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Arnold Schwarzenegger
Governor

CLOSING BRIEF OF DIVISION OF WATER RIGHTS PROSECUTION TEAM IN THE MATTER OF HEARING ON DRAFT CEASE AND DESIST ORDERS –

MARK AND VALLA DUNKEL

I. INTRODUCTION

This matter comes before the State Water Resources Control Board (State Water Board or Board) based on the Notice of Public Hearing for the draft Cease and Desist Order (Draft CDO) issued to Mark and Valla Dunkel (the Dunkels) pursuant to Water Code section 1831. Water Code section 1831, subdivision (d) allows the Board to “issue a cease and desist order in response to a violation or threatened violation of... [t]he prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division....” The Draft CDO was issued to the Dunkels based on the threat of unauthorized diversion and use of water.

The Division of Water Rights (Division) Prosecution Team (Prosecution Team) presented evidence at the public hearings for these matters on May 5 and August 4, 2010. The evidence showed that the Dunkel parcel that is the subject of this hearing does not abut any natural watercourse. The Dunkels also do not have a water right permit or license issued by the Board, nor did they present sufficient evidence at the hearings verifying irrigation on the parcel prior to 1914 and subsequent continuous use of water. The Dunkels did present some facts at the hearing, which, in another proceeding, the Board held supported an implied retention of a riparian right. The Board may have to determine whether those facts support an implied retention of a

riparian right for this particular parcel. If the Board determines that the Dunkel parcel has in fact retained a riparian right to divert water from Middle River, that right would necessarily be constrained by the common limits of all riparian rights.

Evidence shows that the Dunkel property is within the Woods Irrigation Company (Woods) service boundaries, and water has been served to the Dunkel parcel by Woods since at least 2006. (PT-08.) The Woods ditch tender has complete control over the gates serving the Dunkel property. The Dunkels pay Woods an annual assessment for irrigation water provided to them, based on the type of crop to be planted on the property during the coming year. (*Id.*) The property is also assessed a drainage fee, again based on the farmable acreage. (*Id.*) Until the Board issues a ruling in the Woods CDO matter, the Dunkels cannot validly rely on water diverted by Woods under Woods' claimed rights that are in dispute.

The Dunkels were asked to submit to the Division sufficient evidence establishing a valid basis of right or a water supply contract with someone with a valid basis of right to serve their property, or else comply with the provisions of the Water Code regarding appropriations of water after 1914. They did not do so at any time prior to the hearings in this matter. Absent a finding that a) Woods holds adequate appropriative rights and will serve the Dunkels pursuant to those rights, b) the Dunkels have impliedly retained a riparian water right for to Middle River and will only divert water within the limits of those rights, or c) both of the above, there is no indication that the Dunkels intend to voluntarily cease diverting and using water on their parcel, and there therefore exists a threat of unauthorized diversion and use. For the clear and strong public policy reasons

outlined in the Board's Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, the Board should issue a Cease and Desist Order to the Dunkels reflecting the limitations inherent in whatever conclusions the Board draws on the above issues.

II. FACTS

On July 16, 2008, the State Water Board adopted a Strategic Workplan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). (PT-01, p. 1.) The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. (*Ibid.*) As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta. (*Ibid.*)

On February 18, 2009, the Division mailed letters to owners of property on Roberts and Union Islands within the Delta for which the Division had evidence of possible recent irrigation but no record of any claim of right for existing diversions of water." (PT-01, p. 1.) In those letters the Division requested each property owner "inform the Division within 60 days as to the basis of their right to divert water by filing a Statement of Water Diversion and Use with appropriate evidence, define a contractual basis for diversion of water, or cease diversion of water until a basis of right is secured." (*Ibid.*) The Division's letter informed the contacted property owners that a failure to respond might result in enforcement action. (*Ibid.*)

The Division mailed the Dunkels a copy of the February 18, 2009 letter as owners of Assessor Parcel 162-090-01. (PT-01, p. 2.) The Division followed up with a second letter on September 9, 2009. (*Ibid.*) The Division had evidence that the Dunkels were irrigating their parcel (*Id.*, pp. 1-2), but had no evidence of any appropriative right for diversion or use of water by the Dunkels. The parcel also does not abut any surface stream. (*Id.*, p. 2.) This lack of continuity indicates that a riparian basis of right typically does not exist.

