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10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENFO1949
12 DRAFT CEASE AND DESIST ORDER
13 REGARDING UNAUTHORIZED
14 DIVERSIONS RO THREATENED
15 UNAUTHORIZED DIVERSIONS OF
16 WATER FROM OLD RIVER IN SAN
17 JOAQUIN COUNTY

18) WRITTEN TESTIMONY
19) OF JACK ALVAREZ

20) Hearing Date: March 21, 2016
21) Hearing Officer: Frances Spivy-Weber

22 **INTRODUCTION**

23 1. My name is Jack Alvarez, and I submit this written testimony on behalf of The
24 West Side Irrigation District (“**WSID**” or “**District**”).

25 2. I am a member of the Board of Directors of WSID, and have served on the Board
26 since 1994 and am very familiar with its jurisdictional area, facilities, water right and operations.
27 I am currently the President of the Board of Directors, and have held that position since February
28 1997.

1 3. WSID is a California irrigation district, located in San Joaquin County, and
2 includes 6,345.86 acres of agricultural land within its boundaries.

3 4. The District holds water right License 1381, originally issued on September 29,
4 1933 and amended on August 19, 2010 (“**License**”). A true and correct copy of the License is
5 provided as **EXHIBIT WSID0005**.

6 5. License 1381 has a priority date of April 17, 1916, and authorizes the direct
7 diversion of 82.5 cubic feet per second (“**cfs**”) from Old River in San Joaquin County from (1)
8 about April 1 to October 31 of each year for irrigation and (2) from April 1 to October 31 of each
9 year for municipal, domestic and industrial uses.

WSID CDO/BBID

ACL WSID0158

1 6. In 1929 the Department of Public Works issued Bulletin No. 21, which discussed
2 WSID diversions and confirmed that the water diverted by WSID pursuant to its License is
3 “largely return flow from diversions farther upstream and water reaching the San Joaquin Delta
4 from Sacramento River through Georgiana Slough and other inter-delta channels.” I obtained a
5 copy of the report from the Department of Water Resources (“DWR”), the successor of the
6 Department of Public Works. DWR posts historic reports on its website at
7 <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>. A true and correct copy
8 of Department of Public Works Bulletin No. 21 dated 1929 is provided as **EXHIBIT**
9 **WSID0006**, see pages 156-158.

10 7. The License was issued in 1933 documenting the maximum amount of water
11 found to have been put to beneficial use in the years 1930, 1931 and 1932, as acknowledged in
12 that October 9, 1933 letter to WSID from the State of California Department of Public Works. A
13 true and correct copy of the October 9, 1933 letter is provided as **EXHIBIT WSID0007**. A true
14 and correct copy of Table 38 of the Sacramento San Joaquin Water Supervisor’s Report,
15 Department of Public Works Bulletin No. 23 dated August 1932 is provided as **EXHIBIT**
16 **WSID0008**. I obtained a copy of the Water Supervisor’s Report from DWR’s website at
17 <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>.

18 8. WSID and its diversion facilities on Old River are located in the Sacramento-San
19 Joaquin Delta. A true and correct copy of the Sacramento-San Joaquin Delta Atlas prepared by
20 the California Department of Water Resources is provided as **EXHIBIT WSID0010**. I obtained
21 a copy of the Delta Atlas from DWR’s website at
22 <http://baydeltaoffice.water.ca.gov/DeltaAtlas/index.cfm>. See page 4 for a map of the Delta,
23 showing the location of Old River. See also **EXHIBITS WSID0001, WSID0002, WSID0003**
24 and **WSID0004** for maps of the WSID boundaries. These maps accurately reflect the District’s
25 boundaries and diversion facility location.

26 9. The WSID License file at the State Water Resources Control Board contains a
27 copy of the State Water Resources Control Board staff’s July 18, 1985 Report of Inspection of
28 the WSID Facilities on file with the State Water Resources Control Board, a true and correct

1 copy of which is provided here as **EXHIBIT WSID 0009**. In that inspection report, the State
2 Board explained:

3 a. water moves slowly in the flat gradient channel which is affected by tides
4 of about 4 feet;

5 b. the channel is from 4 feet to 8 feet deep depending on tides; and

6 c. the quality of Old River water diverted by WSID in the intake channel is
7 poor, running from 800 to 1000 total dissolved solids.

