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10 BEFORE THE  
11 STATE WATER RESOURCES CONTROL BOARD

12 PUBLIC WORKSHOPS RE:  
13 CONSIDERATION OF POTENTIAL  
14 AMENDMENTS OR REVISIONS OF  
15 THE WATER QUALITY CONTROL  
PLAN FOR THE SAN FRANCISCO  
BAY/SACRAMENTO-SAN JOAQUIN  
DELTA ESTUARY

Westlands Water District's Memorandum  
Providing Comments On The Materials  
Presented In The Workshops Re: Consideration  
of Potential Amendments or Revisions of the  
Water Quality Control Plan For The San  
Francisco Bay/Sacramento-San Joaquin Delta  
Estuary

16 Westlands Water District ("Westlands" or "District") submits this memorandum pursuant  
17 to (1) the revised notice of public workshop ("Revised Notice") issued by the State Water  
18 Resources Control Board ("Water Board" or "SWRCB") on September 17, 2004, and (2) the  
19 Water Board's April 29, 2005 letter extending the final comment deadline. This memorandum  
20 provides Westlands' comments on certain issues addressed by the San Joaquin River Exchange  
21 Contractors Water Authority ("Exchange Contractors") and Deltakeeper during the Workshops  
22 on Potential Amendments or Revisions to the 1995 Water Quality Control Plan ("1995 Plan" or  
23 "1995 WQCP") for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Delta").

24 **I. INTRODUCTION**

25 **A. Westlands Water District**

26 Westlands is a California water district formed pursuant to California Water Code section  
27 3400 *et seq.*, with its principal office in Fresno, California. Westlands serves approximately  
28

1 540,000 acres of highly productive farmland in the western San Joaquin Valley, including lands  
2 in both Fresno and Kings Counties. To supply these farms with critical irrigation supplies,  
3 Westlands depends upon water made available by the Central Valley Project ("CVP"). Westlands  
4 holds vested rights to receive CVP water from the United States Bureau of Reclamation  
5 ("Reclamation").

6 **B. Westlands Concurs With And Incorporates Herein By Reference The**  
7 **Information Submitted By The San Luis & Delta-Mendota Water Authority**

8 Westlands is a member of the San Luis & Delta-Mendota Water Authority ("Authority").  
9 Westlands has reviewed the information submitted by the Authority during the periodic review  
10 and ongoing proceedings relating to the 1995 Plan, including the Authority's "Memorandum  
11 Supplementing Information and Providing Final Comments on the Materials Presented in the  
12 Workshop Regarding Consideration of Potential Amendments or Revisions of the 1995 Water  
13 Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary," dated  
14 June 3, 2005. Westlands incorporates herein that information by reference.

15 **II. COMMENTS**

16 **A. Certain Comments Submitted By The Exchange Contractors And**  
17 **Deltakeeper Are Beyond The Scope Of The Topics Set Forth In The Water**  
18 **Board's Resolution 2004-0062**

19 Under the guise of addressing the Southern Delta Electrical Conductivity objective and  
20 the Program of Implementation, the Exchange Contractors and Deltakeeper separately presented  
21 comments regarding the need for agricultural drainage in the western San Joaquin Valley  
22 ("Westside") region and/or Reclamation's San Luis Unit drainage program. The drainage issues  
23 raised by the Exchange Contractors and the Deltakeeper are far beyond the scope of the topics for  
24 workshops established through Water Board Resolution 2004-0062. In addition, whether  
25 irrigation of the San Luis Unit has effects, and what effects, on the San Joaquin River is very  
26 much in dispute.

27 Westside drainage issues were raised during the Periodic Review, when the Exchange  
28 Contractors requested that the Water Board amend the Program of Implementation to require  
Reclamation to develop a plan for financing and implementing a Westside drainage program.