Having no evidence supporting any basis for any right to divert and use water on the property, the Division concluded that a threat of unauthorized diversion existed. (PT-01, p. 2.) On December 14, 2009, in accordance with Water Code sections 1831-1836, the Division issued a Notice of Draft CDO to the Dunkels. (PT-07.) The Draft CDO requires the Dunkels to cease and desist the diversion and use of water on the subject parcel until sufficient evidence establishing a valid basis of right or an existing water supply contract to serve the property has been approved. On December 30, 2009, counsel for the Dunkels requested a hearing on the Draft CDO.

Following submission of the December 30, 2009 request for hearing, evidence was provided to the Division indicating that the Dunkel property is within the Woods Irrigation Company (Woods) service boundaries, and water has been served to them since at least 2006. (PT-08.) The Woods ditch tender has complete control over the gates serving the Dunkel property, and the Dunkels pay Woods an annual assessment for irrigation water provided to them, based on the type of crop to be planted on the property during the coming year. (*Id.*) The property is also assessed a drainage fee,

again based on the farmable acreage. (*Id.*) Woods assesses the Dunkels irrigation and drainage based on 32.73 farmable acres. (*Id.*)

This additional information was not adequate for the Division to conclude that the parcel had been irrigated prior to 1914, continuously up to the present, or had preserved, either expressly or impliedly upon severance from Middle River, a riparian right to divert and use water from Middle River. Although this later-provided information did point to a water supply contract with Woods, the Division was already pursuing a similar action against Woods based on questions about the validity and extent of Woods' rights. Since the Dunkels presented no information supporting a right to divert and use water independent from Woods' questioned rights, the Division concluded the threat of unauthorized diversion and use remained.

III. ANALYSIS AND ARGUMENT

Board's Jurisdiction Over Pre-1914 and Riparian Claims of Right

As a threshold matter, the Dunkels claim that this process is "beyond the authority of the Board." (Dunkel Request for Hearing, December 30, 2009, p. 2.)

Since this matter does not involve a permit or license issued by the Board and there is no allegation of 'waste' or 'unreasonable use,' the Board lacks authority and jurisdiction with regard to the threatened CDO. Outside of a statutory stream system adjudication, the Board has no authority to make any determinations regarding riparian or pre-1914 rights to property.

(*Ibid.*) This proposition is without merit.

A conclusion that the Board is without jurisdiction to determine the validity of riparian rights or the validity and extent of pre-1914 claims of right would be inconsistent with the Board's statutory duties and mission and would render superfluous a number of

specific provisions of the Water Code.¹ For example, Water Code section 1202² declares to be unappropriated water,

all water which has never been appropriated, [and] all water appropriated prior to December 19, 1914, which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation, or which has not been put, or which has ceased to be put to useful or beneficial purpose.

In order to determine whether there exists any unappropriated water pursuant to section 1202, the Board may investigate and “ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this State.” (Wat. Code, § 1051.) Section 1051 does not identify any limitation regarding the type of claim of right the Board may investigate. “Water heretofore filed upon or attempted to be appropriated,” by any reasonable interpretation, logically includes both pre-1914 appropriative and post-1914 appropriative claims. Any other interpretation would make section 1202 unnecessary. Were the Board limited to only investigating post-1914 appropriative water rights, it would be unable to ever make any conclusive determination whether there exists unappropriated water available for appropriation. As

¹ As the Dunkels recognize, the Board has the authority to “determine all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right.” (Wat. Code, § 2501.) While the Board is not currently undertaking a streamwide statutory adjudication pursuant to Water Code section 2500, et seq., on balance, the Water Code sections described herein point inexorably to the conclusion that the Board has been empowered by the Legislature to investigate and determine the bases of right for diversions, and take appropriate action when a claim cannot be supported.

² Unless otherwise specified, all references are to the Water Code.

discussed below, this approach would cause serious disruptions to the orderly administration of water rights statewide.

