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Arnold Schwarzenegger
Governor

CLOSING BRIEF OF DIVISION OF WATER RIGHTS PROSECUTION TEAM IN THE MATTER OF HEARING ON DRAFT CEASE AND DESIST ORDER – WOODS IRRIGATION COMPANY

I. INTRODUCTION

This matter comes before the State Water Resources Control Board (State Water Board or Board) based on the Notice of Public Hearing for the draft Cease and Desist Order (Draft CDO) against Woods Irrigation Company (Woods) pursuant to Water Code section 1831. Water Code section 1831, subdivision (d) allows that "the board may issue a cease and desist order in response to a violation or threatened violation of... [t]he prohibition set forth in Section 1052 against the unauthorized *diversion* or use of water subject to this division...." (Italics added.) The Draft CDO was issued to Woods based on the threat of unauthorized diversion of water.

The Division of Water Rights (Division) Prosecution Team (Prosecution Team) presented evidence at the public hearing on June 7, 24-25, 28, and July 2, 2010. The evidence showed that Woods has been delivering water to its service area since at least 1911 in amounts up to 77.7 cubic feet per second (cfs). There is no competent evidence supporting diversions in excess of this amount prior to 1914. The Division has not offered an opinion as to who holds the right to the diversion and use of this amount of water, but concluded that the right exists based on initiation prior to 1914 and continued beneficial use.

Evidence presented at the hearing also showed that Woods does not own any of the lands it delivers water to, meaning that Woods cannot claim it holds any riparian

water rights. The Division asked Woods for a list of parcels in its service area that Woods was serving pursuant to those parcels' own rights. The Division never received that information. Because the Division had no information supporting rights held by the actual owners of parcels in Woods' service area independent of the claimed 77.7 cfs right, the Draft CDO was issued only to Woods, and the hearing was likewise noticed only to Woods.

While the Board has already stated that it will not make a determination regarding any of the potential rights of parties other than Woods in this hearing (see Hearing Officer Pettit's letters dated May 24, 2010), that information is nonetheless necessary to determine whether Woods is diverting water without a basis of right. For that reason, the Prosecution Team believes that the draft CDO should be issued largely unaltered, requiring Woods to show a basis of right for diversions in excess of the 77.7 cfs pre-1914 water right. This may include a showing that some lands currently served by Woods have retained riparian rights or that landowners currently served by Woods are receiving water pursuant to their own appropriative water rights. The Division will have to evaluate that information separately in light of the Board's conclusions regarding the extent and ownership of the 77.7 cfs pre-1914 right. But because Woods is currently diverting water in excess of of the 77.7 cfs right, and because the validity and extent of any additional rights have not yet been established and will not be determined pursuant to this hearing, there clearly exists the threat of unauthorized diversion by Woods.

Regardless of whether the Board determines that the 77.7 cfs pre-1914 water right is held by Woods or by the individual landowners, Woods, as the diverter of the water, should be required to provide evidence supporting the bases of right for its deliveries in excess of this amount. It is not unreasonable to expect a water diverter such as Woods to know and have evidence of the validity of the rights it is exercising on behalf of its customers.

For both the clear legal and strong public policy reasons discussed herein, the Board should issue the draft CDO as written. If Woods wishes to continue to divert water in excess of the 77.7 cfs pre-1914 right, it must either show that those diversions are not unauthorized or else comply with the provisions of the Water Code regarding appropriations of water after 1914 like everyone else.