1 The Staff Report on the Periodic Review noted these comments, but concluded that:

2 The implementation measures contained in the 1995 Plan  
3 recommend actions that should be undertaken by certain agencies to  
4 improve Bay and Delta conditions for a number of beneficial uses.  
5 Because implementation of the 1995 Plan requires independent  
6 regulatory actions, the 1995 Plan does not order any specific action  
7 be undertaken nor does it provide for funding any actions. Staff  
8 believes that the WQCP is not the correct forum for assigning  
9 responsibility for certain actions, and funding those actions. This  
10 suggestion is more appropriately made during future water right or  
11 water quality actions that may occur.

12 (Staff Report on the Periodic Review of the 1995 Water Quality Control Plan for the San  
13 Francisco Bay/Sacramento-San Joaquin Delta Estuary, at 56 (emphasis added).) The Staff Report  
14 did not recommend any addition of Westside drainage issues in the Program of Implementation.  
15 (*Id.*) The Water Board adopted the Staff Report in Resolution 2004-0062 (September 30, 2004).

16 Despite this clear direction, on March 14, 2005, Chris White, General Manager of the  
17 Central California Irrigation District, presented testimony on behalf of the Exchange Contractors,  
18 ostensibly in support of the testimony of Dr. Burt, regarding the Southern Delta Electrical  
19 Conductivity objective. Among other things, Mr. White argued that the San Joaquin River “is  
20 being utilized by the Bureau of Reclamation as a drainage system instead of the San Luis Drain,”  
21 and that “Reclamation’s current use of the San Joaquin River as a stealth drain is the major cause  
22 of water quality degradation.” (SJEC – EXH – 02.) Mr. White further contended that drainage  
23 water from the San Luis Unit exacerbates, either directly or indirectly, drainage problems within  
24 the Exchange Contractors’ service area. (*Id.*) Based on those assertions, Mr. White requested  
25 that the Water Board find that Reclamation uses the San Joaquin River as a “stealth drain” and  
26 order Reclamation to present evidence that it is taking steps to develop and implement a drainage  
27 plan. (*Id.*) For its part, Deltakeeper sought a fundamental change in California’s water system.  
28 Deltakeeper proposed a scheme involving retirement of significant amounts of agricultural lands  
on the Westside of the San Joaquin Valley.<sup>1</sup> (*See, e.g.,* DK – EXH – 24 through 26.) Deltakeeper  
proposes to cut off long-established beneficial uses, with devastating consequences.

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<sup>1</sup> For a detailed response to the assertions of Deltakeeper, *see* the memorandum submitted by the Authority, which, as provided above, is incorporated herein by reference.

1 In addition, as the Exchange Contractors, and presumably Deltakeeper, are well aware, a  
2 separate process is underway to address drainage issues in the San Luis Unit. On June 2, 2005,  
3 Reclamation released for public review its draft "Environmental Impact Statement regarding the  
4 San Joaquin Drainage Feature Re-Evaluation," as part of the process leading to the provision of  
5 drainage for the San Luis Unit which was ordered by the trial court following the Ninth Circuit's  
6 decision in *Firebaugh Canal Co. v. United States*, 203 F.3d 568 (9th Cir. 2000). That draft  
7 document incorporates many aspects of the "Westside Regional Drainage Plan," which was  
8 developed jointly by the water districts within the San Luis Unit, including Westlands, and the  
9 Exchange Contractors. Any interested party has the opportunity to submit comments on  
10 Reclamation's draft Environmental Impact Statement regarding the San Joaquin Drainage Feature  
11 Re-Evaluation. The comment deadline is August 1, 2005. Reclamation's analysis of the San  
12 Joaquin Valley Drainage Feature Re-Evaluation should continue, at least for now, without  
13 interference by the Water Board.

14 In sum, the submissions by the Exchange Contractors and Deltakeeper are beyond the  
15 scope of issues set forth in Resolution 2004-0062. They raise a host of legal and technical issues  
16 that cannot and should not be bound up with proposed revisions to the Plan, particularly since the  
17 principal issue is being addressed in the ongoing San Joaquin Drainage Feature Re-Evaluation.  
18 Simply put, they have nothing to do with what level of water quality is reasonably needed to  
19 protect beneficial uses of Delta water.

