



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

October 15, 2014

VIA ELECTRONIC MAIL

WOODS IRRIGATION COMPANY
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Dear Ms. Spaletta and Mr. Ruiz:

RULING ON COMMENTS REGARDING ADVANCE COURTESY NOTICE OF TENTATIVE DATES FOR A SUPPLEMENTAL HEARING AND PRE-HEARING CONFERENCE RELATED TO ORDER WR 2012-0012 (ORDER GRANTING RECONSIDERATION) - IN THE MATTER OF THE PETITIONS FOR RECONSIDERATION OF ORDER WR 2011-0005

The State Water Resources Control Board (State Water Board) hearing team received comments from Woods Irrigation Company (Woods) and certain landowners within Woods' service area (Landowners), dated September 13, 2014 and September 14, 2014, respectively, in response to the State Water Board's September 4, 2014 advance courtesy notice of tentative dates for the above referenced supplemental hearing. The letters raise objections to the tentatively scheduled dates of January 15, 2015 (pre-hearing conference) and March 9-12, 2015 (supplemental hearing), request delay, and raise additional objections.

Objections to Tentatively Scheduled Dates

Both Woods and Landowners object to the tentatively scheduled dates of the pre-hearing conference and supplemental hearing. Both commenters have advised the Division of Water Rights (Division) that the attorneys representing Woods (S. Dean Ruiz and John Herrick) are also attorneys of record in the matter of *Modesto Irrigation District ("MID") et al. v. Tanaka et al.*, Sacramento Superior Court Case No. 34-2011-00112886 (*Tanaka*). In addition, Ms. Spaletta notes that the historian who will represent Woods and Landowners in any rehearing proceeding related to the Woods CDO is also a likely expert witness in *Tanaka*, which is scheduled for trial on March 24, 2015. Woods also advised that Mr. Herrick will be on vacation during the period April 22 through May 5, 2015. Both commenters contend that it would be unduly onerous for Woods' attorneys to move forward with the proposed March dates for the supplemental Woods hearing.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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Additionally, both Woods and Landowners request delay because of *Modesto Irrigation District v. Woods Irrigation Company et. al*, Case No. 34-2011-80000803 ("*MID v. Woods*"), a case concerning the water rights of Woods, Modesto Irrigation District, and other parties to the hearing. *MID v. Woods* is currently pending in Sacramento Superior Court with a trial date set for August 2015. The commenters have advised us that there is a motion pending in that case to dismiss for failure to join the Woods' landowners, and if that motion is not granted, the Landowners will likely intervene to protect their water right interests. Both commenters similarly contend that while the *MID v Woods* case is pending, the State Water Board should not consider the water rights issues of Woods or its landowners.

Finally, Ms. Spaletta requested more than 60 days between the pre-hearing conference and the hearing to prepare their cases.

After consideration, we have determined that:

- It is proper for the State Water Board to move forward with the supplemental hearing, despite the similarity of issues in *MID v. Woods*. Both the State Water Board and the Sacramento Superior Court have proper jurisdiction over water right matters, and the State Water Board was the first venue in which the matters were brought to hearing.
- There shall be no change to the tentatively scheduled date of January 15, 2015 for the Pre-Hearing Conference.
- The tentatively scheduled dates of March 9, 10, 11, and 12, 2015 for the Supplemental Hearing shall be rescheduled to dates in June 2015. We agree that accommodation of concerns expressed by the commenters regarding the *Tanaka* hearing's workload and availability of attorneys of record and expert witness for that case is appropriate. The rescheduled supplemental hearing dates in June 2015 avoid conflict with the March 2015 hearing date in that case, and allow Mr. Herrick to be present for the hearing.
- This change in hearing dates provides more than 60 days between the pre-hearing conference and the hearing, as per Ms. Spaletta's request, so it is not necessary to make a separate determination as to this request.
- We shall allow an additional opportunity for submittal of requests to change the rescheduled supplemental hearing dates.

Additional Objections

Both Woods and Landowners request a new hearing stating that a supplemental hearing will not provide due process for Landowners. The commenters assert that supplementing the hearing rather than starting from scratch will place a burden on "Landowners" to overcome the State Water Board's previous adverse decision.

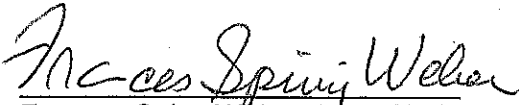
Despite the commenters' assertions, Landowners' burden of proof has not shifted. The State Water Board has already stated that a hearing shall be scheduled to allow Woods' customers to participate as parties, call witnesses, and cross-examine witnesses that have already testified on behalf of other parties in order to supplement the evidentiary record with evidence of water rights held by the Woods' customers. (Order WR 2012-0012 [granting reconsideration].) The information presented by Woods' customers will be balanced with the original evidence in determining whether to change or re-adopt the original terms of Order WR 2011-0005. The State Water Board has not placed a burden on Landowners to disprove the original findings.

Thus, no additional burden is imposed on Woods' customers by supplementing the existing hearing record rather than starting a new hearing, and the request to undertake an entirely new hearing is denied.

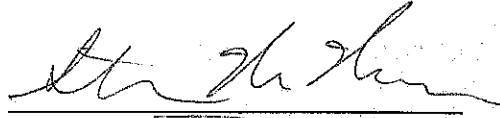
Ms. Spaletta requests, in the alternative, that extensive communication occur prior to the hearing regarding the scope and issues for the hearing. We agree that such communication will be welcome in the context of the Pre-Hearing Conference.

Thank you for your continued cooperation. If you have any non-controversial, procedural questions, please contact Staff Counsel Marianna Aue at (916) 327-4440 (Marianna.Aue@waterboards.ca.gov), or Staff Engineer Ernest Mona at (916) 341-5359 (Ernie.Mona@waterboards.ca.gov). (Gov. Code, § 11430.20, subd. (b).)

Sincerely,



Frances Spivy-Weber, Vice-Chair
Hearing Officer



Steven Moore, Member
Hearing Officer

CC:
Order WR 2012-0012 Hearing Service List

MAILING SERVICE LIST

(July 2012, Updated: 03/13/14, 03/14/14, 08/27/14, 09/04/14, 09/18/14)

Order WR 2012-0012 (Order Granting Reconsideration)

In the Matter of the Petitions for Reconsideration of WRO 2011-0005

(VIA ELECTRONIC MAIL)

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