II. FACTS

On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). (PT-01, p. 1.) The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. (*Ibid.*) As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta. (*Ibid.*)

On February 18, 2009, the Division mailed letters to owners of property on Roberts and Union Islands within the Delta for which the Division had evidence of possible recent irrigation but whose names "[did] not appear in the Division's records establishing any claim of right for existing diversions of water." (PT-04.) In those letters the Division requested each property owner inform the Division within 60 days as to the basis of his or her right to divert water by filing a Statement of Water Diversion and Use with appropriate evidence, "secure a contract from a water purveyor having legal water rights and submit a copy of the contract to the Division," or else cease diversion of water until a basis of right is secured. (*Id.*) The Division's letter informed the contacted property owners that a failure to respond might result in enforcement action. (*Id.*)

On March 4, 2009, Woods submitted evidence supporting a 1911 non-statutory appropriative water right to divert water from Middle River to lands within and upon Roberts Island at a rate of up to 77.7 cubic feet per second (cfs). (PT-05.) 1909 and 1911 documents submitted by Woods identify the amount, purpose of use, place of use, and a plan for irrigation development. (*Id.*) The 1911 documents also indicate that a portion of the diversion system was installed prior to 1911. (*Id.*) Based on subsequent mapping and evaluation of the documentation, Division staff concluded that it was likely that the entire claimed amount of 77.7 cfs was developed under the right. (PT-01, p. 2.)

On April 20, 2009, Division staff requested that Woods identify and define the current area served and the amount of water delivered under the pre-1914 water right. Woods' response did not include the requested place of use or the diversion information. (PT-01, p. 2.)

Division staff conducted onsite inspections of the Woods system and met with Woods' counsel and directors on July 30, 2009 and August 4, 2009. (PT-06.) During the August inspection staff took measurements of the flows being diverted into Woods' two main irrigation canals using standard stream flow measuring equipment. (*Id.*, p. 2.) The combined flow of the two canals measured by staff totaled approximately 90 cfs. (*Ibid.*) This rate exceeded the maximum diversion rate of 77.7 cfs identified by the 1911 documents as the limit of pre-1914 water right.[1] Woods did not dispute these measurements at the hearing.

Based on the information it had been given, including the results of the inspection, the Division requested that Woods provide a list of the riparian parcels that Woods serves on behalf of the property owners through its diversion works. (PT-01, p. 2.) As of December 28, 2009, Woods had not submitted the requested Statements of Water Diversion and Use, the requested current delineation of its service area, a listing of riparian parcels being served within the Woods' place of use, information regarding current diversion and use amounts, or justification for diversions measured in excess of the 77.7 cfs right. (*Ibid.*)

Based on the gap in information, and in accordance with Water Code sections 1831 through 1836, the Division issued the Notice of Draft CDO against Woods at issue

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[1] The two 1911 agreements that form the basis for the 77.7 cfs diversion rate both specifically use language to the effect that "[Woods] agrees under the terms, conditions, limitations and restrictions herein stated, to furnish the second parties water, not exceeding at any one time [77.7] cubic feet per second." (WIC Exhibit 6O, p. 1; WIC Exhibit 6P, p. 1.) Woods did not present any competent evidence contradicting the plain terms of these agreements so as to support diversions at a rate greater than 77.7 cfs pursuant to this particular pre-1914 water right.

in this proceeding. (PT-07.) The Draft CDO would require Woods to cease and desist from diversion and use of water in excess of 77.7 cfs until:

- the Board has sufficient evidence supporting a valid basis of right or a water supply contract to cover any diversions in excess of the 77.7 cfs,
- Woods has filed Statements of Water Diversion and Use for all its points of diversion, and
- Woods has developed a monitoring plan that includes the installation of measuring devices to identify the amounts of water diverted and used within Woods' service area and an operators manual describing how, when and where those measuring devices will be read and recorded.

(*Id.*, p. 2)

Following issuance of the Notice of Draft CDO, counsel for Modesto Irrigation District (MID) provided the Division with a 1958 California Supreme Court case, *Woods Irrigation Company v. The Department of Employment* (1958) 50 Cal.2d 174 [323 P.2d 758] (PT-10), which MID suggested supported a different conclusion regarding the validity and extent of the 77.7 cfs pre-1914 water right. (PT-09.) Division staff reviewed the Supreme Court decision and MID's concerns and concluded that that case did not provide sufficient evidence to refute Division staffs' opinion that the pre-1914 right had been shown by reliable evidence to have been validly established and continuously exercised. (PT-01, p. 3.)

