



State Water Resources Control Board

January 4, 2021

VIA ELECTRONIC MAIL

TO: CURRENT SERVICE LIST

POST-HEARING STATUS UPDATE ON YONG KIL PAK AND YOUNG SUN PAK AND RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI INVESTMENT LP HEARINGS

The State Water Resources Control Board (State Water Board)'s Hearing Team is providing a status update on the hearings for Yong Kil Pak and Young Sun Pak (Pak)¹ and Rudy Mussi, Toni Mussi, and Lory C. Mussi Investment LP (Mussi), and inviting clarification on the following: 1) whether the Prosecution Team still seeks final orders to be issued in these proceedings; 2) whether the Prosecution Team, Pak, Mussi, or any other party to these proceedings believes that supplemental briefing is necessary; and 3) whether revisions are needed to the respective hearing Service Lists. Written responses should be submitted to wr_hearing.unit@waterboards.ca.gov by noon on March 5, 2021.

BACKGROUND

Draft Cease and Desist Orders (CDOs)

On December 14, 2009, the Assistant Deputy Director for the State Water Board's Division of Water Rights (Division) responsible for enforcement issued separate Draft CDOs against Pak and Mussi. Both Draft CDOs allege that the parties listed in the Draft CDOs made unauthorized diversions of water without a valid basis of right for use on the parties' respective parcels on Roberts Island in San Joaquin County. On December 30, 2009, Pak and Mussi separately requested hearings on their respective Draft CDOs.

¹ Yong Kil Pak is also known as Yong Pak, and Young Sun Pak is also known as Sun Young.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Hearings

The State Water Board conducted proceedings regarding these Draft CDOs in 2010. The hearings commenced on May 5, 2010, and continued on June 9, July 9, and July 15 of 2010. The hearings examined similar issues, and numerous witnesses testified for both the Pak hearing and the Mussi hearing. Parties filed combined closing briefs for both proceedings, some including requests for official notice, on August 30, 2010. The Division's Prosecution Team filed a response to the requests for official notice on September 2, 2010.

Post-hearing Developments

Following commencement of the hearings regarding Pak and Mussi, closely related legal disputes arose in the context of other alleged unauthorized diversions on Roberts Island. These disputes culminated in the publication of two precedential opinions by the California Court of Appeal, Third Appellate District: *Young v. State Water Resources Control Board* (2013) 219 Cal.App.4th 397 and *Modesto Irrigation District v. Tanaka* (2020) 48 Cal.App.5th 898.

In 2018, the Legislature and the Governor approved Assembly Bill No. 747, which, among other things, established the Administrative Hearings Office (AHO) within the State Water Board, effective July 1, 2019. Several water right enforcement matters pending hearing at the time of the establishment of the AHO were transferred to the AHO. But because the hearings regarding the Draft CDOs against Pak and Mussi were initiated and completed well before the establishment of the AHO, the Pak and Mussi proceedings have remained with the existing State Water Board staff Hearing Team.

STATUS UPDATE

Although the hearings regarding the Draft CDOs against Pak and Mussi occurred over ten years ago, the proceedings have not yet been resolved. In 2019, a Hearing Team staff member contacted parties in these proceedings to update the respective Service Lists. The updated Service Lists are attached to this letter. The Hearing Team is preparing a draft order ruling on the merits and outstanding evidentiary issues of the Pak and Mussi hearings. Additionally, the Hearing Team anticipates taking official notice of other subsequent legal developments, including but not limited to the aforementioned appellate court opinions. Before proceeding with any subsequent steps in the hearing process, the Hearing Team wishes to clarify the following issues with the parties:

- 1) Does the Prosecution Team still seek final orders to be issued in these proceedings?
- 2) Does the Prosecution Team, Pak, Mussi, or any other party to these proceedings believe that supplemental briefing is necessary?
- 3) Are additional revisions to the Service Lists needed?

Please submit any written responses you wish to provide to wr_hearing.unit@waterboards.ca.gov within 60 days of the date of this letter.

PROHIBITION ON *EX PARTE* COMMUNICATIONS AND INSTRUCTIONS ON RESPONSE SUBMITTAL

As stated in in the Notices of Public Hearing, the Prosecution Team has been, and continues to be, separated from the Hearing Team. There shall be no *ex parte* communications between State Water Board members or Hearing Team staff and any of the other participants, including members of the Prosecution Team, regarding substantive or controversial procedural matters within the scope of the proceedings.

As any procedural matters at this stage may arguably be controversial, all responses to this letter **must be submitted in writing** to the Hearing Team at wr_hearing.unit@waterboards.ca.gov. Furthermore, any party's communications to the Hearing Team must be served on all other parties. Parties must then provide the Hearing Team with proof of service. A party may provide this proof of service through a formal proof of service or by other verification. For emails, the verification shall be a list of the email addresses of the parties or their representatives in an electronic-mail "cc" (carbon copy) list.

Please **do not attempt to communicate by telephone or in person** with State Water Board members or any Hearing Team staff member regarding these proceedings, because other parties would not be able to participate in such communications.

SETTLEMENT

The parties may engage in private settlement discussions and may include other persons in those discussions. Because of the separation of functions discussed above, no State Water Board member or Hearing Team member will participate in such settlement discussions or receive any evidence of what occurred during them. If, however, the parties negotiate and sign a written settlement agreement, the parties should, using the communication procedures described above, notify the Hearing Team as soon as possible and may submit the agreement to the Hearing Team.

Sincerely,

ORIGINAL SIGNED BY

Michael Buckman
Hearings Unit Supervisor