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16
17 **BEFORE THE STATE OF CALIFORNIA**
18 **STATE WATER RESOURCES CONTROL BOARD**
19

20 In the Matter of Draft Cease and Desist) **MOTION FOR ISSUANCE OF CEASE**
Order No. 2009-00XX DWR Enforcement) **AND DESIST ORDER BASED ON**
21 Action 73 Against Woods Irrigation) **ADMISSION**
Company)
22)
23)

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1 In this proceeding, the Woods Irrigation Company ("WIC") claims a pre-1914 appropriative
2 water right based upon three pieces of evidence – WIC's 1909 Articles of Incorporation, and two
3 1911 water service agreements. WIC asserts these three documents prove WIC appropriated water
4 prior to 1914 and thus hold an appropriative right. In WIC's Joint Closing Brief ("WIC Brief"),
5 however, WIC makes a concession which undermines WIC's evidence and position entirely: during
6 its discussion of *WIC v. Dept. of Employment*, WIC admitted it was "delivering the riparian water of
7 those being served through common facilities." (WIC Brief, at 20:22-25.) In other words, WIC
8 concedes that it has not been appropriating water under its own pre-1914 water right, but has been
9 instead diverting water on behalf of landowners pursuant to asserted riparian water rights. The
10 concession is fatal because, in California, riparian and appropriative rights are mutually exclusive:
11 WIC's diversion of water pursuant to landowner riparian rights precludes it from establishing a pre-
12 1914 appropriative water right. (*Rindge v. Crags Land Co.* (1922) 56 Cal.App. 247, 252; Cal.
13 Water Code, § 1201.) Given the admission, there is nothing further for the State Water Board to
14 decide and a cease and desist order should issue as presented in the closing brief filed by Modesto
15 Irrigation District, State Water Contractors, and San Luis & Delta-Mendota Water Authority.


16 Dated: August 25, 2010

O'LAUGHLIN & PARIS LLP

17
18 By:


TIM O'LAUGHLIN

Attorneys for Plaintiff
MODESTO IRRIGATION DISTRICT

19
20
21
22 Dated: August  2010

DIEPENBROCK HARRISON
A Professional Corporation

23
24
25 By:


Jon D. Rubin

Attorneys for Plaintiff
SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY

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Dated: August __, 2010

KRONICK MOSKOVITZ TIEDEMANN & GIRARD
A Professional Corporation

By: Stanley C. Powell
For Clifford W. Schulz
Attorneys for Plaintiff
STATE WATER CONTRACTORS

PROOF OF SERVICE

1 I, Gilberto J. Castro, declare as follows:

2 I am over 18 years of age and not a party to the within action; my business address is 400
3 Capitol Mall, Suite 1800, Sacramento, California, I am employed in Sacramento County, California.

4 On August 25, 2010, I served a copy of the foregoing document entitled: **MOTION FOR**
5 **ISSUANCE OF CEASE AND DESIST ORDER BASED ON ADMISSION** on the following
6 interested parties in the above-referenced case number to the following:

7 See attached Service List

8 **BY MAIL**

9 By following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope,
10 for collection and mailing with the United States Postal Service where it would be deposited for first
11 class delivery, postage fully prepaid, in the United States Postal Service that same day in the
12 ordinary course of business as indicated above.

13 **ELECTRONIC MAIL**

14 I caused a true and correct scanned image (.PDF file) copy to be transmitted via the electronic mail
15 transfer system in place at Diepenbrock Harrison, originating from the undersigned at 400 Capitol
16 Mall, Suite 1800, Sacramento, California, to the e-mail address(es) indicated above.”

17 **BY FACSIMILE** at _____ a.m./p.m. to the fax number(s) listed above.

18 The facsimile machine I used complied with California Rules of Court, rule 2003 and no error was
19 reported by the machine. Pursuant to California Rules of Court, rule 2006(d), I caused the machine
20 to print a transmission record of the transmission, a copy of which is attached to this declaration.