It is well settled that, "with the exception of riparian rights or appropriative rights *perfected*³ prior to December 19, 1914, all water use is conditioned upon compliance with the statutory appropriation procedures set forth in division 2 of the Water Code (commencing with section 1000)." (State Water Board Order (Order) 2001-22 at p. 25-26, citing Wat. Code, §§ 1225, 1201, italics added.) Because any water not diligently put to beneficial use pursuant to a pre-1914 claim of right constitutes unappropriated water, any appropriation of water in excess of that amount constitutes a new appropriation, requiring compliance with division 2 of the Water Code. Any new appropriation of water not undertaken in compliance with division 2 of the Water Code constitutes an unauthorized diversion or use of water.

The Legislature has specifically vested the Board with the authority to prevent the unauthorized diversion and use of water. The Water Code provides that "the diversion or use of water subject to [Division 2 of the Water Code] other than as authorized in this division is a trespass," and authorizes the Board to pursue enforcement action against violators of this proscription. (Wat. Code, § 1052; see also Wat. Code, §§ 1055, 1831.) The Board has also been instructed that "it is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits, licenses,

³ The California Supreme Court noted as early as 1869 that a water right is acquired by the actual appropriation and use of the water, and not merely by an intent to take the water. (*Nevada County & Sacramento Canal Co. v. Kiddbut* (1869) 37 Cal. 282, 310-14, italics added.)

certifications and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.” (Wat. Code, § 1825; see also Wat. Code, § 183 [authorizing the State Water Board to hold any hearings and conduct any investigations necessary to carry out the powers vested in it].)

Because the Board has been instructed to vigorously prevent the unlawful diversion of water, it follows that the Board may and must first determine the nature, validity and extent of a claimed right. This is true not only because that is the logical conclusion of the Board’s express legal authorities, but also because any other conclusion would be unworkable. The Board would be effectively impotent in administering the statewide system of water rights if the mere claim of a pre-1914 or riparian water right, without evidence of initiation prior to 1914 and continuous beneficial use, or contiguity with a natural watercourse or express or implied reservation of a riparian right upon severance, as the case may be, were sufficient to divest the Board of all its statutory authority and responsibilities. Without being able to determine the validity and extent of claimed rights, the Board could never determine whether there exists unappropriated water, and likewise could do nothing to prevent the unlawful diversion of water. The Board would be unable to approve any new applications to appropriate water and would be powerless to protect the rights of lawful appropriators, two of the Board’s significant legislatively proscribed roles.

It should be noted that this is not an issue of first impression for the Board. In Order WR 2001-22, the Board determined that it has jurisdiction to ascertain whether water use is covered by a valid pre-1914 appropriative water right. (*Id.*, pp. 25-26.) The

Board held that “the assertion that a prima facie showing of a pre-1914 water right ends the [State Water Board’s] jurisdiction lacks legal support and is inconsistent with the [State Water Board’s] statutory mandate to ensure that unauthorized diversions do not take place.” (*Ibid.*) The Board’s rationale likewise applies to claims of riparian right. The parties and the facts of these particular cases do not provide any new rationale supporting the Board’s departure from this relatively recent view of its authority.

Retention of a Riparian Right

Basically, the riparian doctrine acts so as to accord “to the owner of land contiguous to a watercourse a right to the use of the water on [that] land.” (Hutchins, *The California Law of Water Rights* (1956) p. 40 (hereafter Hutchins).) According to Hutchins, “[i]n law ... only the tracts which border upon the stream are endued with riparian rights.” (*Id.*, p. 197, citations omitted.) In addition to the requirement that the land be contiguous to the watercourse, “water may be used only on that portion of the riparian parcel which is within the watershed of the source stream,” and “unless the right is reserved, a parcel severed from contiguity by conveyance loses the riparian right and it cannot thereafter be reestablished.” (Attwater & Markle, *Overview of California Water Rights and Water Quality Law* (1988) 19 Pac. L.J. 957, 971.)

