

CARTER & MOMSEN, LLP

444 NORTH STATE STREET
POST OFFICE BOX 1709
UKIAH, CALIFORNIA 95482

JARED G. CARTER
BRIAN C. CARTER
BRIAN S. MOMSEN
DANIELA M. PAVONE
MATISSE M. KNIGHT

PHONE: (707) 462-6694
FAX: (707) 462-7839
E-MAIL: bcarte@pacific.net
WEBSITE: www.cartermomsen.com

December 23, 2009

VIA E-MAIL, FAX TO (916) 341-5621 AND U.S. MAIL

Arthur G. Baggett, Jr.
Hearing Officer
State Water Resources Control Board
Executive Office
1001 I Street
P.O. Box 100
Sacramento, CA, 95814

Re: Your File No. 363:JO:262.0(23-03-06); Draft Cease &
Desist Order; Request For Reconsideration Of December 3
Ruling Re Discovery Procedures

Dear Hearing Officer Baggett:

This firm represents respondents Tom Hill and Steve Gomes. In accordance with Dana Heinrich's December 17, 2009, letter to this office, we hereby request that you reconsider your ruling of December 3, 2009 (in which ruling you denied our request that an exception be made with respect to discovery proceedings herein).

The hearing before the Board in this matter is set for January 26, 2010. While the draft cease and desist order was issued in early April 2009, the parties were embroiled in a lawsuit in Superior Court in Mendocino County, which suit was not finally resolved until October 2009. The pendency of that lawsuit prevented the parties, including our clients, from taking any discovery in this proceeding.

On November 10, 2009, we served herein our clients' requests for an exception to normal administrative discovery. On November 20, we served the written discovery that we were seeking permission to propound. On December 3, you denied the request for exception.

As things now stand, our clients will have little or no time to conduct the limited discovery that is available in an administrative context, and are denied the right to propound written discovery requests that enable a party to gather material amounts of information in a short period of time. Compared to

Arthur G. Baggett, Jr.
State Water Resources Control Board
December 23, 2009
Page 2

the full discovery rights available in a Superior Court civil case (such as quiet title to real property), the discovery available to my clients herein is exceedingly limited and is available on only a very truncated period of time (compared to the year-plus during which discovery can be conducted in a normal civil action).

You refer in your letter to the fact that the prosecution team will be producing exhibits and written testimony, and that is true. But this is a poor substitute for the full, long lasting and far-ranging discovery that is available to one defending a vested property right in a civil action in Superior Court. The prosecution's ideas about what is relevant and material is unlikely to comport completely with our and our clients' ideas on that subject. The timing of the disclosure also leaves next to no time for effective follow-up, even by deposition. As for the documents, your ruling requires us to travel to Sacramento and review files rather than having them (and the other requested items) copied and mailed to us.

In sum, under your ruling our clients are suffering a material diminution in the amount of discovery they can conduct. This, in a case in which the Water Board has arguably exerted jurisdiction beyond the scope of its own prior definition of its jurisdiction, and without any discovery having been available during the initial 'investigation' conducted by the Board's staff. See Water Code §1100.

The net result, we submit, is a deprivation of due process. The fact that the Superior Court can review the ultimate decision does not by itself preclude the conclusion that due process was not afforded.

We therefore request that you reconsider your ruling and reverse same, and allow our clients the full variety of written discovery that we have propounded herein, as well as deposition rights available (as you point out) under Water Code 1100.

Thank you for your consideration of this request. We would welcome the opportunity to provide further briefing on this subject and to argue the matter orally at your earliest convenience, including to answer any questions you might have about anything stated the above. It may be that a brief continuance is required; we are willing to so whatever needs to

Arthur G. Baggett, Jr.
State Water Resources Control Board
December 23, 2009
Page 3

be done to protect our clients' interests to the greatest extent possible in this forum.

We look forward to your response at your earliest convenience. Thank you.

Sincerely,



Brian C. Carter

cc: (via e-mail, U.S. mail)
DIVISION OF WATER RIGHTS PROSECUTION TEAM
c/o David Rose
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Drose@waterboards.ca.gov

SONOMA COUNTY WATER AGENCY
c/o Alan B. Lilly
1011 22nd Street
Sacramento, CA 95816-4907
abl@bkslawfirm.com

MILLVIEW COUNTY WATER DISTRICT
c/o Christopher J. Neary
110 S. Main Street, Suite C
Willits, CA 95490
cjneary@pacific.net