

**10/16/12 BOARD MEETING – ITEM #13  
CHANGE SHEET #1 (CIRCULATED 10/10/2012)**

Necessary format and other typographical changes may be made to the Draft Order, dated September 19, 2012. In addition, the following changes are made:

1. On page 6 of the Draft Order, under **Section 4.1, The State Water Board Has the Authority to Hear and Decide This Case**, the following changes to the paragraph will be made, as described and shown below:
  - a. At the end of the second sentence, a new footnote #7 will be sequentially added;
  - b. In the fourth and fifth sentences, the text “CDO” will replace the text “cease and desist order”

**4.1 The State Water Board Has the Authority to Hear and Decide This Case**

The Dunkels, San Joaquin County, San Joaquin County Flood Control & Water Conservation District, Central Delta Water Agency and South Delta Water Agency all argue that the State Water Board lacked the authority to hear the present case or to issue a CDO against the Dunkels because of limits to the State Water Board’s authority to regulate riparian and pre-1914 appropriative water right holders. This legal argument is addressed in State Water Board [Order WR 2011-0005](#), at pp. 9-18, State Water Board [Order WR 2012-0001](#), at pp. 2-6, and State Water Board [Order WR 2012-0012](#), at pp. 4-5.<sup>6, 7</sup> The parties do not raise any legal arguments not considered in the previous orders, or provide any other convincing reason why the State Water Board should disapprove or distinguish those orders. The State Water Board has authority to consider issuance of a ~~CDO~~**cease and desist order** in response to the unauthorized diversion or use of water. The mere assertion of a claim of riparian or pre-1914 right does not deprive the State Water Board of the authority to determine whether a ~~CDO~~**cease and desist order** should be issued, including the authority to determine whether the allegedly unauthorized diversion or use is in fact authorized under a valid riparian or pre-1914 right.

2. On page 9 of the Draft Order, under **Section 5.0, Conclusion**, the text “CDO” will replace the text “Cease and Desist Order”, as shown below:

Therefore, the State Water Board declines to issue a ~~CDO~~**cease and desist order** against the Dunkels.
3. On page 9 of the Draft Order, under the **ORDER section, provision No. 1**, the text “CDO” will replace the text “Cease and Desist Order”, as shown below:
  1. A ~~CDO~~**cease and desist order** against Mark and Valla Dunkel shall not be issued at this time.

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<sup>6</sup> State Water Board orders may be found on the State Water Board’s website at:

[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/index.shtml](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/index.shtml).

<sup>7</sup> **Challenges to the decisions regarding the State Water Board’s authority in State Water Board Orders WR 2011-0005 and 2012-0001 are currently pending in *Young v. State Water Resources Control Board* (CO68559) and *Millview County Water District v. State Water Resources Control Board* (Mendocino County Superior Court, Case No. SCIK-CVPT-12-59715), respectively.**