Considering all of the information they had before them, Division staff concluded that regardless of whether Woods holds the right or the shareholders themselves hold

the right, a plan was consummated in 1909, water has been served to acreage within the Woods service area since at least 1911, and beneficial use of the water was developed to the originally identified maximum rate of 77.7 cfs. (PT-01, p. 4.)

A hearing was held on this matter on June 7, 24-25 and 28, 2010 and July 2, 2010. At the hearing, Timothy Grunsky, President of Woods, agreed that Woods does not own any of the lands it serves with water. (Reporter's Transcript – Vol. II, June 24, 2010, pp. 451-452.)

III. ANALYSIS AND ARGUMENT

Board's Jurisdiction Over Pre-1914 Claims of Right

As a threshold matter, Woods claims that this process is "beyond the authority of the Board." (Woods Request for Hearing, January 11, 2010, pp. 1-2.)

> Since this matter does not involve a permit or license issued by the Board and there is no allegation of 'waste' or 'unreasonable use,' the Board lacks authority and jurisdiction with regard to the threatened CDO. Outside of a statutory stream system adjudication, the Board has no authority to make any determinations regarding riparian or pre-1914 rights to property.

(*Ibid.*) This proposition is without merit.

A conclusion that the Board is without jurisdiction to determine the validity and extent of pre-1914 claims of right would be inconsistent with the Board's statutory duties and mission would render superfluous a number of specific provisions of the Water Code.[2] For example, Water Code section 1202[3] declares to be unappropriated water,

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[2] As Woods recognizes, the Board has the authority to "determine all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right." (Wat. Code, § 2501.) While the Board is not currently undertaking a streamwide

> all water which has never been appropriated, [and] all water appropriated prior to December 19, 1914, which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation, or which has not been put, or which has ceased to be put to useful or beneficial purpose.

In order to determine whether there exists any unappropriated water pursuant to section 1202, the Board may investigate and "ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this State." (Wat. Code, § 1051.) Section 1051 does not identify any limitation regarding the type of claim of right the Board may investigate. "Water heretofore filed upon or attempted to be appropriated," by any reasonable interpretation, logically includes both pre-1914 appropriative and post-1914 appropriative claims. Any other interpretation would make section 1202 unnecessary. Were the Board limited to only investigating post-1914 appropriative water rights, it would be unable to ever make any conclusive determination whether there exists unappropriated water available for appropriation. As discussed below, the consequence of this view would be serious disruptions to the orderly administration of water rights statewide.

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statutory adjudication pursuant to Water Code section 2500, et seq., on balance, the Water Code sections described herein point inexorably to the conclusion that the Board has been empowered by the Legislature to investigate and determine the bases of right for diversions, and take enforcement action when a claim cannot be supported.

[3] Unless otherwise specified, all references are to the Water Code.

It is well settled that, "with the exception of riparian rights or appropriative rights *perfected*[4] prior to December 19, 1914, all water use is conditioned upon compliance with the statutory appropriation procedures set forth in division 2 of the Water Code (commencing with section 1000)." (State Water Board Order (Order) 2001-22 at p. 25-26, citing Wat. Code, §§ 1225, 1201, italics added.) Because any water not diligently put to beneficial use pursuant to a pre-1914 claim of right constitutes unappropriated water, any appropriation of water in excess of that amount constitutes a new appropriation, requiring compliance with division 2 of the Water Code. Any new appropriation of water not undertaken in compliance with division 2 of the Water Code constitutes an unauthorized diversion or use of water.

