salinity within the south Delta.

13 D 1641 provides that the circulation problems in the Delta are caused by “... export pumping
14 by the SWP and CVP and in-Delta diversions in the southern Delta [which] cause null zones, areas
15 with little or no circulation.” (SJC- 10, page 4, citing D 1641 (Staff Exhibit 2, p. 87).) SJC-10
16 points out that “Although the State Water Board found [in D 1641] that in-Delta users contribute in
17 part to southern Delta salinity, based on substantial evidence it was reasonable to place the entire
18 burden and obligation to meet the southern Delta salinity objectives on DWR and USBR.” [SJC-10,
19 page 4.] In addition SJC-10 points out that D 1641 acknowledged that “...the construction of
20 permanent barriers alone is not expected to result in attainment of the water quality objectives.”
21 (SJC-10, page 4 citing D 1641 (Staff Exhibit 2, page 88).) Based on D 1641 the need to implement
22 additional mitigation measures to address salinity in the Delta should not be a surprise to DWR and
23 USBR. Consequently failure to take any action outside of reliance on the barriers to “obviate” the
24 threat of violations of D1641 should not be allowed by the State Water Board.

25 DWR and USBR’s continual refusal to take meaningful action to “obviate” the threat of
26 noncompliance with the salinity conditions of their permits and licenses and lack of action to meet
27 their permit and license conditions is well evident and well documented. DWR and USBR have
28 endlessly and intentionally delayed, through both wet and dry periods, dealing with the very real

1 problem of salinity in the San Joaquin River and the south Delta. DWR and USBR have been
2 repeatedly advised and ordered to address the problem (see WR 2006-0006, Staff Exhibit 1, pages 8,
3 9., in addition to the admonishments by the State Water Board and its staff since 2006), but have
4 continued to ignore all advice and have failed to follow orders. The time has come to tackle the
5 salinity problem, and that time is now. Both DWR and USBR have the obligation and the ability to
6 do so, but apparently fail to take their responsibilities and permit conditions seriously. If this is not
7 addressed by the State Water Board now, violations and salinity problems will continue throughout
8 2009 and beyond. Modification of 2006-0006 is not warranted now, rather enforcement of D 1641
9 and WR 2006-0006 is warranted. Failure to comply with permit conditions by two of the largest
10 water right holders in the State also set a very bad example for other permit holders.

11 12 **III. CONCLUSION**

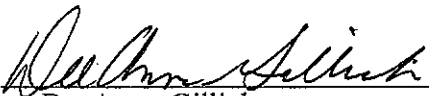
13 The CDO Order found that there was a threat of future violations and required DWR and
14 USBR to take action to obviate the threat of future violations. Well, violations have occurred since
15 2006 and are continuing to occur as of July 3, 2009 (DWR-32) and most likely are continuing today.
16 Since 2006 DWR and USBR have repeatedly asserted that there is nothing they can do to address
17 these violations. This is absurd, not supported by the evidence at the hearing, and the exact type of
18 behavior the CDO intended to address. The State Water Board is obligated to enforce its own water
19 quality control plan (See *State Water Resources Control Board Cases, supra 136 Cal, App. 4th 674*),
20 and must require DWR and USBR to comply with D 1641.

21 During the CDO hearing which resulted in WR Order 2006-006 the County argued that "Due
22 to Reclamation and DWR's past practices and threatened violation of the interior Delta salinity
23 objectives, the State Board should issue final CDOs. This will provide the State Board with more
24 meaningful enforcement options pursuant to Water Code section 1845 in the event that the salinity
25 objectives are violated in the future. Reclamation and DWR must be required to take all reasonable
26 actions to meet the salinity objectives and up to this time they have demonstrated a lack of
27 willingness or intent to take reasonable actions to meet these objectives." The State Water Board did
28 issue the CDO and exceedences of the salinity objectives have occurred. The State Water Board

1 must demonstrate meaningful enforcement of its water quality control plan. Modification of the
2 CDO is not appropriate now. Rather enforcement of the CDO and enforcement of D 1641 is
3 appropriate. This is exactly what is required under the law and what is expected by the Courts as
4 the *Robie* Court indicated when discussing whether the Bureau will meet its salinity objective
5 obligations. The *Robie* Court stated: "We must presume the Bureau will comply with the legal
6 obligation the Board has placed on it and **that the Board will enforce that obligation.**" (Emphasis
7 added. *State Water Resources Control Board Cases, supra 136 Cal, App. 4th 674, 745.*) Just do it!

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9 Dated: August 11, 2009

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