21 A true and correct copy was also forwarded by regular U.S. Mail by following ordinary business practice,
22 placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with the United States
23 Postal Service where it would be deposited for first-class delivery, postage fully prepaid, in the United States
24 Postal Service that same day in the ordinary course of business.

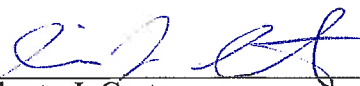
25 **BY OVERNIGHT DELIVERY**

26 Federal Express Golden State Overnight
27 Depositing copies of the above documents in a box or other facility regularly maintained by Federal
28 Express, or Golden State Overnight, in an envelope or package designated by Federal Express or
Golden State Overnight with delivery fees paid or provided for.

PERSONAL SERVICE

via process server via hand by:

I certify under penalty of perjury under the laws of the State of California that the foregoing
is true and correct and that this declaration was executed on August 25, 2010, at Sacramento,
California.



Gilberto J. Castro

1 HEARING REGARDING ADOPTION OF CEASE AND DESIST ORDER
2 AGAINST: WOODS IRRIGATION COMPANY (MIDDLE RIVER)(-- SAN JOAQUIN
3 COUNTY – SCHEDULED TO COMMENCE ON JUNE 7, 2010

4 REVISED SERVICELIST
(APRIL 23, 2010)

5 **THE FOLLOWING MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND**
6 **OTHER DOCUMENTS.** (All have AGREED TO ACCEPT electronic service, pursuant to
7 the rules specified in the hearing notice.)

8 WOODS IRRIGATION COMPANY 9 c/o John Herrick, Esq. 10 4255 Pacific Avenue, Suite 2 11 Stockton, CA 95207 12 jherrlaw@aol.com 13 c/o Dean Ruiz, Esq. 14 Harris, Perisho & Ruiz 15 3439 Brookside Road, Suite 210 16 Stockton, CA 95219 17 dean@hpllp.com 18 c/o Dennis Donald Geiger, Esq. 19 311 East Main Street, Suite 400 20 Stockton, CA 95202 21 dgeiger@bgrn.com	22 DIVISION OF WATER RIGHTS 23 PROSECUTION 24 TEAM 25 c/o David Rose 26 State Water Resources Control Board 27 1001 I Street 28 Sacramento, CA 95814 drose@waterboards.ca.gov
29 MODESTO IRRIGATION DISTRICT 30 c/o Tim O'Laughlin 31 Ken Petruzzelli 32 O'Laughlin & Paris LLP 33 117 Meyers Street, Suite 110 34 P.O. Box 9259 35 Chico, CA 95927-9259 36 towater@olaughlinparis.com 37 kpetruzzelli@olaughlinparis.com	38 STATE WATER CONTRACTORS 39 c/o Stanley C. Powell 40 Kronick, Moskovitz, Tiedemann & Girard 41 400 Capitol Mall, 27 th Floor 42 Sacramento, CA 95814 43 spowell@kmtg.com
44 SAN JOAQUIN COUNTY AND THE SAN 45 JOAQUIN COUNTY FLOOD CONTROL & 46 WATER 47 CONSERVATION DISTRICT 48 c/o DeeAnne M. Gillick 49 Neumiller & Beardslee 50 P.O. Box 20 51 Stockton, CA 95201-3020 52 dgillick@neumiller.com 53 tshephard@neumiller.com	54 CENTRAL DELTA WATER AGENCY 55 c/o Dean Ruiz, Esq. 56 Harris, Perisho & Ruiz 57 3439 Brookside Road, Suite 210 58 Stockton, CA 95219 59 dean@hpllp.com

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<p>SOUTH DELTA WATER AGENCY c/o John Herrick Attorney at Law 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 <u>jherlaw@aol.com</u></p> <p>c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 <u>dean@hpllp.com</u></p>	
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