

JENNIFER L. SPALETTA – SBN 200032  
ALEXIS K. GALBRAITH – SBN 260756  
HERUM / CRABTREE  
*A California Professional Corporation*  
2291 W. March Lane, Suite B-100  
Stockton, CA 95207  
Telephone: (209) 472-7700  
Facsimile: (209) 472-7986

Attorneys for  
R.D.C. FARMS, INC.  
RONALD & JANET DELCARLO  
EDDIE VIERRA FARMS, LLC  
DIANNE E. YOUNG  
WARREN P. SCHMIDT, Trustee of the  
SCHMIDT FAMILY REVOCABLE TRUST

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

WATER RIGHTS ORDER 2011-0005 )  
In the Matter of Draft Cease and Desist Order ) **PETITION FOR RECONSIDERATION**  
Against Unauthorized Diversions by Woods ) **Water Code Section 1122**  
Irrigation Company ) **Code of Regulations Title 23, §§ 768 and 769**

---

R.D.C. FARMS, INC., RONALD & JANET DELCARLO, EDDIE VIERRA FARMS, LLC, DIANNE E. YOUNG, AND WARREN P. SCHMIDT, Trustee of the SCHMIDT FAMILY REVOCABLE TRUST (“Petitioners”) hereby petition the State Water Resources Control Board (“State Water Board”), pursuant to Water Code Section 1122 and California Code of Regulations Sections 768 and 769, for reconsideration of Water Rights Order 2011-0005 (“Order WR 2011-0005”) in the Matter of Draft Cease and Desist Order Against Unauthorized Diversions by Woods Irrigation Company.

1. Petitioners herein are each landowners who own land within the boundaries of the Woods Irrigation Company. Petitioners may be contacted through their counsel listed above.
2. Petitioners request reconsideration of Order WR 2011-0005 in the Matter of Draft Cease and Desist Order Against Unauthorized Diversions by Woods Irrigation Company.

3. Order WR 2011-0005 was adopted by the State Water Board on February 1, 2011.

4. Petitioners assert (1) they were prevented from having a fair hearing due to an irregularity in the proceedings, by the ruling, and as the result of the State Water Board's abuse of discretion, (2) Order 2011-0005 is not supported by substantial evidence, (3) there is relevant evidence that could not have been produced with the exercise of reasonable diligence that the State Water Board should consider before rendering its decision, and (4) the State Water Board has committed an error of law in adopting Order 2011-0005 as it violates Petitioners' due process rights and exceeds the State Water Board's jurisdiction.

5. Petitioners request that Order WR 2011-0005 be set aside, vacated, and amended as set forth in the attached Memorandum of Points and Authorities in Support of this Petition.

6. Copies of this Petition for Reconsideration, the accompanying Memorandum of Points and Authorities in Support of the Petition for Reconsideration, and its enclosures are being sent by electronic mail to the interested parties contained on the attached list.

Respectfully submitted,

Dated: March 2, 2011

**HERUM / CRABTREE**  
*A California Professional Corporation*

By:   
JENNIFER L. SPALETTA  
Attorneys for Petitioners

**WOODS IRRIGATION COMPANY CDO HEARING  
ORDER 2011-0005 SERVICE LIST  
(VIA ELECTRONIC MAIL)**

<p>WOODS IRRIGATION COMPANY c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 <a href="mailto:jherrlaw@aol.com">jherrlaw@aol.com</a></p> <p>c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 <a href="mailto:dean@hpllp.com">dean@hpllp.com</a></p> <p>c/o Dennis Donald Geiger, Esq. 311 East Main Street, Suite 400 Stockton, CA 95202 <a href="mailto:dgeiger@bgrn.com">dgeiger@bgrn.com</a></p>	<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM c/o David Rose State Water Resources Control Board 1001 I. Street Sacramento, CA 95814 <a href="mailto:drose@waterboards.ca.gov">drose@waterboards.ca.gov</a></p>
<p>MODESTO IRRIGATION DISTRICT c/o Tim O'Laughlin O'Laughlin &amp; Paris LLP PO. Box 9259 Chico, CA 92927 <a href="mailto:towater@olaughlinparis.com">towater@olaughlinparis.com</a> <a href="mailto:kpetruzzelli@olaughlinparis.com">kpetruzzelli@olaughlinparis.com</a> <a href="mailto:kincaid@olaughlinparis.com">kincaid@olaughlinparis.com</a></p>	<p>STATE WATER CONTRACTORS c/o Stanley C. Powell Kronick, Moscovitz, Tiedemann &amp; Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 <a href="mailto:spowell@kmtg.com">spowell@kmtg.com</a></p>
<p>THE SAN LUIS &amp; DELTA-MENDOTA WATER AUTHORITY Jon D. Rubin/Valerie C. Kincaid Diepenbrock ♦ Harrison 400 Capitol Mall, 18th Floor Sacramento, CA 95814 <a href="mailto:jrubin@diepenbrock.com">jrubin@diepenbrock.com</a> <a href="mailto:iseaton@diepenbrock.com">iseaton@diepenbrock.com</a></p>	<p>CENTRAL DELTA WATER AGENCY c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 <a href="mailto:dean@hpllp.com">dean@hpllp.com</a></p>
<p>SOUTH DELTA WATER AGENCY c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 <a href="mailto:jherrlaw@aol.com">jherrlaw@aol.com</a></p> <p>c/o Dean Ruiz, Esq. 3439 Brookside Road, Suite 210 Stockton, CA 95219 <a href="mailto:dean@hpllp.com">dean@hpllp.com</a></p>	<p>SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT c/o DeeAnn M. Gillick Neumiller &amp; Beardslee P.O. Box 20 Stockton, CA 95201-3020 <a href="mailto:dgillick@neumiller.com">dgillick@neumiller.com</a> <a href="mailto:mbrown@neumiller.com">mbrown@neumiller.com</a></p>

<p>SAN JOAQUIN FARM BUREAU c/o Bruce Blodgett 3290 North Ad Art Road Stockton, CA 95215-2296 <a href="mailto:director@sifb.org">director@sifb.org</a></p>	<p>Jennifer J. Spaletta Attorney-at-Law Herum\Crabtree Attorneys 2291 West March Lane, Suite B100 Stockton, CA 95201 <a href="mailto:jspaletta@herumcrabtree.com">jspaletta@herumcrabtree.com</a></p>
<p>Mark A. Pruner Attorney-at-Law 1206 "Q" Street, Suite 1 Sacramento, CA 95811 <a href="mailto:mpruner@prunerlaw.com">mpruner@prunerlaw.com</a></p>	<p>NORTHERN CALIFORNIA WATER ASSOCIATION c/o David J. Guy, President 455 Capitol Mall, Suite 335 Sacramento, CA 95814 <a href="mailto:dguy@norcalwater.org">dguy@norcalwater.org</a></p>

JENNIFER L. SPALETTA – SBN 200032  
ALEXIS K. GALBRAITH – SBN 260756  
HERUM / CRABTREE  
*A California Professional Corporation*  
2291 W. March Lane, Suite B-100  
Stockton, CA 95207  
Telephone: (209) 472-7700  
Facsimile: (209) 472-7986

Attorneys for  
R.D.C. FARMS, INC.  
RONALD & JANET DELCARLO  
EDDIE VIERRA FARMS, LLC  
DIANNE E. YOUNG  
WARREN P. SCHMIDT, Trustee of the  
SCHMIDT FAMILY REVOCABLE TRUST

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

WATER RIGHTS ORDER 2011-0005 )  
In the Matter of Draft Cease and Desist Order )  
Against Unauthorized Diversions by Woods ) **MEMORANDUM OF POINTS AND**  
Irrigation Company ) **AUTHORITIES IN SUPPORT OF**  
 ) **PETITION FOR RECONSIDERATION**  
 ) **Water Code Section 1122**  
 ) **Code of Regulations Title 23, §§ 768 and 769**

---

**I. INTRODUCTION**

R.D.C. FARMS, INC., RONALD & JANET DELCARLO, EDDIE VIERRA FARMS, LLC, DIANNE E. YOUNG, AND WARREN P. SCHMIDT, Trustee of the SCHMIDT FAMILY REVOCABLE TRUST (“Petitioners”) submit the following Memorandum of Points and Authorities in Support of Petition for Reconsideration of Water Rights Order 2011-0005 (“Order WR 2011-0005” or “Order”) In the Matter of Draft Cease and Desist Order Against Unauthorized Diversions by Woods Irrigation Company. Order WR 2011-0005 was adopted by the State Water Resources Control Board (“State Water Board” or “Board”) on February 1, 2011. Order WR 2011-0005 issues a Cease and Desist Order (“CDO”) against Woods Irrigation Company (“Woods”) requiring that Woods cease its diversions from Middle River at a rate not to exceed 77.7 cubic feet per second (“cfs”). The Order curtails diversions by Woods that are

made pursuant to the water rights held and claimed by landowners within the Woods service area, including these Petitioners. The State Water Board does not have jurisdiction to regulate claimed riparian and pre-1914 appropriative rights through its cease and desist order authority. Further, none of these landowners were provided notice of the proceedings or allowed to participate in them, in violation of their due process rights. Finally, the Order is factually and legally flawed.

Petitioners do not believe that they are required to file this request for consideration by law. However, they do so in the hope that the State Water Board will reconsider these serious errors and undertake its investigation of Delta water rights within the bounds of the law.

## II. STATEMENT OF FACTS

Woods is an irrigation company that diverts water from Middle River and conveys that water to customers on Roberts Island. Petitioners own and farm property within the Woods service area and utilize Woods' facilities to exercise their riparian and pre-1914 appropriative water rights. On December 29, 2009, a notice of proposed cease and desist order, including a draft CDO was issued to Woods for the threatened violation of the prohibition against the unauthorized diversion or use of water. A hearing was scheduled for June 7, 2010. None of the landowners who use Woods' facilities to exercise their water rights, including these Petitioners, received notice of the hearing.

By letters dated May 12, 2010, attached hereto as **Exhibit A**, Petitioners made a request to intervene in the proceedings along with a request that the proceedings be continued to August 2010 to cure the due process problem. The letter expressed Petitioners' concern that their riparian and pre-1914 water rights would be affected by any order against Woods. The letter noted that none of the landowners served by Woods had been notified of the potential scope of the Woods CDO hearing and advised the State Water Board of the serious due process concerns implicated by its proceeding in the current manner. By a letter dated, May 24, 2010, attached hereto as **Exhibit B**, the State Water Board Hearing Officer declined to continue the hearing or allow Petitioners' intervention. This letter went on to state that "The Woods CDO hearing will not bind non-parties to the hearing."

Following the Woods CDO hearing in June and July 2010, the State Water Board issued a draft order on December 14, 2010 issuing a cease and desist order against Woods and scheduling a workshop for January 18, 2011 to receive public comments on the CDO. By a letter dated January 11, 2011, attached hereto as **Exhibit C**, Petitioners submitted comments on the draft order and pointed out the fact that, as written, the decision unconstitutionally violated the due process rights of Petitioners and other landowners within Woods' service area by interfering with the exercise of their water rights. Petitioner submitted additional comments on a second revised order by a letter dated January 27, 2011, attached hereto as **Exhibit D**. Petitioners requested that the draft order be amended to address their due process concerns and practical considerations related to the enforcement of the order. In addition, the comment letter also pointed out errors in the draft order's analysis with regard to the riparian rights of Delta lands and Woods' Delta Pool argument. On February 1, 2011, the State Water Board issued Order WR 2011-0005. Petitioners' proposed amendments and comments were not incorporated into the final Order.

### **III. STANDARD OF REVIEW**

An interested party may petition the State Water Board for reconsideration of a decision or order based on the following grounds: (1) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (2) the decision or order is not supported by substantial evidence, (3) there is relevant evidence, which in the exercise of reasonable diligence, could not have been produced, and (4) error in law. Cal. Code Regs., tit 23, §768. Petitioners assert that the Order is flawed on all four grounds.