20 **B. It Is Beyond Reasonable Dispute That Irrigation Water Applied In Westlands**  
21 **Water District Does Not Reach The San Joaquin River Nor Otherwise**  
22 **Exacerbate The Drainage Discharge Problems Suffered By The Exchange**  
**Contractors**

23 Even if Westside drainage issues were within the scope of the consideration of  
24 amendments or revisions to the 1995 Plan, the Water Board should not adopt any findings in  
25 favor of the arguments made by either the Exchange Contractors or Deltakeeper. Although their  
26 proposed solutions differ tremendously, both Deltakeeper and the Exchange Contractors implicate  
27 Westlands in their arguments regarding the cause and effect of agricultural drainage discharges  
28 into the San Joaquin River. These implications are without merit. Irrigation water applied in

1 Westlands does not reach the San Joaquin River either as surface or groundwater drainage, nor  
2 does irrigation in Westlands exacerbate the Exchange Contractors' own drainage problems.

3 **1. Westlands Does Not Discharge Surface Drainage Beyond Its**  
4 **Boundaries, And Lateral Groundwater Migration From Westlands, If**  
5 **Any, Is Negligible**

6 Deltakeeper argues that water delivered through the Delta-Mendota Canal to the San Luis  
7 Unit ultimately drains as "water flows into the San Joaquin [River] via the San Luis Drain,  
8 groundwater accretions & sloughs." (DK - EXH - 24.) Through diagrams, as well as through  
9 discussion of the development of the San Luis Act, Deltakeeper strongly implies that Westlands  
10 and "Westlands area farms" create drainage water which ultimately reaches the San Joaquin  
11 River. (*Id.*) There is absolutely no evidence to support that assertion. The Exchange Contractors  
12 present as fact their argument that "poor-quality drainage water from the San Luis Unit seeps in  
13 the underground aquifers downslope into Central California Irrigation District and Firebaugh  
14 Canal Water District, and that water is extremely poor-quality." (SJEC - EXH - 02.) These  
15 arguments are without merit.<sup>2</sup> Irrigation water applied in Westlands does not reach the San  
16 Joaquin River.

17 **a. Westlands does not discharge any surface drainage beyond its**  
18 **boundaries.**

19 Deltakeeper's arguments that irrigation water applied in Westlands reaches the San  
20 Joaquin River as surface drainage are factually impossible. Westlands does not use the San Luis  
21 Drain to convey drainage water to the San Joaquin River. The tile drains that were installed in  
22 some areas were plugged in 1986 to comply with prior orders of the Water Board regarding  
23 Kesterson Reservoir, and there is no way for District drainage water to even reach the San Luis  
24 Drain. Similarly, Mud Slough and Salt Slough are far from the District's boundaries, there is no

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25 <sup>2</sup> Westlands does not dispute the primary thrust of Mr. White's testimony, namely, that  
26 Reclamation has heretofore failed to provide drainage to the San Luis Unit as required under the  
27 San Luis Act. However, the Exchange Contractors and Westlands vehemently disagree as to the  
28 effect of Reclamation's failure to provide drainage. It is important for the Water Board to  
understand that certain allegations by the Exchange Contractors have not been proven as fact, and  
indeed are the subject of ongoing litigation. The Water Board should not adopt or assume as fact  
the Exchange Contractors' theories regarding the effects of San Luis Unit irrigation on the  
Exchange Contractors' drainage problems.

1 way for District surface drainage to reach them.

