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BEFORE THE CALIFORNIA

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STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Draft Cease and Desist) **REQUEST FOR OFFICIAL NOTICE**
16 Order No. 2009-00XX-DWR Enforcement)
Action Against Mark Dunkel and Valla)
17 Dunkel)

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South Delta Water Agency, Central Delta Water Agency and Mark Dunkel and Valla Dunkel
20 (hereinafter collectively "SDWA" and "CDWA" and "DUNKEL") hereby requests that the Hearing
21 Officers in the above-referenced matter before the State Water Resources Control Board ("State
22 Water Board") take official notice of the certified copy of the deed which is attached hereto as
23 **Exhibit "A"**. Exhibit "A" is the Grant Deed between Joel P. Whitney and Horton C. Fisher dated
24 the 12th day of December, 1876. This deed pertains to the chain of title in the Dunkel matter, and
25 to nearby parcels, and is in evidence in the Mussi matter.

26

Section 648.2 to title 23 of the California Code of Regulations authorizes the State Water
27 Board to take official notice of "such facts as may be judicially noticed by the courts of this state."

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1 (23 Cal. Code Regs. § 648.2.) California Evidence Code section 452 enables courts to take judicial
2 notice of the following types of matters/information:

- 3 (a) The decisional, constitutional, and statutory law of any state of the
4 United State and the resolutions and private acts of the Congress of
5 the United States and of the Legislature of this state.
- 6 (b) Regulations and legislative enactments issued by or under the
7 authority of the United States or any public entity in the United
8 States.
- 9 (c) Official acts of the legislative, executive, and judicial department of
10 the United States and of any state of the United States.
- 11 (d) Records of (1) any court of this state or (2) any court of record of the
12 Unites States or of any state of the United States.
- 13 (e) Rules of court of (1) any court of this state or (2) any court of record
14 of the Unites States or of any state of the United States.
- 15 (f) The law of an organization of nations and of foreign nations and
16 public entities in foreign nations.
- 17 (g) Facts and propositions that are of such common knowledge within the
18 territorial jurisdiction of the court that they cannot reasonably be the
19 subject of dispute.
- 20 (h) Facts and propositions that are not reasonably subject to dispute and
21 are capable of immediate and accurate determination by resort to
22 sources of reasonably indisputable accuracy.

23 As the court explains in *Lockhard v. MVM, Inc.* (2009) 175 Cal.App.4th 1452, at pages
24 1460-1461:

25 “The grant deed is judicially noticeable under Evidence
26 Code section 452, subdivisions (c) and (g). (See *Evans v.*
27 *Cal. Trailer Court* (1994) 28 Cal.App.4th 540, 549, 33
28 Cal.Rptr.2d 646 [court may take judicial notice of deed
under Evidence Code section 452, subdivision (g)]; *Cal-*
American Income Property Fund II v. County of Los
Angeles (1989) 208 Cal.App.3d 109, 112, fn. 2, 256
Cal.Rptr. 21 [court may take judicial notice of recordation

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of deed under Evidence Code section 452, subdivision (c)
].) Its existence and authenticity cannot reasonably be
subject to dispute

SDWA, CDWA and DUNKEL further requests that all evidence which is in the record in
the Mussi, Pak & Young and Woods Irrigation Company matters be incorporated into the
DUNKEL matter. The issues are similar, the parties are identical, and the evidence in these
matters is substantially interrelated. The evidence in the record in the Mussi, Pak & Young, and
Woods Irrigation Company matters are clearly the type of records and information to which the
Board may take judicial notice of in the Dunkel matter pursuant to Evidence Code section
452(d) et seq.

