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17 **BEFORE THE CALIFORNIA**

18 **STATE WATER RESOURCES CONTROL BOARD**

19 In the Matter of Draft Cease and Desist) **OPPOSITION TO MOTION TO STRIKE**
20 Order No. 2009-00XX-DWR Enforcement)
21 Action 73 Against Woods Irrigation)
22 Company)
23)
24)
25)

26 **I**

27 **INTRODUCTION**

28 CENTRAL DELTA WATER AGENCY, SOUTH DELTA WATER AGENCY, and
WOODS IRRIGATION COMPANY (“CDWA”, “SDWA”, and “WIC”) herein oppose the
Motion to Strike recently filed by the MSS Parties concerning certain portions of the Neudeck
testimony. The motion is procedurally improper and misconstrues that portion of the Joint
Closing Brief submitted by WIC, CDWA, and SDWA which it seeks to strike.

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II

ARGUMENT

THE MOTION TO STRIKE IS PROCEDURALLY IMPROPER

The hearing officers did not allow for or invite motions or additional briefings subsequent to the filing of the closing briefs which were due August 2010. Therefore, the MSS Parties' Motion to Strike is procedurally improper and an attempt to supplement their Closing Brief with the subject motion to strike.

The Joint Closing Brief submitted by WIC, CDWA and SDWA clearly discusses the reasons why the subject portions of the Neudeck testimony are important and relevant with respect to numerous issues which are before the Board in this matter. (See, WIC, CDWA, and SDWA Joint Closing Brief at page 64, line 26 through page 69, line 10). This portion of the Joint Closing Brief properly points out that the Neudeck testimony was not presented solely to support the Delta pool theory and that the appellate court in the Phelps matter did not reject the common underground/surface supply theory.

WIC, CDWA, and SDWA respectfully request that the hearing officer consider the above-referenced portion of their Joint Closing Brief which addressed these issues and clearly demonstrates that all of Mr. Neudeck's testimony is necessary and relevant. Moreover, the Joint Closing Brief submitted by WIC, CDWA, and SDWA specifically acknowledged and addressed the hearing officer's evidentiary Ruling of July 19, 2010 and the hearing officers are fully capable of determining the importance and relevance of the Neudeck testimony in this context without the improper filing and consideration of a Motion to Strike.

II

CONCLUSION

For the reasons discussed herein, the MSS Parties' Motion to Strike should be denied and stricken from the administrative record.

DATED: September 3, 2010

HARRIS, PERISHO & RUIZ

BY _____


DEAN RUIZ

3 **CERTIFICATE OF SERVICE**

4 I am employed in the County of San Joaquin, State of California, over the age of eighteen
5 years, and not a party to the within action. My business address is Harris, Perisho & Ruiz, 3439
6 Brookside Road, Suite 210, Stockton, California 95219.

7 On, September 3, 2010, I served the following document(s) described as:

8 **OPPOSITION ON MOTION TO STRIKE**

9
10 **(BY MAIL)** by placing the original a true copy thereof enclosed in sealed
11 envelopes for collection and mailing with the United States Postal Service that same day
12 in the ordinary course of business. I am aware that on motion of party served, service is
13 presumed invalid if postal cancellation date or postage meter date is more than 1 day after
14 date of deposit for mailing in affidavit.

15 **(BY CERTIFIED MAIL)**
16 Certified Mail Receipt No. _____ (attached)/Return Receipt Requested

17 **(BY FACSIMILE)** I transmitted from a facsimile transmission machine whose telephone
18 number is (209) 957-4254 the following documents described above. The above-
19 described transmission was reported as complete without error by a transmission report
20 issued by the facsimile transmission machine upon which the said transmission was made
21 immediately following the transmission. A true and correct copy of the said transmission
22 report is attached hereto and incorporated herein by this reference.

23 **(BY OVERNIGHT DELIVERY)**
24 Depositing originals/copies of the above documents in a box or other facility regularly
25 maintained by Federal Express, or UPS, in an envelope or package designated by
26 Federal Express or UPS with delivery fees paid or provided for.

27 **(BY PERSONAL SERVICE)** (as indicated below)
28 process server courier service

(BY ELECTRONIC MAIL)
I caused a true and correct scanned image (.PDF file) copy to be transmitted via the
electronic mail transfer system in place at Harris, Perisho & Ruiz, originating from the
undersigned at 3439 Brookside Road, Suite 210, Stockton, California, to the address(es)
indicated below.

1 To the interested parties and/or their counsel addressed as follows:

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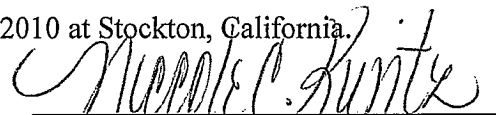
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24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct to the best of my knowledge.

26 Executed this 3rd day of September 2010 at Stockton, California.

27 
28 Niccole C. Kuntz