2                                   b.     **Horizontal migration of groundwater from the District does not**  
3   **reach the San Joaquin River.**

4             Both Deltakeeper and the Exchange Contractors argue that irrigation water applied in  
5 Westlands travels as groundwater until it reaches the San Joaquin River. These arguments are  
6 without merit. The "downslope" migration of poor quality drainage water is the subject of  
7 pending litigation in *Firebaugh Canal Company and Central California Irrigation District v.*  
8 *United States*, Case No. CIV-F-91-048 OWW (consolidated with CIV-F-88-634-022) (E.D. Cal.).  
9 The plaintiffs, both of whom are Exchange Contractor districts, have repeatedly alleged that large  
10 quantities of poor quality drainage water migrate from Westlands and other San Luis Unit  
11 contractors downslope into the Exchange Contractors' boundaries. Those allegations are refuted  
12 by studies showing that the soils in Westlands and the surrounding area are generally highly  
13 compacted and do not allow for high rates of groundwater migration, and that because the "slope"  
14 alleged by the Exchange Contractors is generally measured in inches per mile, it contributes  
15 nothing to the groundwater migration in the area.

16             Furthermore, in the proceedings leading to D-1641, the Water Board received evidence  
17 confirming that Westlands does not discharge drainage water outside of its boundaries and there  
18 is no lateral movement of groundwater from Westlands to the San Joaquin River. Some of this  
19 evidence came in the form of testimony by Steven Deverel, Ph.D., the expert witness called by  
20 the Exchange Contractors. Among other things, Dr. Deverel testified that:

21                                   MR. NOMELLINI: Can these flows that we talked about that go  
22 across the boundary of Westlands into the Firebaugh Canal Water  
23 District find their way to the San Joaquin River?

24                                   DR. DEVEREL: No.

25                                   MR. NOMELLINI: What happens to those flows, and why is it  
26 that they do not get to the river?

27                                   DR. DEVEREL: Well, the primary reason is that the hydraulics  
28 gradients are such that flow shifts tend to flow downward once you  
get past or somewhere in Firebaugh Canal Water District. So,  
somewhat of a complicated hydraulic or hydrologic situation.

At the boundary of Firebaugh and Westlands and into Firebaugh  
you have upward flow at some depth to the surface to drainage

1 laterals. But there is a point in Firebaugh and beyond Firebaugh  
2 where, as you move closer to the river, water starts flowing  
3 downward and to the east. Flows in a manner that goes underneath  
4 the river. There is not accretion; at least the data I have seen does  
5 not indicate that there is accretion of groundwater to river in that  
6 area.

7  
8 MR. NOMELLINI: Could you show us on Westlands 97 where  
9 that area is.

10  
11 DR. DEVEREL: One would look at this area here that we just  
12 talked about. This is the four-mile boundary of Firebaugh with  
13 Westlands.

14  
15 As you can see, water can flow across that boundary. But, in  
16 general, it does not flow to the river here. Because of pumping that  
17 takes place on the east side of the river, groundwater flows  
18 downward and towards the pumping trough that tends to exist over  
19 here.

20  
21 MR. NOMELLINI: So there is a gradient that would take the water  
22 to the low point of that pumping trough or hole, and that is below  
23 the flow line to the river?

24  
25 DR. DEVEREL: That's right.

26  
27 Dr. Deverel's testimony is described at length at pages 8 through 14 of Westlands' "Reply Brief  
28 of Westlands Water District For Phases Two Through Seven" dated July 12, 1999, which was  
submitted as part of the proceedings leading to D-1641. A copy of that brief is attached hereto as  
Exhibit 1.

## 29 30 2. The Exchange Contractor's "Groundwater Pressure" Theory Is 31 Baseless

32  
33 Perhaps recognizing the limited viability of their "downslope migration" argument, the  
34 plaintiffs in the *Firebaugh Canal Co.* litigation developed an additional theory, which the  
35 Exchange Contractors presented to the Water Board during the workshops:

36  
37 [T]he failure to have a drainage system results in groundwater  
38 pressures being transmitted downslope to our service areas [and that  
39 these] increases in groundwater pressures in the downslope areas  
40 are causing the drainage of poor quality water to eventually reach  
41 the San Joaquin River either as surface drainage or as groundwater  
42 accretion flows.

