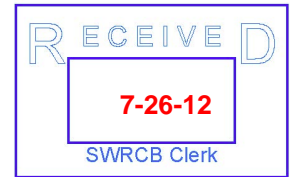




State Water Resources Control Board



July 26, 2012

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Townsend:

COMMENT LETTER – 08/07/12 BOARD MEETING: WRO 2011-0005 RECONSIDERATION

The Division of Water Rights Prosecution Team has received and read the proposed Order on Reconsideration and would like to note several comments regarding that proposed Order. While the Prosecution Team does not agree that notice of the draft Cease and Desist Order (CDO) to Woods Irrigation Company (WIC) was inadequate as to any customer/shareholders of WIC whose rights were being exercised by WIC on their behalf, it is not the Prosecution Team's intent in filing these comments to object to the Board's conservative approach to due process issues.

The Prosecution Team has already concluded its case-in-chief and has no plans to put on additional evidence, other than perhaps rebuttal evidence if necessary. According to the proposed order, the Prosecution team is to make its witnesses available again for cross-examination by new parties. One of the Prosecution Team's witnesses, Mark Stretars, has retired from state service, and that will need to be taken into account in scheduling any further hearing dates for which the Prosecution Team's witnesses will be required. The Prosecution Team would ask that the Board, if it adopts the proposed Order, limit the scope of cross-examination of the Prosecution Team's witnesses to those witnesses' original testimony and the Prosecution Teams' case-in-chief, and require any new parties to note in advance whether they intend to conduct such cross-examination.

As to the scope of issues for any reopened portion of the hearing, the Prosecution Team requests that legal issues already addressed in full by the original parties not be re-heard, except to the extent that new parties have factual information showing water rights separate from and in addition to those determined by the Board to exist in Order WRO 2011-0005. Specifically, the Board proposes to rescind pages 61-63 of Order WRO 2011-0005. The Board should, nonetheless, consider all fully-addressed issues closed, including the nature and scope of the right being exercised by WIC. Though the process will be different than that outlined in the ordering paragraphs of Order WRO 2011-0005, there is no reason for any further hearings not to be conducted in accordance with that order's substantive requirement, that,

for rights not recognized in [Order WRO 2011-0005], the basis of right must be substantiated by different information than was provided during the hearing that preceded [that] order. If the basis of right for property outside the original Woods service area is the transfer of an appropriative right from within the original Woods service area, the information provided . . . must include proof of a reduction of use within the Woods service area commensurate with deliveries to the property outside the Woods service area.

(WRO 2011-0005, p 61.)

Due to an unavoidable scheduling conflict, I will be unable to attend the Board Meeting scheduled for August 7, 2012. Other Prosecution Team members will be available to answer any questions, and the Prosecution Team is not requesting a continuance.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Rose", written in a cursive style.

David Rose
Staff Counsel
Prosecution Team