### **IV. DISCUSSION**

#### **A. Irregularity in the Proceedings Prevented Petitioners from Having a Fair Hearing**

Order WR 2011-0005 requires Woods to cease diversions exceeding 77.7 cfs to landowners within the Woods' service area until the Deputy Director both (1) receives evidence to support the claims of additional pre-1914 or riparian rights of the landowners, and (2) is satisfied with, or accepts that evidence as forming a basis of right for the landowner. (Order at 62) The Order states that "Woods may deliver water to the user upon the Deputy Director's

Approval.” (Order at 62) By inference, if the Deputy Director does not approve the increased deliveries, Woods cannot deliver the water without the risk of incurring monetary civil penalties and/or facing a restraining order. As a result, the Order, as written, effectuates the issuance of a cease and desist order against Petitioners and the other individual landowners within Woods’ service area. Further, the Order, by necessity, determines that the landowners do not have riparian or pre-1914 appropriative rights to substantiate larger diversions.

1. The State Water Board Does Not Have Jurisdiction or Authority to Issue an Cease and Desist Order to Regulate Riparian or Pre-1914 Appropriative Rights.

The State Water Board’s authority pursuant to Water Code section 1831 to a issue cease and desist order is limited to cases involving diversion of surface water subject to Division 2, Part 2 of the Water Code. Water Code section 1831(e) states that “this article shall not authorize the board to regulate in any manner, the diversion or use of water not otherwise subject to regulation of the board under this part.” Riparian and pre-1914 appropriative water rights are not subject to regulation by the State Water Board under Part 2 of Division 2 of the Water Code. *See* Water Code section 1201. Therefore, the State Water Board’s proceedings leading up to and including issuance of Order WR 2011-0005 amount to a regulation of riparian and pre-1914 appropriative water rights outside of the limits of the State Water Board’s jurisdiction.

This is not to say that the State Water Board has no ability to investigate and seek injunctive relief against threatened unlawful diversions by riparian and pre-1914 appropriative right claimants if the State Water Board believes these claims are unfounded. The State Water Board may investigate threatened unlawful diversions of water pursuant to Water Code sections 1050 and 1052. However, to obtain an order to curtail diversions pursuant to a claimed riparian or pre-1914 appropriative right the State Water Board must request that the Attorney General petition the superior court for injunctive relief as provided in Water Code section 1052(c).

In this Order, the State Water Board took an impermissible short cut, in excess of its jurisdiction. The Order should be set aside on that basis.

2. Order 2011-0005 Violates Petitioners’ Due Process Rights

Assuming the State Water Board has the power to issue a CDO which limits riparian or



pre-1914 rights at all, this power does not allow the State Water Board to limit the exercise of individual landowners' riparian or pre-1914 rights – as it does in Order 2011-0005 - *before* providing the landowners with proper notice and the opportunity to be heard. The process contained in the Order, which allows landowners to provide evidence to Board staff after-the-fact to try and “win-back” their curtailed rights is expressly prohibited by both the Water Code and the due process doctrine of the California Constitution, article 1, section 7.

Water Code section 1831 is clear – the State Water Board may only issue a cease and desist order “after notice and an opportunity for hearing pursuant to section 1834.” The informal process contained in the Order, where individual landowners must bring evidence to the Deputy Director for review and approval prior to diversion, does not meet the notice and opportunity requirements of Water Code section 1834. It also amounts to an express regulation of riparian and pre-1914 appropriative rights prohibited by Water Code section 1831(e). Further, the process contained in the Order does not provide Petitioners with the ability to request reconsideration or judicial review of the Deputy Director's determination – prior to issuance of an order actually curtailing diversions -- as would be the case for a properly prosecuted CDO, pursuant to Water Code sections 1831 and 1120 et seq.

The Order, as written, abrogates Petitioners' right to a fair hearing in violation of their due process rights, and should be set aside.

**B. The Order Is Not Supported by Substantial Evidence**

Petitioners adopt the comments of Woods Irrigation Company, San Joaquin County, and South Delta Water Agency, submitted to the State Water Board in January 2011, addressing the evidentiary and factual flaws in the Order and the State Water Board's errors in not admitting relevant evidence that Woods Irrigation Company sought to include in the record.

**C. There is Relevant Evidence, Which in the Exercise of Reasonable Diligence, Could Not Have Been Produced.**

As the Board should be well aware, compiling the relevant evidence related to riparian and pre-1914 appropriative rights for literally thousands of acres of land that were developed a hundred years ago is an enormous, time consuming task. Given that these Petitioners were never

given notice that their water rights would be subject to a cease and desist order, they have only just begun this process. They could not have produced this evidence in time for the hearing in June and July 2010, and in fact were not allowed to even try to do so because their request for intervention and continuance was denied by the Hearing Officer. *See generally* Declaration of Jennifer L. Spaletta.

**D. Order 2011-0005 is Based on Errors in Law**

In addition to the State Water Board's legal error in proceeding in excess of its jurisdiction and without providing due process notice and the opportunity to be heard to Petitioners, the Board also erred in its analysis of riparian water rights, as follows.

1. Delta Lands are Riparian

The Order includes the statement, "land does not become riparian by virtue of its having been flooded or swamp land, *as riparian rights do not attach to land that is under water.*" (Order at 40). This statement is an over-simplification of the law and is not supported by the citations provided in the Order. The California Supreme Court has expressly recognized riparian rights to lands located in Delta regions in which water spreads out from the main channel.

Prior to reclamation, the interior of Roberts Island included more water than it does today as a result of the fact that the rivers that flowed into and through the delta in this region were not naturally confined to the definite channels in which they flow today. Rather, as the term "Delta" explains, these rivers, upon reaching this portion of the valley floor, often spread out, flowing through "fingers" of sloughs and swamp-like swath areas, making their way out to the Pacific Ocean, and influenced by the tide. Obviously, the extent of this natural disbursement of water, and the length of the various sloughs and swaths it generated, were not static. Rather, they would change from year to year and even from season to season within a year based on the conditions at the time.

This "delta" concept is not the same thing as "flood" waters or "diffused surface waters" as the statement in the Order implies, and the law has historically treated these two types of waters differently. "Diffused surface waters" consist of drainage falling upon and naturally flowing from and over land before such waters have found their way into a natural watercourse.

Hutchins (1956) *The California Law of Water Rights*, p. 27, 372. “Flood waters” are waters that were once part of a watercourse, but have broken away from the watercourse. Flood waters include the element of abnormality. *Id.* (emphasis added).

Neither of these types of waters describes the type of water that regularly traversed Roberts Island, and the rest of the Sacramento-San Joaquin Delta, prior to completion of reclamation efforts. Rather, the water that ran over and through Roberts Island prior to reclamation is best described as “overflows not separated from the stream.”

It is well determined by the authorities that waters flowing under circumstances such as these, notwithstanding that they may consist of a large expanse of water on either side of the main channel, constitute but a single watercourse **and that riparian rights pertain to the whole of it**. Hutchins at 26, citing *Miller & Lux v. Madera Canal & Irr. Co.*, 155 Cal. 59, 77 (1907, 1909).

A review of the actual factual discussion in *Miller & Lux v. Madera Canal & Irr. Co.* is helpful to illustrate the similarities between way in which the Fresno River made its way to the San Joaquin River and the way in which the water in the various delta channels made their way to the Pacific Ocean:

The matter was practically heard upon affidavits, a large number of which were filed on either side, and those upon the part of plaintiff, made by persons who had observed conditions on said Fresno River for twenty and thirty years, show that practically in every year during the winter and early spring months, on account of rainfall and the melting of the snows in the watershed of the stream, the Fresno River carries a large volume of water; that this entire volume of water, if not interfered with, is carried in the channel of the river past the point where the water is diverted from the river into the reservoirs of appellant complained of, and for some distance west of the town of Madera, **when the river divides into two or more channels which diverge and flow in the same general direction as the main channel of the river and further on unite with it; that when the volume of water flowing in the river reaches the higher stages a portion of the water flows into these branch channels; that at the highest stages of the flow the water overflows the main and branch channels of the river at various points and spreads over the low-lying lands adjacent thereto; that the main and branch channels of the \*76 river and the lands subject to overflow lie in a trough or basin running parallel with the river for a distance of about eighteen**

**miles; that all of the water which so overflows flows on with the water confined in the lower banks of the main and branch channels of the river in a westerly direction and in a continuous body down to Lone Willow slough and finally into the main channel of the San Joaquin River; that none of the water which overflows is vagrant or becomes lost or wasted, but flows in a continuous body, as above stated, within a clearly defined channel, and so continues until the volume of water coming down the stream commences to lower, when the overflow waters recede back into the main channel of the river and flow on with the rest of the water; that this overflow is practically of annual occurrence, and may be and is anticipated in every season of ordinary rainfall within the watershed of the Fresno River and fails to occur only in seasons of drought or exceptionally light rainfall.**

Upon this showing it cannot be said that a flow of water, occurring as these waters are shown to occur, constitutes an extraordinary and unusual flow. In fact, their occurrence is usual and ordinary. It appears that they occur practically every year and are reasonably expected to do so, and an extraordinary condition of the seasons is presented when they do not occur; they are practically of annual occurrence and last for several months. They are not waters gathered into the stream as the result of occasional and unusual freshets, but are waters which on account of climatic conditions prevailing in the region where the Fresno River has its source are usually expected to occur, do occur, and only fail to do so when ordinary climatic conditions are extraordinary-when a season of drought prevails.

As to such waters, it is said in Gould on Waters, section 211, "Ordinary rainfalls are such as are not unprecedented or extraordinary; and hence floods and freshets which habitually occur and recur again, though at irregular and infrequent intervals, are not extraordinary and unprecedented. It has been well said that 'freshets are regarded as ordinary which are well known to occur in the stream occasionally through a period of years though at no regular intervals.' " (*Heilbron v. Fowler Switch Canal Co.*, 75 Cal. 426, [7 Am. St. Rep. 183, 17 Pac. 535]; \*77 *Cairo Railway Co. v. Brevoort*, 62 Fed. 129; *California T. & A. Co. v. Enterprise C. & L. Co.*, 127 Fed. 741.)

And when such usually recurring floods or freshets are accustomed to swell the banks of a river beyond the low-water mark of dry seasons and overflow them, but such waters flow in a continuous body with the rest of the water in the stream and along well-

defined boundaries, they constitute a single natural watercourse. It is immaterial that the boundaries of such stream vary with the seasons or that they do not consist of visible banks. It is only necessary that there be natural and accustomed limits to the channel. If within these limits or boundaries **nature has devised an accustomed channel for the limited flow of the waters therein during the dry season, and an accustomed but extended channel for their flow when the volume is increased by annual flood waters, and all flow in one continuous stream between these boundaries and are naturally confined thereto, and when the waters lower the overflow recedes into the main channel, this constitutes one natural watercourse for all such waters and the rights of a riparian owner thereto cannot be invaded or interfered with to his injury.** This is the character of the waters of the Fresno River, the flow of which it is shown the defendant intends to divert. These overflow waters, occasioned through such usually recurring floods and freshets, are not waters which flow beyond the natural channel boundaries of the stream which nature has designed to confine their flow; they are not waters which depart from the stream or are lost or wasted; they flow in a well-defined channel in a continuous body and in a definite course to the San Joaquin River, and while they spread over the bottom lands, or low places bordering on the main channel of the Fresno River as it carries its stream during the dry season, still this is the usual, ordinary, and natural channel in which they flow at all periods of overflow, the waters receding to the main channel as the overflow ceases.

**It is well determined by the authorities that waters flowing under circumstances such as these, notwithstanding they may consist of a large expanse of water on either side of the main channel, constitute but a single watercourse and that riparian rights pertain to the whole of it.** As is said in *Lux v. Haggin*, 69 Cal. 418, [10 Pac. 674], “it is not essential to a watercourse that the banks shall be unchangeable or that there shall everywhere a visible change in the angle of ascent marking the line between bed and banks. ... We can conceive that in the course of a stream there may be shallow places where the water spreads and where there is no distinct ravine or gully. Two ascending surfaces may rise from the line of meeting very gradually for an indefinite distance on either side. In such case if water flowed periodically at the portion of the depression it flowed in a channel ...” In *Crawford v. Rambo*, 44 Ohio St. 279, 282, [7 N. E. 429, 431], the court says: “It is difficult to see upon what principle the flood waters of a river can be likened to surface waters. When it is said that a river is out of its banks no more is implied than that its volume then exceeds

what it ordinarily is. Whether high or low, the entire volume at any time constitutes the water of the river at such time, and the land over which its current flows must be regarded as its channel; so that when, swollen by rains and melting snows it extends and flows over the bottom in its course, that is its flood channel, and when by droughts it is reduced to its minimum, that is its low water channel.”