8 10. There is a drainage canal located in WSID called the Bethany Drain. The location
9 of the Bethany Drain is accurately depicted on **EXHIBITS WSID0001, WSID0002, WSID0003**
10 and **WSID0004**.

11 11. The Bethany Drain collects irrigation return water through tile drains from
12 landowners within WSID, shallow groundwater from tile drains, and municipal drainage from
13 lands within the City of Tracy and discharges that return water directly into WSID's intake
14 channel. My understanding of the operation of Bethany Drain is based on personal experience
15 over the last 20 years negotiating the agreements related to the operations of the Bethany Drain
16 on behalf of WSID.

17 12. The Bethany Drain is exclusively owned, operated and maintained by WSID, and
18 WSID maintains exclusive control over the Bethany Drain from its origination within the District
19 boundaries along its entire course, until it discharges into the WSID intake canal. Title to the
20 Bethany Drain was obtained by WSID over time, from the 1930's and 1940's. True and correct
21 copy of three deeds to portions of the Bethany Drain that exemplify the deeds held by WSID for
22 the Bethany Drain are attached hereto as **EXHIBITS WSID0014, WSID0015 and WSID0016**.
23 These deeds are official records of the district and are true and correct copies of public records
24 recorded in San Joaquin County.

25 13. The history and original purpose of the Bethany Drain is explained in a WSID
26 business record obtained from Naglee-Burk Irrigation District, maintained by the district since
27 1924, and produced here as **Exhibit WSID0011**, which contains a true and correct copy of an
28

1 August 1924 Report on Drainage prepared by Thomas H. Means Engineering for the Naglee-
2 Burk Irrigation District (“**Drainage Report**”).

3 14. The Drainage Report confirms that drainage is needed within WSID to protect
4 lands from high water tables, and notes that in 1924 water stood at less than 4 feet from the
5 surface within WSID. See **EXHIBIT WSID0011** at pages 14 - 19.

6 15. Municipal discharges into the Bethany Drain are allowed pursuant to a contract
7 between the City of Tracy and WSID, as well as other similar contracts between WSID and other
8 municipal and industrial properties. A true and correct copy of the 2010 Drainage Agreement
9 between the City of Tracy and The West Side Irrigation District is provided as **EXHIBIT**
10 **WSID0012**. The other drainage agreements between WSID and others are similar in form.

11 16. A map of the City’s drainage system, its relationship to WSID drains, and other
12 drainage information is included in the City of Tracy November 2012 Citywide Storm Drainage
13 Master Plan, a true and correct copy of which is provided as **EXHIBIT WSID0013**, see pages
14 1.15, 1.18, 2.1 and 2.3, and Figures 1.4 and 2.3. This Master Plan document was officially
15 adopted by the City of Tracy City Council, is maintained by the City as an official document and
16 business record of the City, and was obtained from the City of Tracy website at
17 http://www.ci.tracy.ca.us/documents/Final_Storm_Drainage_Master_Plan.pdf.

18 17. WSID discharges its drain water from the Bethany Drain into the WSID intake
19 channel with the express intention of recapturing the water at its diversion pumps. This practice
20 has continued for many years with the full knowledge of the State Water Resources Control
21 Board.

22 18. By letter dated September 21, 1998, WSID notified State Water Board that it
23 “obtains a substantial amount of water through recycled tail water from district irrigation, and
24 from neighboring districts.” A true and correct copy of a September 21, 1998 letter from WSID
25 to the State Water Resources Control Board is provided as **EXHIBIT WSID0017**. This letter is
26 maintained as a business record of WSID.

27 19. By letter dated September 25, 1998, WSID again notified the State Water Board
28 that “it is our position that this [Bethany Drain] water is not subject to appropriation because it

1 does not reach a natural watercourse. The water is pumped from a man-made canal.
2 Consequently, WSID has the right to use this water without a permit from the State Water
3 Resources Control Board. As such, WSID does not need to divert such water under the terms of
4 its License, it does not need to file a new appropriation, and it does not need to provide the Board
5 with copies of agreements entitling it to use this water.” A true and correct copy of that
6 September 25, 1998 letter is provided as **EXHIBIT WSID0018**. This letter is maintained as a
7 business record of WSID.

