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March 26, 2010

Via E-Mail dheinrich@waterboards.ca.gov

Dana Heinrich, Esq.
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State Water Resources Control Board
Office of Chief Counsel
P. O. Box 100
Sacramento, CA 95812-0100

Re: Water Right Hearing Regarding Adoption fo Draft CDO against Gallo, Dunkel, Mussi, and Pak and Young

Dear Ms. Heinrich:

This is a follow up to my earlier letter and deals with the same issue. As per prior communications, I am seeking to make sure that the CDO process is conducted in a fair manner, and decided on the facts presented, not assumed. The basis of my original concern was the fact that the current SWRCB efforts aimed at investigating water rights in the southern Delta were based on the Wee Report submitted by the San Joaquin River Group Authority, which alleged large-scale illegal diversions.

Even a cursory review of the Wee Report indicated it was lacking in relevant information and made no effort to investigate riparian or pre-1914 water rights. The Report "missed" the existence of Grant Line Canal and North/Victoria Canal as sources of riparian rights; ignored other historical interior island channels; did not identify water delivery systems or irrigation companies or districts; and did not review deeds or other title documents. Some or all of these "missing" facts can and do preserve riparian rights and/or pre-1914 rights. Without investigating these other, relevant facts, any conclusions about the existence of water rights is meaningless.

Notwithstanding the clear insufficiencies of the Wee Report, the Board moved ahead to focus on in-Delta diverters. This policy decision suggests the Board has already reached conclusions about whether or not "illegal diverters" exist, or are "rampant" in the southern Delta.

A few months ago I was informed that Chairman Hoppin gave a speech at the Almond Growers Convention last December. I was told his comments included references to illegal Delta diverters. It took me three months to get a copy of the recording, and upon review discovered it did not completely support what I was told was stated. The text of the pertinent part is set forth below. Immediately prior to these comments, Chairman Hoppin made some statements about the illegal diverters in the Russian River area, followed by:

There's (sic) illegal diversions in the Delta. There's (sic) people that at one point had riparian water rights on those islands and as the ranches passed through generations and generations, some of the heirs have decided to sell their property. Well once there's an interruption in a parcel that was contiguous with the water source that granted the status of being riparian, those rights have been sacrificed. Some of those folks have pre-14 water rights, some of them think they have pre-14 water rights. It's not an enormous amount, but there's going to be additional scrutiny certainly in the Delta not so much because the illegal violations there are tremendously more egregious than the rest of the State but just because it is the axis of all of the water activity in our State.

As you can see, the Chairman does not state that there are "allegations" of illegal diversions, he states there are illegal diversions. Without trying to be unfair to him, it must also be stated that his brief description of how riparian rights are lost is incomplete, and thus not correct.

I realize that this in and of itself may not lead anyone other than myself to conclude there is bias, though it must be recognized that, at the very least, it is highly improper for the upcoming judge in a water rights proceeding to already believe there are illegal diverters in the area, not that there are *allegations* of illegal diversions. These statements by the Chairman suggest that he is familiar with the arguments of the Wee Report, but completely unfamiliar with the glaring shortcomings of the Report, and unfamiliar with the numerous facts that support the riparian and pre-1914 rights in the area. His statements indicate that he agrees with the allegations and positions of the parties who sought intervention in the upcoming hearing and are attacking local water rights. The same parties with whom Board member Baggett has met on the same topic.

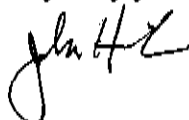
I realize that simply by raising these issues, the judges in the upcoming CDO hearings may become biased against my clients even if they weren't already. However, the inexplicable focus on southern Delta water rights during a time when illegal exports are ignored, water quality standards violated, and efforts to worsen the standards move forward all point to some institutionalized bias against the diverters our area.

Dana Heinrich, Esq.
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Taken as a whole, I believe all the questions I have raised and all the facts we now know indicate an unacceptable level of bias exists. I respectfully request that two different hearing officers be named for these CDO hearings given the evidence suggesting an appearance, if not actual bias. The current hearing officers certainly have no specific need to hear these particular issues, and any preference by them to be hearing officer should not be controlling. The remaining Board members are more than qualified to conduct the proceedings.

Please call me if you have any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Herrick", written in a cursive style.

JOHN HERRICK