STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 1381 (Application 301)

West Side Irrigation District

AMENDED ORDER APPROVING CHANGE IN PURPOSE OF USE AND ISSUING AMENDED LICENSE

SOURCE: Old River

COUNTY: San Joaquin

WHEREAS:

1. License 1381 was issued pursuant to permitted Application 301 on September 29, 1933, and was recorded with the County Recorder of San Joaquin County on October 7, 1933. Recording of this license, and subsequent orders issued thereto, is prescribed by Water Code section 1650.

2. The Division of Water Rights (Division) record of ownership for License 1381 shows the current holder of the license as West Side Irrigation District (licensee).

3. License 1381 authorizes direct diversion of 82.5 cubic feet per second (cfs) from April 1 to October 31. The authorized purpose of use is Irrigation of 11,993.76 acres.

4. The licensee submitted a Petition for Change dated November 15, 2001 to change the purpose of use to Irrigation, Domestic, Municipal and Industrial.

5. The petition was noticed on April 30, 2004 and no protests to approval of the petition were filed with the Division.

6. On May 28, 2004, the U.S. Bureau of Reclamation (Reclamation) advised the Division that water delivery for new Domestic, Municipal and/or Industrial uses as well as the historic Irrigation uses would be injurious to its water rights. Such increased diversions would require Reclamation and the Department of Water Resources to make increased releases from project reservoirs for the Delta when the Delta is in balance. Reclamation indicated that it had no issues regarding ongoing diversion and use levels.

7. The quantity of water that represents ongoing diversion and use has been the subject of much discussion within the context of this water right. To resolve this issue, the Division issued a Notice of Proposed Partial Revocation (NPR) of License 1381 on January 25, 2009 because licensee had not applied its full licensed amount of water to beneficial use pursuant to License 1381 for at least five consecutive years.

8. In response to the NPR, licensee developed additional information documenting its average monthly diversion rate, peak diversion rate, and annual diversion quantities. The NPR issues were resolved when licensee agreed to limit future diversions under the license to 82.5 cfs, with an annual limit of 27,000 acre-feet (af). The annual limit reflects the amount of water licensee has actually put to beneficial use under this license, based on the licensee's highest beneficial use amount in the five years immediately preceding the Division's NPR.

9. Since the license has been amended to include an annual use limit of 27,000 af, adding additional purposes of use will not result in any increase in annual diversions. Therefore, approval of the change will not operate to the injury of any legal user of water. Also, the change will not effectively initiate a new right.

10. The State Water Resources Control Board (State Water Board) standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for State Department of Fish and Game Stream Alteration Agreement shall be updated or added to the amended license.

11. Under the California Environmental Quality Act (CEQA), the licensee is the lead agency for preparation of environmental documentation for the project. On November 14, 2001, the licensee adopted an Initial Study/Negative Declaration (ND), SCH # 2001092073, for the change petition to provide a municipal water supply.

    The State Water Board is a responsible agency for purposes of considering whether to approve the change petition that will allow licensee to provide water for Municipal, Domestic and Industrial purposes. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14 § 15096, subd. (a)) The State Water Board has considered the ND in deciding whether to approve the petition. Approval of the change petition should not result in any significant impacts to biological resources.

    The licensee's environmental review was limited to impacts associated with using water for the proposed additional purposes of use within the authorized place of use. Consequently, the State Water Board's approval of the petition must be similarly limited in scope.

    In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346]) There is no evidence that approval of the change petition, with inclusion of an annual limit on water diversion and use based on the past, documented diversion level, will have any adverse impacts on public trust resources.

    The State Water Board will issue a Notice of Determination within 5 days of the date of this Order.

THEREFORE, IT IS ORDERED:

The Petition for Change in purpose of use to add Domestic, Municipal and Industrial purposes of use is approved. The attached amended license is issued.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for *Victoria A. Whitney*
Deputy Director for Water Rights

Dated: AUG 19 2010

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 301 PERMIT 270 LICENSE **1381**

THIS IS TO CERTIFY, That

West Side Irrigation District
P.O. Box 177
Tracy, CA 95378-0177

has the right to the use of the waters of **Old River** in **San Joaquin County**

tributary to **San Joaquin River**

for the purpose of **Municipal, Domestic, Industrial, and Irrigation uses.**

Amended License 1381 supersedes the license originally issued on **September 29, 1933**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (State Water Board), or its predecessor, and the terms of **Permit 270**. The priority of this right dates from **April 17, 1916**. Proof of maximum beneficial use of water under this license was made as of **August 22, 1933** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **eighty-two and five tenths (82.5) cubic-feet per second from (1) about April 1 to October 31 of each year for Irrigation use, and (2) from April 1 to October 31 of each year for Municipal, Domestic, and Industrial uses. The maximum amount diverted under this license shall not exceed 27,000 acre-feet per year.**

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time for Irrigation use provided there is no interference with other rights and instream beneficial uses and provided further that all terms of conditions protecting instream beneficial uses are observed.

