

December 12, 2005

Ms. Tam M. Doduc
Chairperson
Hearing Officer
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Closing Brief of Central Delta Water Agency, R C Farms, Inc.,
Kurt Sharp and Rudy Mussi
Delta Salinity CDO's and WQRP

INTRODUCTION

The facts surrounding the subject Proposed Cease and Desist Order (hereinafter CDO) and the JPOD Water Quality Response Plan (hereinafter WQRP) at the very least reflect bad faith on the part of the Department of Water Resources and the United States Bureau of Reclamation and even worse the possibility of more serious wrongdoing including parties other than DWR and USBR.

It is very apparent that there is a concerted effort involving DWR, USBR and the San Joaquin River Group Authority to degrade the water quality in the San Joaquin River at Brandt Bridge, in Old River near Middle River and in Old River at Tracy Road Bridge by securing a change in the standards from .7 EC to 1.0 EC for the period of April through August. Although determined by the hearing officer not to be a subject of the hearings, many of the documents included on the exhibit lists were obviously written specifically to support such a change.

BAD FAITH OF THE DEPARTMENT OF WATER RESOURCES AND UNITED STATES BUREAU OF RECLAMATION

_____The February 14, 2005, joint letter from Department of Water Resources and Bureau of Reclamation to Victoria Whitney, Chief of Division of Water Rights, SWRCB, which is Exhibit WR-6, presents that attempting to meet the .7 EC standard “could force DWR and Reclamation to release large quantities of water from upstream reservoirs” (Id., pg. 2) and that “DWR and Reclamation could be required to take actions that result in an unreasonable use of water and a significant reduction in water supplies south and west of the Delta, or be subject to the SWRCB’s enforcement action.”

FAILURE TO SET FORTH ACTIONS NECESSARY TO MEET STANDARDS

DWR and Reclamation do not even explain actions that they think would be necessary much less how such actions would be deemed unreasonable.

OVERLY BROAD REQUEST FOR CHANGE

One would expect that the required actions could vary as to each station, the particular time of the year, the hydrology at the time and other factors not the least of which would be export project operations.

In the March 25, 2005, letter to Mr. Arthur Baggett, Jr., Chair, SWRCB, the Department of Water Resources (WR-7) concedes such variability:

“If DWR and Reclamation cannot meet the conditions under D-1641, they will not be authorized to use their facilities for water transfers or joint point operations based on requirements in their Water quality response Plan for joint point operations. (See D1641 at 156, section 2.a.(4) requiring that all permit conditions be met before joint point operations are undertaken.) The inability to make transfers would prevent wheeling of water for the Environmental Water

Account Program (EWA) and for wildlife refuges south of the Delta during August, the month when the majority of this water is transferred. Relief from the requirement of the 0.7 EC objective in August would be critical to prevent interference with these transfers at the SWP delta pumping facility.”

The EWA is just another name for increased exports and portions of EWA exports and almost all refuge exports would likely add to the salinity at Brandt Bridge, Old River near Middle River and Old River at Tracy Road Bridge. The export projects want to degrade San Joaquin River and Delta water quality so they can export more water. As will be discussed further below, such action is in violation of the Watershed Protection Act (WC 11460 et seq.), Delta Protection Act (WC 12200 et seq.) and San Joaquin River Act (WC 12230 et seq.).

It is quite obvious DWR and Reclamation were attempting to secure changes which would lead to broad changes in the Water Quality Control plan under the guise of a temporary urgency change.

MISREPRESENTATION OF THE ROLE AND TIMING OF PERMANENT RATHER THAN TEMPORARY BARRIERS

The SWRCB in D-1641 at page 88 clearly provided:

“The construction of permanent barriers alone is not expected to result in attainment of the water quality objectives. (Citations.) The objectives can be met consistently only by providing more dilution or by treatment. (Citations.)” The permanent barriers are expected to generally improve water quality. “The exception is at Brandt Bridge where water quality may worsen slightly at times due to barrier operation.”

