

John Herrick

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January 19, 2010

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 Juan Navarro
San Joaquin County Parcels Nos. 191-030-01 & 191-030-02

Dear Mr. Kassel:

I represent Juan Navarro, Jose Navarro, and Francisco Navarro. Pursuant to your letter dated January 13, 2010, Mr. Navarro 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.

1. 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, we believe the property maintained the ability to get water for irrigation and other purposes at the time of physical (surface) separation from the neighboring channel (Middle River). The facts as we currently understand them as follows:

The property was part of the large property holdings on Roberts Island owned first by Whitney, then Fisher, then Stewart through 1895 per the San Joaquin County Assessor's maps. The Assessor's maps then show the property owned by "J. Morrisey" in 1896. Ownership continues in the name of "Morrisey" until the 1902 map which shows the owners as "Nelson and Grundsky." Ownership then changes again per the map which shows "H.C. Schmidt."

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Per statements made to me personally by Anna June Ratto, the property later passed to H.C. Schmidt's sons F. W. Schmidt and O. J Schmidt. It was at this time that the property became two parcels instead of one. Upon the deaths of the brothers, the property first passed to the surviving one, and then to Ms. Ratto, their relative/heir. Ms. Ratto then sold the property to Juan Navarro in December 2003.

Ms. Ratto also informs me that to her personal knowledge, the property was irrigated and farmed by H. C. Schmidt, and such practices continued when the property was passed to his sons F. W. Schmidt and O. J. Schmidt. From this, we conclude that the practices clearly indicate the retention of a riparian right by the continued irrigation of the property by family members before and after separation of the easterly parcel from Middle River.

I am now preparing a declaration for Ms. Ratto to sign attesting to the above. Please let me know if submittal of such a declaration and the Assessor's maps will suffice to allow you to dismiss the draft CDO. If not, please let me know what issues you believe remain, and what further information you might need. I have not investigated the pre-1914 use of water on the property, but will if need be.

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

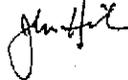
We maintain the current efforts by the Division on behalf of the Board present an unfair burden on the right holders in the southern Delta; forcing them to spend time, money and effort to "prove" property rights without any controversy existing, or any other allegedly injured party challenging these 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

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violation of both State and Federal constitutional prohibitions against takings without just compensation.

Very truly yours,



JOHN HERRICK

cc: Mr. Jose Navarro
Mr. Francisco Navarro