(0000027)

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 3, North 2,111,904 feet and East 6,268,367 feet, being within SE¼ of NE¼ of Section 3, T2S, R4E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

11,993.76 acres within the boundaries of the West Side Irrigation District as shown on amended map dated March 21, 1929, filed with the State Water Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2089) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for *Victoria A. Whitney*
Deputy Director for Water Rights

Dated: AUG 19 2010

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 1381 (Application 301)

West Side Irrigation District

ORDER APPROVING CHANGE IN PURPOSE OF USE

SOURCE: Old River

COUNTY: San Joaquin

WHEREAS:

1. License 1381 was issued pursuant to permitted Application 301 on September 29, 1933, and was recorded with the County Recorder of San Joaquin County on October 7, 1933. Recording of this license, and subsequent orders issued thereto, is prescribed by Water Code section 1650.

2. The Division of Water Rights (Division) record of ownership for License 1381 shows the current holder of the license as West Side Irrigation District.

3. License 1381 authorizes direct diversion of 82.5 cubic feet per second (cfs) from April 1 to October 31. The authorized purpose of use is irrigation of 11,993.8 acres.

4. The Licensee submitted a petition for change dated November 15, 2001 to change the purpose of use to irrigation, domestic, municipal and industrial.

5. The petition was noticed on April 30, 2004 and no protests to approval of the petition were filed with the Division. The notice provided information on recent water use under the license, indicating that the maximum use in the most recent five years of record is 58.8 cfs, with an annual amount of 24,957 acre-feet (af). Diversion of the full licensed quantity of 82.5 cfs has not occurred since 1977.

6. On May 28, 2004, the U.S. Bureau of Reclamation (Reclamation) advised the Division that water delivery for new domestic, municipal and/or industrial uses as well as the historic irrigation uses would be injurious to its water rights. Such increased diversions would require Reclamation and the Department of Water Resources to make increased releases from project reservoirs for the Delta when the Delta is in balance. Reclamation indicated that it had no issues regarding ongoing diversion and use levels.

7. The quantity of water that represents ongoing diversion and use has been the subject of much discussion within the context of this water right. To resolve this issue, the Division issued a Notice of Proposed Partial Revocation (NPR) of License 1381 on January 25, 2009 because Licensee had not applied its full licensed amount of water to beneficial use pursuant to License 1381 for at least five consecutive years.

8. In response to the NPR, Licensee developed additional information documenting its average monthly diversion rate, peak diversion rate, and annual diversion quantities. The NPR issues were resolved when Licensee agreed to limit future diversions under the license to 82.5 cfs, with an annual limit of 27,000 acre-feet (af). The annual limit reflects the amount of water

Licensee has actually put to beneficial use under this license, based on the Licensee's highest beneficial use amount in the five years immediately preceding the Division's NPR.

9. Since the license has been amended to include an annual use limit of 27,000 af, adding additional purposes of use will not result in any increase in annual diversions. Therefore, approval of the change will not operate to the injury of any legal user of water. Also, the change will not effectively initiate a new right.

10. The State Water Board standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for State Department of Fish and Game stream alteration agreement shall be updated or added to the amended license.

11. Under the California Environmental Quality Act (CEQA), the Licensee is the lead agency for preparation of environmental documentation for the project. On November 14, 2001, the Licensee adopted an Initial Study/Negative Declaration (ND), SCH # 2001092073, for the change petition to provide a municipal water supply.

The State Water Board is a responsible agency for purposes of considering whether to approve the change petition that will allow Licensee to provide water for municipal, domestic and industrial purposes. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14 § 15096, subd. (a).) The State Water Board has considered the ND in deciding whether to approve the petition. Approval of the change petition should not result in any significant impacts to biological resources.

The Licensee's environmental review was limited to impacts associated with using water for the proposed additional purposes of use within the authorized place of use. Consequently, the State Water Board's approval of the petition must be similarly limited in scope.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that approval of the change petition, with inclusion of an annual limit on water diversion and use based on the past, documented diversion level, will have any adverse impacts on public trust resources.

The State Water Board will issue an NOD within 5 days of the date of this order.

