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January 11, 2010

Mr. James Kassel
Asst. Deputy Director for Water rights
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

**Re: Cease and Desist Order for Woods Irrigation Company
Enforcement Action 73**

Dear Mr. Kassel:

I represent Woods Irrigation Company. Pursuant to your letter dated December 28, 2009, Woods Irrigation Company must take certain actions or request a hearing no later than 20 days from the receipt of this letter and draft order. Without prejudice to the concerns hereinafter stated, and without waiver of any other rights we hereby request such a hearing. We further request that any date for hearing be coordinated and set for the convenience of both sides.

We acknowledge your prior correspondence requesting follow-up information concerning the diversion of water by Woods under its pre-1914 rights, as well as, riparian rights. The process the district is engaged in is both a historic review of district records as well as an investigation into those lands which continue to receive riparian water through Woods facilities. To develop the information to support the riparian diversions, we previously engaged a consultant engineering firm that is presently engaged in that task. We expect to receive preliminary information within the next 30 days which we will share with you.

In view of the fact that this additional information may resolve all issues, we request that the date of any hearing or any other action be delayed until we have met and reviewed the results of our ongoing research.

Notwithstanding the above, we object to this process as being beyond the authority of the Board, and hereby demand you withdraw the draft CDO and not proceed under the terms and conditions of your letter and the draft document. Since this matter does not involve a permit or license issued by the Board and there is no allegation of "waste" or "unreasonable use," the Board lacks authority and jurisdiction with regard to the threatened CDO. Outside of a statutory stream system adjudication, the Board has no authority to make any determinations regarding riparian or

STATE WATER RESOURCES
CONTROL BOARD
2010 JAN 12 PM 12:00
DIV. OF WATER RIGHTS
SACRAMENTO

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pre-1914 rights to property. Jurisdiction for such determinations rests solely in the courts, and not the Board. If you believe the Board does possess such authority we suggest we submit the matter to the courts for resolution. Until such time, no further efforts at enforcement against these riparian or pre-1914 right holders should proceed.

We maintain the current efforts by the Division on behalf of the Board present an unfair burden on the right holders in the southern Delta; forcing them to spend time, money and effort to "prove" property rights without any controversy existing, or any other allegedly injured party challenging these rights. The Division's efforts at enforcement are being unfairly applied to this one area; the sole focus being on in-Delta rights. We believe this is part of an inappropriate and coordinated effort to enhance exports at the expense of prior and senior rights.

At issue herein are the riparian rights of the diverts which are valuable property rights. The action of the SWRCB in this matter have devalued and infringed upon such rights in direct violation of both State and Federal constitutional prohibitions against takings without just compensation.

Sincerely yours,

GEIGER & KEEN LLP

By: 

Dennis Donald Geiger

Enclosures
DDG:dg
cc: Board of Directors