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January 14, 2010

Via UPS Next Day Delivery
and email JKASSEL@waterboards.ca.gov

James W. Kassel
Assistant Deputy Director for Water Rights
State Water Resources Control Board
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, California 95814

Re: Notice of Cease and Desist Order
Nelly Mussi, et al - APNs 141-400-08, 131-070-02,
131-070-12 and 131-070-13

Dear Mr. Kassel:

I represent Nelly Mussi and Rudy M. Mussi Investment LP in this matter and submit this letter on their behalf. Your December 28, 2009, letter requires certain actions or a request for hearing within twenty (20) days after receipt. Without prejudice to the concerns hereinafter stated and without waiver of any other rights, challenges and defenses, 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, I am still in the process of developing information to respond to your requests but have not been able to meet your deadlines. I have ordered but not yet received a chain of title for the "131" parcels and will make the response following review of the chain. I expected to receive the chain of title sooner and informed Dante J. Nomellini, Jr. of my expectations to provide a response by December 2, 2009. I apologize for this failed expectation. I was previously unaware of any issue as to the riparian status on the "141" parcel but will include it in my response. The imposition of the burden and expense on Delta diverters (who have been irrigating for decades) of in effect proving up riparian and pre-1914 rights outside of a stream wide adjudication is in my view politically motivated, outside the jurisdiction of the SWRCB and constitutionally impermissible. Without waiver of any objection, I have recommended the submittal of supporting data in the hope of dissuading further abuse of law and process.

James W. Kassel
Assistant Deputy Director for Water Rights
State Water Resources Control Board

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Second, we object to this process as being beyond the authority of the Board, and hereby demand you withdraw the threatened CDO and not proceed under the terms and conditions of your letter and the draft document. Since this matter does not allege violation of permit or license terms 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 parties alleging riparian or pre-1914 right holders should proceed.

Third, we maintain the current efforts by the Division present an unfair burden on the water right holders in the Delta. The Delta diverters are being forced to spend time, money and effort to "prove" their property rights and are suffering a devaluation of their property as a result of such efforts. We believe these efforts are solely focused on the Delta as a part of an inappropriate and coordinated effort to enhance exports at the expense of prior and senior water rights in the Delta. As such, the Division's efforts are in direct violation of both State and Federal constitutional prohibitions against takings without just compensation.

Yours very truly,



DANTE JOHN NOMEILLINI

DJN:ju

cc: Nelly Mussi
Rudy Mussi