THEREFORE, IT IS ORDERED:

The petition for change in purpose of use to add domestic, municipal and industrial purposes of use is approved. The attached amended license is issued.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for *Victoria A. Whitney*
Deputy Director for Water Rights

Dated: APR 23 2010

Attachment: Amended License 1381

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 301 PERMIT 270 LICENSE **1381**

THIS IS TO CERTIFY, That

West Side Irrigation District
P.O. Box 177
Tracy, CA 95378-0177

has the right to the use of the waters of **Old River** in **San Joaquin County**

tributary to **San Joaquin River**

for the purpose of **Municipal, Domestic, Industrial, and Irrigation uses.**

Amended License 1381 supersedes the license originally issued on **September 29, 1933**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (State Water Board), or its predecessor, and the terms of **Permit 270**. The priority of this right dates from **April 17, 1916**. Proof of maximum beneficial use of water under this license was made as of **August 22, 1933** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **a total of eighty two and five tenths (82.5) cubic feet per second from April 1 to October 31 of each year. The maximum amount diverted under this license shall not exceed 27,000 acre-feet per year.**

For irrigation purpose of use only: In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 3, North 2,111,904 feet and East 6,268,367 feet, being within SE¼ of NE¼ of Section 3, T2S, R4E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

11,993.8 acres located within the boundaries of the West Side Irrigation District as shown on map filed with the Division of Water Rights, March 21, 1929.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2089) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

for James V. Kassel

Victoria A. Whitney, Chief
Division of Water Rights

Dated: APR 23 2010

NFP: DCC: 01/20/10
U:\PERDRV\NPonferrada\301 West Side Irrigation District\Amended License

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2010 – 0012 – EXEC

In the Matter of the Diversion and Use of Water by

West Side Irrigation District

ORDER APPROVING SETTLEMENT AGREEMENT AND PARTIAL REVOCATION

BY THE EXECUTIVE DIRECTOR:[1]

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a Notice of Proposed Partial Revocation to the West Side Irrigation District (West Side or Licensee). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights prosecution team (Prosecution Team) and West Side have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

The State Water Board issued License 1381 on September 29, 1933. Division records show West Side as the owner of License 1381. The license authorizes the Licensee to divert 82.5 cubic feet per second (cfs) from about April 1 to October 31. The authorized purpose of use is irrigation of 11,993.8 acres.

On July 18, 1985, the Division conducted a field inspection of the project served by License 1381. Division staff observed that the place of use had been reduced from 11,993.8 acres to 9,413 acres. Division staff recommended that the authorized direct diversion rate be reduced to

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[1] State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

64.75 cfs. The field engineer calculated that the maximum monthly diversion should not exceed 4,900 acre-feet (af) (82.5 cfs x 1.98 af/cfs x 30 days = 4,900 af). The reduction in the licensed direct diversion rate was calculated based on a pro-rata reduction in service area. Subsequently, further lands were de-annexed from West Side and the reported water use declined.

On August 5, 2004, the Division advised Licensee that License 1381 may be amended to reflect the maximum recent use, which is lower than authorized under the terms of the license. The Division requested that Licensee submit a statement of facts documenting recent use of 82.5 cfs and the maximum annual use by September 4, 2004. Licensee did not submit the requested statement of facts.

On September 7, 2004, Licensee informed the Division that it has experienced low water levels in Old River, particularly in the spring months, for several years, which have inhibited its pumping capacity. Licensee did not identify which years had low water levels.

A June 20, 2006 letter from the Division requested that Licensee submit its triennial Report of Licensee for 2001, 2002, 2003 by July 20, 2006. Licensee submitted these reports on July 11, 2006.

Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."

On January 25, 2008, the Division issued a Notice of Proposed Partial Revocation to West Side. West Side submitted a hearing request on February 8, 2008, pursuant to Water code section 1675.1.

West Side and the Division Prosecution Team agree to settle the matters identified in the Notice of Proposed Partial Revocation through this Settlement Agreement in lieu of a hearing on said matters.

3.0 SETTLEMENT AGREEMENT

West Side and the Prosecution Team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Settlement Agreement that is attached hereto. The general terms of the settlement are:

(1) West Side filed a petition for change of purpose of use for License 1381 on November 15, 2001 to add municipal, domestic and industrial uses. The Division agrees to promptly process West Side's petition for change in purpose of use, based upon the previously noticed petition.

(2) Concurrent with issuance of the Order approving West Side's petition for change in purpose of use, the State Water Board will amend License 1381 to reflect a maximum annual diversion limit of 27,000 af. The maximum diversion rate will remain 82.5 cfs.