The California Supreme Court has expressed the “well settled rule that where the owner of a riparian tract conveys away a noncontiguous portion of the tract by a deed that is silent as to riparian rights, the conveyed parcel is forever deprived of its riparian status. (*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 538 [81 P.2d 533], citing *Anaheim Union Water Co. v. Fuller*, 150 Cal. 327, 331.) The court in *Rancho Santa*

Margarita v. Vail went on to explain that, "in a grant, the grantor has title to the land subject to the grant. The proposed grantee has nothing, and therefore the grantee secures only such title as is granted.... If the grant deed conveys the riparian rights to the noncontiguous parcel, that parcel retains its riparian status." (*Rancho Santa Margarita v. Vail*, supra, 11 Cal.2d. at p. 539.) From this it is clear that a grant deed must provide some clear indication that riparian rights to a parcel not abutting a watercourse are in fact being transferred with the parcel. (See *Strong v. Baldwin* (1908) 154 Cal. 150, 157 [97 P. 178].) The court in *Strong v. Baldwin* found riparian rights to have been retained where the grantor included in the deeds either of two specific references to "the same rights to the use of water that appertained to said land," or to "the water rights and privileges...." These specific terms of the grant, together with the fact that the parcels "ha[d] always been dependent for irrigation on the waters of said river, and ha[d] always been irrigated by means of said waters...." led the court to conclude that the parcels no longer abutting the watercourse had retained riparian rights. Where no such language is present, generally a parcel no longer abutting the watercourse has no riparian right to the diversion or use of those waters.

As described by Hutchins, the courts have stated a more liberal rule since *Rancho Santa Margarita v. Vail*, "enlarging the exceptions from the rule to include some circumstances other than express mention in the deed of conveyance." (Hutchins, supra, p. 195.) Under this "more liberal rule" courts have looked for "circumstances [that] were such to show that the parties so intended" to retain the riparian right to

parcels severed from contact with a stream by grant or transfer. (See *Hudson v. Dailey* (1909) 156 Cal. 617, 624-625 [105 P. 748].)

In a previous matter the Board held that the execution of a contract to supply water to particular lands, prior to severance of those lands from direct connection to a particular watercourse, impliedly preserved a riparian right for that parcel. (Order WR 2004-0004, pp. 23, 27-28.) When the Dunkels finally presented evidence supporting their own basis of right at the hearing, the facts in this case appear to be essentially the same as the circumstances in the above case.

One additional point worth addressing is the Dunkels' contention that there existed "an interior island slough and ... thereby retained its connection to Middle River." (Dunkel Response to Motion for Directed Verdict, June 1, 2010, p. 1.) There does not appear to be any dispute that there exists an irrigation channel abutting the Dunkel parcel that connects to Middle River, but there is a serious paucity of credible evidence to support a conclusion that there ever existed a slough in that location to which the Dunkels could claim a riparian right. The Board may find that the existence of the man-made irrigation channel supports an implied retention of a riparian right to Middle River, similar to the contract discussed above, but there is no support for any conclusion that the Dunkel parcel has any legal right to water based on the bare claims that there was once a slough in that location.

Swamp and Overflow Lands and "Delta Pool" Theories

The Dunkels suggest that all lands in the Delta retain riparian water rights, regardless of physical severance from a surface stream or channel, for two general

reasons: 1) because the lands in the Delta were historically "swamp and overflow lands," reclamation of those lands was and is dependent on agriculture, and therefore intent to preserve riparian water rights should be presumed for all these lands; and 2) the Delta is one great pool of water attached to the Pacific Ocean, from which parcels can never really be physically severed. (Dunkel-9.)

There are several fatal flaws with both of these propositions. Even were the Board to agree that lands in the Delta were and remain riparian to a "Delta pool," it does not follow that the owners of those lands would have the right to divert surface water pursuant to those riparian claims, as the two sources are different. Just as a landowner whose parcel abuts the Pacific Ocean may not lawfully divert water from a stream flowing into the ocean without an independent valid right to divert water from that stream, a landowner in the Delta may not legally take water from a surface stream under a claim that his or her parcel is riparian to a Pacific Ocean-influenced "Delta pool." Although water quality issues do not generally prevent a riparian landowner from moving his or her point of diversion as necessary to maintain access to the best quality water that their particular source has to offer, the water quality problems with the water underlying the lands in the Delta leads inexorably to the conclusion that any "Delta pool" and the surface water bodies that run through the Delta are different sources of water.⁴

⁴ The Board has previously addressed this same point and reached this same conclusion. "The difference in quality of the groundwater and the surface water does not support, and actually tends to contradict, the assertion that the groundwater is the underground flow of the Middle River or the San Joaquin River. In the absence of other evidence, the respondents' factual contention is unfounded and provides no support to the legal contention." (Order WR 2004-0004, p. 13.)

