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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

IN THE MATTER OF THE  
RECONSIDERATION OF ORDER WR  
2011-0005

**PRE-HEARING CONFERENCE BRIEF OF  
VARIOUS LANDOWNERS**

Date: January 15, 2015  
Time: 9:00 a.m.

1 Spaletta Law Client List:

2 R.D.C. FARMS, INC.  
3 RONALD & JANET DEL CARLO  
4 EDDIE VIERRA FARMS, LLC  
5 DIANNE E. YOUNG  
6 BERNIECE SILVA TR ET AL.  
7 LARRY AND DONETTE D'ALONZO TR  
8 RENZO AND EVELYN MENCONI  
9 PATRICK J & PATRICIA KENNEDY  
10 MARCHINI LAND CO.  
11 LILLIAN MAZZANTI SURVIVORS TRUST  
12 JOHN ROBERT SANGUINETTI  
13 SINGH FARMS INC  
14 KELLY PELLEGGRI, TRUSTEE  
15 DINO AND NICOLE DEL CARLO  
16 MARY PEREIRA COELHO TR  
17 RELM PROPERTIES, LLC  
18 MARIE PETERS TR ET AL.  
19 MUSSI AG  
20 ANTONIOLLI FAMILY LTD PTP  
21 ARIANA ANTONIOLLI TR  
22 RONNIE AND JANET DEL CARLO TR  
23 GEORGE AND PAMELA VIERRA  
24 CURTIS GRUNSKY  
25 HELEN COSTA TR ET AL.  
26 KEVEN AND DENISE JONES  
27 VICKY PIERINI  
28 LARRY VIERRA ET AL.  
TIMOTHY AND LYNN GRUNSKY  
EVO AND ANGELA DEL CARLO  
MARY PERRY  
MICHAEL VIERRA  
SCHMIDT HIGHWAY 4 RANCH LLC  
LORRAINE DEL SOLDATO-SWANY AND LORETTA MOULDING  
ISONE INC  
NATHAN MUSSI  
EMILY MARIE CABRAL  
PATRICIA HAMM, TRUSTEE, LOUIS MELLO TR AND HELEN BALCAO TR  
JOHN T. BERTILACCHI ET AL.  
RICHARD KLEIN  
MANUEL RODGERS  
JUDITH BALCAO TR ET AL.  
JUDITH BALCAO TR  
PATRICIA BOWLES ET AL.  
JACK KLEIN TRUST PTP  
ROBINSON DIVERSIFIED FARMS, LP

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HEATHER ROBINSON TANAKA  
HONKER LAKE RANCH LP  
PAK, YONG KIL & YOUNG SUN C/O CELLI RANCHES  
A ROSSI INC  
ANDREW M. HARRAGON TR ET AL.  
AUGUST & LILLIAN TR MAZZANTI  
MARIO JAQUES TR  
RICHARD AND VINCENT MARCHINI  
RICHARD AND DEBBIE MARCHINI TR  
LINDA A. LEHMANN-KITZMILLER C/O MARCHINI LAND CO PTP  
JOHN E. AND DIXIE L. BRASS TRUST C/O MARCHINI LAND CO PTP

1                   **I.           INTRODUCTION**

2                   Landowners submit this pre-hearing conference brief for the January 15, 2015 Pre-hearing  
3 Conference for the Supplemental Public Hearing regarding Cease and Desist Order (“CDO”) No.  
4 2011-0005 against Woods Irrigation Company (“Woods”).

5                   In Order WR 2011-0005, the Board issued a CDO against Woods. Although the order  
6 made decisions regarding the water rights of Landowners who receive water through Woods, and  
7 restricted the ability of Landowners to continue receiving water through Woods’ facilities, the  
8 Board did not allow Landowners to participate in the proceedings leading up to the order. The  
9 order was set aside for this due process violation.

10                  The Board has now reopened the hearing and stated that its sole purpose in ordering the  
11 reconsideration of Order WR 2011-0005 and the rehearing is to allow the landowners to  
12 participate in the CDO proceedings. The Board thus explained in its Notice of Supplemental  
13 Hearing and Pre-hearing Conference that only Woods’s customers would be allowed to present  
14 evidence in the supplemental hearing, and that participation by other parties would be limited to  
15 cross-examination and rebuttal of new evidence, and any redirect examination permitted by the  
16 hearing officers.