8 **CITY OF TRACY WASTEWATER**

9 20. The City of Tracy operates a wastewater treatment plant and discharges treated
10 wastewater effluent to Old River, a water of the United States, pursuant to Order R5-2012-0115
11 (NPDES Permit CA0079154) issued by the Central Valley Regional Water Quality Control
12 Board. A true and correct copy of NPDES Permit CA0079154, obtained from the State Water
13 Board website at [http://www.waterboards.ca.gov/rwqcb5/board_decisions/adopted_orders/
14 san_joaquin/r5-2012-0115.pdf1](http://www.waterboards.ca.gov/rwqcb5/board_decisions/adopted_orders/san_joaquin/r5-2012-0115.pdf1) is provided as **EXHIBIT WSID0019**.

15 21. The City discharges approximately 9 million gallons per day ("**mgd**"), which is
16 equivalent to 14 cfs, on a substantially continuous basis into Old River upstream from the
17 District's point of diversion under License 1381. A true and correct copy of an excel spreadsheet
18 submitted by the City of Tracy to the State Water Resources Control Board summarizing
19 discharges from its wastewater treatment plant, as provided by the State Water Board
20 Prosecution Team in its November 3, 2015 response to a Public Records Act Request submitted
21 by WSID is provided as **EXHIBIT WSID0020**.

22 22. The City obtains water supplies from three sources: (1) South San Joaquin
23 Irrigation District water delivered from the Stanislaus River (typically the majority of the City's
24 supply); (2) United States Bureau of Reclamation water delivered from the Delta-Mendota
25 Canal; and (3) local groundwater wells (typically the smallest portion of the City's supply). The
26 City's treated wastewater discharges are foreign in source and/or foreign in time to the Old River
27 flow. These sources are explained in the April 2011 City of Tracy Urban Water Management
28 Plan, a copy of which is provided as **EXHIBIT WSID0021**. This Plan was formally adopted by

1 the City of Tracy and is an official record and business record of the City of Tracy, and was
2 obtained from the City of Tracy website at [http://www.ci.tracy.ca.us/documents/
3 Urban_Water_Management_Plan_2011.pdf](http://www.ci.tracy.ca.us/documents/Urban_Water_Management_Plan_2011.pdf).


4 23. On May 6, 2014, the City Council adopted Resolution 2014-165, authorizing the
5 City to enter into a Wastewater Revocable License Agreement with WSID (“2014 Agreement”)
6 for the sale of treated wastewater from the City’s wastewater treatment plant. The 2014
7 Agreement provided that WSID may divert all of the City’s wastewater discharges from April 1,
8 2014 through October 31, 2014, estimated to be approximately 14 cfs, equivalent to 27.8 acre-
9 feet per day, on a continuous basis. A true and correct copy of Resolution 2014-165 is provided
10 as **EXHIBIT WSID0022**. A true and correct copy of the 2014 Agreement is provided as
11 **EXHIBIT WSID0023**.

12 24. On March 3, 2015, the Tracy City Council adopted Resolution 2015-033,
13 authorizing the City to enter into a Wastewater Revocable License Agreement with WSID
14 (“2015 Agreement”) for the sale of treated wastewater from the City’s wastewater treatment
15 plant. The 2015 Agreement provided that WSID may divert all of the City’s wastewater
16 discharges from April 1, 2015 through October 31, 2015, estimated to be approximately 14 cfs,
17 equivalent to 27.8 acre-feet per day, on a continuous basis. A true and correct copy of
18 Resolution 2015-033 is provided as **EXHIBIT WSID0024**. A true and correct copy of the 2015
19 Agreement is provided as **EXHIBIT WSID0025**.

20 25. WSID did not provide the City with a written Commencement Notice and WSID
21 did not purchase or divert wastewater from the City under the 2015 Agreement. On July 7, 2015
22 the City terminated the 2015 Agreement. A true and correct copy of the July 8, 2015 Letter from
23 the City of Tracy notifying WSID of the termination is provided as **EXHIBIT WSID0026**.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed this ____ day of February, 2016 in Tracy, California.

27
28 
JACK ALVAREZ