So in *O'Connell v. East Tennessee Ry Co.*, 87 Ga., 246, [27 Am. St. Rep. 246, 13 S. E. 489, 491], “If the flood water forms a continuous body with the water flowing in the ordinary channel, or if it departs from such channel *animo revertendi*, as by the recession of the waters, it is to be regarded as still a part of the river ... The surplus waters do not cease to be a part of the river when they spread over the adjacent low grounds without well-defined banks or channels so long as they form with it one body of water eventually to be discharged through the proper channel.” To the same effect are *Chicago etc. Ry. Co. v. Emmert*, 53 Neb. 237, [68 Am. St. Rep. 602, 73 N. W. 540]; *Fordham v. Northern Pacific Ry. Co.*, 30 Mont. 421, [104 Am. St. Rep. 729, 76 Pac. 1040]; *Jones v. Seaboard etc. Ry. Co.*, 67 S. C. 181, [45 S. E. 188]; *New York etc. Ry. Co. v. Hamlet Hay Co.*, 149 Ind. 344, [47 N. E. 1060, 49 N. E. 269]; *Cairo etc. Ry. Co. v. Brevoort*, 62 Fed. 129.

**And where the stream usually flows in a continuous current, the fact that the water of the stream, on account of the level character of the land, spreads over a large area without apparent banks does not affect its character as a watercourse.** (*Macomber v. Godfrey*, 108 Mass. 219, [11 Am. Rep. 340]; *West v. Taylor*, 16 Or. 165, [13 Pac. 665].) *Miller & Lux v. Madera Canal & Irrigation Co.* 155 Cal. 59, 75 -78 (Cal. 1909).

Similarly, the lands on Roberts Island likely experienced regular seasonal inundation and/or surrounding by intermittent sloughs and swaths prior to the completion of reclamation efforts that served to keep these waters confined to the main channels. Clearly, the efforts of these landowners to control these waters and meter their use, does not evidence the intent to forego riparian rights which they clearly had prior to reclamation. Rather, it is more logical, and consistent with public policy, to view these efforts as efforts to comply with the constitutional amendment of 1928 which limited all water use in the state to that which is both reasonable and beneficial. This amendment was specifically triggered by court decisions, such as the *Miller* decision noted above, which upheld a riparian’s right to utilize the entire overflow of a stream

without regard for the rights of appropriators who desired to dam and control the regular seasonal overflow so as to maximize use of the water.

The California Supreme Court had occasion to address the rights of riparian right holders on delta lands in the nearby Suisun Bay in 1934, a few years after the constitutional amendment. *See Peabody v. City of Vallejo*, 2 Cal.2d 351, 369, 40 P.2d 486, 492 (CA.1935). In *Peabody*, the high court did not question the riparian rights of the delta landowner, but rather, clarified that the constitutional amendment limited the riparian right such that the owner no longer had the right to use the full flow of the stream over his lands in the same manner as had been previously upheld in the *Miller* decision.

The landowners on Roberts Island are not claiming riparian rights based on abnormal flood events or diffused surface water flow that has yet to reach a watercourse. Rather, their riparian rights derive from the very “delta” nature of the properties and the watercourses, which naturally fanned out over the properties in numerous smaller channels and swaths as they made their way to the ocean. The California Supreme Court, since at least 1909, has specifically held that such land is riparian.

## 2. A “Delta Pool” Analysis is Appropriate

Section 4.4.1 of the Order rejects Woods’ argument that the channels surrounding Roberts Island are all part of a “Delta Pool” and thus lands that maintained a riparian connection to any natural water body in the Delta may draw from Middle River. In so doing, it appears that the State Water Board has misunderstood the hydrologic basis for this argument and ignored many of its own prior decisions which rely on the very same concept to approve diversions from the Delta. Here, we discuss the “Delta Pool” concept as it relates to the various inter-connected channels of surface water in the Delta.

In reviewing water right applications, the State Water Board must evaluate water availability and possible injury to other right holders. To do this, the Board looks at the point of diversion, where the water that flows by that point of diversion originates, and where it goes, so that the Board can properly determine the impact of the diversion. In the Delta, the water originates from almost every direction. The precise mix of fresh and saline water depends on the

year and the season and the tide. The hydrologic reality in the Delta is that a diversion from one channel has virtually the same impact as a diversion of a like amount of water from another channel.

The Order appears to reject the concept that lands that were riparian to Burns Cut-off, for example, could divert water from Middle River. This is error. A riparian or pre-1914 right holder can change his point of diversion so long as the change does not injure another right holder. Whether a landowner diverts from Burns-Cut-off, or Middle River, the effect is the same due to the nature of the hydrologically connected Delta Channels.

This very concept was relied on by the complaining parties in this case as the basis for their complaint and standing to participate in the hearing. The complaining parties have lodged similar complaints against diverters from a variety of Delta channels – not just Middle River – on the basis that any unauthorized diversion from any Delta Channel adversely impacts them.

This is logical given that the very permitted diversion rights of the state and federal projects treat the Delta Channels as one source. In Decision 990, approving the water rights for the federal Central Valley Project (“CVP”) for diversion from Sacramento River, Rock Slough, Old River and “Channels of the Sacramento-San Joaquin Delta,” the State Board described the Delta:

“The Delta covers about 700 square miles of rich fertile lands between the City of Sacramento on the north, the City of Tracy on the south, the City of Stockton on the east and the City of Pittsburg on the west. It contains over 50 reclaimed islands (DWR 70A) interlaced by about 550 miles of open channels (DWR 5, p. 18). **Water levels in these channels, all at or near sea level, are hydraulically connected and aggregate an open water area of about 38,000 acres (60 square miles)...**” Water Rights Decision 990 at 43.

Similarly, when issuing the water rights for the State Water Project (“SWP”) for diversion from the Feather River and the “Sacramento San Joaquin Delta” the State Water Board considered water availability from the Delta only in the aggregate. *See e.g.* Water Rights Decision 1275 at pages 6, 16-20, 26-29. The State’s Application A14443 actually sought to divert 6,185 cfs from “Delta Channels.”



While the test for approving a new water right application and the test for riparian rights are not exact in all respects, they are the same when it comes to evaluating the source of supply. For the same reasons that the State Water Board can approve diversions from the "Delta" in general for the SWP and CVP, it can find that a land with riparian rights to Burns Cut-off can exercise those riparian rights by diverting from Middle River. As far as we can tell, the State Water Board has always evaluated water supply impacts for those wishing to divert Delta water for use outside the Delta by relying on this "Delta Pool" concept. It was disingenuous and inequitable for the State Water Board to disregard this same concept when evaluating riparian and pre-1914 rights in the Delta in Order 2011-0005.

#### V. CONCLUSION

Based on the foregoing, Petitioners respectfully request that the State Water Board grant this Petition for Reconsideration of Order 2011-0005.

Dated: March 2, 2011

Respectfully submitted,

**HERUM / CRABTREE**  
*A California Professional Corporation*

By:   
JENNIFER L. SPALETTA  
Attorneys for Petitioners

# **EXHIBIT A**

May 12, 2010

**VIA E-MAIL AND OVERNIGHT MAIL**

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

[wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)

**Re: Woods Irrigation Company CDO Hearing June 7, 2010**  
**Request to Intervene, Request for Continuance**

To Whom It May Concern:

This office represents Dino Del Carlo and RDC Farms, Inc. Each owns real property that is served with water from Woods Irrigation Company's facilities. It has just come to our attention, based on the arguments presented at the May 5, 2010 CDO hearing, that the State Board and/or the other parties may attempt to define the scope of riparian and/or pre-1914 water rights for lands located currently served with water from Woods Irrigation Company at the hearing currently set for June 7, 2010. There are serious conflict of interest and due process concerns with this possibility that require that we request to formally intervene as a party in any such proceeding.

Also, due to the practical impossibility of preparing to present evidence of water rights for our clients' properties on such short notice, and the fact that I will be out on maternity leave during the scheduled hearing time, we respectfully request that the hearing be continued until at least August 2010. These proceedings involve complex factual issues, years of historical title information, and expert testimony. I am the only attorney who has assisted my clients with this work for their properties and it would be highly prejudicial if they were required to obtain alternate counsel to attempt to participate on June 7, 2010.

Please note that my clients also farm other properties, owned by other landowners, that are served with water from Woods Irrigation Company. However, none of these property owners, or any of the other property owners served by Woods Irrigation Company for that matter, have received notice of the potential scope of the Woods

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
May 12, 2010  
Page 2

Irrigation District at the June 7, 2010 CDO hearing for Woods Irrigation District, prior to the actual CDO hearing for Eddie Vierra Farms, LLC.

We understand that the State Board has not provided notice to any of the landowners served by Woods Irrigation Company of the potential scope of the Woods Irrigation Company CDO hearing. These landowners have not been named as parties to that hearing, nor do they have their own counsel to represent their interests at that hearing.

While I am sure that many, if not all, of these landowners will continue to object to the jurisdiction of the State Board to determine their riparian and/or pre-1914 water rights, it is nonetheless imperative that the State Board consider the due process requirements of any effort to do so. If the State Board intends this hearing to have any bearing on water rights determinations for lands located within the service area of Woods Irrigation Company, each and every one of these landowners must receive notice of the hearing and be given adequate time to obtain their own legal counsel and prepare their own presentations of evidence to support their respective water rights. Otherwise, any decision by the State Board will surely be void. Further, even if the State Board were to try to limit its determination to just the water rights of the Woods Irrigation Company, as an entity, separate and apart from the rights of the individual landowners, these rulings will undoubtedly prejudice the landowners in any future proceedings.

We respectfully request a prompt response to this request so that we can advise our clients accordingly.

Very truly yours,

  
JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached service list (via e-mail and Overnight Mail).

Jennifer L. Spalletta  
jspalletta@herumcrabtree.com

May 12, 2010

**VIA E-MAIL AND OVERNIGHT MAIL**

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
1001 I Street, 2nd Floor  
Sacramento, CA 95814

wrhearing@waterboards.ca.gov

Re: Woods Irrigation Company CDO Hearing June 7, 2010  
Request to Intervene, Request for Continuance

To Whom It May Concern:

This office represents Eddie Vierra Farms, LLC, which owns real property that is served with water from Woods Irrigation Company's facilities. It has just come to our attention, based on the arguments presented at the May 5, 2010 CDO hearing, that the State Board and/or the other parties may attempt to define the scope of riparian and/or pre-1914 water rights for lands located currently served with water from Woods Irrigation Company at the hearing currently set for June 7, 2010. There are serious conflict of interest and due process concerns with this possibility that require that we request to formally intervene as a party in any such proceeding.

Also, due to the practical impossibility of preparing to present evidence of water rights for our clients' properties on such short notice, and the fact that I will be out on maternity leave during the scheduled hearing time, we respectfully request that the hearing be continued until at least August 2010. These proceedings involve complex factual issues, years of historical title information, and expert testimony. I am the only attorney who has assisted my clients with this work for their properties and it would be highly prejudicial if they were required to obtain alternate counsel to attempt to participate on June 7, 2010.

Further, Eddie Vierra Farms, LLC is already subject to a CDO hearing that has yet to be scheduled. It would be highly prejudicial for any evidence or determinations to be made regarding the water rights of Eddie Vierra Farms, LLC lands served by Woods

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
May 12, 2010  
Page 2

Irrigation District at the June 7, 2010 CDO hearing for Woods Irrigation District, prior to the actual CDO hearing for Eddie Vierra Farms, LLC.

We understand that the State Board has not provided notice to any of the landowners served by Woods Irrigation Company of the potential scope of the Woods Irrigation Company CDO hearing. These landowners have not been named as parties to that hearing, nor do they have their own counsel to represent their interests at that hearing.

