

November 3, 2014

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Re: Consideration of Administrative Civil Liability, David
L. & Linda M. Davis Trust

Dear Ladies and Gentlemen:

Pursuant to the hearing procedure for the above referenced matter, on behalf of
the David L. & Linda M. Davis Trust, we are submitting the following documents for the
Board's consideration.

1. Evidentiary Objections to Policy Statement and Exhibits.

Mr. Adam Laputz, et al.
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If you have any questions, please contact me.

Very truly yours,



Loren J. Harlow
BAKER MANOCK & JENSEN, PC

LJH:TLW

cc: The David L. & Linda M. Davis Trust (email and hardcopy)

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7 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY
8 CONTROL BOARD FOR THE CENTRAL VALLEY REGION

9 In the Matter of:

10 Consideration of Administrative Civil
11 Liability,
David L & Linda M. Davis Trust

**DAVID L. & LINDA M. DAVIS TRUST
EVIDENTIARY OBJECTIONS TO
POLICY STATEMENT AND EXHIBITS**

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14 We are counsel to the David L. & Linda M. Davis Trust and David L. and Linda M.
15 Davis, as Trustees, (Davis) and on their behalf are submitting the following evidentiary objections
16 to the policy statement and exhibits pursuant to the hearing notice.

17 **I.**
18 **INTRODUCTION**

19 Pursuant to the September 26, 2014 Advisory Team email¹ addressed to the Prosecution
20 Team and Davis and by the terms of the Settlement Agreement and Stipulation for Entry of
21 Administrative Civil Liability Order², it is Davis interpretation that the Settlement Agreement was
22 voided by the Advisory Team rejection of the settlement. The Prosecution Team asserts that the
23 hearing notice is conclusive that the agreement is still operative. Notwithstanding the Prosecution
24 argument, preparation of a hearing notice cannot supplant or replace contract law.

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27 ¹ Prosecution Exhibit 35. "The Board's Advisory Team must again reject the proposed settlement and
instruct the Prosecution Team to issue a Hearing Procedure so that the Board may consider the Administrative Civil
Liability at the next available Board meeting."

28 ² Prosecution Exhibit 22

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II.
EVIDENTIARY OBJECTIONS

A. Policy Statement

1. First Paragraph.

The statement "*The facts of this case are not disputed by Davis Trust.*" Davis objects based upon California Evidence Code sections 1152 and 1154. The Prosecution Team's statement even if correct could only be based upon oral or written statements during the course of settlement discussions.

B. Exhibits

California Government Code 11513 (c) states that "*Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions.*" Each of the following objections to Exhibits is based upon hearsay as the sole source of the evidence not supplementing or explaining any direct evidence.

1. Exhibit 24. "Attachment B"

Entries: "Reviewing Newsletters, Farm Evaluations and Attend a Coalition Event are based upon hearsay contained in other exhibits that are not admissible over objection.

2. Exhibit 25.

The Parcel Quest Report is not an official document of Madera County. The report itself indicates the report results are not guaranteed. No witnesses are proposed to explain or verify the accuracy or completeness of the exhibit.

3. Exhibit 27.

EWG Farm Subsidies report is not an official publication of the USDA. The document itself indicates it cannot guarantee the accuracy of the information. No witnesses are proposed to explain or verify the accuracy or completeness of the exhibit.

4. Exhibit 28.

The Exhibit is titled "*Draft Technical Memorandum*". The report bases estimates of grower education costs on a personal communication with A. Schroeter (2010) with the Central

1 Coast Board. The testimony of A. Schroeter is used to substantiate grower costs that are used in
2 Exhibit 24. Ms. Schroeter is not a witness.

3 **5. Exhibit 29.**

4 Although the record of communication is contained within the Board file, the
5 hearsay statement of Mr. Klassen is not admissible to establish obligations of the Eastern San
6 Joaquin Order.

7 **III.**
8 **CONCLUSION**

9 In summary, Davis requests that the above exhibits be excluded from the hearing record as
10 inadmissible hearsay offered not to supplement or explain direct evidence but the sole source of
11 evidence.

12 DATED: November 3, 2014

13 Respectfully submitted,

14 BAKER MANOCK & JENSEN, PC

15
16 By: *Loren J. Harlow*
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18 Attorneys for David L. & Linda M. Davis
19 Trust
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