



VIA ELECTRONIC MAIL AND US MAIL (dheinrich@waterboards.ca.gov)

March 10, 2010

Division of Water Rights
State Water Resources Control Board
Attention: Dana Heinrich
P.O. Box 2000
Sacramento, CA 95812-2000

**Re: Gallo Vineyards, Mark and Valla Dunkel, Rudy Mussi et al., and
Yong Pak and Sun Young Cease and Desist Order Hearings –
Unavailability of Evidence and Deadline for Witnesses and Other
Exhibits**

Dear Ms. Heinrich:

Our client, the Modesto Irrigation District (“MID”) has a strongly vested interest in the above titled CDO hearings. For many years the South Delta Water Agency has asserted that everyone in the South Delta has a riparian water right and pre-1914 water right, water rights potentially senior to those of MID and other upstream parties. As a consequence of such alleged rights, the South Delta Water Agency has asserted that the South Delta is entitled to water quality and quantity from the San Joaquin River. For many years we have asked the State Water Board to investigate the water rights in the South Delta, quantify the rights, and prosecute those found to have diverted water illegally. MID took the lead and submitted six complaints against landowners in the Delta. To date, no action has been taken on these matters. When we communicated this interest with Board members, we were assured we would be able to participate in a meaningful manner. Now investigations, settlements, and prosecutions are occurring, but we are not involved and we are provided no information.

Along with the San Luis & Delta Mendota Water Authority and State Water Contractors, the MID requested intervention in the above titled CDO hearings through letters dated February 9, 2010. We have also requested intervention in other recent matters involving the unauthorized diversion of water by other South Delta landowners as well. We have heard nothing. Please respond in writing if our request for intervention was approved or denied and the reason for such denial. We sought intervention in order to participate in a meaningful manner before hearing notices were issued. There was no response. We have requested information from your staff and received nothing. Information obtained in the course of the Compliance Unit’s investigations has not been made available to us. We do not know what investigative work has been done or in what

117 Meyers St., Suite 110
Post Office Box 9259
Chico, California 95927-9259

530.899.9755 tel
530.899.1367 fax

detail until testimony and exhibits become available after April 1, 2010. We do not know if there are gaps in the staff investigation and, as a result, must conduct our own independent and complete investigation. There is, however, insufficient time for such an investigation. Furthermore, testimony, exhibits, and evidence submitted could consequently prove redundant and unnecessary.

In addition, the Compliance Unit is in the process of settling cases. We support settlements. However, the factual basis upon which the settlements are being made should be made available to the public. Staff is telling us that the documents and discussions are "confidential" and will not be disclosed, now or in the future. How can the public determine whether the settlement is correct when none of the information upon which the settlement is based has been or will be disclosed?

We have therefore requested the public records for every active action within the Compliance Unit (*see* attached). We will be requesting issuance of subpoenas for hearings presently noticed based on the limited information currently available. As information becomes available we may request additional subpoenas. We also request a two-week extension of the April 1 deadline for submitting testimony, exhibits, and lists of exhibits. We believe that, even with the extension there will be sufficient time for parties to examine the testimony, exhibits, and lists of exhibits before the May 5, 2010 deadline. Delaying the May 5, 2010 hearing date should not be necessary.

Please contact me at your earliest convenience regarding the requested extension, our requests for public records, our subpoena requests, and our intervention requests.

Very truly yours,
O'LAUGHLIN & PARIS LLP

By:



KENNETH PETRUZZELLI

Attachment

Cc: Jon Rubin
Cliff Schulz
Valerie Kincaid
Stanley Powell
Byron Buck



VIA US MAIL AND ELECTRONIC MAIL (jkassel@waterboards.ca.gov)

March 10, 2010

Division of Water Rights
Hearings and Special Projects
State Water Resources Control Board
Attention: Jim Kassel
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Records for Compliance Unit Delta Activity

Dear Mr. Kassel:

Pursuant to the Public Records Act (Government Code § 6250 et seq.), I am requesting that the State Water Resources Control Board (“SWRCB”) make available and/or provide copies of the various documents, whether they exist in physical or electronic form. We request the public records for every potential enforcement action, active investigation case, almost resolved case, and resolved action within the Compliance Unit listed below.

Potential Enforcement

Cases
Abbate (2)
DWR properties
Kaiser
Monroy
Pellegrini
Rodgers, D & C
Rossi T. (2)
Salmon C & M (2)
Sharp (2)
Union Properties Inc
Cerri
Damele (2)
Jacques
Robinson
Speckman
Tanaka
Ratto, J. & M. (2)

Active Investigation

Cases
Burgin/Grunsky
De Carli **
Delucchi **
Foley
Frances **
Harragon
Peters, M
Rodgers, V.
Silva

Almost Resolved Cases

Armanino
Coney Island LP
Main Stone
Passaglia
Ripken
Torlai,

Union Island Mutual

WC
Wenzel M.
Witt

Resolved cases

Abbate (1)	Ratto, J. & M. (1)	Abate G
Aufdermaur	RC Farms- Sanguinetti	Ferguson R
Arnaudo Bros	RDC Farms	Damele (1)
D'Alonzo, L	Speckman, H & J	Marcucci, R & J
Holdener	Stockton Port Property	Del Barba
Larkin, M & R	LLC	Sharp (1)
Ohm, B	Galli	Salmon C & M (1)
Phelps	Moitoso/Jacques	Rosa
	Rossi T. (1)	Dement-Machado

Pursuant to the Public Records Act, you are required to respond to this request within ten (10) days. (Govt. Code § 6253(c).) Also, please be aware that Government Code § 6253(a) requires release of all reasonably segregable portions of the requested records which are not themselves exempt from mandatory disclosure. Accordingly, I also request that you provide me with a privilege log of all documents that the SWRCB maintains are exempt from disclosure, pursuant to the Act's requirement that "[t]he agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter." (Govt. Code § 6255.)

Please also be aware that Government Code § 6253.9 requires that when documents not exempt from disclosure exist in an electronic format, the documents requested shall be made available in any electronic format in which they are held. (Govt. Code § 6253.9.) If any of the aforementioned documents requested exist in both electronic and physical form, please provide the electronic form. If any document existing in electronic form exists in multiple formats, please provide a copy in each format.

Once you have compiled the documents, please call me with an estimate of photocopying or other reproduction costs. The SWRCB may elect to review the materials in your office to determine which documents should be copied.

Thank you for your attention on this matter.

Please let me know if you have any questions. I look forward to hearing from you.

Very truly yours,
O'LAUGHLIN & PARIS LLP

By:


KENNETH PETRUZZELLI