Footnote [5] on Table 2 of D-1641 provides:

“[5] The 0.7 EC objective becomes effective on April 1, 2005. The DWR and the USBR shall meet 1.0 EC at these stations year round until April 1, 2005. The 0.7 EC objective is replaced by the 1.0 EC objective from April through August after April 1, 2005 if permanent barriers are constructed, or equivalent

measures are implemented, in the southern Delta and an operations plan that reasonably protects southern Delta agriculture is prepared by the DWR and the USBR and approved by the Executive Director of the SWRCB. The SWRCB will review the salinity objectives for the southern Delta in the next review of the Bay-Delta objectives following construction of the barriers.”

The SWRCB referenced to “equivalent measures” makes it clear that compliance is not tied to permanent barriers.

Temporary barriers are currently being installed and operated and more important than the timing of installation of permanent barriers which are not mandated by the SWRCB is the operations plan. Certainly DWR and Reclamation as project operators appreciate that no objective review by the SWRCB or any other party can be conducted without the specifics of an operations plan setting forth the actions necessary to meet the .7 EC standards.

THE SUGGESTION THAT DELAY IN CONSTRUCTION OF PERMANENT BARRIERS IS DUE TO FACTORS BEYOND THE CONTROL OF DWR AND RECLAMATION IS DISINGENUOUS.

The joinder of the permanent barriers with the increases in export pumping to the so-called 8500 cfs and 10,300 cfs levels is not required by D-1641. To the extent such increased export pumping increases deliveries to the west side of the San Joaquin River which directly or indirectly add to the accretion or direct discharge of salts to the San Joaquin River, it is likely that the burden of meeting the .7 EC standards will be more difficult. The commitment of DWR and Reclamation to increased exports from the Delta in priority to protecting the San Joaquin River and Delta including the farmers, the fish and the wildlife therein is apparent.

THE EXCEPTION OF THE .7 EC STANDARDS FROM THE WATER QUALITY RESPONSE PLAN IS FURTHER EVIDENCE OF BAD FAITH ON THE PART OF DWR AND RECLAMATION.

There is no indication in D-1641 that the Division Chief was given any authority to change the water quality standards and in fact on page 156 of D-1641 it is required that all other provisions be met as a condition of authorization of JPOD. Although it is not clear who instigated the exception or why the Division Chief would have allowed it, the exception does fit with the plan, albeit illicit, to degrade the San Joaquin River and Delta water quality through change of the .7 EC standards. Given the letters from DWR and Reclamation (WR 6 and 7), it is hard to imagine that the exception was not instigated by DWR and Reclamation.

DUTIES OF DWR

Although the Department of Water Resources has many duties, some of which have the potential for conflict, its duties to protect the public interest and comply with the Watershed Protection Act, Delta Protection Act and San Joaquin River Act cannot be accorded a junior priority to its duties as operator of the State Water Project.

The Water Code provides:

“§ 102. State ownership of water; right to use

All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law.

“§ 105. Development for public benefit

It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.

§ 107. Declarations of state policy

The declaration of the policy of the State in this chapter is not exclusive, and all other or further declarations of policy in this code shall be given their full force and effect.

In the case of National Audubon Society v. Superior Court, 33 Cal.3d 419, the California Supreme Court at page 446 found:

“c. The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.”

DWR is, of course, a Department of the State. It cannot set aside its public trust or public interest responsibilities and even for a time play a role as mere permit holder. There is really only “one hat” which includes all duties and responsibilities. DWR has failed to outline the actions required to meet the .7 EC standards, failed to outline and consider the related impacts of meeting or not meeting such standards and failed to demonstrate the “infeasibility” of actions to meet such standards. The appropriate permits clearly do not provide a basis for overriding the public trust and public interest responsibilities.

Apart from the more general public trust and public interest responsibilities there are a number of statutes which specifically apply to this matter.