The Board and courts have already declared that, "lands that are severed from the surface stream or do not abut the surface stream do not have riparian rights to the surface flow even though they are overlying the underground flow of the stream."

(Order WR 2004-0004, p. 12; see also *Phelps v. State Water Resources Control Bd.* (Super. Ct., Sacramento County 2006 NO. 04CS00368).) This relatively recent proposition would seemingly apply to a "Delta pool" no less than to the underground flow of a stream.

The Dunkels' other contention is that the lands in the Delta, because they are reclaimed from swamp and overflowed land, retain riparian rights to the channels of the Delta even if physically severed from the channels because those lands were covered with water prior to reclamation. (Dunkel-9.) This argument has likewise been raised and addressed fully by both the Board and the courts. (See Order WR 2004-0004, p. 11; see also *Phelps v. State Water Resources Control Bd.*, supra NO. 04CS00368 at pp. 9-10.) The Board, in addressing this issue, stated that

If a parcel of land is reclaimed from swamp and overflowed land and is not severed from the adjacent watercourse, it will include a riparian right because it is adjacent to the watercourse. If the parcel has been severed from the watercourse, however, its history of having been flooded does not make it riparian, because it could not have exercised riparian water rights when it was under water.

(Order WR 2004-0004, p. 11, citing Hutchins, *The California Law of Water Rights* (1956) p. 210.) The Board goes on to cite the California Supreme Court in stating that "an owner of swamp and overflow land would not have a riparian right if either there was no watercourse (i.e., no channel) to which a riparian right could attach, or the land was on the bottom of, not adjacent to, the stream." (Order WR 2004-0004, p. 11, citing *Lux v.*

Haggin (1886) 69 Cal. 255, 413 [10 P. 674].) Lands on the bottom of the stream, by definition, could not afford the owner a riparian right. (Order WR 2004-0004, p. 10.)

The Dunkels presented evidence at the hearing that, at the time their property was severed from a direct connection to Middle River, it was already covered by a contract to receive water from Woods.

Existence and Extent of Pre-1914 Right

No competent evidence was presented at the hearings to demonstrate the irrigation of the Dunkels' parcel prior to 1914, and so there is no basis for a pre-1914 appropriative water right claim by the Dunkels. Depending on the outcome of the Woods CDO hearing, the Board may determine that Woods holds a valid pre-1914 appropriative water right, in which case the Dunkels' use would not be unauthorized if within the limits of Woods right. Conversely, the Board could conclude that Woods does not hold any rights, but is merely exercising the rights of its shareholders. If that is the case, the Dunkels may or may not have their own pre-1914 water right, depending on the Board's findings and conclusions in this proceeding regarding whether the Dunkels' parcel was continuously irrigated, and to what extent, beginning prior to December 19, 1914. The evidence here does not support a conclusion that any amount of water was used on the Dunkel parcel prior to that date.

There Exists the Threat of Unauthorized Diversion

At the time the Division issued the Draft CDO at issue here, the Dunkels had ignored several inquiries from the Division regarding the basis of right for the diversion

and use of water on Assessors Parcel 162-090-01. After the Draft CDO was issued, the Dunkels' response was inadequate to rebut the evidence of a threat of unauthorized diversion or use of water. The Dunkels response did not substantiate any basis of right held by the Dunkels themselves, instead relying only a contract with Woods, whose water rights were already at that time the subject of a separate Draft CDO. Because the Woods draft CDO is outstanding, pending a determination by the Board, the Dunkels' reliance on Woods' rights do not obviate the threat of unauthorized diversion and use.

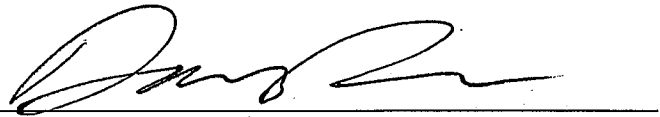
IV. CONCLUSION

The State has a policy to apply water to beneficial use to the fullest extent possible. This holds true particularly in watersheds where there is heavy demand for water and supply is limited. The Delta is unquestionably such a watershed, where competition for limited water resources is intense, and where it is well documented that there is often insufficient water of adequate quality to meet all demands.