While I am sure that many, if not all, of these landowners will continue to object to the jurisdiction of the State Board to determine their riparian and/or pre-1914 water rights, it is nonetheless imperative that the State Board consider the due process requirements of any effort to do so. If the State Board intends this hearing to have any bearing on water rights determinations for lands located within the service area of Woods Irrigation Company, each and every one of these landowners must receive notice of the hearing and be given adequate time to obtain their own legal counsel and prepare their own presentations of evidence to support their respective water rights. Otherwise, any decision by the State Board will surely be void. Further, even if the State Board were to try to limit its determination to just the water rights of the Woods Irrigation Company, as an entity, separate and apart from the rights of the individual landowners, these rulings will undoubtedly prejudice the landowners in any future proceedings.

We respectfully request a prompt response to this request so that we can advise our clients accordingly.

Very truly yours,



JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached service list (via e-mail and Overnight Mail).

# **EXHIBIT B**



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Executive Office

Charles R. Hoppin, Chairman  
1001 I Street • Sacramento, California 95814 • (916) 341-5615  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

May 24, 2010

Ms. Jennifer L. Spaletta  
Herum\Crabtree Attorneys  
2291 West March Lane, Suite. B100  
Stockton, CA 95207

Dear Ms. Spaletta:

### CONTINUANCE RESPONSE

The State Water Resources Control Board (State Water Board) hearing team received your letters of May 12, 2010. The letters request that your clients Eddie Vierra Farms, LLC, Dino Del Carlo, and RDC Farms, Inc., be allowed to intervene in the Cease and Desist Order (CDO) hearing for the Woods Irrigation Company (Woods); that the hearing be continued until at least August 2010 to accommodate your maternity leave; and that all landowners in the Woods service area receive individual notice. The letters express concern that Eddie Vierra Farms, Inc. specifically, and other landowners in general could be prejudiced by evidence or determinations concerning their rights in the Woods hearing. The State Water Board declines to continue the CDO hearing or to allow late intervention of your clients at this point.

The Woods CDO hearing will not bind non-parties to the hearing. Whether landowners who receive water through Woods would be otherwise impacted by the proceeding will depend upon the terms of an order either issuing or not issuing a CDO against Woods. The Hearing Officers may, if appropriate or necessary, hold open the hearing to allow for submission of additional evidence or to allow for participation of additional parties.

If the hearing is held open and re-noticed for the participation of additional potential parties, then the hearing team will not schedule such additional hearing before August 2010 in order to accommodate your maternity leave.

Sincerely,

Walt Pettit  
Board Member  
Hearing Officer

cc: See Next Page



cc: NELLY MUSSI AND RUDY M. MUSSI  
INVESTMENT LP  
[dean@hpllp.com](mailto:dean@hpllp.com)

MODESTO IRRIGATION DISTRICT  
[towater@olaughlinparis.com](mailto:towater@olaughlinparis.com)  
[kpetruzzelli@olaughlinparis.com](mailto:kpetruzzelli@olaughlinparis.com)

THE SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY  
[jrubin@diepenbrock.com](mailto:jrubin@diepenbrock.com)  
[vkincaid@diepenbrock.com](mailto:vkincaid@diepenbrock.com)

SOUTH DELTA WATER AGENCY  
[dean@hpllp.com](mailto:dean@hpllp.com)

DIVISION OF WATER RIGHTS  
PROSECUTION TEAM  
[drose@waterboards.ca.gov](mailto:drose@waterboards.ca.gov)

STATE WATER CONTRACTORS  
[spowell@kmtg.com](mailto:spowell@kmtg.com)

CENTRAL DELTA WATER AGENCY  
[dean@hpllp.com](mailto:dean@hpllp.com)

SAN JOAQUIN COUNTY AND THE  
SAN JOAQUIN COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT  
[dgillick@neumiller.com](mailto:dgillick@neumiller.com)  
[mbrown@neumiller.com](mailto:mbrown@neumiller.com)

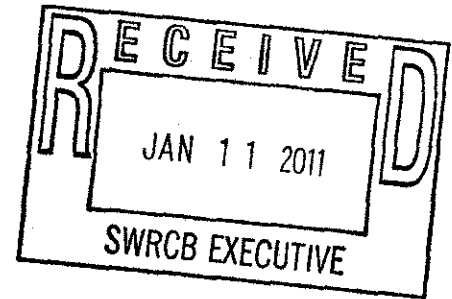
# **EXHIBIT C**

Jennifer L. Spaletta  
jspaletta@herumcrabtree.com

January 11, 2011

VIA ELECTRONIC MAIL: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)  
Confirmation via U.S. Mail

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> floor  
Sacramento, CA 95814



Re: **Comment Letter - 01/18/11 Board Workshop: Woods CDO**

To Whom It May Concern:

These comments are submitted on behalf of my clients Eddie Vierra Farms, LLC and RDC Farms, Inc.. My clients own and/or farm property within the Woods Irrigation Company ("Woods") service area and utilize the Woods facilities to exercise their riparian and pre-1914 appropriative water rights. These comments address four issues with the draft decision: (1) Due Process Concerns, (2) Practical Considerations for the CDO, (3) Riparian Rights Analysis as Applied to Delta Lands, and (4) Delta Pool Analysis.

#### **DUE PROCESS CONCERNS**

On May 12, 2010 I sent a letter to the State Board, attached hereto as Exhibit A, expressing our concern that any hearing regarding Woods Irrigation Company should not and could not impact the rights of my clients or any other individual landowners utilizing Woods' facilities because these landowners had not received proper notice of the hearing. Counsel for Modesto Irrigation District, the State Water Contractors and San Luis and Delta Mendota Water Authority also wrote to the State Board agreeing that the Woods hearing could not impact the rights of landowners within Woods. (Exhibit B).

The State Board Hearing Officer responded to these letters and stated that "The Woods CDO hearing will not bind non-parties to the hearing." (Exhibit C).

Despite this statement, that is precisely what the current draft decision will do. As written, the decision unconstitutionally violates the due process rights of landowners within Woods service area to exercise their water rights.

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
January 11, 2011  
Page 2

The draft decision concludes that there is sufficient evidence of pre-1914 rights to the extent of 77.7 cfs such that the State Board will not issue a CDO that requires Woods to curtail diversions beyond that amount. However, the decision does not determine whether the pre-1914 right is held by Woods or the landowners. Rather, the decision states "that Woods or landowners within the Woods original service area had the intention before 1914 to divert up to 77.7 cfs of water for irrigation..." and "the evidence indicates that the water rights associated with the 77.7 cfs Woods diversion passed with the land as it was subdivided subsequent to the 1911 service contracts executed between Woods and individual landowners." (Draft Decision at 4).

Recognizing that individual landowners within the Woods service area did not present evidence regarding their rights in that proceeding, the decision states: "the CDO accounts for the possibility that additional landowners within Woods service area may provide evidence of valid water rights that would enable them to receive additional water beyond that covered by the 77.7 cfs diversion. The CDO provides for revisions based upon submission of evidence of such rights that satisfies the Deputy Director." (Draft Decision at page 5).

**This provision, however, gets the law of due process exactly backwards.** Assuming the State Board has the power to issue a CDO which limits riparian or pre-1914 rights in the first place, this power does not allow the State Board to limit the exercise of individual landowners' riparian or pre-1914 rights before proper notice and opportunity to be heard. The CDO cannot require that individual landowners provide additional evidence to the Deputy Director and seek approval before utilizing the Woods facilities to exercise their riparian and pre-1914 rights. Rather, if the State Board wishes to limit the diversion of these individual landowners, it must, at a minimum, proceed to give each and every one of them proper notice and opportunity for hearing before issuing the CDO.

This problem is best illustrated by example. Assume the State Board issues the draft decision and the CDO is in effect in August 2011; Woods' pumps are diverting 77.7 cfs, but my client needs more water to irrigate his crops, and he asks WOODS to increase diversions to fulfill his demands. Woods is acting as my client's agent in my client's exercise of his riparian and pre-1914 water rights - which my client has every right to exercise because the CDO has not been issued against him. Yet, as written, the draft decision precludes Woods from increasing its diversions to provide water to individual landowners.

This problem is exactly what we envisioned when we wrote to the State Board in May to request that the Board reconsider going to hearing against Woods without proper notice to each and every effected landowner. Woods serves as a collective distribution system to implement the water rights of its landowners. As the draft decision

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
January 11, 2011  
Page 3

correctly notes, these rights are appurtenant to the land as a result of the recorded 1911 contracts. (Draft Decision at 4). Thus, a CDO that prohibits Woods from diverting more than 77.7 cfs (see Draft Decision at 60) is meaningless because Woods' right to divert derives only from the rights of the individual landowners who hold the water rights. The State Board has not followed the required procedure to implement a CDO against these landowners.

Issuing this decision as written will violate the due process rights of every landowner in Woods. Enforcing the decision will make the State Board liable for unconstitutional taking as well as any other consequential damages that may result to lands that may not receive sufficient water. No trial court will issue an injunction based on this decision given its constitutional flaws.

As we discuss below, these flaws can be remedied by revising the decision prior to issuance.

#### **PRACTICAL CONSIDERATIONS**

In light of the very serious due process problem with the draft decision, we ask that the State Board modify the decision to include more practical and useful enforcement provisions.

First, it is not clear that Woods diverts more than 77.7 cfs when measured with a 30-day accumulation provision. As the draft decision notes, staff measured a 90 cfs diversion rate at one inspection during 2010. The decision should be modified to give Woods and its landowners time to work with staff to develop an appropriate measuring and reporting program so that the diversions can be tracked over several irrigation seasons. Only then will the Board know whether it even needs to proceed with further enforcement action against the individual landowners. Paragraphs 3 and 4 in the draft decision address such a program.

Second, assuming measurement over a proper time period shows that diversions exceed 77.7 cfs using accumulation, the State Board should give individual landowners notice and opportunity to present evidence of riparian and/or pre-1914 rights to substantiate the total diversions. Clearly, it will behoove the landowners to work proactively with staff to provide this evidence so that future hearings can be avoided. However, if the State Board is not satisfied with the evidence presented by landowners, it may then proceed to hearing against individual landowners, following the required statutory procedures.

Then, and only then, may a CDO issue that actually restricts the Woods diversions made on behalf of landowners.

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
January 11, 2011  
Page 4

In this regard, we request that the following changes be made to the "Order" section of the draft decision found at pages 60-62:

1. Following "IT IS HEREBY ORDERED THAT pursuant to sections 1831 through 1836 of the Water Code" **delete** the words "within 60 days Woods shall cease and desist from diverting water in excess of 77.7 cfs at any time, unless and until compliance with the following is accepted and approved by the Deputy Director for Water Rights."
2. **Delete** all of paragraph 1 and **replace** with "Woods shall within 60 days of the date of this Order, submit a list of all properties, and the property owners, who receive water from Woods' diversion season."
3. Paragraphs 2 and 5 must be **deleted** in their entirety based on the due process violation explained above.

These requested changes are noted to address the due process violation explained above. The failure of my clients to request other changes to the draft decision is not a waiver of any rights my clients have to challenge any other aspect of the decision in any future proceeding.

Finally, the State Board should understand that while many landowners in Woods still do not even know about these proceedings, others are aware of the proceedings and are investigating alternate water supplies in the event that their riparian and/or pre-1914 rights are curtailed. These other options include transfers, state and federal water supply contracts, and area of origin water right applications. Lands on Roberts Island are within the area of origin and have a right to divert at least natural flow that is prior to the diversion rights of the exports units of the state and federal projects. Given the extreme economic consequences that would result from curtailed diversions on Roberts Island, these landowners should be given the opportunity to pursue these other means prior to issuance or enforcement of a CDO that seeks to curtail diversions.