(3) West Side dismisses its request for hearing regarding the Notice of Proposed Partial Revocation.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and West Side is approved and is incorporated by reference into this Order.

Dated: **March 09, 2010**

ORIGINAL SIGNED BY
THOMAS HOWARD FOR
Dorothy Rice
Executive Director

Attachment

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the West Side Irrigation District (West Side or Licensee) and the Division of Water Rights (Division) Prosecution Team. The parties enter into this Settlement Agreement because it is their collective desire to settle the issues raised in the Notice of Proposed Partial Revocation issued to West Side, dated January 25, 2008. This Settlement Agreement will be submitted to the Executive Director of the State Water Resources Control Board (State Water Board) for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the Executive Director issues an order approving the Settlement Agreement. This Settlement Agreement, if approved and adopted by the Executive Director, is intended to resolve all issues raised by the Notice of Proposed Partial Revocation for License 1381.

BACKGROUND

The Division and West Side stipulate to the following facts:

1. The State Water Board issued License 1381 on September 29, 1933. Division records show West Side as the owner of License 1381. The license authorizes the Licensee to divert 82.5 cubic feet per second (cfs) from about April 1 to October 31. The authorized purpose of use is irrigation of 11,993.8 acres.

2. On July 18, 1985, the Division conducted a field inspection of the project served by License 1381. Division staff observed that the place of use had been reduced from 11,993.8 acres to 9,413 acres. Division staff recommended that the authorized direct diversion rate be reduced to 64.75 cfs. The field engineer calculated that the maximum monthly diversion should not exceed 4,900 acre-feet (af) (82.5 cfs x 1.98 af/cfs x 30 days = 4,900 af). The reduction in the licensed direct diversion rate was calculated based on a pro-rata reduction in service area.

   The license inspection results were provided to Licensee on October 8, 1986. Licensee was requested to provide a new engineered map and a petition to change the place of use for the reduced place of use. Licensee did not agree that the diversion rate should be reduced based on pro-rata reduction in service area and did not provide a revised map.

3. In the Division's April 9, 1992 letter, staff again notified Licensee of the Division's opinion that a revised engineered map was needed.

4. Licensee advised the Division on June 4, 1992 that the Local Agency Formation Commission had detached lands from the district. Licensee advised the Division that it was premature to submit a new engineered map because its service area was undergoing change.

5. On July 27, 1992, Division staff advised Licensee that the Division needs more specific details on its planning effort. The matter of updating the license and maps had been outstanding since 1986, but Licensee had not yet submitted revised maps.

6. Licensee informed the Division by letter dated September 21, 1998 that it would not be taking any action to amend the place of use. Licensee confirmed that the district

boundaries have been reduced over time as land is annexed into the City of Tracy for municipal development. Land is routinely detached from the district for this purpose.

7. On September 19, 2001, the State Clearinghouse circulated an Initial Study and Negative Declaration (ND) for change in purpose of use of License 1381 of West Side. The ND states that the district consists of approximately 6,161 acres.

8. Licensee's November 21, 2001 letter states that approximately 5,800 acres of land have changed from agricultural to urban uses, and have detached from the district. The district is now comprised of 6,161 acres.

9. On May 28, 2004, the U.S. Bureau of Reclamation advised the Division that it appears that a portion of License 1381 appears to have been abandoned or forfeited through non-use.

10. On August 5, 2004, the Division advised Licensee that License 1381 may be amended to reflect the maximum recent use lower than authorized under the terms of the license. The Division requested that Licensee submit a statement of facts documenting recent use of 85 cfs and the maximum annual use by September 4, 2004. Licensee did not submit the requested statement of facts.

11. On September 7, 2004, Licensee informed the Division that it has experienced low water levels in Old River, particularly in the spring months, for several years, which have inhibited its pumping capacity. Licensee did not identify which years had low water levels.

12. In a May 10, 2005 letter, Division staff restated the information regarding lower-than-authorized recent use. The May 10 letter documents that the Division did not receive the requested statement of facts showing: (a) use of 85 cfs or (b) a lack of available water, and advised Licensee that the Division may consider amending the license to limit the use to the documented amounts.

13. A June 20, 2006 letter from the Division requested that Licensee submit its triennial Report of Licensee for 2001, 2002, 2003 by July 20, 2006. Licensee submitted these reports on July 11, 2006.

14. Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."

