

JOHN HERRICK

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December 30, 2009

Via mail and email

Mr. James Kassel
Asst. Deputy Director for Water Rights
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Draft Cease and Desist Order for Mark Dunkel
San Joaquin County Parcel No. 162-090-01

Dear Mr. Kassel:

I have been unable to speak directly to Mr. Dunkel, but he has contacted my office with regard to me representing him in this matter. In order to preserve his rights, I am submitting this letter on his behalf. Pursuant to your letter dated December 14, 2009, Mr Dunkel and Valla Dunkel must take certain actions or request a hearing no later than 20 days from the receipt of the letter and draft order. Without prejudice to the concerns hereinafter stated, and without waiver of any other rights we hereby request such a hearing. We further request that any date for such hearing be coordinated and set for the convenience of both sides.

As per my prior communications with Mr. Stretars of your office I believe that this property is currently, and has always been a part of the Woods Irrigation Company, which began delivering water in 1910. The subject property appears to abut the eastern main supply canal of the Company. In a recent meeting of the Woods Board of Directors, I noted that the property abutted their canal, and asked them to confirm if it were in fact within their boundaries and being served by the Company. I was informed that it was within the boundaries and was being supplied with water. I passed this information onto Mr. Stretars of your Division who, by way of email dated December 22, 2009, asked me to provided proof of these statements. I have requested Woods IC provide me with confirmation of this relationship, such as a statement to that effect. Although I expect this information soon, I am requesting a hearing before the specified deadline, in case it does not arrive in time.

After voluntarily submitting this the information, and confirmation by the Division, it is my understanding the Division will not pursue the CDO.

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Notwithstanding the above, we object to this process as being beyond the authority of the Board, and hereby demand you withdraw the draft CDO and not proceed under the terms and conditions of your letter and the draft document. 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. Jurisdiction for such determinations rests solely in the courts, and not the Board. If you believe the Board does possess such authority we suggest we submit the matter to the courts for resolution. Until such time, no further efforts at enforcement against these riparian or pre-1914 right holders should proceed.

We maintain the current efforts by the Division on behalf of the Board present an unfair burden on the right holders in the southern Delta; forcing them to spend time, money and effort to “prove” property rights without any controversy existing, or any other allegedly injured party challenging these rights. The Division’s efforts at enforcement are being unfairly applied to this one area; the sole focus being on in-Delta rights. We believe this is part of an inappropriate and coordinated effort to enhance exports at the expense of prior and senior rights.

At issue herein are the riparian rights of the diverters which are valuable property rights. The actions of the SWRCB in this matter have devalued and infringed upon such rights in direct violation of both State and Federal constitutional prohibitions against takings without just compensation.

Very truly yours,

JOHN HERRICK

cc: Mark Dunkel
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