

John Herrick

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May 13, 2010

Via E-Mail dheinrich@waterboards.ca.gov

Dana Heinrich, Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
P. O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Heinrich:

I have been advised by counsel for a number of landowners who receive water from the Woods Irrigation Company that their clients rights are not being represented in the upcoming CDO hearing. Pursuant to the arguments and evidence presented by MID et. al., at the May 5, 2010, hearing for Mark and Valla Dunkel, I understand that those parties and/or the State Board prosecution team may attempt to define the scope of riparian and/or pre-1914 water rights for lands currently served with water from Woods Irrigation Company ("Woods IC") at the CDO hearing currently set for June 7, 2010. There are serious conflicts of interest and due process concerns with this possibility which require that we request this hearing be continued so that all effected landowners may receive proper notice, retain their own counsel, and participate in the proceedings.

This issue is not simply speculation. MID et. al., have argued that Woods IC does not hold and cannot hold any water rights, but that it diverts only under the rights of those its serves. Under this theory, attempts by MID et. al., to show that diversions by Woods IC are not supported by others' rights cannot properly be addressed by Woods IC as it is not authorized to represent those right holders or defend their rights. The alternative would be for Woods IC to make a showing of those other rights, but again, Woods IC is not authorized to represent those right holders. Even without such MID et. al., efforts, any evidence put forth towards the quantification of the Woods IC rights would likely involve evidence of other rights which support diversions alleged to be in excess of any Woods IC rights. As you know, Woods IC's position is that it diverts under its own rights *and* those of parties it serves. Under this situation, the SWRCB would be forced to make determinations and decisions regarding the water rights of parties not represented by any counsel in the proceeding, and in fact without those third parties ever having received notice that their rights were being considered and ruled upon by the SWRCB.

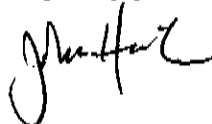
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My office and those I am associated with on this matter only have authority to represent Woods IC in the hearing set for June 7, 2010. We do not have authority to represent the interest of any individual landowner in the hearing. We are also not aware of any notice of the hearing that has been provided to these individual landowners, or the possibility that water rights for their properties may be at issue. Our duties of professional responsibility do not allow us to attempt to represent the interests of these individual landowners, without their consent.

There are also practical problems with continuing with a Woods Irrigation Company CDO hearing as scheduled, without including all landowners as parties. Assuming a CDO would issue to Woods IC, if the water rights are held by the individual landowners any such CDO would be ineffective to curtail diversions by these landowners. Thus, the entire process would be a waste of time and resources.

I therefore request the Woods IC CDO hearing set for June 7, 2010 be continued until the parties have determined the scope of the issues to be considered and proper notice and time for preparation be given to all necessary parties. I see no way the hearing can go forward as scheduled without denying numerous landowners of their due process rights.

Very truly yours,



John Herrick, Esq.

cc: Dante J. Nomellini, Esq.
Jennifer Spaletta, Esq.
Mia Brown, Esq.
Dean Ruiz, Esq.
Don Geiger, Esq.
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