15. The Division asserts, and Licensee disputes, that Licensee has not applied its full licensed amount of water to beneficial use pursuant to License 1381 for at least five consecutive years when water was available to Licensee.

16. On January 25, 2008, the Division issued a Notice of Proposed Partial Revocation to West Side.

17. West Side submitted a hearing request on February 8, 2008, pursuant to Water code section 1675.1.

18. The Division's Prosecution Team and Licensee met several times to discuss potential settlement.

AGREEMENT

Both the Division and West Side agree to settle this matter, in lieu of proceeding to hearing on the Notice of Proposed Partial Revocation, on the following terms:

1) West Side filed a petition for change of purpose of use for License 1381 on November 15, 2001 to add municipal, domestic and industrial uses. The petition complies with Water Code section 1701 and has been accepted by the Division for processing. Processing of the petition was delayed by the U.S. Bureau of Reclamation's (Reclamation) May 28, 2004 assertion that increased diversion pursuant to the petition would require Reclamation to make increased releases from project reservoirs for the Delta when the Delta is in balance. Reclamation did not object to continued diversion of established quantities of water. This Settlement Agreement establishes the quantity of water previously put to use by West Side and resolves Reclamation's concern. Consequently, the Division agrees to promptly process West Side's petition for change in purpose of use, based upon the previously noticed petition.

2) Concurrent with issuance of the Order approving West Side's petition for change in purpose of use, the State Water Board will amend License 1381 to reflect a maximum annual diversion limit of 27,000 af. The maximum diversion rate will remain 82.5 cfs.

3) West Side dismisses its request for hearing regarding the Notice of Proposed Partial Revocation on the effective date of this Settlement Agreement. West Side also waives its right to request reconsideration by the State Water Board of the Order Approving the Settlement Agreement between the Division and West Side provided no additional requirements are included in that order beyond the requirements of this Settlement Agreement.

4) Miscellaneous:

   Independent Judgment. Each party represents and declares that in executing this Settlement Agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.

   No Precedent. This Settlement Agreement involves unique facts and legal issues and shall not be deemed a precedent decision of the State Water Board.

   Additional Documents. Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.

   Entire Agreement. This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements,

promises, or representations, made by the other party other than those contained in this Settlement Agreement.

Mutual Agreement. The parties have agreed to the particular language in this Settlement Agreement, and this Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.

Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

Reasonableness of Settlement. The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.

Section Headings. The parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.

Effective Date. This Settlement Agreement shall become effective immediately on adoption of the State Water Board Executive Director's order approving the Settlement Agreement.

Choice of Law. This Settlement Agreement shall be interpreted and governed by the laws of the State of California.

Authorization. Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

Date: 2-1-2010

West Side Irrigation District

By Jack Alvarez
Jack Alvarez
President

ATTEST: By Barbara Kleinert
Barbara Kleinert
Secretary

Date: 2/1/10

Division of Water Rights

By James W. Kassel
James W. Kassel,
Assistant Deputy Director
for Water Rights

FORM 64

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

LICENSE 1381 PERMIT 270 APPLICATION 381

THIS IS TO CERTIFY, *That* The West Side Irrigation District of Tracy, California, *has made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of* Old River in San Joaquin County *tributary of* San Joaquin River *for the purpose of* irrigation *under Permit* 270 *of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from* April 17, 1916,

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed eighty-two and one-half (82.5) cubic feet per second from about April 1st to about October 31st of each season. In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

The point of diversion of such water is located on the South bank of Old River, bearing North twenty-eight degrees fifty-three minutes twenty seconds (28° 53' 20") East, four thousand four hundred sixty-six and six tenths (4466.6) feet from the South quarter corner of Section 3, T 2 S, R 4 E, M.D.B.&M., being within the Rancho El Pescadero and the SE¼ of NE¼ of said Section 3.

A description of the lands or the place where such water is put to beneficial use is as follows:

11,993.76 acres within the boundaries of the West Side Irrigation District as shown on map filed with the Division of Water Rights, March 21, 1929.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

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This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

SEC. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; *and providing, further*, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; *and providing, further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; *and provided, further*, that when such municipality shall desire to use the additional waters granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness my hand and the seal of the Department of Public Works of the State of California, this [redacted] *day of* [redacted], *19* [redacted].

[SEAL]

EDWARD HYATT
State Engineer

By Harold Conkling
Deputy

LICENSE 1381

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RESOURCES

LICENSE
TO APPROPRIATE WATER

ISSUED TO The West Side Irr. District

DATED September 29, 1933

3086 8-33 1M CALIFORNIA STATE PRINTING OFFICE

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