This is an equitable issue. The landowners on Roberts Island have been diverting water using the same facilities and in the same manner, for a century. As a result, families and entire communities have developed in reliance. The complaining parties in this case have also diverted water for decades, without any complaint about the diversions by landowners served by Woods, until now. To the extent the State Board wants to act to limit diversions, it should, at a minimum, give these landowners time to secure other water rights to prevent irreparable injury. In the end, given their area of origin priority and ability to purchase stored water, they will be diverting the same amount of water, just under different rights. Thus, there is no pressing public policy reason why the State Board needs to issue a CDO now that requires curtailed diversions.

## **RIPARIAN RIGHTS ANALYSIS AS APPLIED TO DELTA LANDS**

Page 40 of the draft decision includes the statement "land does not become riparian by virtue of its having been flooded or swamp land, as *riparian rights do not attach to land that is under water.*" This is an over-simplification of the law and the facts that is not supported by the citations provided in the draft order. The California Supreme Court has expressly recognized riparian rights to lands located in Delta regions in which water spreads out from the main channel.

Prior to reclamation, the interior of Roberts Island, including the Home Ranch property, included more water than it does today as a result of the fact that the rivers that flowed into and through the delta in this region were not naturally confined to the definite channels in which they flow today. Rather, as the term "Delta" explains, these rivers, upon reaching this portion of the valley floor, often spread out, flowing through "fingers" of sloughs and swamp-like swath areas, making their way out to the Pacific Ocean, and influenced by the tide. Obviously, the extent of this natural dispersment of water, and the length of the various sloughs and swaths it generated, were not static. Rather, they would change from year to year and even from season to season within a year based on the conditions at the time.

This "delta" concept is not the same thing as "flood" waters or "diffused surface waters" as page 40 of the draft decision implies, and the law has historically treated these different types of waters differently.

"Diffused surface waters" consist of drainage falling upon and naturally flowing from and over land before such waters have found their way into a natural watercourse. Hutchins at 27, 372. "Flood waters" are waters that were once part of a watercourse, but have broken away from the watercourse. Flood waters include the element of abnormality. Hutchins at 27, 372.

Neither of these types of waters describes the type of water that regularly traversed Roberts Island, and the rest of the Sacramento-San Joaquin Delta, prior to completion of reclamation efforts. Rather, the water that ran over and through Roberts Island prior to reclamation is best described as "overflows not separated from the stream." See Hutchins at 26:

It is well determined by the authorities that waters flowing under circumstances such as these, notwithstanding that they may consist of a large expanse of water on either side of the main channel, constitute but a single watercourse **and that riparian rights pertain to the whole of it.**

Hutchins at 26, citing *Miller & Lux v. Madera Canal & Irr. Co.*, 155 Cal. 59, 77 (1907, 1909). A review of the actual factual discussion in this case is helpful to illustrate the similarities

between way in which the Fresno River made its way to the San Joaquin River and the way in which the water in the various delta channels made their way to the Pacific Ocean:

The matter was practically heard upon affidavits, a large number of which were filed on either side, and those upon the part of plaintiff, made by persons who had observed conditions on said Fresno River for twenty and thirty years, show that practically in every year during the winter and early spring months, on account of rainfall and the melting of the snows in the watershed of the stream, the Fresno River carries a large volume of water; that this entire volume of water, if not interfered with, is carried in the channel of the river past the point where the water is diverted from the river into the reservoirs of appellant complained of, and for some distance west of the town of Madera, **when the river divides into two or more channels which diverge and flow in the same general direction as the main channel of the river and further on unite with it; that when the volume of water flowing in the river reaches the higher stages a portion of the water flows into these branch channels; that at the highest stages of the flow the water overflows the main and branch channels of the river at various points and spreads over the low-lying lands adjacent thereto; that the main and branch channels of the \*76 river and the lands subject to overflow lie in a trough or basin running parallel with the river for a distance of about eighteen miles; that all of the water which so overflows flows on with the water confined in the lower banks of the main and branch channels of the river in a westerly direction and in a continuous body down to Lone Willow slough and finally into the main channel of the San Joaquin River; that none of the water which overflows is vagrant or becomes lost or wasted, but flows in a continuous body, as above stated, within a clearly defined channel, and so continues until the volume of water coming down the stream commences to lower, when the overflow waters recede back into the main channel of the river and flow on with the rest of the water; that this overflow is practically of annual occurrence, and may be and is anticipated in every season of ordinary rainfall within the watershed of the Fresno River and fails to occur only in seasons of drouth or exceptionally light rainfall.**

Upon this showing it cannot be said that a flow of water, occurring as these waters are shown to occur, constitutes an extraordinary and unusual flow. In fact, their occurrence is usual and ordinary. It appears that they occur practically every year and are reasonably expected to do so, and an extraordinary condition of the seasons is presented when they do not occur; they are practically of annual occurrence and last for several months. They are not waters gathered into the stream as the result of occasional and unusual freshets, but are waters which on account of climatic conditions prevailing in the region where the Fresno River has its source are usually expected to occur, do occur, and only fail



to do so when ordinary climatic conditions are extraordinary-when a season of drouth prevails.

As to such waters, it is said in *Gould on Waters*, section 211, "Ordinary rainfalls are such as are not unprecedented or extraordinary; and hence floods and freshets which habitually occur and recur again, though at irregular and infrequent intervals, are not extraordinary and unprecedented. It has been well said that 'freshets are regarded as ordinary which are well known to occur in the stream occasionally through a period of years though at no regular intervals.' " ( *Heilbron v. Fowler Switch Canal Co.*, 75 Cal. 426, [7 Am. St. Rep. 183, 17 Pac. 535]; \*77 *Cairo Railway Co. v. Brevoort*, 62 Fed. 129; *California T. & A. Co. v. Enterprise C. & L. Co.*, 127 Fed. 741.)

And when such usually recurring floods or freshets are accustomed to swell the banks of a river beyond the low-water mark of dry seasons and overflow them, but such waters flow in a continuous body with the rest of the water in the stream and along well-defined boundaries, they constitute a single natural watercourse. It is immaterial that the boundaries of such stream vary with the seasons or that they do not consist of visible banks. It is only necessary that there be natural and accustomed limits to the channel. If within these limits or boundaries **nature has devised an accustomed channel for the limited flow of the waters therein during the dry season, and an accustomed but extended channel for their flow when the volume is increased by annual flood waters, and all flow in one continuous stream between these boundaries and are naturally confined thereto, and when the waters lower the overflow recedes into the main channel, this constitutes one natural watercourse for all such waters and the rights of a riparian owner thereto cannot be invaded or interfered with to his injury.** This is the character of the waters of the Fresno River, the flow of which it is shown the defendant intends to divert. These overflow waters, occasioned through such usually recurring floods and freshets, are not waters which flow beyond the natural channel boundaries of the stream which nature has designed to confine their flow; they are not waters which depart from the stream or are lost or wasted; they flow in a well-defined channel in a continuous body and in a definite course to the San Joaquin River, and while they spread over the bottom lands, or low places bordering on the main channel of the Fresno River as it carries its stream during the dry season, still this is the usual, ordinary, and natural channel in which they flow at all periods of overflow, the waters receding to the main channel as the overflow ceases.

**It is well determined by the authorities that waters flowing under circumstances such as these, notwithstanding they may consist of a large expanse of water on either side of the main channel, constitute but a single watercourse and that riparian rights pertain to the whole of it.** As is said in *Lux v. Haggin*, 69 Cal. 418, [10 Pac. 674], "it is not essential to a watercourse that the banks shall be

unchangeable or that there shall everywhere a visible change in the angle of ascent marking the line between bed and banks. ... We can conceive that in the course of a stream there may be shallow places where the water spreads and where there is no distinct ravine or gully. Two ascending surfaces may rise from the line of meeting very gradually for an indefinite distance on either side. In such case if water flowed periodically at the portion of the depression it flowed in a channel ..." In *Crawford v. Rambo*, 44 Ohio St. 279, 282, [7 N. E. 429, 431], the court says: "It is difficult to see upon what principle the flood waters of a river can be likened to surface waters. When it is said that a river is out of its banks no more is implied than that its volume then exceeds what it ordinarily is. Whether high or low, the entire volume at any time constitutes the water of the river at such time, and the land over which its current flows must be regarded as its channel; so that when, swollen by rains and melting snows it extends and flows over the bottom in its course, that is its flood channel, and when by drouths it is reduced to its minimum, that is its low water channel."

So in *O'Connell v. East Tennessee Ry Co.*, 87 Ga., 246, [27 Am. St. Rep. 246, 13 S. E. 489, 491], "if the flood water forms a continuous body with the water flowing in the ordinary channel, or if it departs from such channel *animo revertendi*, as by the recession of the waters, it is to be regarded as still a part of the river ... The surplus waters do not cease to be a part of the river when they spread over the adjacent low grounds without well-defined banks or channels so long as they form with it one body of water eventually to be discharged through the proper channel." To the same effect are *Chicago etc. Ry. Co. v. Emmert*, 53 Neb. 237, [68 Am. St. Rep. 602, 73 N. W. 540]; *Fordham v. Northern Pacific Ry. Co.*, 30 Mont. 421, [104 Am. St. Rep. 729, 76 Pac. 1040]; *Jones v. Seaboard etc. Ry. Co.*, 67 S. C. 181, [45 S. E. 188]; *New York etc. Ry. Co. v. Hamlet Hay Co.*, 149 Ind. 344, [47 N. E. 1060, 49 N. E. 269]; *Cairo etc. Ry. Co. v. Brevoort*, 62 Fed. 129.

**And where the stream usually flows in a continuous current, the fact that the water of the stream, on account of the level character of the land, spreads over a large area without apparent banks does not affect its character as a watercourse.** (*Macomber v. Godfrey*, 108 Mass. 219, [11 Am. Rep. 340]; *West v. Taylor*, 16 Or. 165, [13 Pac. 665].)

*Miller & Lux v. Madera Canal & Irrigation Co.* 155 Cal. 59, 75-78 (Cal. 1909). Similarly, the lands on Roberts Island likely experienced regular seasonal inundation and/or surrounding by intermittent sloughs and swaths prior to the completion of reclamation efforts that served to keep these waters confined to the main channels. Clearly, the efforts of these landowners to control these waters, and meter their use, does not evidence an intent to forego riparian rights which they clearly had prior to reclamation. Rather, it is more logical, and consistent with public policy, to view these efforts as efforts to comply with the constitutional amendment of 1928 which limited all water use

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
January 11, 2011  
Page 9

in the state to that which is both reasonable and beneficial. This amendment was specifically triggered by court decisions, such as the *Miller* decision noted above, which upheld a riparian's right to utilize the entire overflow of a stream without regard for the rights of appropriators who desired to dam and control the regular seasonal overflow so as to maximize use of the water.

The California Supreme Court had occasion to address the rights of riparian right holders on delta lands in the nearby Suisun Bay in 1934, a few years after the constitutional amendment. See *Peabody v. City of Vallejo*, 2 Cal.2d 351, 369, 40 P.2d 486, 492 (CA.1935). In *Peabody*, the high court did not question the riparian rights of the delta landowner, but rather, clarified that the constitutional amendment limited the riparian right such that the owner no longer had the right to use the full flow of the stream over his lands in the same manner as had been previously upheld in the *Miller* decision.

While this is a lengthy explanation, it is necessary to correct the over-simplification of the law set forth on page 40 of the draft decision. These properties are not claiming riparian rights based on abnormal flood events or diffused surface water flow that has yet to reach a watercourse. Rather, their riparian rights derive from the very "delta" nature of the properties and the watercourses, which naturally fanned out over the properties in numerous smaller channels and swaths as they made their way to the ocean. The California Supreme Court, since at least 1909, has specifically held that such land is riparian.

#### **DELTA POOL ANALYSIS**

Section 4.4.1 of the draft decision rejects Woods' argument that the channels surrounding Roberts Island are all part of a "Delta Pool" and thus lands that maintained a riparian connection to any natural water body in the Delta may draw from Middle River. In so doing, it appears that the State Board has misunderstood the hydrologic basis for this argument and ignored many of its own prior decisions which rely on the very same concept to approve diversions from the Delta. Here, we discuss the "Delta Pool" concept as it relates to the various inter-connected channels of surface water in the Delta.