The State Water Board recently adopted a Strategic Workplan for Activities within the Delta Estuary. The Workplan emphasized the Board's responsibility to vigorously enforce water rights, in part by preventing unauthorized diversions of water. In order to prevent the unauthorized diversion of water, the Board must first determine what diversions are authorized. Allowing diversion of water without satisfactory evidence supporting a basis of right would further fuel the uncertainty that currently exists regarding water diversions in and through the Delta as well as throughout the state. The Board has a strong interest in a well-functioning water rights system, and should not condone the diversion and use of water without substantiation of a valid water right.

The Dunkels have not substantiated the initiation of diversion and use of water on their parcel prior to December 19, 1914, and the continuous beneficial use of a particular amount of water to the present day. The Dunkels likewise do not hold an appropriative water right permit or license issued by the Board for use after 1914. Therefore, the Board should issue a CDO limiting the Dunkels to either water delivered under Woods' pre-1914 appropriative water rights, if any, or the natural flow of Middle River, if the Board determines the Dunkel parcel has a riparian right to water from Middle River.

Respectfully submitted this 13th day of September 2010, at Sacramento,
California.

A handwritten signature in black ink, appearing to read "David Rose", written over a horizontal line.

David Rose
Staff Counsel
STATE WATER RESOURCES CONTROL BOARD

PROOF OF SERVICE

I, Joanne Griffin, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22nd Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On this date, September 9, 2010 I served the within documents:

**CLOSING BRIEF OF DIVISION OF WATER RIGHTS PROSECUTION TEAM IN THE
MATTER OF HEARING ON DRAFT CEASE AND DESIST ORDERS –**

MARK AND VALLA DUNKEL

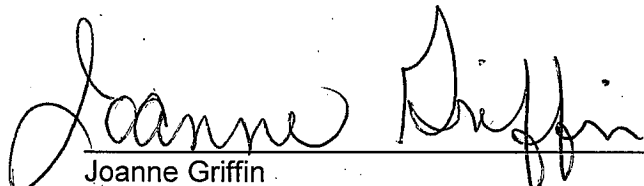
X	BY ELECTRONIC MAIL: I caused a true and correct copy of the document to be transmitted by computer compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
	BY HAND DELIVERY: I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	BY OVERNIGHT MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
	BY FIRST CLASS MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By emailing a true copy thereof addressed to the following parties:

Mark and Valla Dunkel c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherriaw@aol.com	South Delta Water Agency c/o John Herrick Attorney at Law 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherriaw@aol.com	Modesto Irrigation District c/o Tim O'Laughlin Ken Petruzzelli O'Laughlin & Paris LLP 117 Meyers St., Suite 110 P.O. Box 9259 Chico, CA 95927-9259 towater@olaughlinparis.com kpetrुzzelli@olaughlinparis.com
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<p>c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>	<p>San Joaquin County and the San Joaquin County Flood Control & Water Conservation District c/o DeeAnne M. Gillick Neumiller & Beardslee P.O. Box 20 Stockton, CA 95201-3020 dgillick@neumiller.com tshepard@neumiller.com</p>	<p>San Luis & Delta-Mendota Water Authority c/o Jon D. Rubin Diepenbrock & Harrison 400 Capitol Mall, Suite 1800, Sacramento, California 95814 jrubin@diepenbrock.com</p>
<p>State Water Contractors c/o Stanley C. Powell Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 spowell@kmtg.com</p>	<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM c/o David Rose State Water Resources Control Board 1001 I Street Sacramento, CA 95814 DRose@waterboards.ca.gov</p>	<p>State Water Resources Control Board Division of Water Rights Attention: Ernest Mona P.O. Box 2000 Sacramento, CA 95812-2000 1001 I Street, 2nd Floor Sacramento, California wrhearing@waterboards.ca.gov</p>
<p>CENTRAL DELTA WATER AGENCY c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>		

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on September 9, 2010 at Sacramento, California.



 Joanne Griffin
 Legal Support Supervisor I