17                  The Board’s Notice further described the two issues that would be addressed in the  
18 supplemental hearing:

- 19                   1. Should the original terms of Order WR 2011-0005 be modified or re-adopted based on  
20 supplemental evidence, cross examination, or arguments that arise as a result of the  
21 supplemental hearing; and
- 22                   2. What, if any, evidence is available to substantiate valid water rights held by Woods’  
23 customers beyond the evidence that was provided during the hearing in 2010?

24                  Landowners have several comments and questions relating to the Board’s procedural  
25 stance and the scope of proceedings. The Landowners hope that these issues are clarified by the  
26 Board through the Pre-hearing Conference. The Landowners are also responding to the  
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1 suggestions in the MSS Parties<sup>1</sup> pre-hearing brief. Nothing in this brief should be construed as a  
2 waiver of Landowners’ continuing objections to this proceeding as a violation of their due  
3 process rights.

4 **II. ISSUES**

5 1. **Briefing and Stipulations:** The MSS Parties suggest that the parties confer and agree on  
6 stipulations of fact and law and a schedule for submission of stipulations and pre and post hearing  
7 briefs. The Landowners support these ideas and agree that stipulations and briefing will help  
8 streamline the proceedings.

9 2. **Clarification of Parties.** Landowners and Woods submitted a petition requesting that the  
10 Board clarify that the scope of the rehearing will not involve properties that do not receive  
11 irrigation water from Woods. The prosecution team supports the petition and the MSS Parties  
12 have not objected. The Board should grant the petition.

13 3. **Clarification of Who will be bound by the Order.** The Board needs to clarify whether  
14 any potential order in this case will be directed at Woods and the Landowners or Woods alone.  
15 The Board description of the issues to be considered suggests that the order will be addressed at  
16 both Woods and Landowners. However, the Board has not issued a draft order against the  
17 Landowners, making it unclear what the Landowners should be responding to in the hearing on  
18 this point. The Landowners continue to request that the Board take a step back and issue a draft  
19 order that will form the basis of the scope of the hearing.

20 The due process clauses of the state and federal constitutions impose constraints on  
21 governmental decisions that deprive individuals of life, liberty, or property. (U.S. Const.,  
22 Amends. V, XIV; Cal. Const., art. I, § 7.) The fundamental requirement of these clauses is that  
23 the government must provide individuals with the opportunity to be heard “at a meaningful time  
24 and in a meaningful manner” before taking their property. (See, e.g., *Mathews v. Eldridge* (1976)  
25 424 U.S. 319, 333; *id.* at pp. 348-48 [the due process clause requires “that ‘a person in jeopardy  
26 of serious loss [be given] notice of the case against him . . . .’ ”].)

27 Under the terms of Section 1831 of the Water Code, the Board generally satisfies due

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28 <sup>1</sup> Modesto Irrigation District, San Luis & Delta-Mendota Water Authority, Westlands Water District, and State Water Contractors, Inc.

1 process requirements in the CDO context by notifying an individual of the case against him or  
2 her, and allowing that individual to request a hearing before the Board issues a final CDO. But  
3 the Board never initiated CDO proceedings against Landowners. Instead, the Board’s initial draft  
4 CDO was directed only at Woods. The Board is thus restricted—both by the due process clause  
5 and the language of Section 1831—to issuing a CDO against Woods alone.

6 **4. Full Participation by All Parties:** The MSS Parties request that all parties be allowed to  
7 “fully participate” in the supplemental hearing and that the rehearing be used to “definitively  
8 determine” all of the water rights of all Landowners and Woods. Landowners maintain that such  
9 a “definitive determination” of all water rights of the parties cannot as part of a CDO proceeding,  
10 especially as part of this truncated rehearing process.

11 If the Board wants to attempt a full adjudication of all water rights in the Delta, or even  
12 for a portion of the Delta, it would require a different type of proceeding that would have to start  
13 fresh with a new investigation, discovery and an expanded list of parties. With a new proceeding,  
14 all parties should be allowed to participate fully from the beginning and all related water rights  
15 would be at issue - including those of the MSS Parties.

