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14 Attorneys for MARK AND VALLA DUNKEL
15 CENTRAL DELTA WATER AGENCY and
16 SOUTH DELTA WATER AGENCY

17 STATE OF CALIFORNIA

18 STATE WATER RESOURCES CONTROL BOARD

19 In the matter of:) MARK and VALLA DUNKEL COMMENTS
20) RE: WR 2013-XXXX
21 WATER RIGHT HEARING REGARDING)
22 DRAFT ORDER DENYING PETITION) **Hearing Date: April 9, 2013**
23 FOR RECONSIDERATION OF STATE) **Hearing Place: Coastal Hearing Rm. 2nd**
24 WATER BOARD ORDER WR 2013-) **Flr., CalEPA Bldg. 1001 I Street,**
25 XXXX, WHICH DECLINED TO ISSUE) **Sacramento, CA**
26 CEASE AND DESIST ORDER AGAINST)
27 MARK AND VALLA DUNKEL – MIDDLE)
28 RIVER, SAN JOAQUIN COUNTY)

I.

INTRODUCTION

The following comments are submitted on behalf of Mark and Valla Dunkel (“Dunkel”) and the Central Delta Water Agency (“CDWA”) and South Delta Water Agency (“SDWA”) as real parties in interest in this matter. CDWA and SDWA will be collectively herein referred to as the “Agencies”.

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II

DISCUSSION

3 Subject to their objection to the State Water Resources Control Board is (“Board”)
4 continued assertion of authority to determine the validity and extent of riparian and pre-1914
5 water rights through a CDO proceeding, Dunkel and the Agencies otherwise support the
6 adoption of WR-2013-XXXX. Said Order properly recognizes the clear evidence submitted
7 during the administrative hearing which lead to the determination that Dunkel’s property retains
8 a riparian right to Middle River. The uncontested evidence adduced at the hearing clearly
9 demonstrated that the owners of the Dunkel property intended to retain a riparian right upon
10 separation from the physical connection to Middle River by entering into an irrigation agreement
11 with the Woods Irrigation Company in 1911.

12 The Board properly relies on the well settled law as set forth in Hudson v. Daley, (1909)
13 156 Cal.617, 624-25 which provides that “When a riparian parcel is subdivided that such it no
14 longer contiguous to a water course, the riparian right formerly attached to the non- contiguous
15 parcel may be retained upon a showing of intent to preserve the riparian right in the non-
16 contiguous parcel. As such, Petitioners’ contention that the Board’s findings are not supported
17 by the evidence are simply without merit.

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19 Contrary to Petitioners’ claim, it is inappropriate and unnecessary for WR-2013-XXXX
20 to be amended to include language consistent with that included in the Gallo Settlement
21 Agreement. The Dunkel matter was not resolved through settlement. Rather, an exhaustive
22 administrative hearing occurred through which the evidence clearly demonstrated that the
23 Dunkel property retained and maintains a riparian right to Middle River. Petitioners’ request in
24 this regard is similarly without merit and should be rejected.

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III
CONCLUSION

While Dunkel and the Agencies continue to contest the Board's assertion of jurisdiction in this matter, they otherwise respectfully request that WR-2013-XXXX be adopted as written.

DATED: March 27, 2013

HARRIS, PERISHO & RUIZ

BY  _____
S. DEAN RUIZ
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CENTRAL DELTA WATER AGENCY
and SOUTH DELTA WATER AGENCY