Water Code section 12232 which provides:

“§ 12232. Duty of state agencies not to cause degradation of quality of water

The State Water Resources Control Board, the State Department of Water Resources, the California Water Commission, and any other agency of the state having jurisdiction, shall do nothing, in connection with their responsibilities, to cause further significant degradation of the quality of water in that portion of the San Joaquin River between the points specified in Section 12230.” (Emphasis added.)

Water Code section 12230 provides:

“§ 12230. Legislative findings and declaration

The Legislature hereby finds and declares that a serious problem of water quality exists in the San Joaquin River between the junction of the San Joaquin River and the Merced River and the junction of the San Joaquin River with Middle River; that by virtue of the nature and causes of the problem and its effect upon water supplies in the Sacramento-San Joaquin Delta, it is a matter of statewide interest and is the responsibility of the State to determine an equitable and feasible solution to this problem.”

Brandt Bridge is of course clearly within the area of concern.

Water Code section 12201 provides:

“§ 12201. Necessity of maintenance of water supply

The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.”

“§ 12202. Salinity control and adequate water supply; substitute water supply; deliver

Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.”

“§ 12204. Exportation of water from delta

In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.” (Emphasis added.)

Water Code section 11460 provides:

“§ 11460. Prior right to watershed water

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.”

In addition to the duty of Reclamation to conform to State water rights laws, the duty of Reclamation to meet SWRCB standards has repeatedly been made clear by numerous Acts of Congress.

PL 99-546 (H.R. 3113) October 27, 1986, 100 Stat. 3050 in pertinent part provides as follows:

“(b)(1) Unless the Secretary of the Interior determines that operation of the Central Valley project in conformity with State water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta and Estuary is not consistent with the congressional directives applicable to the project, the Secretary is authorized and directed to operate the project, in conjunction with the State of California water project, in conformity with such standards. Should the Secretary of the Interior so determine, then the Secretary shall promptly request the Attorney General to bring an action in the court of proper jurisdiction for the purposes of determining the applicability of such standards to the project.”

No such determination has been made by the Secretary of the Interior as to the .7 EC standards.

Title 34 of PL 102-575 (CVPIA) in Section 3406 (b)(&) directs the Secretary to

“(7) meet flow standards and objectives and diversion limits set forth in all laws and judicial decisions that apply to Central Valley Project facilities, including, but not limited to, provisions of this title and all obligations of the United States under the “Agreement Between the United States and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project” dated May 20, 1985, as well as Pub. L. 99-546.

More recently in PL 108-361 (H.R. 2828) October 25, 2004, Congress provided:

“(D) PROGRAM TO MEET STANDARDS.—

(i) IN GENERAL.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.” (Emphasis.)

The water quality standards referred to are those in D-1641.

It would appear that the plan for DWR and Reclamation is not a plan to meet the standards but a plan to change the standards.

The actions of both DWR and Reclamation related to the current proceeding clearly reflect at the very least bad faith.

DWR AND RECLAMATION RESPONSIBILITY TO MEET STANDARDS

It is clear under the terms of D-1641 that the responsibility for meeting the standards at Brandt Bridge, Old River near Middle River and Old River at Tracy Road Bridge is imposed on the permits of both DWR and Reclamation. DWR contends that the responsibility for meeting Vernalis standards is solely that of Reclamation however, footnote 26 on page 19 of D-1641 provides:

“²⁶The DWR and the USBR have committed themselves to provide “backup” during the term of the SJRA for any responsibility that otherwise would be placed on the San Joaquin basin water right holders as a result of an allocation of responsibility in the Bay-Delta Water Rights Hearing. (R.T. pp. 9987-9995.) By doing this, the DWR and the USBR have made it possible for the SWRCB to approve the SJRA without needing to look to the non-signing water right holders in the San Joaquin Basin for the water that would not be provided under the SJRA to meet objectives other than the pulse flow objectives from April 15 through May 15.”