16 Landowners are concerned that the MSS Parties’ are seeking to expand the scope of this  
17 rehearing to raise issues of water availability in the Delta and other ancillary water rights issues  
18 that were not part of the original proceeding and for which Landowners will have no notice and  
19 opportunity to respond. This would create additional due process concerns for the Landowners  
20 and would unfairly seek to make adjudications of the Landowners’ rights without adjudicating the  
21 related rights of the MSS Parties (or determining that these parties even have related rights and  
22 therefore standing) . These broader issues must be addressed in a full adjudication where all  
23 parties can conduct pre-trial discovery and properly prepare their cases for trial, not as part of a  
24 back-door attack in a truncated CDO rehearing.

25 That said, Landowners agree that all parties should be allowed to present evidence to rebut  
26 evidence presented by the Landowners in the re-opened CDO hearing and the Landowners should  
27 be allowed to present evidence to counter rebuttal evidence presented by the other parties.

28 **5. CDO versus Adjudication:** Similarly, the Board should reject the MSS Parties’ request  
that the Board “definitively determine” or adjudicate the water rights of Woods and Landowners

1 for precedential purposes. That is not the function of CDO proceedings. A CDO serves to  
2 prevent unlawful diversions. The Board thus can determine the scope of a pre-1914 or riparian  
3 right only to the extent necessary to determine whether a given diversion is unlawful. It may not  
4 even be necessary to consider certain water rights in the context of a CDO proceeding. For  
5 example, some landowners may claim riparian rights. However, if the Board finds that the  
6 landowners and Woods collectively have pre-1914 rights to support diversions of 77.7 cfs on a  
7 30-day average, and the evidence shows that the diversions by Woods fall within this limit, there  
8 would be no need for the Board to even address riparian rights.

9 The MSS Parties' request for full adjudication relies on a misreading of two recent  
10 appellate decisions—the *Millview* and *Young* decisions—concerning the Board's authority under  
11 Section 1831 to evaluate claimed riparian and pre-1914 rights. Neither case supports the MSS  
12 Parties' position. Both the *Millview* and *Young* courts began by acknowledging “the long-  
13 standing rule that the Board ‘does not have jurisdiction to regulate riparian and pre-1914  
14 appropriative rights.’ ” (See *Millview County Water Dist. v. State Water Resources Control Bd.*  
15 (2014) 229 Cal. App. 4th 879, 893; see also *Young v. State Water Resources Control Bd.* (2013)  
16 219 Cal.App.4th 397, 404.) But they also recognized the Board's authority to prevent unlawful  
17 diversions. (*Ibid.*) “[H]armoniz[ing] these potentially conflicting principles,” the courts  
18 concluded that the Board may evaluate claimed riparian or pre-1914 rights to the extent necessary  
19 to exercise its Section 1831 authority to prevent unlawful diversions. (*Ibid.*) The courts were  
20 clear, however, that the Board could not determine the scope of pre-1914 or riparian rights  
21 beyond this narrow purpose. Indeed, under Section 1831, subdivision (e), “water diverted under a  
22 *valid* pre-1914 [or riparian] water right is protected from such regulation.” (*Millview, supra*, 229  
23 Cal. App. 4th at p. 494; see *Young, supra*, 219 Cal.App.4th at p. 404.)

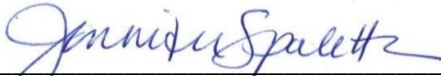
24 Under *Millview* and *Young*, then, the Board may evaluate the scope of a pre-1914 or  
25 riparian right to determine whether a given diversion is unlawful. But the Board may not  
26 determine these rights under Section 1831 to allow parties, like the MSS Parties, the certainty  
27 they desire. That is not the function of CDO proceedings. If the MSS Parties want Woods and  
28 Landowners' rights to be adjudicated, their remedy is to file a petition under Section 2525 of the  
Water Code for a determination of rights in a stream system.

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Dated: January 13, 2015

Respectfully submitted,

SPALETTA LAW PC

By:   
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JENNIFER L. SPALETTA  
Attorney for R.D.C. Farms, Inc., et al.



1 **PROOF OF SERVICE**

2 I am employed in the County of San Joaquin; my business address is 225 West Oak Street,  
3 Lodi, California; I am over the age of 18 years and not a party to the foregoing action.

4 On January 13, 2015, I served a true and correct copy of:

5 **PREHEARING CONFERENCE BRIEF OF VARIOUS LANDOWNERS**

6  **BY ELECTRONIC MAIL (EMAIL).** By sending the document(s) to the person(s) at the  
7 email address(es) listed below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: \_\_\_\_\_