In reviewing water right applications, the State Board must evaluate water availability and possible injury to other right holders. To do this, the board looks at the point of diversion, where the water that flows by that point of diversion originates and where it goes, so that the board can properly determine the impact of the diversion. In the Delta, the water originates from almost every direction. The precise mix of fresh and saline water depends on the year and the season and the tide. The hydrologic reality in the Delta is that a diversion from one channel has virtually the same impact as diversion of a like amount of water from another channel.

The draft decision appears to reject the concept that lands that were riparian to Burns Cut-off, for example, could divert water from Middle River. This is error. A riparian or pre-1914 right holder can change her point of diversion so long as the change does not injure another right holder. Whether a landowner diverts from Burns-Cut-off, or Middle River, the effect is the same due to the nature of the hydrologically connected Delta Channels.

This very concept was relied on by the complaining parties in this case as the basis for their complaint and standing to participate in the hearing. The complaining parties have lodged similar complaints against diverters from a variety of Delta channels – not just Middle River – on the basis that any unauthorized diversion from any Delta Channel adversely impacts them.

This is logical given that the very permitted diversion rights of the state and federal projects treat the Delta Channels as one source. In Decision 990, approving the water rights for the federal Central Valley Project for diversion from Sacramento River, Rock Slough, Old River and "Channels of the Sacramento-San Joaquin Delta," the State Board described the Delta:

"The Delta covers about 700 square miles of rich fertile lands between the City of Sacramento on the north, the City of Tracy on the south, the City of Stockton on the east and the City of Pittsburg on the west. It contains over 50 reclaimed islands (DWR 70A) interlaced by about 550 miles of open channels (DWR 5, p. 18). **Water levels in these channels, all at or near sea level, are hydraulically connected and aggregate an open water area of about 38,000 acres** (60 square miles)..." Water Rights Decision 990 at 43.

Similarly, when issuing the water rights for the State Water Project for diversion from the Feather River and the "Sacramento San Joaquin Delta" the State Board considered water availability from the Delta only in the aggregate. See e.g. Water Rights Decision 1275 at pages 6, 16-20, 26-29. The State's Application A14443 actually sought to divert 6,185 cfs from "Delta Channels."

While the test for approving a new water right application and the test for riparian rights are not exact in all respects, they are the same when it comes to evaluating the source of supply. For the same reasons that the State Board can approve diversions from the "Delta" in general for the SWP and CVP, it can find that a land with riparian rights to Burns Cut-off can exercise those riparian rights by diverting from Middle River. As far as we can tell, the State Board has always evaluated water supply impacts for those wishing to divert Delta water for use outside the Delta by relying on this "Delta Pool" concept. It would be disingenuous and inequitable for the State Board to disregard this same concept when evaluating riparian and pre-1914 rights in the Delta.

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
January 11, 2011  
Page 11

**Conclusion**

Thank you for the opportunity to present these comments on the draft order. We look forward to continuing to work with the State Board and staff to resolve these difficult issues.

Respectfully submitted,



JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:

Cc: Clients

Jennifer L. Spalletta  
jspalletta@herumcrabtree.com

May 12, 2010

**VIA E-MAIL AND OVERNIGHT MAIL**

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
1001 I Street, 2nd Floor  
Sacramento, CA 95814

wrhearing@waterboards.ca.gov

Re: Woods Irrigation Company CDO Hearing June 7, 2010  
Request to Intervene, Request for Continuance

To Whom It May Concern:

This office represents Eddie Vierra Farms, LLC, which owns real property that is served with water from Woods Irrigation Company's facilities. It has just come to our attention, based on the arguments presented at the May 5, 2010 CDO hearing, that the State Board and/or the other parties may attempt to define the scope of riparian and/or pre-1914 water rights for lands located currently served with water from Woods Irrigation Company at the hearing currently set for June 7, 2010. There are serious conflict of interest and due process concerns with this possibility that require that we request to formally intervene as a party in any such proceeding.

Also, due to the practical impossibility of preparing to present evidence of water rights for our clients' properties on such short notice, and the fact that I will be out on maternity leave during the scheduled hearing time, we respectfully request that the hearing be continued until at least August 2010. These proceedings involve complex factual issues, years of historical title information, and expert testimony. I am the only attorney who has assisted my clients with this work for their properties and it would be highly prejudicial if they were required to obtain alternate counsel to attempt to participate on June 7, 2010.

Further, Eddie Vierra Farms, LLC is already subject to a CDO hearing that has yet to be scheduled. It would be highly prejudicial for any evidence or determinations to be made regarding the water rights of Eddie Vierra Farms, LLC lands served by Woods

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
May 12, 2010  
Page 2

Irrigation District at the June 7, 2010 CDO hearing for Woods Irrigation District, prior to the actual CDO hearing for Eddie Vierra Farms, LLC.

We understand that the State Board has not provided notice to any of the landowners served by Woods Irrigation Company of the potential scope of the Woods Irrigation Company CDO hearing. These landowners have not been named as parties to that hearing, nor do they have their own counsel to represent their interests at that hearing.

While I am sure that many, if not all, of these landowners will continue to object to the jurisdiction of the State Board to determine their riparian and/or pre-1914 water rights, it is nonetheless imperative that the State Board consider the due process requirements of any effort to do so. If the State Board intends this hearing to have any bearing on water rights determinations for lands located within the service area of Woods Irrigation Company, each and every one of these landowners must receive notice of the hearing and be given adequate time to obtain their own legal counsel and prepare their own presentations of evidence to support their respective water rights. Otherwise, any decision by the State Board will surely be void. Further, even if the State Board were to try to limit its determination to just the water rights of the Woods Irrigation Company, as an entity, separate and apart from the rights of the individual landowners, these rulings will undoubtedly prejudice the landowners in any future proceedings.

We respectfully request a prompt response to this request so that we can advise our clients accordingly.

Very truly yours,

  
JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached service list (via e-mail and Overnight Mail).

Jennifer L. Spalletta  
jspalletta@herumcrabtree.com

May 12, 2010

**VIA E-MAIL AND OVERNIGHT MAIL**

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

[wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)

Re: **Woods Irrigation Company CDO Hearing June 7, 2010**  
**Request to Intervene, Request for Continuance**

To Whom It May Concern:

This office represents Dino Del Carlo and RDC Farms, Inc. Each owns real property that is served with water from Woods Irrigation Company's facilities. It has just come to our attention, based on the arguments presented at the May 5, 2010 CDO hearing, that the State Board and/or the other parties may attempt to define the scope of riparian and/or pre-1914 water rights for lands located currently served with water from Woods Irrigation Company at the hearing currently set for June 7, 2010. There are serious conflict of interest and due process concerns with this possibility that require that we request to formally intervene as a party in any such proceeding.

Also, due to the practical impossibility of preparing to present evidence of water rights for our clients' properties on such short notice, and the fact that I will be out on maternity leave during the scheduled hearing time, we respectfully request that the hearing be continued until at least August 2010. These proceedings involve complex factual issues, years of historical title information, and expert testimony. I am the only attorney who has assisted my clients with this work for their properties and it would be highly prejudicial if they were required to obtain alternate counsel to attempt to participate on June 7, 2010.

Please note that my clients also farm other properties, owned by other landowners, that are served with water from Woods Irrigation Company. However, none of these property owners, or any of the other property owners served by Woods Irrigation Company for that matter, have received notice of the potential scope of the Woods



Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
May 12, 2010  
Page 2

Irrigation District at the June 7, 2010 CDO hearing for Woods Irrigation District, prior to the actual CDO hearing for Eddie Vierra Farms, LLC.

We understand that the State Board has not provided notice to any of the landowners served by Woods Irrigation Company of the potential scope of the Woods Irrigation Company CDO hearing. These landowners have not been named as parties to that hearing, nor do they have their own counsel to represent their interests at that hearing.

While I am sure that many, if not all, of these landowners will continue to object to the jurisdiction of the State Board to determine their riparian and/or pre-1914 water rights, it is nonetheless imperative that the State Board consider the due process requirements of any effort to do so. If the State Board intends this hearing to have any bearing on water rights determinations for lands located within the service area of Woods Irrigation Company, each and every one of these landowners must receive notice of the hearing and be given adequate time to obtain their own legal counsel and prepare their own presentations of evidence to support their respective water rights. Otherwise, any decision by the State Board will surely be void. Further, even if the State Board were to try to limit its determination to just the water rights of the Woods Irrigation Company, as an entity, separate and apart from the rights of the individual landowners, these rulings will undoubtedly prejudice the landowners in any future proceedings.

We respectfully request a prompt response to this request so that we can advise our clients accordingly.

Very truly yours,

  
JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached service list (via e-mail and Overnight Mail).



O'Laughlin & Paris LLP

Attorneys at Law

May 20, 2010

Walter Petit  
Frances Spivey-Weber  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**Re: Woods Irrigation Company CDO hearing, June 7, 2010**

Dear Mr. Petit and Ms. Spivey-Weber:

This letter is written on behalf of Modesto Irrigation District ("MID"), the State Water Contractors ("SWC") and the San Luis & Delta Mendota Water Authority ("SLDMWA"). We have read and reviewed the letter of May 12, 2010 submitted by Ms. Spaletta regarding continuing the June 7, 2010 hearing date for Woods Irrigation Company ("WIC"). We met with Ms. Spaletta and spoke extensively regarding her concerns. The purpose of this letter is to address the concerns of Ms. Spaletta and allow the WIC hearing to go forward on a basis that protects her client.

SLDMWA, SWC and MID have no desire to adjudicate or determine the water rights of the individual landowners in WIC. WIC has asserted its own water right separate and apart from the lands and landowners within WIC's purported service area. We agree the only focus of the June 7, 2010 hearing should be: Does WIC have a pre-1914 water right, and, if so, what amount, season and lands are covered by the pre-1914 right? Whether individual landowners have separate rights is an issue to be addressed another day.

WIC cannot represent the water rights of individual landowners. The testimony offered by WIC does not include evidence that WIC can or claims to represent the interests of the landowners with respect to any of their claimed separate rights. There is nothing in WIC's Articles of Incorporation stating it can so represent the landowners' interest. There is no evidence of an assignment of water rights from the landowners to WIC. Indeed, Ms. Spaletta's letter points out that WIC can not represent her clients. In fact, WIC and its counsel have a major conflict with their landowners. WIC is asserting its own pre-1914 water right. Needless to say, this conflicts with numerous landowners in WIC who may, or will, assert that any pre-1914 rights are their rights and not WIC's.

If the scope of the CDO is limited to determining WIC's independent, separate and distinct water right, then the CDO should only address WIC's water right claims and not the water right claims of the landowners within WIC. If the prosecution team is

Post Office Box 9259  
Chico, CA 95927-9259  
117 Meyers Street, Suite 110  
Chico, CA 95928

530.899.9755 tel  
530.899.1367 fax

successful and the hearing officers rule that WIC has a limited or no pre-1914 water right, then the CDO to be issued should state:

Woods Irrigation Company is limited to/prohibited from diverting water from Middle River under a claim of pre-1914 right by Woods Irrigation Company. Woods Irrigation Company may continue to deliver water to landowners in WIC who have valid riparian, pre-1914, or post-1914 appropriative rights.

We would request a pre-hearing conference this week to discuss this issue. We suggest a telephonic conference call, or if the hearing officers desire, a short conference in Sacramento.

Very truly yours,  
O'LAUGHLIN & PARIS LLP

By:

  
TIM O'LAUGHLIN

cc: John Herrick (via e-mail)  
Dean Ruiz (via e-mail)  
Dennis Geiger (via e-mail)  
Jon Rubin (via e-mail)  
Valerie Kincaid (via e-mail)  
Stanley Powell (via e-mail)  
DeeAnn Gillick (via e-mail)  
Jennifer Spaletta (via e-mail)  
David Rose (via e-mail)  
Art Baggett (via e-mail)  
Charlie Hoppin (via e-mail)



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Executive Office

Charles R. Hoppin, Chairman  
1001 I Street • Sacramento, California 95814 • (916) 341-5615  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

May 24, 2010

Ms. Jennifer L. Spaletta  
Herum\Crabtree Attorneys  
2291 West March Lane, Suite. B100  
Stockton, CA 95207

Dear Ms. Spaletta:

### CONTINUANCE RESPONSE

The State Water Resources Control Board (State Water Board) hearing team received your letters of May 12, 2010. The letters request that your clients Eddie Vierra Farms, LLC, Dino Del Carlo, and RDC Farms, Inc., be allowed to intervene in the Cease and Desist Order (CDO) hearing for the Woods Irrigation Company (Woods); that the hearing be continued until at least August 2010 to accommodate your maternity leave; and that all landowners in the Woods service area receive individual notice. The letters express concern that Eddie Vierra Farms, Inc. specifically, and other landowners in general could be prejudiced by evidence or determinations concerning their rights in the Woods hearing. The State Water Board declines to continue the CDO hearing or to allow late intervention of your clients at this point.