Except as to the pulse flow period from April 15 through May 15, it would appear that DWR has responsibility for meeting the Vernalis standard as a part of its “backup” commitment.

Since DWR coordinates the SWP operations with the CVP operations of Reclamation, jointly owns and operates San Luis and other facilities with Reclamation; has joint points of diversions with Reclamation and wheels water for CVP service areas on the west side of the San Joaquin Valley including refuges which directly or indirectly contribute to degradation of the San Joaquin, it is responsible for a significant portion of the degradation of the San Joaquin River.

DWR DOES HAVE THE ABILITY TO HELP MEET THE SALINITY STANDARDS ON THE SAN JOAQUIN RIVER.

In addition to existing facilities such as San Luis Reservoir and the various canals, DWR could borrow, rent or acquire and/or construct additional facilities to provide dilution flows in the San Joaquin River. Exchanges and transfers could be made to provide such water. As admitted by DWR, they already contribute money for the San Joaquin River Agreement and administer grants for drainage control projects in the San Joaquin Valley. More important than the physical works would be for DWR to support rather than subvert the improvement of San Joaquin River water quality. DWR claims that it is helpless to prevent others from using the unused capacity of

its conveyance facilities to deliver water into the CVP service areas which directly or indirectly contribute to the salinity of the San Joaquin River. DWR conveniently ignores the provisions in Water Code section 1810(d) which provide:

“(d) This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.”

In D-1641 at page 89 the SWRCB provided as follows:

“Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis. Downstream of Vernalis, salinity is influenced by San Joaquin River inflow, tidal action, diversions of water by the SWP, CVP, and local water users, agricultural return flows, and channel capacity. Measures that affect circulation in the Delta, such as barriers, can help improve the salinity concentrations.” (Emphasis added.)

DWR and Reclamation could reduce exports at times when such exports are drawing salt from the bay into the southern Delta, thereby degrading the quality of water that is tidally pumped by the South Delta barriers and degrading export water quality that results in further degradation of the San Joaquin River. Reduced pumping during portions of the high tide period could at times improve the operation of the temporary barriers so that water circulation upstream of the barriers is improved. Improvements to temporary barriers could also be considered particularly in conjunction with timely reduction in export pumping.

THE HARM FROM EXCEEDING THE .7 EC STANDARDS IS CLEAR.

It is universally recognized that increased salinity in water at the levels relevant herein are detrimental. As explained in Department of Water Resources, the California Water Plan Update

Bulletin 160-93 at pages 131 and 132 (CDWA-14)

“Salty irrigation water presents several costly problems for farmers. In many agricultural areas, it is common to recirculate irrigation water a number of times to increase irrigation efficiency. Salty water can be recycled fewer times than water that is initially low in salt. Also, more salty water must be used for irrigation than is required when using supplies low in salt. The requirement to use more water results in significant additional cost for pumping and handling the water and, perhaps, additional cost to purchase the water.

Generally, the most salt-tolerant crops are not the ones having highest value. Therefore, given a salty water supply, a farmer may be required to grow less valuable crops than is possible when low-salt irrigation water is available.

Finally, crop yields fall as salt in the irrigation water increases beyond the optimal ranges specific to individual crops.”

In addition to the question of whether or not there will be a substantial loss in crop yield, there are obvious impacts associated with the increased water diversion and the drainage pumping of the additional water for leaching. Changes in farming practices, application of soil amendments and drainage improvements cost money and could result in detrimental environmental impacts.

The testimony of Rudy Mussi (CDWA-9a, b & c), Kurt Sharp (CDWA-8), Chip Salmon (SDWA-3) and Alex Hildebrand (SDWA-2), farmers in the area of concern, confirms the salt damage to their crops and the fact that increased salt means increased crop damage.

The restraining characteristics of the soils in much of the Delta must be recognized in analyzing the impacts of increased salinity. The drainage characteristics of the soil including the permeability of the soil, the depth of the water table and the constraints of required farm practices are critical.