The Legislature has specifically vested the Board with the authority to prevent the unauthorized diversion and use of water. The Water Code provides that "the diversion or use of water subject to [Division 2 of the Water Code] other than as authorized in this division is a trespass," and authorizes the Board to pursue enforcement action against violators of this proscription. (Wat. Code, § 1052; see also Wat. Code, §§ 1055, 1831.) The Board has also been instructed that "it is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits, licenses, certifications and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water." (Wat. Code, § 1825; see also

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[4] The California Supreme Court noted as early as 1869 that a water right is acquired by the actual appropriation and use of the water, and not merely by an intent to take the water. (*Nevada County & Sacramento Canal Co. v. Kiddbut* (1869) 37 Cal. 282, 310-14, italics added.)

Wat. Code, § 183 [authorizing the State Water Board to hold any hearings and conduct any investigations necessary to carry out the powers vested in it].)

Because the Board has been instructed to vigorously prevent the unlawful diversion of water, it follows that the Board may and must first determine the nature, validity and extent of a claimed right. This is true not only because that is the logical conclusion of the Board's express legal authorities, but also because any other conclusion would be unworkable. The Board would be effectively impotent in administering the statewide system of water rights if the mere claim of a pre-1914 water right, without evidence of initiation prior to 1914 and continuous beneficial use, were sufficient to divest the Board of all its statutory authority and responsibilities. Without being able to determine the validity and extent of claimed rights, the Board could never determine whether there exists unappropriated water, and likewise could do nothing to prevent the unlawful diversion of water. The Board would be unable to approve any new applications to appropriate water and would be powerless to protect the rights of lawful appropriators, two of the Board's significant legislatively proscribed roles.

It should be noted that this is not an issue of first impression for the Board. In Order WR 2001-22, the Board determined that it has jurisdiction to ascertain whether water use is covered by a valid pre-1914 appropriative water right. (*Id.*, pp. 25-26.) The Board held that "the assertion that a prima facie showing of a pre-1914 water right ends the [State Water Board's] jurisdiction lacks legal support and is inconsistent with the [State Water Board's] statutory mandate to ensure that unauthorized diversions do not

take place." (*Ibid.*) The facts of the case at hand do not provide any new rationale supporting the Board's departure from this relatively recent interpretation of its authority.

Swamp and Overflow Lands and "Delta Pool" Theories

Woods suggests that all lands in the Delta retain riparian water rights, regardless of physical severance from a surface stream or channel, for two general reasons: 1) because the lands in the Delta were "swamp and overflow lands," reclamation of those lands was and is dependent on agriculture, and therefore intent to preserve riparian water rights should be presumed for all these lands; and 2) the Delta is one great pool of water attached to the Pacific Ocean from which parcels can never really be physically severed. (WIC Exhibit 8.)

There are several fatal flaws with both of these propositions. Even were the Board to agree that lands in the Delta were and remain riparian to a "Delta pool," it does not follow that the owners of those lands would have the right to divert surface water pursuant to those riparian claims, as the two sources are different. Just as a landowner whose parcel abuts the Pacific Ocean may not lawfully divert water from a stream that flows into the ocean without an independent valid right to divert water from that stream, a landowner in the Delta may not legally take water from a surface stream under a claim that his or her parcel is riparian to the Pacific Ocean-influenced "Delta pool." Although water quality issues do not generally prevent a riparian landowner from moving his or her point of diversion as necessary to maintain access to the best quality water that their particular source has to offer, the water quality problems with the water underlying

the lands in the Delta leads inexorably to the conclusion that the "Delta pool" and the surface water bodies that run through the Delta are different sources of water.[5] The Board and courts have already declared that, "lands that are severed from the surface stream or do not abut the surface stream do not have riparian rights to the surface flow even though they are overlying the underground flow of the stream." (Order WR 2004-0004, p. 12; see also *Phelps v. State Water Resources Control Bd.* (Super. Ct, Sacramento County 2006 NO. 04CS00368).) This relatively recent proposition would seemingly apply to a "Delta pool" no less than to the underground flow of a stream.

