

IN THE MATTER OF THE CONSIDERATION OF A CEASE AND DESIST ORDER AGAINST YONG PAK AND SUN YOUNG FOR UNAUTHORIZED DIVERSION OF WATER FROM THE MIDDLE RIVER IN SAN JOAQUIN COUNTY

DIVISION OF WATER RIGHTS PROSECUTION TEAM EXHIBIT 01 (PT-01)

WRITTEN TESTIMONY OF MATTHEW J. QUINT, WATER RESOURCES CONTROL ENGINEER AND MARK L. STRETARS, SENIOR WATER RESOURCES CONTROL ENGINEER

Introduction:

Matthew J. Quint, is a Water Resources Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). He has been working for the Division since May 10, 2007 in the Enforcement Section, Compliance Unit. His experience includes review of water right permits and licenses to assure compliance with licenses terms and conditions and field inspection of water right projects for potential unauthorized diversion or storage. A copy of his resume is attached as Division Prosecution Team. (PT-02)

Mark Stretars is a professional Engineer, registered in California, and a Senior Water Resource Control Engineer with the State Water Resources Control Board (SWRCB), Division of Water Rights (Division). He has 35+ years of experience in California water rights working for the Division in programs dealing with water right application acceptance, protest and hearing actions, complaint and compliance actions, and petitions for change and transfers of water. He is currently the Chief of the Compliance and Enforcement Unit. A copy of his resume as previously submitted is attached as (PT-03).

The joint testimony, herein provided, identifies the personal knowledge of the evidence and actions leading to the Division's recommendation to issue the draft Cease and Desist Order against Pak and Young.

Are Pak and Young making unauthorized diversions of water from the Sacramento-San Joaquin Delta:

On July 16, 2008, The State Water Board adopted a Strategic Workplan Plan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). 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. As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta.

On February 18, 2009, the Division mailed letters to property owners on Roberts and Union Islands within the Delta. The Division requested that each property owner either: inform the Division within 60 days as to the basis of their right by filing a Statement of

Water Diversion and Use with appropriate evidence; define a contractual basis for diversion of water; or cease diversion of water until a basis of right is secured. The letter also informed the contacted property owners that a failure to respond may result in enforcement action.

The Division mailed Pak and Young a copy of the February 18, 2009 letter as owners of Assessor Parcel 131-180-07. On September 9, 2009, a second certified letter (Certification # 7004 2510 0003 9152 9976) was sent to Pak and Young at 650 Vista Hill Terrace, Fremont, CA 94539. U.S. Postal Service confirms delivery of the letter on September 10, 2009. However as of December 14, 2009, the Division had not received a response from Pak and Young supporting a basis of right for the diversion and use of water on parcel 131-181-07 containing 40 acres. (PT-04) The letter advised that, based on the Division's evaluation of aerial photographs and crop information for the property, Pak and Young have diverted water during recent years to irrigate crops on parcel 131-180-07 located on Roberts Island. The San Joaquin County Assessor's Parcel maps and aerial photographs both show that the parcel has no continuity to a surface stream. This lack of continuity indicates that a riparian basis of right typically does not exist.

The 2007 San Joaquin County crop data layer identifies parcel 131-180-07 as having been planted with corn, tomatoes, alfalfa, and safflower in recent years. According to the 1980 California Department of Water Resources publication "*Crop Water Use in California*," corn requires an estimated annual water consumption of 3.2 acre-feet per acre, tomatoes require approximately 3 acre-feet per acre, alfalfa requires approximately 4.8 acre-feet per acre, and safflower requires approximately 0.5 acre-feet per acre. (PT-05) Parcel 131-180-07 contained approximately 30 acres of corn and tomatoes in 2001, 25 acres of alfalfa in 2006, and 25 acres of safflower in 2007. (PT-06) These amounts of acreages planted with these types of crops correlates to an estimated annual water consumption of 56 acre-feet.

The Division, having determined that the property currently lacked any continuity to surface streams, and having no evidence supporting any other basis for any right to divert and use water on the property, concluded that a threat of unauthorized diversion existed.

On December 14, 2009, in accordance with Water Code section 1831-1836, The Division issued a Notice of Draft Cease and Desist order (CDO) against Pak and Young. (PT-07) The draft CDO required Pak and Young to cease and desist from diversion and use of water on Parcel 131-180-07 until sufficient evidence establishing a valid basis of right or an existing water supply contract to serve the property has been approved. If Pak and Young disagreed with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, they were directed to request a hearing before the State Water Board no later than 20 days from the date of receipt of this notice. On December 30, 2009, counsel for Pak and Young requested a hearing.

Information Submitted after Request for Hearing

Following submission of a request for hearing on December 30, 2009, evidence was presented to the Division that Pak and Young receive water from Woods-Robinson-Vasquez Water System through a cement-lined irrigation ditch abutting their property.

The water is conveyed from a diversion point on Middle River. These documents thereafter indicate:

- The property is currently severed from any natural water course. (PT-08)
- The property was riparian to Duck Slough, a natural channel, in 1870 (PT-09).
- The Pak and Young property was shown abutting a natural channel on the 1911 United States Geological Survey Map entitled Holt Quadrangle, California. (PT-10)
- The Woods-Robinson-Vasquez District was created and began serving water to the properties in approximately 1925 through a point of diversion on Middle River. (PT-11, PT-12 & PT-13)

After reviewing the additional submitted evidence, there remains insufficient evidence that Park and Young irrigated through a pre-1914 right up to the present, or from a riparian source after Duck Slough ceased to exist as a natural water course.

Conclusion:

The Division finds that Pak and Young have not substantiated their claim of riparian rights for the property. There is insufficient evidence at this time to conclude that the natural water channel (Duck Slough) was replaced by the irrigation ditch currently abutting the Park and Young property in a manner sufficient to preserve a riparian right. Specifically, the Division cannot conclude that, between 1911, when there is evidence supporting the existence of Duck Slough, and 1925, when the Woods-Robinson-Vasquez District reportedly began serving water to the properties via a “ditch” conveying water pumped from Middle River, there was a natural water course capable of conveying water from Middle River to the property sufficient to support a retention of a riparian right to that water course.

Pak and Young have not provided any additional evidence to establish any other basis of right for their diversions. Acceptable information supporting a valid basis of right could include, but is not limited to: a chain of title supporting riparian status for the parcel; evidence supporting an existing or implied preservation of the riparian right established prior to severance of the parcel from the stream or another riparian parcel; evidence which verifies irrigation on the parcel prior to 1914 and documents the subsequent continuous use of water.