

Jennifer L. Spaletta
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January 8, 2010

VIA CERTIFIED MAIL and email to johagan@waterboards.ca.gov

Attn: James W. Kassel
Assistant Deputy Director for Water Rights
Division of Water Rights
Post Office Box 2000
Sacramento, California 95812-2000

Re: MLS: Enforcement Action 78
Eddie Vierra Farms, LLC
APNs 131-180-05, 131-260-02, 131-190-04, 131-190-05, 131-270-08 and 131-270-09

Dear Mr. Kassel:

This office represents Eddie Vierra Farms, LLC. We are in receipt of your letter dated December 28, 2009 enclosing a draft Cease and Desist Order (CDO) related to the above described property.

Eddie Vierra Farms, LLC disagrees with the facts and time schedules for corrective actions set forth in the CDO and therefore **formally requests a hearing before the State Water Board.** We request that this hearing be set at a date and time mutually convenient for the parties, but no sooner than September 1, 2010. This request for hearing does not waive any of my client's rights, prejudice any defense to the CDO or amount to an assent to the jurisdiction of the State Water Resources Control Board for the purposes stated in the CDO, which we contend the Board is without jurisdiction to administer.

We specifically 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. To the extent 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 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.

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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.

Despite these concerns, my client remains willing to cooperate by providing information to your staff. We are in the process of developing information to satisfy your requests, but the short time frames specified by the Division have not allowed for a complete investigation of the property and other relevant facts. We intend to complete our investigation as soon as possible and voluntarily submit further information.

Further, you should be aware that the CDO, as written, is nonsensical in that it refers to installation of a flow meter on the "Kuckuk Pump" to measure use of water under License 1345. The Kuckuk Pump does not serve lands under License 1345. Rather, the Natalie Pump on Burns Cut-off serves lands under License 1345, as well as adjacent riparian parcels. It is also unclear what the basis is for the CDO related to License 1345 as there has been no complaint that my client, or anyone else, is violating or threatening to violate the terms of License 1345. I am hopeful that someone from your staff can contact me to discuss this item further so that we can determine the basis for the inclusion of License 1345 matters in the CDO and exactly what staff is seeking from my client.

Very truly yours,



JENNIFER L. SPALETTA
Attorney-at-Law

JLS:md

cc: Matt Yelland, Eddie Vierra Farms, LLC