Woods also contends that the lands in the Delta, because they are reclaimed from swamp and overflowed land, retain riparian rights to the channels of the Delta even if physically severed from the channels, because those lands were covered with water prior to reclamation. (WIC Exhibit 8, p. 1.) This argument has likewise been raised and addressed fully by both the Board and the courts. (See Order WR 2004-0004, p. 11; see also *Phelps v. State Water Resources Control Bd.* (Cal.Superior, Feb 14, 2006) 2006 WL 6087853 (NO. 04CS00368), pp. 9-10.) The Board, in addressing this issue, stated that

> If a parcel of land is reclaimed from swamp and overflowed land and is not severed from the adjacent watercourse, it will include a riparian right

[5] The Board has previously addressed this same point, and reached this same conclusion. "The difference in quality of the groundwater and the surface water does not support, and actually tends to contradict, the assertion that the groundwater is the underground flow of the Middle River or the San Joaquin River. In the absence of other evidence, the respondents' factual contention is unfounded and provides no support to the legal contention." (2004-0004, p. 13.)

> because it is adjacent to the watercourse. If the parcel has been severed from the watercourse, however, its history of having been flooded does not make it riparian, because it could not have exercised riparian water rights when it was under water.

(Order WR 2004-0004, p. 11, citing Hutchins, The California Law of Water Rights (1956) p. 210.) The Board goes on to cite the California Supreme Court in stating that "an owner of swamp and overflow land would not have a riparian right if either there was no watercourse (i.e., no channel) to which a riparian right could attach, or the land was on the bottom of, not adjacent to, the stream." (Order WR 2004-0004, p. 11, citing *Lux v. Haggin* (1886) 69 Cal. 255, 413 [10 P. 674].) Lands on the bottom of the stream, by definition, could not afford the owner a riparian right. (2004-0004, p. 10.)

Finally, these issues are completely irrelevant to a determination of what rights Woods holds. Because Woods does not own any lands it serves with water, it cannot hold any riparian rights. (See Hutchins, p. 183. "The riparian right is uniformly held to be an incident of property in the land, identified with the realty, and therefore real property.") As stated previously, the existence of independent rights held by Woods' shareholders may very well support a conclusion that Woods' diversions in excess of 77.7 cfs are not unauthorized, but since those rights are not before the Board to be verified or disputed as a part of this hearing, the only thing the Board can really do is order Woods to provide evidence supporting a valid basis of right for all of its diversion, or else limit its diversion to the extent of proven rights.

Existence and Extent of Pre-1914 Right

Prior to initiation of this action, Woods submitted evidence claiming a 1911 non-statutory appropriative water right to divert water from Middle River to lands within and upon Roberts Island at a rate of up to 77.7 cfs. (PT-05) According to Hutchins, although posting of notice of proposed appropriations was customary for initiating a nonstatutory water right, it was not required. (Hutchins, p. 87.) "The important thing was that there must have been a' visible act and avowed intent' of such sufficiency as to preclude later claimants from being misled as to the purpose and scope of the undertaking." (*Ibid.*, citations omitted.) And of course it was true then, as now, that "title to the right does not vest until the appropriation is completed." (*Ibid.*, citing *Nevada County & Sacramento Canal Co. v. Kidd* (1869) 37 Cal. 282, 310-311.)

The 1909 and 1911 documents Woods provided the Division identify the amount of water intended to be diverted, the purpose of use and place of use, and a plan for irrigation development. (PT-05) The 1911 documents also indicate that a portion of the diversion system was installed prior to 1911. (*Id.*) Based on subsequent independent mapping and evaluation of the documentation, Division staff concluded that it was likely that the 77.7 cfs was developed to the maximum extent of the claim.

Considering all of the information they had before them, Division staff concluded that regardless of whether Woods holds the right or the shareholders themselves hold the right, a plan was consummated in 1909, water has been served to acreage within

the Woods service area since at least 1911, and beneficial use of the water was developed to the originally identified amount of 77.7 cfs. (PT-01, p. 4.)

