



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



Arnold Schwarzenegger  
Governor

Office of Chief Counsel  
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December 17, 2009

## VIA EMAIL AND U.S. MAIL

THOMAS HILL AND STEVE GOMES  
c/o Jared Carter, Brian Carter and  
Matisse Knight  
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Dear Mr. Carter:

### WATER RIGHT HEARING REGARDING PROPOSED CEASE AND DESIST ORDER AGAINST MILLVIEW COUNTY WATER DISTRICT, THOMAS P. HILL, AND STEVEN L. GOMES

I received your letter dated December 10, 2009. In your letter, you asked whether there is a procedure available to ask Hearing Officer Arthur G. Baggett, Jr. to reconsider his December 3, 2009 ruling regarding pre-hearing discovery, and to allow you to appear before him to argue the matter, with or without additional briefing. In the event that reconsideration is not an option, you asked if there is a procedure available to appeal his ruling administratively.

In response to your first question, the hearing officer may in his discretion reconsider his ruling, and allow oral argument and additional briefing on the matter, and you may request the hearing officer to do so in the form of a letter. Please be sure to copy the other hearing participants on any correspondence to the hearing officer. In response to your second question, the law governing adjudicative proceedings before the State Water Resources Control Board (State Water Board) does not provide for administrative or judicial review of procedural rulings. (See Wat. Code, § 1126, subd. (b) [providing for judicial or administrative review of final Board action].) If the hearing officer does not reconsider his ruling, the ruling may be challenged as part of a petition for reconsideration of the final order issued after the close of the hearing. (Cal. Code Regs., tit. 23, § 768.)

Judging from your letter, you do not plan to depose State Water Board employees pursuant to the deposition notices that you served on the Prosecution Team on December 2, 2009, unless the hearing officer reconsiders his ruling on pre-hearing discovery. In the event that you seek to depose Board employees in the future, please be advised that Andy Chu is no longer a Board employee, and the Board cannot accept service on his behalf. (Gov. Code, § 68097.1, subd. (b).) In addition, the person most knowledgeable of the Board's determination that issuing permits on the Russian River would not harm prior vested rights and the person most

knowledgeable about the Board's fully appropriated stream determination pertaining to the Russian River are not members of the Prosecution Team. Accordingly, those persons are not parties or the employees of a party in this proceeding, and deposition notices are not adequate to compel their attendance at a deposition. (Gov. Code, § 2025.280, subd. (b); Cal. Code Regs., tit. 23, § 648.1, subd. (a).) A non-party deponent is not required to attend a deposition unless the deponent is served with a deposition subpoena. (Gov. Code, § 2020.010, subd. (b).) Witness fees and mileage also must be paid in accordance with Government Code section 68097.2. (Gov. Code, § 2020.230, subdivision (a).)

If you have any questions about this letter, you may contact me at (916) 341-5188.

Sincerely,

*Dana Heinrich*

Dana Heinrich  
Senior Staff Counsel

cc: **[via email only]**

Arthur G. Baggett, Jr., Hearing Officer  
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**[via email and regular mail]**

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