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May 14, 2007

Matt Scroggins
California Regional Water Quality Control Board
Central Valley Region
Fresno Branch Office
1685 E Street
Fresno, Ca 93706

Re: Tentative NPDES Permit for City of Atwater
CA00789197

Dear Mr. Scroggins:

I am attorney for Gallo Cattle Company and other Gallo family members who own the property running south and west of the intersection of Highway 140 and Bert Crane Road in Merced, County. As I advised you over the phone, I recently reviewed the above referenced Permit and the Waste Discharge Requirements Order No. R5-2007-XXXX and I found items 24 and 25 to be incorrect and incomplete in places.

In item 24, it is stated that "Merced County and Merced Irrigation District entered into an agreement for construction, easements, ownership, and maintenance of the Atwater Drain on 6April 1922." The correct information is: Gallo's predecessors in interest and the ranches west of the Gallo Ranches and owners of land lying between Atwater and Highway 140 conveyed an easement to a Drainage Improvement District which was for the purpose of draining, through a ditch, the surplus, detrimental or injurious water from the irrigated farm lands lying within the District. The portion of the ditch from Atwater to Gallo lands is known as the Atwater Drain which interconnects with the ditch extending across and to the west of Gallo lands to Bear Creek. That portion of the ditch is known as the Peck Drain. The easement granted to the District extended through the channel of Bear Creek all the way to the San Joaquin River.

In about 1950, the City of Atwater had relocated their Treatment Plant to a point south of the City and sought to use the Atwater Drain to dispose of the treated effluent. Many of the land owners located between the city limits and Highway 140, which were opposed to this usage of the ditch, obtained an injunction against the City for use of the drain for this purpose, therefore,

the City brought an action under its power of eminent domain to acquire and did acquire an easement over and through the lands between the City and Highway 140, covered by the Drain, to use it to dispose of the effluent. In 1978, the City having no easement over Gallo lands, entered into a contract which gave the City the right to flow not to exceed 6,000,000 gallons of effluent on to Gallo lands. (The City's right to was increased to 12,000,000 gallons per day recently). Under the Agreement, all rights to the flowage became the property of Gallo. In May of 1992, the Superior Court of Merced County rendered a judgment against the former owner of the neighboring game refuge and was determined by final judgment that all rights to the effluent and water that came on the Gallo land via the Atwater Drain was Gallo's property. The game refuge has no right to receive any of this water and only flowage that is abandoned by Gallo and flows on to refuge land can be claimed by the refuge.

After formation of MID, the County granted MID a right to the works, including the drain ditch across Gallo's lands and other lands to the west, of the Drainage Improvement District and MID became obligated to perform the covenants of the District, however, MID has not maintained or repaired this ditch on Gallo property or other properties extending to Bear Creek, and has refused to do so.

Thanking you for the opportunity to furnish this information, I remain,

Very truly yours,
//s/ John E. Whiting

John E. Whiting

JEW:cw

cc: Mike Gallo, Randy Reviere