

**JOHN HERRICK**

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December 30, 2009

**Via mail and email**

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: Draft Cease and Desist Order for Mussi  
San Joaquin County Parcel No. 131-170-03

Dear Mr. Kassel:

I represent Rudy and Toni Mussi, and Lory C. Mussi Investment LP, et al. Pursuant to your letter dated December 14, 2009, the Mussi's must take certain actions or request a hearing no later than 20 days from the receipt of the 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.

First, 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. As per my prior communications with Mr. Stretars of your office, this property is near, and similarly situated to, the property of Ms. Tanaka against whom a Complaint was recently filed. The information being submitted on behalf of Ms. Tanaka is still in preparation and once submitted, will also apply to the Mussi property. We intend to complete our investigation as soon as possible and voluntarily submit further information.

Secondly, 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 with regard to "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

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matter to the courts for resolution. Until such time, no further efforts at enforcement against these riparian or pre-1914 right holders should proceed.

Third, 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 diverters which are valuable property rights. The actions 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.

Very truly yours,

JOHN HERRICK

cc: Rudy Mussi  
Lory Mussi