The Woods CDO hearing will not bind non-parties to the hearing. Whether landowners who receive water through Woods would be otherwise impacted by the proceeding will depend upon the terms of an order either issuing or not issuing a CDO against Woods. The Hearing Officers may, if appropriate or necessary, hold open the hearing to allow for submission of additional evidence or to allow for participation of additional parties.

If the hearing is held open and re-noticed for the participation of additional potential parties, then the hearing team will not schedule such additional hearing before August 2010 in order to accommodate your maternity leave.

Sincerely,

Walt Pettit  
Board Member  
Hearing Officer

cc: See Next Page

California Environmental Protection Agency



cc: NELLY MUSSI AND RUDY M. MUSSI  
INVESTMENT LP  
[dean@hpllp.com](mailto:dean@hpllp.com)

MODESTO IRRIGATION DISTRICT  
[towater@olaughlinparis.com](mailto:towater@olaughlinparis.com)  
[kpetruzzelli@olaughlinparis.com](mailto:kpetruzzelli@olaughlinparis.com)

THE SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY  
[jrubin@diepenbrock.com](mailto:jrubin@diepenbrock.com)  
[ykincaid@diepenbrock.com](mailto:ykincaid@diepenbrock.com)

SOUTH DELTA WATER AGENCY  
[dean@hpllp.com](mailto:dean@hpllp.com)

DIVISION OF WATER RIGHTS  
PROSECUTION TEAM  
[drose@waterboards.ca.gov](mailto:drose@waterboards.ca.gov)

STATE WATER CONTRACTORS  
[spowell@kmtq.com](mailto:spowell@kmtq.com)

CENTRAL DELTA WATER AGENCY  
[dean@hpllp.com](mailto:dean@hpllp.com)

SAN JOAQUIN COUNTY AND THE  
SAN JOAQUIN COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT  
[dgillick@neumiller.com](mailto:dgillick@neumiller.com)  
[mbrown@neumiller.com](mailto:mbrown@neumiller.com)

# **EXHIBIT D**

Jennifer L. Spaletta  
jspaletta@herumcrabtree.com

January 27, 2011

VIA EMAIL: commentletters@waterboards.ca.gov

Mr. Charlie Hoppin, Chair  
State Water Resources Control Board  
c/o Ms. Jeanine Townsend, Clerk of the Board  
Post Office Box 100  
Sacramento, California 95812-0100

Re: Comments on Revised Draft Woods IC Cease and Desist Order

Dear Chairman Hoppin and Members of the Board:

I write to comment on the Revised Draft Cease and Desist Order Against Woods Irrigation Company which was posted on your website on Wednesday, January 27, 2011. I represent landowners who exercise their riparian and pre-1914 water rights through the collective Woods distribution system, including R.D.C. Farms, Inc., Ron and Janet DelCarlo, Gina DelCarlo, and Eddie Vierra Farms, LLC. Despite the commitment of the hearing officer prior to commencement of the hearings that the decision would not impact non-parties to the hearing, the Order, as drafted, continues to unconstitutionally impact non-parties. If adopted, this Order will violate the due process rights of the landowners who exercise their individual riparian and/or pre-1914 rights through the Woods Irrigation Company distribution system. I urge you to seriously reconsider the language in the Order to address this problem.

The concern addressed in this comment letter relates only to the impact of the order on non-parties. As the Board knows, Woods serves as a joint diversion and conveyance system for numerous landowners. These landowners do not have an alternate means of exercising their own riparian or pre-1914 rights, except through the Woods system. The individual landowners were not given notice or opportunity to participate in the Woods CDO hearings. Further, Woods, as a corporate entity that does not own irrigated land, cannot as a matter of law have riparian rights. Thus, these landowners had no basis to understand that the Board would seek, through this hearing process, to determine and potentially restrict the riparian rights of the individual landowners who use the Woods system. Yet, that is precisely what the Board seeks to do through this draft order.

As written the order does not allow Woods to deliver more than 77.7 cfs to landowners within the Woods service area until the Deputy Director both (1) receives evidence to

Mr. Charlie Hoppin, Chair  
State Water Resources Control Board  
c/o Ms. Jeanine Townsend, Clerk of the Board  
January 27, 2011  
Page 2

support claims of additional pre-1914 or riparian rights of the landowners, and (2) is satisfied with, or accepts that evidence as forming a basis of right for the landowner. (See Revised Draft Order at Paragraphs 3 and 5). The Revised Draft Order expressly states that "Woods may deliver water to the user upon the Deputy Director's approval." (See Revised Draft Order at Paragraph 5). By inference, if the Deputy Director does not approve the increased deliveries, Woods cannot make them without risk of incurring monetary civil penalties and/or facing a restraining order.

What happens as a practical matter, to the landowner, if the Deputy Director does not approve the additional diversion? As written, the order would effectuate issuance of a Cease and Desist Order against the individual landowners within Woods who were never given notice or opportunity to participate in the hearing process. How would these landowners appeal such a decision by the Deputy Director? Because such a determination would not be made pursuant to the procedure set forth in Water Code Section 1831, et seq., the landowner would not have the ability to ask the Board for reconsideration or have a clear Board action to appeal to the courts. Further, because the order does not allow the extra diversion until the Deputy Director approves it, the landowners' ability to exercise a claimed riparian or pre-1914 right is curtailed before they have notice and opportunity to present to the board, or a court, evidence to support their claimed right, as required by law.

This process is backwards, and expressly prohibited by both the Water Code and the due process doctrine. The Deputy Director has no authority or jurisdiction to unilaterally decide when to limit the exercise of a claimed riparian or pre-1914 right. The Board's authority in this regard is limited, and must not be exercised without notice and opportunity to be heard in accordance with the required statutory scheme. The Board's authority is set forth in Water Code section 1831. Section 1831(c) is clear – **the Board** may only issue a cease and desist order "**after notice and an opportunity for hearing** pursuant to Section 1834."

**The informal process currently proposed in the Revised Draft Order, where individual landowners must bring evidence to the Deputy Director for review and approval prior to diversion, does not meet the notice and opportunity requirements of Section 1834. Nor does this process provide the right to request reconsideration or judicial review of the Deputy Director's determination, as would be the case for a properly prosecuted Board CDO, pursuant to Water Code sections 1120 et seq.** The Board may not, through this order as to Woods only, eliminate the due process rights of every individual landowner within the Woods service area, placing them at the mercy and will of one administrative employee - the Deputy Director.

What is Woods to do this summer when a landowner claiming riparian or pre-1914 rights comes to it and asks for more water because their crop in the ground will die without it? There has been no CDO against the landowner and the landowner has every right to



Mr. Charlie Hoppin, Chair  
State Water Resources Control Board  
c/o Ms. Jeanine Townsend, Clerk of the Board  
January 27, 2011  
Page 3

use the Woods system to exercise his own water rights. Yet, the CDO directs Woods not to divert more than 77.7 without additional approvals by the Deputy Director. This is an impossible situation.

The order must be revised to ensure that individual landowners are given notice and opportunity before a CDO is imposed against the exercise of their individual rights. We propose the following modifications:

**Clarify how the 77.7 cfs is to be measured as a limit in the opening paragraph of the order, as follows:**

IT IS HEREBY ORDERED THAT pursuant to sections 1831 through 1836 of the Water Code, within 60 days Woods shall cease and desist from diverting water in excess of 77.7 cfs, measured as a 30 day average~~at any time~~, unless and until Woods has complied with paragraph 3 ~~through 6~~, below:

**Replace paragraphs 3, 4, 5 and 6 with the following:**

3. If Woods diverts at a rate of more than 77.7 cfs, as measured using a 30-day average, Woods shall, within 60 days of the additional diversion, report in writing to the Deputy Director (1) the identity of the landowner(s) or entity(ies) claiming the additional right to divert, and (2) the claimed basis for the additional right to divert. The Deputy Director may seek additional information from the claimant(s) to support the claimed additional diversion right as provided by law. If the Deputy Director determines that the identified claimant's additional diversion is likely a violation or threatened violation, as defined in Water Code section 1831 (d), the Board may follow the procedures set forth in Water Code sections 1831-1836 as to the claimant(s).

Please note the following about this suggested change:

We have removed the requirement in paragraph 4 that Woods identify everyone it delivers to. As David Guy from NCWA properly observed, the Board has no jurisdiction over Woods' exercise of its pre-1914 right, and should not care about this information except to the extent that a landowner is demanding that Woods exceed 77.7 cfs to serve that landowners' claimed riparian or pre-1914 right. Our proposed language addresses this situation.

We have also removed the requirement that Woods receive Deputy Director pre-approval to transfer part of the 77.7 cfs outside of its original service area. Again, the board should not care, and does not have jurisdiction over transfers of a pre-1914 right, unless the transfer causes the diversion of more than 77.7 cfs, in which case, under our

Mr. Charlie Hoppin, Chair  
State Water Resources Control Board  
c/o Ms. Jeanine Townsend, Clerk of the Board  
January 27, 2011  
Page 4

proposed language, Woods would have to report the information to the Deputy Director who could then proceed in accordance with the law.

Finally, we have removed the extra monitoring and reporting requirements for deliveries to individual lands that were in paragraph 6. The law already requires that landowners claiming riparian or pre-1914 rights do monitoring and reporting. See Water Code sections 5100 et seq. This paragraph is unnecessary and should be eliminated to avoid any conflict with existing law.

Respectfully submitted,



JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached Service List, via email

**WOODS IRRIGATION COMPANY CDO HEARING  
SERVICE LIST  
(VIA ELECTRONIC MAIL)**

<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM c/o David Rose State Water Resources Control Board 1001 I Street Sacramento, CA 95814 <a href="mailto:DRose@waterboards.ca.gov">DRose@waterboards.ca.gov</a></p>	<p>WOODS IRRIGATION COMPANY c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 <a href="mailto:jherrlaw@aol.com">jherrlaw@aol.com</a></p> <p>c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 <a href="mailto:dean@hpllp.com">dean@hpllp.com</a></p> <p>c/o Dennis Donald Geiger, Esq. 311 East Main Street, Suite 400 Stockton, CA 95202 <a href="mailto:dgeiger@bgrn.com">dgeiger@bgrn.com</a></p>
<p>SOUTH DELTA WATER AGENCY c/o John Herrick Attorney at Law 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 <a href="mailto:jherrlaw@aol.com">jherrlaw@aol.com</a></p> <p>c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 <a href="mailto:dean@hpllp.com">dean@hpllp.com</a></p>	<p>CENTRAL DELTA WATER AGENCY c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 <a href="mailto:dean@hpllp.com">dean@hpllp.com</a></p>
<p>SAN LUIS &amp; DELTA-MENDOTA WATER AUTHORITY c/o Jon D. Rubin diepenbrock+harrison 400 Capitol Mall, Suite 1800, Sacramento, California 95814 <a href="mailto:jrubin@diepenbrock.com">jrubin@diepenbrock.com</a></p>	<p>MODESTO IRRIGATION DISTRICT c/o Tim O'Laughlin Ken Petruzzelli O'Laughlin &amp; Paris LLP 117 Meyers St., Suite 110 P.O. Box 9259 Chico, CA 95927-9259 <a href="mailto:towater@olaughlinparis.com">towater@olaughlinparis.com</a> <a href="mailto:kpetruzzelli@olaughlinparis.com">kpetruzzelli@olaughlinparis.com</a></p>

JENNIFER L. SPALETTA – SBN 200032  
ALEXIS K. GALBRAITH – SBN 260756  
HERUM / CRABTREE  
*A California Professional Corporation*  
2291 West March Lane, Suite B-100  
Stockton, CA 95207  
Telephone: (209) 472-7700  
Facsimile: (209) 472-7986

Attorneys for  
R.D.C. FARMS, INC.  
RONALD & JANET DELCARLO  
EDDIE VIERRA FARMS, LLC  
DIANNE E. YOUNG  
WARREN P. SCHMIDT, Trustee of the  
SCHMIDT FAMILY REVOCABLE TRUST

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

WATER RIGHTS ORDER 2011-0005 )

In the Matter of Draft Cease and Desist Order )  
Against Unauthorized Diversions by Woods )  
Irrigation Company )

**DECLARATION OF JENNIFER L.  
SPALETTA IN SUPPORT OF PETITION  
FOR RECONSIDERATION**

---

I, JENNIFER L. SPALETTA, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and an attorney for R.D.C. FARMS, INC., RONALD & JANET DELCARLO, EDDIE VIERRA FARMS, LLC, DIANNE E. YOUNG, AND WARREN P. SCHMIDT, Trustee of the SCHMIDT FAMILY REVOCABLE TRUST, hereinafter referred to as “Petitioners.” The following facts are based upon my personal knowledge, and if called to testify to them, I would and could do so.

