



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



Arnold Schwarzenegger  
Governor

Office of Chief Counsel  
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April 30, 2010

Mr. John Herrick  
Attorney at Law  
4255 Pacific Avenue, Suite 2  
Stockton, CA 95207

Dear Mr. Herrick:

**WATER RIGHT HEARINGS REGARDING ADOPTION OF DRAFT CEASE AND DESIST ORDERS AGAINST MARK AND VALLA DUNKEL; MUSSI ET AL.; AND YONG PAK AND SUN YOUNG**

In your letter to Dana Heinrich dated April 27, 2010, you requested that the hearings referenced above be delayed in light of the fact that South Delta Water Agency and Central Delta Water Agency have filed a petition for writ of prohibition and complaint for declaratory relief in Sacramento County Superior Court, seeking to bar the State Water Resources Control Board (State Water Board) from holding the hearings, which are currently scheduled for May 5, 2010. You stated that the court is likely to grant some form of temporary relief, including an order precluding the May 5, 2010 hearings, at least until opposing parties have had an opportunity to submit further briefing. In light of this, you suggested that the hearings be tentatively continued until June 7, 2010. You also suggested that all discovery and public record productions be continued to agreed on dates pending the court's decision.

Your request is denied. Unless a court order requires otherwise, the May 5, 2010 hearings will be held as scheduled.

Your renewed request for my recusal and the recusal of Chairman Hoppin as hearing officers is also denied. In support of your request, you pointed to the State Water Board's January, 2008 Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta, which provides that, although the number and magnitude of illegal diversions in the Delta is unknown, it could be quite significant. This provision does not even establish that the State Water Board Members who voted to adopt the Strategic Plan have concluded that illegal diversions in the Delta are significant, let alone support your argument that Chairman Hoppin and I have prejudged the hearing issues. As stated in Ms. Heinrich's April 23, 2010 letter to you, Chairman Hoppin and I have not prejudged the issue of whether any particular diversion in the Delta is illegal, including the diversions of your clients. Accordingly, there is no basis for your allegation that we are biased against your clients.

You also stated that my recollection and Chairman Hoppin's recollection of past meetings or discussions regarding Delta enforcement issues, as summarized in Ms. Heinrich's April 23, 2010 letter to you, did not answer the question whether any such meetings or discussions

occurred before 2009. Our recollection of past meetings or discussions, however, was not limited to meetings or discussions that occurred in 2009.

If you have any questions regarding this letter, you may contact Ms. Heinrich at (916) 341-5188 or [dheinrich@waterboards.ca.gov](mailto:dheinrich@waterboards.ca.gov).

Sincerely,



Arthur G. Baggett, Jr.  
Board Member

Enclosure

cc: Mr. Charles R. Hoppin, Chairman, State Water Board (via email only)  
Mr. Ernest Mona, State Water Board (via email only)  
Mr. Larry Lindsay, State Water Board (via email only)  
Ms. Dana Heinrich, State Water Board (via email only)  
Ms. Jane Farwell, State Water Board (via email only)

Attached Service List

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