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20  
21 BEFORE THE  
22 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

23 In the Matter of the Draft Cease and Desist  
Order Against Unauthorized Diversion of  
24 Water by Mark and Valla Dunkel

**NOTICE OF PETITION AND PETITION  
FOR RECONSIDERATION OF ORDER  
DECLINING TO ISSUE CEASE AND  
DESIST ORDER (DIVERSION OF WATER  
BY MARK AND VALLA DUNKEL)**

26 NOTICE IS HEREBY GIVEN that, pursuant to sections 1122 and 1126 of the California  
27 Water Code and title 23, sections 768 and 769 of the California Code of Regulations, the San Luis  
28

1 & Delta-Mendota Water Authority (“Water Authority”) and State Water Contractors (“SWC”),  
2 acting for and on behalf of their member agencies, and Modesto Irrigation District (“MID”)  
3 (collectively, “Petitioners”) request that the State Water Resources Control Board (“State Water  
4 Board”) rescind the Order Declining to Issue Cease and Desist Order, issued in the above-  
5 referenced matter on October 16, 2012 (“Order WR 2012-0016” or “Order”) and defer its  
6 decision on whether to issue to the Dunkels a cease and desist order until after it has completed  
7 the hearing in the Woods matter, as directed in Order WR 2012-0012.

8 The address for the Water Authority is P.O. Box 2157, 842 6th Street, Los Banos, CA  
9 93635. The address for SWC is 1121 L Street, Suite 1050, Sacramento, CA 95814. The address  
10 for MID is P.O. Box 4060, Modesto, CA 95352-4060.

11 Petitioners assert (1) the State Water Board should rescind the Order until resolution of  
12 the appeal in *Young et al. v. State Water Resources Control Board* and the reopened hearing  
13 required by Order WR 2012-0012 (“Woods Hearing”), two related proceedings that have the  
14 potential to substantively affect this matter; (2) Order WR 2012-0016 is not supported by  
15 substantial evidence; and (3) Order WR 2012-0016 contains an error in law. As set forth in the  
16 accompanying memorandum, incorporated by reference herein, this Petition requests that Order  
17 WR 2012-0016 be set aside, vacated, and reconsidered pending resolution of the reopened Woods  
18 Hearing to ensure that all relevant evidence is considered and that any future order is supported  
19 by substantial evidence, applies the law, and makes findings consistent with the evidence.

20 This Petition is based on this notice and petition for reconsideration, the memorandum of  
21 points and authorities filed in support thereof, the pleadings and papers on file herein, and upon  
22 such other matters as may be presented to the State Water Board at the hearing, if a hearing is  
23 scheduled.

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1 This notice and petition and the supporting memorandum have been served on all  
2 interested parties listed in the attachment to the proof of service.

3  
4 Dated: November 15, 2012

Kronick, Moskovitz, Tiedemann & Girard  
A Law Corporation

5  
6  
7 By: 

Daniel J. O'Hanlon  
Rebecca R. Akroyd  
Attorneys for SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY

8  
9  
10 Dated: November 15, 2012

San Luis & Delta-Mendota Water Authority

11  
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13 By: 

Jon D. Rubin  
Senior Staff Counsel for SAN LUIS & DELTA-  
MENDOTA WATER AUTHORITY

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15 Dated: November 15, 2012

State Water Contractors

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Clifford W. Schulz  
Stanley C. Powell  
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21 Dated: November 15, 2012

Modesto Irrigation District

22  
23  
24 By:  for

Tim O'Laughlin  
Valerie C. Kincaid  
Attorneys for MODESTO IRRIGATION DISTRICT

1 **PROOF OF SERVICE**

2 I, Sherrie Cork, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On November 15, 2012, served a  
6 copy of the within document(s):

7 **NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF  
8 ORDER DECLINING TO ISSUE CEASE AND DESIST ORDER (DIVERSION OF  
9 WATER BY MARK AND VALLA DUNKEL)**

- 10  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
11 forth below on this date before 5:00 p.m.
- 12  by placing the document(s) listed above in a sealed envelope with postage thereon  
13 fully prepaid, in the United States mail at Sacramento, California addressed as set  
14 forth below.
- 15  by placing the document(s) listed above in a sealed Federal Express envelope and  
16 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal  
17 Express agent for delivery.
- 18  by personally delivering the document(s) listed above to the person(s) at the  
19 address(es) set forth below.
- 20  by transmitting via e-mail or electronic transmission the document(s) listed above  
21 to the person(s) at the e-mail address(es) set forth below.

22 *See Attached Service List*

23 I am readily familiar with the firm's practice of collection and processing correspondence  
24 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
25 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
26 motion of the party served, service is presumed invalid if postal cancellation date or postage  
27 meter date is more than one day after date of deposit for mailing in affidavit.

28 I declare that I am employed in the office of a member of the bar of this court at whose  
direction the service was made.

Executed on November 15, 2012, at Sacramento, California.



Sherrie Cork

1 *In The Matter of the Draft Cease and Desist Order Against Unauthorized Diversion of Water by*  
2 *Mark and Valla Dunkel*

3 **SERVICE LIST**

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21 SAN JOAQUIN COUNTY FLOOD  
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