43  
44 (SJEC - EXH - 02.) In essence, the Exchange Contractors here argue that the application of  
45 irrigation water in Westlands "forces" groundwater levels to rise in the Exchange Contractors'  
46 service area as a result of increased groundwater pressure. This is only a theory, not an

1 established fact. This theory has not yet been fully vetted in the pending litigation, although  
2 Westlands' own investigation has revealed that the tight soil conditions and the extremely low  
3 gradient of slope in the region make such "groundwater pressure" highly unlikely to occur at all,  
4 much less be a contributing factor to the Exchange Contractors' drainage problems. Further,  
5 piezometer readings of groundwater wells in the region contradict the "pressure" theory.

6 Drainage and salinity problems in the Exchange Contractors' service area predate the San  
7 Luis Unit.<sup>3</sup> Given the soil conditions in the region, Westlands believes that the Exchange  
8 Contractors themselves are responsible for most of the San Joaquin River salinity problems.  
9 Nevertheless, Westlands does not ask that the Water Board to find that, as logic suggests, the  
10 application of water by irrigators in the Exchange Contractors' service area is the cause of its  
11 problems. The relative impacts of irrigation in the San Luis Unit and irrigation in the Exchange  
12 Contractors' service area are the subject of ongoing litigation. The Water Board should take care  
13 to avoid making any findings or comments that would appear to adopt or approve the Exchange  
14 Contractors' theories regarding either downslope migration of poor quality groundwater, or the  
15 "groundwater pressure" theory, or contrary theories of Westlands and others.

16 If the Water Board were inclined to entertain these theories, it must do so as part of an  
17 evidentiary proceeding addressing, among other things, the relative water quality impacts of  
18 irrigation in the San Luis Unit and irrigation in the Exchange Contractors' service area.  
19 Westlands respectfully submits that the Water Board would need to review evidence relating to

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21 <sup>3</sup> As the final "Report of the San Joaquin Drainage Program" notes:

22 [C]onditions associated with agricultural drainage in the San Joaquin Valley are not  
23 new to the region. Inadequate drainage and accumulating salts have been persistent  
24 problems in parts of the valley for more than a century, making some cultivated land  
25 unusable as far back as the 1880s and 1890s. . . . [by the 1890s,] [p]oor natural  
26 drainage conditions, coupled with rising ground-water levels and increasing soil  
27 salinity, meant that land had to be removed from production and some farms  
28 ultimately abandoned.

26 ("A Management Plan for Agricultural Subsurface Drainage and Related Problems on the  
27 Westside of the San Joaquin Valley: Final Report," U.S. Department of Interior and California  
28 Resources Agency, 1990, at 15-16, relevant excerpts of which are attached hereto as Exhibit 2.)



1 the use of water within the Exchange Contractors' service area, and compare that use to the water  
2 usage (measured in acre-feet per acre) in the San Luis Unit service area. Only after that  
3 comparative evaluation could the Water Board appreciate the relative impacts to the San Joaquin  
4 River of water used in each respective area. Such an evaluation would be critical because water  
5 usage in the Exchange Contractors' service area is substantially higher than that in the San Luis  
6 Unit. Irrigators in Westlands are among the most efficient in the world. The District's  
7 distribution system is fully enclosed (piped), and most, if not all, irrigators have implemented  
8 water use reducing management practices such as drip irrigation. These practices minimize the  
9 amount of water needed per acre, and as a result reduce the amount of drainage water. There is  
10 little, if any, irrigation water left to move horizontally towards the San Joaquin River. By  
11 contrast, some Exchange Contractors apply nearly twice the amount of irrigation water per acre as  
12 that applied in the San Luis Unit.

13 **III. CONCLUSION**

14 For these reasons, Westlands requests that the Water Board decline to make any findings  
15 in favor of the arguments presented by Deltakeeper or the Exchange Contractors relating to  
16 Westside drainage issues as part of the amendment or revision of the Program of Implementation  
17 for the 1995 Plan.

18 Dated: June 3, 2005

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