

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In re: Draft Order WR 2009-0079-DWR)
)
)
RUDY MUSSI, et al.,)
_____) APN 131-170-03

The draft CDO seeks to prevent Rudi Mussi, et. al. (“Mussis”) from irrigating their property on Roberts Island (San Joaquin County Assessor’s Parcel No. 131-170-03, or “Mussi Parcel”) for not having provided the SWRCB with sufficient information to support a legal right to use water. The Mussis are represented at the hearing by Rudi.

The prosecution team has been provided with substantial information and evidence which confirms that the property owned by Mussi has retained a riparian water right. The parcel was part of larger parcels at the time of Patent, and for a time thereafter, but always abutting Duck Slough. It was subdivided into a much smaller parcel by way of deed dated 1891, but again was still abutting Duck Slough. Thereafter, though 1911, the evidence indicates that Duck Slough not only continued to exist, but also had water in it. Thus its riparian connection to a waterway remained through at least 1911 via Duck Slough.

The evidence shows that not only was water present in Duck Slough as of at least 1911, but that a system of irrigation canals existed which connected Duck Slough to other water sources in the area, specifically, a large slough that existed through at least 1941. These canals abutted the Mussi Parcel, and were either the remnants or replacements of Duck Slough and other old channels.

After the Woods Irrigation Company began operating (no later than 1910), the Mussi Parcel and its neighboring parcel (owned at the time by I.N. Robinson) received water from that Company. However, due to these parcels being at the very end of the Woods IC system, the supply of water periodically inundated their lands due to lack of control. As a result, the owner of the Mussi Parcel, I.N. Robinson, and E.W.S. Woods began getting water from a different point of diversion on Middle River, eventually formalizing their relationship with a “Woods Robinson Vasques” irrigation district which diverts from Middle River. The Mussi Parcel still receives water from this district.

The evidence thus shows that the Mussi Parcel was clearly riparian to Duck Slough through 1911. Thereafter it was abutting a canal system which maintained a connection to the main channels, thereafter it received water from Woods Irrigation Company, and finally was part

of a group of farmers who moved to a new diversion point on Middle River to improve their ability to control the delivery of water to their lands. This uninterrupted access to and ability to receive water from the main channels of the Delta indicates the landowners' intent to preserve the Parcel's riparian right.

In light of these facts, the only reasonable conclusion is that the Mussi Parcel maintained its riparian status from the time of Patent to the present, as well as having established a pre-1914 right.

The Parcel is also situated such that it is riparian to the Delta Pool. Further, the direct connection between the ground water and the surrounding channels creates overlying rights to those waters, which also confer riparian status to the Parcel.

Mussis therefore respectfully demand the SWRCB issue no CDO regarding their diversion and use of water on their Parcel.

Mussis dispute and object to the SWRCB's authority to make any factual determinations regarding riparian, pre-1914 or other rights which could have a binding effect on them; such authority rests solely with the courts. They also dispute and object to the SWRCB's alleged authority to issue a CDO against them regarding any riparian, pre-1914 or other water right use.