Who Holds the Pre-1914 Right?

The Prosecution Team has not made any conclusions regarding whether Woods holds the 77.7 cfs pre-1914 water right or Woods' customers do. The initial agreement delineating the extent of the right seems to suggest that Woods holds the right, to be exercised for the benefit of the parties that created the irrigation company. Specifically, papers of incorporation were filed in 1909 on behalf of Woods Irrigation Company, "*To acquire water and water rights* and lands and rights of way for the purpose of constructing, operating and maintaining ditches for irrigation of the lands of the stockholders of said Corporation...." (PT-05, italics added.) The stockholders at the time were E.W.S. Woods, Alice M. Woods, Jessie Lee Wilhoit and Mary L. Douglass, who held ownership to the lands currently identified within Woods' service area. In September of 1911, agreements were recorded between the above named parties and Woods indicating that Woods would supply water in the amount of up to 77.7 cfs to the lands of the four parties. (WIC Exhibit 6O, p. 1; WIC Exhibit 6P, p. 1.) These lands have now been split into numerous smaller properties; the owners of these parcels each apparently holding shares in the Corporation. (PT-11.)

It is also possible that Woods may simply be diverting the water for its shareholders pursuant to the shareholders' rights, with the shareholders holding the

pre-1914 right in proportion to the fraction of the original 1911 agreement lands they each currently own.

From a practical standpoint, it would seem that regardless of who holds the pre-1914 right, the existence of that right appears well established and the limits well defined. The main difference would be that if the Board concludes that the individual landowners each hold the right in a proportional share, those landowners would be required to each file individual statements of water diversion and use pursuant to Water Code section 5101, et seq. If Woods holds the right, Woods would only be required to file statements of water diversion and use for each of its three points of diversion. This is not to suggest that ease of complying with section 5101, et seq. should be dispositive of or even relevant to the issue of who holds the right.

The other potential difference depending on who holds the right is that if the individual landowners hold the right, Woods may be precluded from serving lands that were not a part of the 1911 agreements unless those lands or landowners have their own independent basis of right. If Woods holds the right it may be able to exercise more flexibility in exercising the right, so long as no other legal users of water are injured by any change in the place of use.

There Exists the Threat of Unauthorized Diversion

Woods has provided sufficient evidence to substantiate the validity of a pre-1914 right to divert 77.7 cfs from Middle River. But because Division staff documented and Woods did not dispute that Woods is already diverting water in excess of this amount,

there exists a threat of unauthorized diversion. The Board should therefore require that Woods file Statements of Water Diversion and Use for each of its points of diversion, submit a list of all properties receiving water through Woods' diversion system and the basis of right for any properties receiving water either outside Woods' service area or in excess of the 77.7 cfs pre-1914 right, and monitor and maintain records of its diversions and the basis of right for such diversions. Without information that Woods is either limiting its diversions to the amounts authorized under its substantiated rights or else is exercising sufficient valid rights on behalf of its shareholders to support its total diversions, the threat of unauthorized diversions by Woods will continue to exist.

IV. CONCLUSION

The State has a policy to apply water to beneficial use to the fullest extent possible. This holds true particularly in watersheds where there is heavy demand for water and supply is limited. The Delta is unquestionably such a watershed, where competition for limited water resources is intense, and where it is well documented that there is often insufficient water of adequate quality to meet all demands.

The State Water Board recently adopted a Strategic Workplan for Activities within the Delta Estuary. The Workplan emphasized the Board's responsibility to vigorously enforce water rights, in part by preventing unauthorized diversions of water. In order to prevent the unauthorized diversion of water, the Board must first determine what diversions are authorized. Allowing diversion of water without satisfactory evidence supporting a basis of right would further fuel the uncertainty that currently exists

regarding water diversions in and through the Delta and throughout the state. The Board has a strong interest in a well-functioning water rights system, and should not condone the diversion and use of water without substantiation of a valid water right.

