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September 13, 2014

Via Electronic Mail

Ernest Mona, Staff Engineer
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Email: Ernie.Mona@waterboards.ca.gov

Re: **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**

Dear Mr. Mona:

I write on behalf of Woods Irrigation Company (“WIC”) and its constituent members, in response to the Advanced 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’s (“Board”) attempt to cure its previous egregious due process violation by conducting a supplemental hearing is ill-conceived and will result in a finding of a further violation of due process. The WIC hearing occurred over 4 years ago. None of WIC’s constituent member landowners (“Members”) were allowed to participate in the hearing. They cannot be afforded appropriate and necessary due process by participating in a supplemental hearing five years later. Cross-examination of witnesses must be contemporaneous in order to be meaningful. Parties to any matter have the right to be present for the entirety of a proceeding. The Members were not parties, were not present and were not able to cross-examine witnesses at the time of the hearing.

As the Board is aware, issues surrounding the WIC matter involve evidence, and water rights dating back over 100 years. WIC and its members are already at a huge disadvantage in trying to provide evidence dating back that far. It is even more difficult for WIC’s members to gather such evidence after another five years have passed.

Moreover, the adjudication of WIC’s water rights are currently pending in the Sacramento County superior court in the matter of *MID, et al. v. WIC, et al.*, case no. 34-2011-80000803, the (“Action”). The Action is currently set for trial in August 2015. The adjudication of WIC’s water rights cannot be separated from a determination of the members’ own, individual water rights. As such, a motion is pending before the court to deem WIC’s members indispensable parties to the Action. If the motion is granted, plaintiffs will have to bring all of WIC’s members into the Action. If the motion is not granted, it is very

likely that WIC's members will petition the court to intervene into the Action. WIC and/or its members should not be forced to simultaneously adjudicate their water rights in two separate forums. If the Board continues to insist upon moving forward with the subject WIC hearings, WIC will be forced to petition the court to stay the administrative proceedings. It makes much more sense for the Board to wait and allow the Action to proceed independently.

In addition to the Action, John Herrick and I are representing Heather Tanaka in the *MID, et al. v. Tanaka, et al.* matter also pending the superior court for the County of Sacramento, case no. 34-2011-00112886, the ("Tanaka Action"). The Tanaka Action also involves an adjudication of a water right in the south Delta. The Tanaka Action is scheduled for trial on March 24, 2015. Mr. Herrick is also out of the country from April 22 through May 5th. Therefore, it is impracticable, unreasonable, and unjust to expect WIC's counsel to be able to participate in any supplemental hearing prior to November 2015.

Finally, the Courtesy Notice is dated September 4, 2014 and requires a response by September 14, 2014. Some of WIC's members are being represented by common counsel in this matter but others are seeking different counsel or are not even yet aware of the need for same. Many of the Members are also fully immersed in harvest. Aside from the other objections raised herein, ten days simply is not long enough for the Members to respond to the notice.

For the reasons set forth herein, we urge the Board to proceed as follows: 1) defer to the pending Action; 2) if the Board moves forward it should do so by way of a new hearing wherein all of WIC members are parties from the onset; and 3) if the Board moves forward with setting a new hearing it should not be scheduled prior to November of 2015.

Thank you for your consideration of these comments and do not hesitate to contact me should you want to discuss these issues in further detail.

Very Truly Yours,

HARRIS, PERISHO & RUIZ



S. DEAN RUIZ, ESQ

SDR/ajf
cc: hearing officers
service list