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 and CENTRAL DELTA WATER AGENCY  
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8 **BEFORE THE CALIFORNIA**  
 9 **STATE WATER RESOURCES CONTROL BOARD**

10  
 11 In the Matter of Draft Cease and Desist ) **OPPOSITION TO MOTION IN LIMINE**  
 Order No. 2009-00XX-DWR Enforcement )  
 12 Action 73 Against Woods Irrigation )  
 Company )  
 13 \_\_\_\_\_ )

14 **I.**

15 **INTRODUCTION**

16 South Delta Water Agency ("SDWA") and Central Delta Water Agency ("CDWA") herein  
 17 oppose the motion in limine presented by Modesto Irrigation District ("MID") at the close of MID's  
 18 case in chief on June 25<sup>th</sup>, 2010. MID argues that Woods Irrigation Company ("WIC") is barred by  
 19 the doctrine of res judicata/collateral estoppel and by the doctrine of judicial estoppel from putting  
 20 on evidence of pre-1914 and riparian water rights. MID's argument is incorrect and its motion must  
 21 be denied. SDWA and CDWA reserves the right to make additional oral arguments on the record  
 22 in opposition to MID's motion.

23 **II.**

24 **ARGUMENT**

25 **A. The Required Elements for Collateral Estoppel to Be Applied Are Not Present.**

26 The elements required to apply the doctrine of collateral estoppel/issue preclusion are  
 27 well settled. As set forth in the California supreme court in Lucido v. Superior Court (1990) 51  
 28 Cal.3d 335, and its progeny, the doctrine applies only if several threshold requirements are

1 fulfilled. First, the issue sought to be precluded from re-litigation must be *identical* to that  
2 decided in the former proceeding. Second, this issue *must have been actually litigated* in the  
3 former proceeding. Third, the issue must have been *necessarily* decided in the former  
4 proceeding. Fourth, the decision in the former proceeding must be final and on the merits.  
5 Finally, the party against whom preclusion is sought must be the same as, or in privity with, the  
6 party to the former proceeding. The party asserting collateral estoppel bears the burden of  
7 establishing these requirements. Id. at 341. Even assuming all the threshold requirements are  
8 satisfied, the court must look to the public policies underlying the doctrine before concluding that  
9 collateral estoppel should be applied in a particular setting. Id. at 342 - 343.

10 The existence of water rights were not at issue and, therefore, were not litigated in  
11 Woods Irrigation Company v. The Department of Employment (1958) 50 Cal.2d 174. Rather,  
12 the issue before the court was whether WIC's employees were agricultural laborers and, thus,  
13 whether WIC was exempt from having to make unemployment insurance contributions on their  
14 behalf. The existence of WIC's water rights or those of its shareholders, was not challenged or at  
15 risk. MID incorrectly asserts that, based on statements in the Reporter's Transcript on Appeal,  
16 WIC's attorney, Gilbert Jones, stated that WID had no water rights . The actual testimony from  
17 The Reporter's Transcript On Appeal, page 140 lines 21-23 is:

18 Q: I see. And does it own any water rights?

19 A: No water rights whatever are transferred by the owners of this land to this company.

20 A true and correct copy of the above referenced portion of the testimony is attached  
21 hereto as **Exhibit "A"**. Hence, a review of the testimony relied upon by MID reveals that WIC's  
22 attorney at the time did not answer a question directly. Instead of answering whether water rights  
23 were held or owned, Mr. Jones offered non-responsive testimony regarding the lack of any  
24 transfer of water rights. As will be touched on below, a reading of the complete documents  
25 indicates that at this part of the testimony, and at all other parts therein, the discussion and  
26 testimony pertained to riparian water rights with no discussion or position given on any pre-1914  
27 rights.

28 An actual determination of whether WIC held its own water rights, independent of its

1 shareholders, was not a part, nor was deciding it necessary for the court's ultimate determination  
2 that WIC employees were exempt agricultural laborers. Consequently, the issues litigated in WIC  
3 v. Dept. of Employment are very different than those at issue in the CDO proceeding. Based on  
4 the obvious differences between the two cases, it is clear that the first three elements necessary to  
5 support a finding of collateral estoppel/issue preclusion are not satisfied and that the doctrine  
6 does not apply in this instance. The issue of WIC's water rights was not decided in the former  
7 proceeding. And, it was not necessarily decided in the former proceeding. Furthermore the  
8 former proceeding was not a water right adjudication nor was it a quiet title action. The former  
9 1957 proceeding clearly did not involve a legal action to determine any water rights held by WIC.

10 In addition to failing to satisfy the first three elements of collateral estoppel/issue  
11 preclusion, the issues in dispute in the WIC CDO proceedings are important from a statewide  
12 public policy perspective. This is another factor preventing the SWRCB from determining that  
13 WIC is estopped from asserting, and further establishing, its water rights in the CDO proceeding.

14 MID's baseless request that the doctrine of collateral estoppel/issue preclusion apply to  
15 the CDO proceeding further highlights the serious due process issues associated with the fact that  
16 the SWRCB may make findings and rulings concerning the water rights of those served by WIC;  
17 none of whom have received notice of the proceeding. As referenced above, it is quite obvious  
18 that the testimony in the WIC v. Dept. of Employment was focused on the fact that WIC was  
19 delivering the riparian right water of those being served through common facilities. The fact that  
20 such delivery also establishes a pre-1914 right does not appear to have been at issue in the case.