The Prosecution Team is not suggesting that Woods has no water rights; the evidence supports a conclusion that Woods likely perfected the 77.7 cfs right its predecessors agreed to in 1911, and have been serving water to its service district since that time. The problem is that Woods is serving more than this amount of water currently, or at least it was at the time of the Division's inspection. Because Woods is already diverting water in excess of the 77.7 cfs pre-1914 right it has substantiated, there exists a threat of unauthorized diversion, and the Board should issue an order requiring that Woods:

(1) File a Statement of Water Diversion and Use (Statement) for each of its points of diversion, consistent with the requirements of Water Code section 5103, subdivisions (a) through (i), if it has not already done so;

(2) Submit a list of all properties and owners receiving water delivered by Woods' diversion system, and the basis of right for any properties receiving water either outside Woods' service area or in excess of the 77.7 cfs pre-1914 right; and

(3) Provide a Monitoring Plan for approval by the Assistant Deputy Director for Water Rights to ensure that Woods maintains records of its diversions and the basis of right for such diversions.

If the Board determines as a result of this hearing that Woods has no water rights of its own, but is instead diverting water pursuant to the rights of its shareholders, the Draft CDO need not require that Woods file any Statements. Instead, Woods' shareholders, as the holders of the water rights, would be required to file Statements consistent with the requirements of Division 2, Part 5.1 of the Water Code, although Woods' shareholders may have Woods file on their behalf. (Wat. Code, § 5102.) Under those circumstances, it would still be appropriate to require Woods to identify all properties and owners receiving water delivered by Woods' diversion system and the basis of right for any properties receiving water either outside Woods' service area or in excess of the 77.7 cfs pre-1914 right. It would likewise be appropriate to require Woods to provide a Monitoring Plan to ensure that it maintains records of its diversions and the basis of right for such diversions. Pursuant to the required monitoring plan, Woods should also maintain complete records of its diversions.[6] Regardless of who holds the right and who files the Statements, Woods should unquestionably know and maintain records of the rights it is exercising, and the Board should require that it do so.

Respectfully submitted this 18th day of August 2010, at Sacramento, California.

David Rose
Staff Counsel
STATE WATER RESOURCES CONTROL BOARD

[6] To this end, Woods could easily request and maintain copies of Statements filed by its shareholders.

PROOF OF SERVICE

I, Joanne Griffin, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22nd Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On August 17, 2010 I served the within documents:

CLOSING BRIEF OF DIVISION OF WATER RIGHTS PROSECUTION TEAM IN THE MATTER OF HEARING ON DRAFT CEASE AND DESIST ORDER - WOODS IRRIGATION COMPANY

X	**BY FACSIMILE:** I caused a true and correct copy of the document to be transmitted by a facsimile/computer machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
	BY HAND DELIVERY: I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	BY OVERNIGHT MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
	BY FIRST CLASS MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing true copies in a computer and emailing said documents addressed to:

Woods Irrigation Company c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherrlaw@aol.com	c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com	c/o Dennis Donald Geiger, Esq. 311 East Main Street, Suite 400 Stockton, CA 95202 dgeiger@bgrn.com
Central Delta Water Agency c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com	South Delta Water Agency c/o John Herrick Attorney at Law 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherrlaw@aol.com	Division of Water Rights State Water Resources Control Board Attention: Jane Farwell P.O. Box 2000 Sacramento, CA 95812-2000 wrhearing@waterboards.ca.gov

San Joaquin County and the San Joaquin County Flood Control & Water Conservation District c/o DeeAnne M. Gillick Neumiller & Beardslee P.O. Box 20 Stockton, CA 95201-3020 dgillick@neumiller.com tshepard@neumiller.com	c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com	

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on August 17, 2010 at Sacramento, California.

Joanne Griffin
Legal Support Supervisor I