

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In re: Draft Order WR 2009-00XX-DWR	)	OPENING STATEMENT OF
	)	JOHN HERRICK
	)	
Yong Pak and Sun Young	)	APN 131-180-07
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The draft CDO seeks to prevent Yong Pak and Sun Young (or "Pak and Young") from irrigating their property on Roberts Island (San Joaquin County Assessor's Parcel No. 131-180-07, or "Pak Parcel") for not having provided the SWRCB with sufficient information to support a legal right to use water. Pak and Young reside in Chicago Illinois and are unable to attend this proceeding. On their behalf, Mr. Gino Celli, the tenant who farms the property is appearing.

The prosecution team has been provided with substantial information and evidence which confirms that the property owned by Pak and Young has retained a riparian water right. The parcel was part of larger parcels over the years, but always abutting Duck Slough since it was first patented from the State of California. Thereafter, though 1911, the evidence indicates that Duck Slough not only continued to exist, but also had water in it. Thus its riparian connection to a waterway remained through at least 1911.

In that same year (1911), the parcel was part of property owned by E.W.S. Woods, who entered into an Agreement with Woods Irrigation Company. The Agreement entitled the E.W.S. Woods property, including the Parcel to receive water through the Woods Irrigation Company system, which was installed and operating at the time. Although the exact date when Duck Slough was filled in is unknown, the agreement with Woods Irrigation Company clearly preserved to the landowner the ability get water from the channels of the Delta for irrigation purposes. This then indicates the intent of the landowner to preserve the riparian right, as he intentionally secured an alternate source and diversion while the land was still riparian.

Further, the Agreement begins a diversion and use of water prior to 1914 which continued uninterrupted thereafter.

In addition to the Agreement providing the Pak Parcel with an alternate method of supplying water, E.W.S. Woods' purchases (including the Pak Parcel) resulted in him owing lands which abutted Middle River at a time when the Pak Parcel still abutted Duck Slough.

While part of the Woods Irrigation Company, and receiving water from it, a previous owner of the Pak Parcel joined with others to creates a different diversion point from which the Parcel receives water today.

In light of these facts, the only reasonable conclusion is that the Pak Parcel maintained its riparian status from the time of Patent to the present, as well as having established a pre-1914 right.

The Parcel is also situated such that it is riparian to the Delta Pool. Further, the direct connection between the ground water and the surrounding channels creates overlying rights to those waters, which also confer riparian status to the Parcel.

Pak and Young therefore respectfully demand the SWRCB issue no CDO regarding their diversion and use of water on their Parcel.

Pak and Young dispute and object to the SWRCB's authority to make any factual determinations regarding riparian, pre-1914 or other rights which could have a binding effect on them; such authority rests solely with the courts. They also dispute and object to the SWRCB's alleged authority to issue a CDO against them regarding any riparian, pre-1914 or other water right use.