DWR presented the testimony of John Letey (DWR-22 rev.) for the proposition that exceeding .7 EC will not harm Delta farmers. Mr. Letey's testimony did not address the harm to Delta farmers but rather presented experimental results and theoretical model results.

Although not highlighted, his testimony at page 8 provides:

“Experimental results and the results from theoretical model analyses all come to the same conclusion—that irrigation water with an EC of 1.0dS/m or slightly higher would be sufficiently protective for the most salt-sensitive crops. Nevertheless, the conclusion should be compared as much as possible to what is actually happening under real farming operations.”

In cross-examination, Mr. Letey was even more candid.

“CROSS-EXAMINATION

Q. BY MR. NOMEILLINI: Mr. Letey, based on your testimony, am I correct you are not offering any testimony with regard to the impact of salinity in the water on agricultural operations in the Delta?

A My testimony is generic, not specific to any location.”

(Reporter's Transcript for October 25, 2005, p. 167.).

The testimony of Terry L. Pritchard (SDWA-5), a soil scientist very familiar with the South Delta soils, water table and farm management practices, clearly concludes that the current .7 EC objective needs to be maintained or crop yields will decline.

The testimony of Sean Snaith (SDWA-6) which quantifies the agriculturally-related economic loss associated with the reduction in yield attributed to the change of the .7 EC objective to 1.0 EC for the period of April 1st through August clearly shows a substantial impact on crop yields and the local economy.

In addition to the loss of crop yield, it is clear that increased diversion of water for

leaching, installation and operation of additional drainage improvements and the addition of more water and soil amendments will result from salinity increases.

ADVERSE IMPACT ON DISSOLVED OXYGEN IN THE STOCKTON DEEP WATER SHIP CHANNEL

To the extent that the .7 EC at the subject stations and particularly at Brandt Bridge require additional downstream flow in the San Joaquin River below the head of Old River, there could be a significant impact relating to dissolved oxygen in the Stockton Deep Water Ship Channel. Exceeding .7 EC could result in less flow through the portion of the Ship Channel between Stockton and Turner Cut, thereby decreasing the dissolved oxygen available to fish.

(CSPA-I.)

ADVERSE IMPACTS RESULTING FROM TOXIC EFFECTS OF WATER HELD BEHIND BARRIERS AND REDUCED CIRCULATION

To the extent that exceeding the .7 EC standard at the subject stations will result in less circulation upstream of the barriers and in the San Joaquin River downstream of the head of Old River, there could be a significant increase in toxicity to aquatic life including fish due to increased residence time of water in null zones. (CSPA-I.)

ADVERSE IMPACTS ON QUALITY OF WATER EXPORTED FROM THE SOUTH DELTA

Exceeding the .7 EC standard will result in degradation of the San Joaquin River downstream of the head of Old River and in Old River, Middle River and Grantline Canal. This degradation will result in increased salinity in the water exported by the CVP and SWP from the South Delta. The amount of degradation occurring at the CVP pumps and the SWP pumps will

vary depending on a number of factors including temporary barrier operation, pumping rates and the proportion of San Joaquin River water reaching each of the export pumps. The significance of increased salinity is well documented. DWR Bulletin 160-93 The California Water Plan Update at pages 130-132 (CDWA-14) outlines the many impacts resulting from reduced water quality. As to the impact on urban consumers, the bulletin provides:

“Many studies have cited the impacts of water quality on the value of water to urban consumers, and all have cited the difficulty of expressing quality impacts in a simple way. A 1989 review of consumer impacts of the mineral content of Delta water proposed a generalized cost of \$0.68 per acre-foot per milligram per liter of incremental total dissolved solids. The current generalized value would be about \$0.80 per acre-foot per milligram per liter (adjusted using the Consumer Price Index), or about \$0.30 per pound of dissolved mineral matter in the water. The impact of this added cost can be quite significant.”