DATED: September 10, 2010

HARRIS, PERISHO & RUIZ

BY 
DEAN RUIZ

EXHIBIT “A”

of sections one (1) and twelve (12) lying West of the
San Joaquin River, Burns Cut-off and Duck Slough
the fractional parts of sections Thirteen (13), Fourteen (14)
Twenty two (22) and Twenty seven (27) lying West of
High Ridge Lane which extends from Burns Cut-off
to Middle River, the fractional part of Section Thirty
four (34) lying between High Ridge and Middle River,
and the fractional part of Sections Thirty two (32) and
Thirty three (33) lying North of Middle River in Town-
ship 1 North Range 5 East. Mont. Diablo Meridian.
Sections One (1), Twelve (12) and Thirteen (13) in Township
1 North Range 4 East Mont. Diablo Meridian. Fractional
parts of Sections Three (3), Five (5) and Six (6) lying North
of Middle River, in Township 1 South Range 5 East
Mont. Diablo Meridian. Sections Fourteen (14), Fifteen (15)
Twenty three (23), Twenty four (24), Twenty five (25) and
the fractional parts of sections sixteen (16) Twenty one
(21), Twenty two (22), Twenty six (26), Twenty seven (27),
Thirty five (35) and Thirty six (36) lying East of Middle
River. Township 1 North Range 4 East. Containing
in the whole about Twenty eight thousand one hundred
and fifteen and seventy five hundredths (28115 ⁷⁵/₁₀₀) acres.
Together with all and singular the tenements, heredit-
aments and appurtenances thereto belonging or in
anywise appertaining, and the reversions and rever-
sions, remainders and remainders, rents, issue
and profits thereof. And also all the estate, right,
title, interest, property, possession, claim and de-
mand whatsoever, as well in law as in equity
of the said party of the first part, of, in or to the
above described premises, and every part and por-
cel thereof, with the appurtenances, to have and
to hold, all and singular, the above mentioned and
described premises, together with the appurtenances
unto the said party of the second part his heirs

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and assigns forever. In Witness Whereof, the said party of the first part has hereunto set his hand and seal this day and year first above written.

Signed, Sealed and Delivered

in Presence of
W. M. Glending.

J. P. Whitney Seal

State of California

City and County of San Francisco

On the Sixteenth day of January A. D. One Thousand Eight hundred and seventy seven, before me, James S. King, a Notary Public in and for said City and County, residing therein,

legally commissioned and sworn, personally appeared Joel P. Whitney known to me to be the person whose name is described to the annexed instrument, and he duly acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year last above written.

J. S. King Seal

James S. King
Notary Public

Recorded at request of W. C. Fisher Jan'y 22^d A. D. 1877
at 50 minutes past 1 o'clk P. M.

Richard D. Davis
To
George S. Fethaway

This Indenture made the Seventh day of December in the year of our Lord, one thousand eight hundred and seventy six, Between Richard D. Davis of

the County of San Joaquin and State of California, party of the first part and George S. Fethaway of the same place, the party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of Thirty seven hundred Dollars Gold Coin of the United States of America, to him in hand paid by the said part of the second part, the receipt of

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13 **BEFORE THE CALIFORNIA**
14 **STATE WATER RESOURCES CONTROL BOARD**

15
16 In the Matter of Draft Cease and Desist) **DECLARATION OF DEAN RUIZ IN**
Order No. 2009-00XX-DWR Enforcement) **SUPPORT OF REQUEST FOR OFFICIAL**
17 Action Against Mark Dunkel and Valla) **NOTICE**
Dunkel)
18)
19)


20 I am an attorney duly licensed to practice law in the State of California and participating
21 in the above referenced matter before the State Water Resources Control Board on behalf of the
22 South Delta Water Agency and Central Delta Water Agency (hereinafter collectively "SDWA",
23 "CDWA").

24 In connection with the Request for Official Notice submitted herewith by SDWA,
25 CDWA, and DUNKEL, I obtained a certified copy of the deed which is attached to the Request
26 for Official Notice as **Exhibit A**. The deed pertains to the chain of title in the Dunkel matter, and
27 to nearby parcels, and is in evidence in the Mussi matter.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of September 2010 at Stockton, California.



Dean Ruiz
Attorney for SOUTH DELTA WATER
AGENCY and CENTRAL DELTA
WATER AGENCY