21 **B. Res Judicata/Claim Preclusion is Not Applicable.**

22 Res judicata, or claim preclusion, prevents the re-litigation of a claim previously tried and  
23 decided. Mycogen Corp. V. Monsanto Co. (2002) 28 Cal. 4<sup>th</sup> 888, 896-897. The claim in WIC v.  
24 Department of Employment specifically addressed WIC's claim that its employees were  
25 agricultural laborers thereby exempting WIC from having to make unemployment insurance  
26 contributions on their behalf. Any discussion of WIC's water rights, or the status of same, was  
27 not related to the claims at issue. Thus, the doctrine of res judicata is not applicable.

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1 **C. The Doctrine of Judicial Estoppel Is Not Applicable.**

2 MID's contention that WIC is judicially estopped from asserting pre-1914 and riparian  
3 water rights in the subject CDO proceedings is misplaced. In WIC v. Department of  
4 Employment, the issues before the court clearly did not pertain to WIC's water rights. The  
5 evidence in the matter included superfluous, limited testimony related to water rights which was  
6 unclear and non-responsive. Moreover, there is no indication whatsoever that even the limited  
7 and incomplete discussion pertaining to water, involved or contemplated pre-1914 appropriate  
8 rights.

9 The doctrine of judicial estoppel seeks to preclude a party from gaining a litigation  
10 advantage by espousing one position and then seeking a second advantage by taking an  
11 incompatible position. Jhaveri v. Teitelbaum, (2009) 176 Ca. App.4th, 740. The dual purpose of  
12 the doctrine are to maintain the integrity of the judicial system and protect parties from unfair  
13 strategies of their opponents. Id. WIC's water rights were not at issue in WIC v. Department of  
14 Employment, and pre-1914 rights were not discussed. WIC has gains no unfair advantage  
15 against its opponents or unfairly surprises them in this matter by asserting its own pre-1914 rights  
16 and the riparian rights of its member shareholders. WIC did not initiate this proceeding other  
17 than to request a hearing to prevent the Draft CDO from being adopted without opposition.  
18 WIC's opponents in this proceeding have always known WIC claims to have valid water rights  
19 both on its own accord and through its member shareholders. WIC has been in existence  
20 diverting water onto Roberts Island since 1911. MID, and WIC's other opponents in this  
21 proceeding cannot seriously claim they have been unfairly surprised or disadvantaged because  
22 WIC continues to assert its right to legally divert water from the Delta. MID's claim that the  
23 doctrine of judicial estoppel applies in this context has no merit.

24 **D. MID's Assertion That WIC Cannot Assert Its Water Rights Before the SWRCB Because**  
25 **the California Supreme Allegedly Has Exclusive Jurisdiction Is Incorrect.**

26 MID's position regarding alleged exclusive jurisdiction defies logic. MID asks the  
27 SWRCB to find that it has no jurisdiction to determine WIC's water rights yet MID took an  
28 opposite position in opposing a recent writ of prohibition filed by the Mussi et., al petitioners  
challenging SWRCB's authority to conduct the subject CDO proceedings. Moreover, MID is


1 asking the SWRCB to find that WIC is forever barred from defending or proving its water rights  
2 because of a decision in an unemployment insurance case in which water rights were not at issue.  
3 Clearly, MID's assertions must be rejected.

4 **III.**

5 **CONCLUSION**

6 For the reasons set forth above, and for those that may be submitted orally on the record,  
7 MID's motion in limine must be denied.

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9 Dated: June 29, 2010

  
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S. DEAN RUIZ  
Attorney for South Delta and  
Central Delta Water Agency

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SAC 67487

3 CIV. 9157

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT.

--oOo--

WOODS IRRIGATION COMPANY, a  
corporation,

Respondent,

vs.

THE DEPARTMENT OF EMPLOYMENT OF  
THE STATE OF CALIFORNIA (HARRY W.  
STEWART, Director of Employment),

Appellants.

1956  
6748

ORIGINAL

FILED

SEP 17 1956

Wm. I. SULLIVAN, CLERK

By \_\_\_\_\_

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REPORTER'S TRANSCRIPT ON APPEAL

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APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SACRAMENTO.

HON. MALCOLM C. GLENN, JUDGE.

--oOo--

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FILED

SEP 25 1956

DIST. COURT OF APPEAL-THIRD DIST.  
J. J. ENDRES, Clerk

OFFICIAL COURT REPORTERS  
306 COUNTY COURTHOUSE  
SACRAMENTO, CALIFORNIA

EXHIBIT A

1 where the water is pumped.

2 THE COURT: That is right, that is where it is pumped from.

3 A That is right, that is where the water is coming into  
4 the area for irrigation.

5 THE COURT: What is the pipe I showed you?

6 A That pipe is this pipe here.

7 THE COURT: I see.

8 A Now, this "canal" there is no such thing. There is no  
9 canal there like that. I don't know where the engineer got it,  
10 but that just doesn't exist.

11 (Witness referring to diagram.)

12 MR. DALEY: Q Mr. Jones, is this concrete structure --  
13 was that built by the Woods Irrigation Company? A It was.

14 Q Is that located on land that is owned by the company?

15 A Well, the Woods Irrigation Company owns -- in that sense  
16 owns no land. All of its works and all easements, they are  
17 on the lands of the people who are the stockholders in the  
18 corporation. They have easements and rights-of-way over all  
19 of these lands but the Woods Irrigation Company itself does  
20 not own the land.

21 Q I see. And does it own any water rights?

22 A No water rights whatever are transferred by the owners  
23 of this land to this company.

24 MR. DALEY: That is all, thank you.

25 MR. SHAW: That is all, your Honor.

26 THE WITNESS: All right.