Using a current generalized value of \$1.00 per acre foot per milligram, the cost per acre foot can be calculated for a degradation to 1.0 EC. $1.0 \text{ EC} - .7 \text{ EC} = .3 \text{ EC}$ times 640 or 192 milligrams per liter of \$192.00 per acre foot. If we assume the San Joaquin River flow passing Vernalis is on the average about 1000 to 2000 cfs or 2000 to 4000 acre feet per day when the reduced standard could be triggered, we would get \$384,000.00 to \$786,000.00 of adverse impact per day. If on average it is assumed that only thirty (30) days per year will be affected, the amount will be \$11,520,000.00 to \$23,580,000.00 per year. The impact is obviously significant.

Figure 6 on page 18 of DWR - Exhibit 20 titled Testimony for SWRCB Hearing on Cease and Desist Order which shows the “Volumetric Fingerprint at Clifton Court Forebay for Historical Conditions 2000-2001”. The volumetric fingerprint for the CVP-Tracy Pumping Plant

was not shown but can be expected to be more severely influenced by San Joaquin River water quality. The degraded export water which is delivered to the west side of the San Joaquin Valley which contributes to the salinity of the San Joaquin River will of course aggravate the problems. Even with reduced direct drainage discharges to the river, much of the salt accumulating in the land and groundwater will eventually adversely impact the San Joaquin River through accretions and other uncontrolled flows.

THE .7 EC STANDARD SHOULD NOT BE EXCEEDED.

With respect to the desirability of water in excess of .7 EC, it is important to note the Testimony of Alex Hildebrand that the salinity objective in the State Water Project contracts is a monthly average of 440 ppm and an average for any ten year period of 220 ppm. this equates to .6875 EC and .3438 EC respectively.

RIPARIAN RIGHTS OF R C FARMS, INC. AND ALEX HILDEBRAND

The testimony of Christopher H. Neudeck (CDWA-1) and exhibits CDWA 4, 5 6 and 7 coupled with the testimony of Kurt Sharp (CDWA-8) and testimony of Alexander Hildebrand (SDWA-2) clearly establish the riparian status of R C Farms, Inc. and Alexander Hildebrand parcels and the riparian water rights relating thereto.

CONCLUSION

The exception of the .7 EC standards in the WQRP, if valid, would constitute a change in the D-1641 standards. A change in such a manner without environmental view and without approval by the SWRCB is clearly improper. The exception should be deleted from the WQRP.

The SWRCB enforcement team is correct in interpreting the DWR and Reclamation

actions as signaling their intention to play games with .7 EC standards including the violation thereof. The evidence is clear that they have not developed a plan to meet the standards and could not even estimate the quantity of additional dilution flow required in the San Joaquin River which they contend would constitute an unreasonable use. The soft approach used by the SWRCB in the past has resulted in DWR and Reclamation assuming that the SWRCB will continue to let them off the hook. The proposed CDO is unduly focused on installation of the permanent barriers rather than compliance with the standards. The CDO should set in place a major cutback in exports if the .7 EC standards are violated, particularly to the areas which adversely impact the San Joaquin River water quality which the standards are intended to protect. While our recommendation is more general, a progression of cutbacks starting with the areas within the San Luis Unit of the CVP which were not to receive water without a valley drain would be logical. In order to stimulate compliance, the threatened penalty must be significant in relation to gain resulting from violation. A \$1000.00 per day penalty is insignificant to DWR, Reclamation and their contractors, especially when they are exporting in excess of 10,000 cfs or 20,000 acre feet per day which at \$100.00 per acre foot has a value of \$2,000,000.00 per day. The time is long past due for the SWRCB to signal its independence.

Yours very truly,

DANTE JOHN NOMELLINI
Attorneys for Central Delta Water Agency, R C
Farms, Inc., Kurt Sharp and Rudy Mussi

DJN:ju