2. Petitioners own and farm property within the Woods Irrigation Company

(“Woods”) service area on Roberts Island, located in the Sacramento-San Joaquin Delta.

3. Petitioners use Woods’ facilities to exercise their riparian and pre-1914 appropriative water rights.

4. On February 1, 2011, the State Water Board issued Order WR 2011-0005 (“Order”) requiring that Woods cease its diversions from Middle River at a rate not to exceed 77.7 cubic feet per section (“cfs”).

5. The Order curtails diversions by Woods that are made pursuant to the water rights held and claimed by Petitioners and other landowners within the Woods service area.

6. Petitioners never received notice that their water rights would be subject to a cease a desist order (“CDO”).

7. Evidence of Petitioners riparian and pre-1914 appropriative water rights was available during the hearing, but was not presented.

8. By letters dated May 12, 2010, attached hereto as Exhibit A, Petitioners made a request to intervene in the proceedings regarding the proposed CDO against Woods and also requested that the proceedings be continued to allow Petitioners to gather relevant evidence related to their water rights.

9. By a letter dated, May 24, 2010, attached hereto as Exhibit B, Petitioners’ request for intervention and a continuance were denied by the State Water Board Hearing Officer.

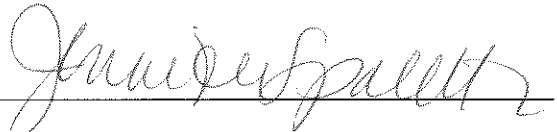
10. Petitioners would not have been able, nor were they given the opportunity, to compile and present evidence to support their respective water rights during the hearing on the Woods’ CDO held in June and July 2010.

11. Petitioners have begun the process of compiling the relevant evidence to substantiate their claims of riparian and pre-1914 appropriative water rights on Roberts Island.

12. This process is extremely time consuming and involves the review of years of historical title information and other documentation for thousands of acres of land.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of March, 2011 in Stockton, California.

  
JENNIFER L. SPALETTA

# **EXHIBIT A**

May 12, 2010

**VIA E-MAIL AND OVERNIGHT MAIL**

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

[wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)

**Re: Woods Irrigation Company CDO Hearing June 7, 2010**  
**Request to Intervene, Request for Continuance**

To Whom It May Concern:

This office represents Dino Del Carlo and RDC Farms, Inc. Each owns real property that is served with water from Woods Irrigation Company's facilities. It has just come to our attention, based on the arguments presented at the May 5, 2010 CDO hearing, that the State Board and/or the other parties may attempt to define the scope of riparian and/or pre-1914 water rights for lands located currently served with water from Woods Irrigation Company at the hearing currently set for June 7, 2010. There are serious conflict of interest and due process concerns with this possibility that require that we request to formally intervene as a party in any such proceeding.

Also, due to the practical impossibility of preparing to present evidence of water rights for our clients' properties on such short notice, and the fact that I will be out on maternity leave during the scheduled hearing time, we respectfully request that the hearing be continued until at least August 2010. These proceedings involve complex factual issues, years of historical title information, and expert testimony. I am the only attorney who has assisted my clients with this work for their properties and it would be highly prejudicial if they were required to obtain alternate counsel to attempt to participate on June 7, 2010.

Please note that my clients also farm other properties, owned by other landowners, that are served with water from Woods Irrigation Company. However, none of these property owners, or any of the other property owners served by Woods Irrigation Company for that matter, have received notice of the potential scope of the Woods



Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
May 12, 2010  
Page 2

Irrigation District at the June 7, 2010 CDO hearing for Woods Irrigation District, prior to the actual CDO hearing for Eddie Vierra Farms, LLC.

We understand that the State Board has not provided notice to any of the landowners served by Woods Irrigation Company of the potential scope of the Woods Irrigation Company CDO hearing. These landowners have not been named as parties to that hearing, nor do they have their own counsel to represent their interests at that hearing.

While I am sure that many, if not all, of these landowners will continue to object to the jurisdiction of the State Board to determine their riparian and/or pre-1914 water rights, it is nonetheless imperative that the State Board consider the due process requirements of any effort to do so. If the State Board intends this hearing to have any bearing on water rights determinations for lands located within the service area of Woods Irrigation Company, each and every one of these landowners must receive notice of the hearing and be given adequate time to obtain their own legal counsel and prepare their own presentations of evidence to support their respective water rights. Otherwise, any decision by the State Board will surely be void. Further, even if the State Board were to try to limit its determination to just the water rights of the Woods Irrigation Company, as an entity, separate and apart from the rights of the individual landowners, these rulings will undoubtedly prejudice the landowners in any future proceedings.

We respectfully request a prompt response to this request so that we can advise our clients accordingly.

Very truly yours,

  
JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached service list (via e-mail and Overnight Mail).

Jennifer L. Spalletta  
jspalletta@herumcrabtree.com

May 12, 2010

**VIA E-MAIL AND OVERNIGHT MAIL**

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
1001 I Street, 2nd Floor  
Sacramento, CA 95814

wrhearing@waterboards.ca.gov

Re: Woods Irrigation Company CDO Hearing June 7, 2010  
Request to Intervene, Request for Continuance

To Whom It May Concern:

This office represents Eddie Vierra Farms, LLC, which owns real property that is served with water from Woods Irrigation Company's facilities. It has just come to our attention, based on the arguments presented at the May 5, 2010 CDO hearing, that the State Board and/or the other parties may attempt to define the scope of riparian and/or pre-1914 water rights for lands located currently served with water from Woods Irrigation Company at the hearing currently set for June 7, 2010. There are serious conflict of interest and due process concerns with this possibility that require that we request to formally intervene as a party in any such proceeding.

Also, due to the practical impossibility of preparing to present evidence of water rights for our clients' properties on such short notice, and the fact that I will be out on maternity leave during the scheduled hearing time, we respectfully request that the hearing be continued until at least August 2010. These proceedings involve complex factual issues, years of historical title information, and expert testimony. I am the only attorney who has assisted my clients with this work for their properties and it would be highly prejudicial if they were required to obtain alternate counsel to attempt to participate on June 7, 2010.

Further, Eddie Vierra Farms, LLC is already subject to a CDO hearing that has yet to be scheduled. It would be highly prejudicial for any evidence or determinations to be made regarding the water rights of Eddie Vierra Farms, LLC lands served by Woods

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell  
May 12, 2010  
Page 2

Irrigation District at the June 7, 2010 CDO hearing for Woods Irrigation District, prior to the actual CDO hearing for Eddie Vierra Farms, LLC.

We understand that the State Board has not provided notice to any of the landowners served by Woods Irrigation Company of the potential scope of the Woods Irrigation Company CDO hearing. These landowners have not been named as parties to that hearing, nor do they have their own counsel to represent their interests at that hearing.

While I am sure that many, if not all, of these landowners will continue to object to the jurisdiction of the State Board to determine their riparian and/or pre-1914 water rights, it is nonetheless imperative that the State Board consider the due process requirements of any effort to do so. If the State Board intends this hearing to have any bearing on water rights determinations for lands located within the service area of Woods Irrigation Company, each and every one of these landowners must receive notice of the hearing and be given adequate time to obtain their own legal counsel and prepare their own presentations of evidence to support their respective water rights. Otherwise, any decision by the State Board will surely be void. Further, even if the State Board were to try to limit its determination to just the water rights of the Woods Irrigation Company, as an entity, separate and apart from the rights of the individual landowners, these rulings will undoubtedly prejudice the landowners in any future proceedings.

We respectfully request a prompt response to this request so that we can advise our clients accordingly.

Very truly yours,



JENNIFER L. SPALETTA  
Attorney-at-Law

JLS:jmh

cc: Attached service list (via e-mail and Overnight Mail).

# **EXHIBIT B**



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Executive Office

Charles R. Hoppin, Chairman  
1001 I Street • Sacramento, California 95814 • (916) 341-5615  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

May 24, 2010

Ms. Jennifer L. Spaletta  
Herum\Crabtree Attorneys  
2291 West March Lane, Suite. B100  
Stockton, CA 95207

Dear Ms. Spaletta:

### CONTINUANCE RESPONSE

The State Water Resources Control Board (State Water Board) hearing team received your letters of May 12, 2010. The letters request that your clients Eddie Vierra Farms, LLC, Dino Del Carlo, and RDC Farms, Inc., be allowed to intervene in the Cease and Desist Order (CDO) hearing for the Woods Irrigation Company (Woods); that the hearing be continued until at least August 2010 to accommodate your maternity leave; and that all landowners in the Woods service area receive individual notice. The letters express concern that Eddie Vierra Farms, Inc. specifically, and other landowners in general could be prejudiced by evidence or determinations concerning their rights in the Woods hearing. The State Water Board declines to continue the CDO hearing or to allow late intervention of your clients at this point.

The Woods CDO hearing will not bind non-parties to the hearing. Whether landowners who receive water through Woods would be otherwise impacted by the proceeding will depend upon the terms of an order either issuing or not issuing a CDO against Woods. The Hearing Officers may, if appropriate or necessary, hold open the hearing to allow for submission of additional evidence or to allow for participation of additional parties.

If the hearing is held open and re-noticed for the participation of additional potential parties, then the hearing team will not schedule such additional hearing before August 2010 in order to accommodate your maternity leave.

Sincerely,

Walt Pettit  
Board Member  
Hearing Officer

cc: See Next Page

cc: NELLY MUSSI AND RUDY M. MUSSI  
INVESTMENT LP  
[dean@hpllp.com](mailto:dean@hpllp.com)

MODESTO IRRIGATION DISTRICT  
[towater@olaughlinparis.com](mailto:towater@olaughlinparis.com)  
[kpetruzzelli@olaughlinparis.com](mailto:kpetruzzelli@olaughlinparis.com)

THE SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY  
[jrubin@diepenbrock.com](mailto:jrubin@diepenbrock.com)  
[vkincaid@diepenbrock.com](mailto:vkincaid@diepenbrock.com)

SOUTH DELTA WATER AGENCY  
[dean@hpllp.com](mailto:dean@hpllp.com)

DIVISION OF WATER RIGHTS  
PROSECUTION TEAM  
[drose@waterboards.ca.gov](mailto:drose@waterboards.ca.gov)

STATE WATER CONTRACTORS  
[spowell@kmtq.com](mailto:spowell@kmtq.com)

CENTRAL DELTA WATER AGENCY  
[dean@hpllp.com](mailto:dean@hpllp.com)

SAN JOAQUIN COUNTY AND THE  
SAN JOAQUIN COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT  
[dgillick@neumiller.com](mailto:dgillick@neumiller.com)  
[mbrown@neumiller.com](mailto:mbrown@neumiller.com)