

**POLICY STATEMENT OF STOCKTON EAST WATER DISTRICT
BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

Hearing on Delta Salinity Draft Cease and Desist Order
October 24, 2005

Stockton East Water District (SEWD) submits the following policy statement on the Delta Salinity Draft Cease and Desist Order and Water Quality Response Plan being considered by the State Water Resources Control Board.

This proceeding has not been noticed as a hearing to change the standards imposed by D 1641. Such a change will be considered in another hearing before this Board. The hearing today is to consider whether or not the Board should:

1. Adopt Draft Cease and Desist Orders against the United State Bureau of Reclamation and the California Department of Water Resources, and
2. Reconsider the Conditional Approval of the April 25, 2005 Water Quality Response Plan for use of Joint Points of Diversion by the United State Bureau of Reclamation and the California Department of Water Resources.

The Board should adopt the Cease and Desist Orders. The standards imposed by the 1995 Water Quality Control Plan must be met, and D 1641 imposed responsibility for meeting those requirements on Reclamation and DWR. The contents of those Cease and Desist Order, however, must be carefully crafted to comply with state and federal law. In addition, the Board must reconsider staff's conditional approval of the Response Plan because the approval violated California law.

BACKGROUND

SEWD holds a contract with the United States Bureau of Reclamation for water supply from the Central Valley Project, delivered through the New Melones Project on the Stanislaus River. Despite numerous claims to the contrary, the New Melones Project was built to provide

water to the Stanislaus River watershed and adjacent areas. Reclamation – not Congress - authorized the use of New Melones for water quality purposes to the extent it did not interfere with the authorized purposes of the project. Despite those limitations, New Melones has been used as the cure-all for San Joaquin River and southern Delta water quality problems for over 25 years.

Congress has recently taken note of this fact and directed Reclamation to cease continued reliance on New Melones to improve south delta water quality. In HR 2828 Congress directed the Secretary of the Interior to develop a program to implement all existing water quality standards and objectives for which the CVP has responsibility, and begin initiation of that plan, no later than October 25, 2005, tomorrow.¹ That plan is to specifically include methods to “reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives”, using various methods. The State Legislature has imposed a similar requirement upon DWR for a plan to be adopted in January of 2006.

WATER QUALITY REQUIREMENTS

All Central Valley Project permits are responsible for complying with the southern delta salinity standard at Vernalis. The CVP and State Water Project permits are jointly responsible for complying with salinity standards at the remaining southern delta compliance points. Despite this, DWR and USBR have solely relied upon releases from New Melones Reservoir to meet southern Delta salinity standards. This is despite the fact that the State Board in D 1641 stated:

“Although releases of dilution water could help meet the southern Delta objectives, regional management of drainage water is the preferred method of meeting the objectives. D 1641 at pp. 83-83.

¹ It seems odd that we are before the State Water Resources Control Board addressing a water quality standards that the Bureau of Reclamation states that it cannot meet when less than one year ago Congress directed the Secretary to develop a method to meet all existing standards – not to waive them

SOUTH DELTA SALINITY OBJECTIVES

In D 1641 the State Board recognized that barriers alone would not insure compliance with the south delta salinity objectives; compliance will require treatment or more dilution flows. D 1641 at p. 88. The State Board also determined that “DWR and USBR are partially responsible for salinity problems in the Delta because of hydrologic changes that are caused by export pumping.” Therefore, the Board imposed the requirement to meet these standards on the state and federal water permits.

In D 1641 the State Board also determined that the water quality benefits of the barriers could also be achieved by other means, but noted that requiring additional flows “could result in an unreasonable use of water.” D 1641 at p. 87. DWR and the USBR have represented that increasing flow from the San Joaquin River does not improve circulation in interior delta channels and cannot guarantee water quality compliance in the southern delta.

The State Board staff has acknowledged that the permanent barriers will not be built before 2009, if that soon. Prior to that time the CDO should provide specific direction to DWR and USBR on what steps should be taken to ensure compliance with the standards. The State Board should not direct DWR and USBR to comply with the standards and allow them to simply drain New Melones Reservoir in trying to do so, particularly when the State Board itself has acknowledged that to do so would likely constitute an unreasonable use of water in violation of the California Constitution.

Items 1 and 2 of the Draft CDO should be re-worded and expanded. Board staff has come to the realization that directing DWR and Reclamation to comply with requirements does not insure that compliance will be achieved. As stated by Charles Lindsay in his testimony, DWR and USBR are in a “probationary period”. During this period there should be heightened

State Board oversight that should include specific direction for what compliance actions will be considered reasonable. Items 1 and 2 should impose limitations on the methods that can be used to avoid an anticipated violation of the 0.7 EC objective, including, but not limited to, the following:

- (1) Water quality releases can be used to meet the standards only after non-flow alternatives are exhausted, including reducing exports, purchasing water, restrictions on discharge from wetlands receiving water from the CVP, and re-circulation².
- (2) Water quality releases cannot be the exclusive method used to meet the standards.
- (3) If water quality releases are used as one of the methods to achieve compliance, USBR cannot release all water from one source for that purpose, and a cap should be imposed upon the quantities of water to be released from non-export facilities.
- (4) Actions taken by the USBR should expressly comply with the limitations imposed by Congress in HR 2828.

RESPONSE PLAN

The State Board must rescind staff's approval of the proposed Response Plan. First, because it was approved in violation of due process requirements. The approval purported to waive compliance with water quality standards imposed as permit conditions by the State Water Resources Control Board in a noticed hearing. Such permit terms can be changed only after an additional noticed hearing.

Most importantly, however, D 1641 required that all water quality objectives are met before DWR and USBR can enjoy the benefit of the Joint Point of Diversion authorization under their permits. Once again, to change that requirement requires a public hearing with notice to all parties participating in the D 1641 process.

² While re-circulation and water purchases for meeting water quality both include flow, they do not constitute an unreasonable use of water because they are not taking water away from beneficial uses. Rather, they both involve the voluntary re-cycling of water that can ultimately be reused for beneficial purposes.

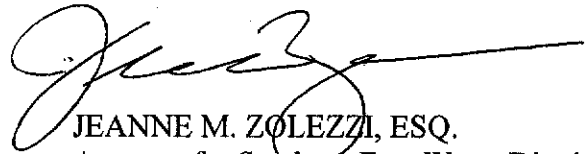
Interestingly, in D 1641 the State Board concluded:

“[t]he actions of the CVP are the principal cause of the salinity concentrations exceeding the objectives at Vernalis. . . . The source of much of the saline discharge to the San Joaquin River is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the Delta by the CVP, primarily through the Delta-Mendota Canal and the CVP Unit.” At p. 83

“The DWR and the USBR are partially responsible for salinity problems in the southern Delta because of hydrologic changes that are caused by export pumping.” At p. 88.

Despite these findings, staff approved use of Joint Point of Diversion to increase export pumping while at the same time waiving compliance with water quality requirements in the south delta. By its own determination the Board acknowledges that authorizing increased exports will and exacerbate water quality in the San Joaquin River and south delta. Approving such increased pumping while at the same time waiving compliance with water quality standards does not fulfill this body’s legislative mandate to protect the quality of waters in this state.

Respectfully submitted,



JEANNE M. ZOLEZZI, ESQ.
Attorney for Stockton East Water District