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December 10, 2009

VIA E-MAIL, FAX TO (916) 341-5400 AND U.S. MAIL

State Water Resources Control Board
Executive Office
Dana Heinrich, Senior Staff Counsel
1001 I Street, 14th Floor
Sacramento, CA, 95814

Re: Your File No. 363:JO:262.0(23-03-06); Draft Cease & Desist Order; Reconsideration Of And/Or Appeal From Arthur G. Baggett, Jr. December 3 Letter Ruling Re Discovery Procedures

Dear Ms. Heinrich:

This firm represents Tom Hill and Steve Gomes. On November 10, 2009, Hill, Gomes and Millview County Water District requested an exception to the normal procedures applicable in a proceeding of this nature, to allow for discovery pursuant to the Code of Civil Procedure. On December 3, 2009, Arthur G. Baggett, Jr. wrote a letter denying that request (copy enclosed).

Hearing Officer Baggett stated in his letter that if we have any questions about that letter we should contact you. We do have a couple of questions about that letter. Whereas Hearing Officer Baggett stated that we should contact you by phone, we are writing to you instead in order to more clearly articulate our questions and to make an accurate record of this communication.

Our questions are:

(1) Is there a procedure available to ask Hearing Officer Baggett to reconsider his ruling and allow us to appear before him and argue the matter, with or without additional briefing?

(2) If reconsideration, with or without argument and further briefing, are not an option, is there a procedure available to appeal that decision administratively?

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Our intent is of course to ensure that we exhaust our administrative remedies and preserve these issues for any subsequent litigation regarding the subject water right. While we are researching the answers to the above questions, we would obviously welcome information and answers from your agency as to its own internal procedures. We regret any inconvenience to the Board and its members and staff, but we believe that it is incumbent upon us, as counsel for Mr. Hill and Mr. Gomes, to proceed as diligently and as thoroughly as reasonably possible.

The essence of our clients' position is that a pre-1914 water right is a property right, not a permit, license or privilege issued by the State. Title to the water right was vested at the relevant times in our clients. The Board has admitted that it does not have jurisdiction over pre-1914 water rights. The Board's staff nevertheless inquired and concluded that some of that water right had been forfeited. Our clients were not offered or given the opportunity to participate in the inquiry/deliberations, or to challenge the staff conclusions.

Now, our clients are required to defend themselves, at considerable expense, against an "enforcement action" based upon the alleged forfeiture. Hearing Officer Baggett's ruling essentially states that we can conduct discovery after the prosecution team discloses the information it has decided to rely upon. In that this is not how discovery normally proceeds in a civil suit (i.e., a party need not wait for another party's submissions, and need not allow another party to define the issues or the scope of the evidence), we believe that the ruling amounts to a denial of due process in a proceeding in which a vested property right is threatened.

Our clients' discovery rights under the ruling bear a much greater resemblance to a criminal defendant's discovery rights than to a property owner's discovery rights under the Code of Civil Procedure in a quiet title suit in Superior Court. Our clients are required to wait until the prosecution discloses its evidence before taking depositions, are supposed to disclose their own witnesses and evidence without having propounded or received responses to any discovery, and have very limited rights to propound written discovery after the prosecution's disclosures. The prosecution, in other words, is allowed to define the issues and the scope of the evidence, and our clients

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have all of one month within which to conduct their own, independent discovery.

The California and U.S. Constitutions guarantee that property shall not be taken or forfeited without due process of law. The above-described procedures, and the proceedings in this case to date, do not amount to due process for our clients. Indeed, to have no notice of or involvement in an agency inquiry, to then be told that your property has been forfeited, and to then be hauled into a hearing in the posture of a criminal defendant if you disagree, violates every tenet of American due process.

The process by which the Board and/or its staff made the factual determinations listed in the draft cease and desist order - and not just the facts themselves - is relevant and material to our clients' defenses herein. Our clients cannot be required to simply take those facts at face value, or ignore them altogether if the prosecution does not deem it relevant, as Mr. Baggett's letter/ruling requires. In order to discover and analyze the evidence relevant to these issues well in advance of the January 26, 2010, hearing, our clients need to be able to employ the discovery requested and to timely receive responses thereto.

We therefore request an opportunity to argue and brief this matter further, either before Hearing Officer Baggett or before an appellate tribunal of the Board or the executive branch of the State California, well in advance of the January 26 hearing on the draft cease and desist order at issue herein.

Thank you for your time and your anticipated assistance with respect to the foregoing. Please contact the undersigned with

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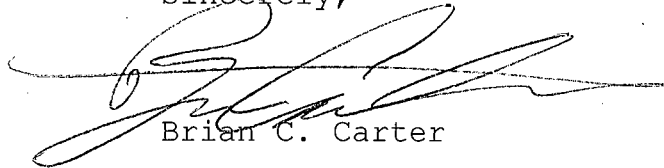
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any questions, comments, information or instructions you or the Board may have.

Sincerely,



Brian C. Carter

Enclosure (A. Baggett 12-03-09 letter/ruling)

cc: (via e-mail, U.S. mail)

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