

**IN THE MATTER OF THE CONSIDERATION OF A CEASE AND DESIST ORDER AGAINST MARK AND VALLA DUNKEL FOR UNAUTHORIZED DIVERSION OF WATER FROM THE SACRAMENTO–SAN JOAQUIN DELTA IN SAN JOAQUIN COUNTY**

**DIVISION OF WATER RIGHTS PROSECUTION TEAM EXHIBIT 01 (PT-01)**

**JOINT WRITTEN TESTIMONY OF MARK L. STRETARS, SENIOR WATER RESOURCES CONTROL ENGINEER AND BRIAN R. COATS, SENIOR WATER RESOURCES CONTROL ENGINEER**

**Introduction**

Mark Stretars is a professional Engineer, registered in California, and a Senior Water Resource Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). He has 35+ years of experience in California water rights, working for the Division in programs dealing with water right application acceptance, protest and hearing actions, complaint and compliance actions, and petitions for change and transfers of water. He is currently the Chief of the Compliance and Enforcement Unit. A copy of his resume as previously submitted is attached as PT-02.

Brian Coats is a Water Resources Control Engineer with the State Water Board, Division of Water Rights. He has 15+ years of experience in California water rights, working for the Division in programs dealing with water right application acceptance, protest and hearing actions, and complaint and compliance actions. He currently works in the Enforcement Unit. A copy of his resume as previously submitted is attached as PT-03.

The joint testimony, herein provided, identifies the personal knowledge of the evidence and actions leading to the Division's recommendation to issue the draft Cease and Desist Order against Mark and Valla Dunkel (the Dunkels).

**Are the Dunkels making unauthorized diversions of water from the Sacramento–San Joaquin Delta:**

On July 16, 2008, The State Water Board adopted a Strategic Workplan Plan for Activities within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Workplan). The Workplan emphasized the State Water Board's responsibility to vigorously enforce water rights by preventing unauthorized diversions of water, violations of the terms of water right permits and licenses, and violations of the prohibition against waste or unreasonable use of water in the Delta. As described in the Workplan, the Division initiated an investigation of the basis of water rights of existing diverters within the Delta.

Parcel 162-090-01 located on Roberts Island is owned by the Dunkels. The property address is 4539 Howard Road and is situated on the north side of Howard Road, within the SE1/4 of the NE1/4 of section 1, T1s, R5E, MDB&M. The San Joaquin County Assessors Map shows the property to be 38 acres. ( PT-04) The San Joaquin County

(PT-01)

crop data layer identifies parcel 162-090-01 as having been planted with 30.5 acres of corn in 2007. (PT-05). According to the 1980 California Department of Water Resources publication "*Crop Water Use in California*," corn requires an estimated annual water consumption of 3.2 acre-feet per acre. (PT-06) Thirty and one-half acres planted with corn correlates to an estimated annual water consumption of 97.6 acre-feet.

On February 18, 2009, the Division mailed letters to property owners on Roberts and Union Islands within the Delta. The Division requested that each property owner either: inform the Division within 60 days as to the basis of their right to divert water by filing a Statement of Water Diversion and Use with appropriate evidence; define a contractual basis for diversion of water; or cease diversion of water until a basis of right is secured. The letter also informed the contacted property owners that a failure to respond may result in enforcement action.

The Division mailed the Dunkels a copy of the February 18, 2009 letter as owners of Assessor Parcel 162-090-01. Additionally, on September 9, 2009, the Division mailed a second letter by Certified Mail (Certification # 7004 2510 0003 9152 9983) to the Dunkels at P.O. Box 996, Tracy, CA 95376. U.S. Postal Service confirms delivery of the letter on September 18, 2009. However, as of December 10, 2009, the Division had not received any response from the Dunkels supporting a basis of right for the diversion and use of water on parcel 162-090-01. Acceptable information supporting a valid basis of right could include, but is not limited to: a chain of title supporting riparian status for the parcel; evidence supporting an existing or implied preservation of the riparian right established prior to severance of the parcel from the stream or another riparian parcel; evidence which verifies irrigation on the parcel prior to 1914 and documents the subsequent continuous use of water; or statements which provide an alternative valid basis of right for diversions of water to the parcel.

The Division, having determined that the property currently lacked any continuity to surface streams, and having no evidence supporting any other basis for any right to divert and use water on the property, concluded that a threat of unauthorized diversion existed.

On December 14, 2009, in accord with Water Code sections 1831 -1836, The Division issued a Notice of Draft Cease and Desist Order (CDO) against the Dunkels. (PT-07) The draft Cease and Desist Order required the Dunkels to cease and desist from diversion and use of water on Parcel 162-090-01 until sufficient evidence establishing a valid basis of right or an existing water supply contract to serve the property has been approved. If the Dunkels disagreed with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, they were directed to request a hearing before the State Water Board no later than 20 days from the date of receipt of this notice. On December 30, 2009, counsel for the Dunkels requested a hearing.

### **Information Submitted After Request for Hearing:**

Following submission of the request for hearing on December 30, 2009, evidence was presented to the Division on January 12, 2010, indicating that the Dunkels receive water from the Woods Irrigation Company (Woods IC). These documents and other information developed by the Division thereafter indicate:

- The Dunkel property is within the Woods IC service boundaries (PT-08).

(PT-01)

- Water has been served to them since at least 2006. (PT-08)
- The water control gates serving the Dunkel property are controlled by the Woods IC ditch tender.
- The Dunkels pay an annual assessment for irrigation water provided to them by Woods IC. The assessment is based on the type of crop to be planted on the property during the coming year. (PT-08)
- The property is also assessed a drainage fee, again based on the acreage farmable. (PT-08)
- Woods IC assesses the Dunkels irrigation and drainage amounts on 32.73 farmable acres. (PT-08)

**Conclusion:**

The Division finds that the Dunkels are currently exclusively receiving water from Woods IC for irrigation of parcel 162-090-01. At this time, Woods IC has been issued a draft CDO. (PT-09) To the extent that Woods IC is found to have sufficient rights to provide said water to the Dunkels, the Dunkels are not currently making any unauthorized diversion or use of water. However, in the event that Woods IC ceases to or is determined to be unable to provide sufficient water to the Dunkels under Woods IC's own rights, no evidence has been provided to establish any other basis of right for the Dunkel's diversion, and therefore a threat of unauthorized diversion may exist.

If the Dunkels for any reason later assert their own basis of right to divert water to their property, they will need to file a Statement of Water Diversion and Use along with evidence supporting of the basis of right.