

RUMIANO FARMS

P.O. Box 277 • Vina, CA 96092 • (530)839-2178

May 25, 2014

State of California
Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 323-6826
Email: staff@oal.ca.gov

Daniel Schultz
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Fax: (916) 314-5400
Email: daniel.schultz@waterboards.ca.gov

Re: Emergency Number 2014-0523-05E.

SWRCB Emergency Regulation Article 24 Curtailment of Diversions Based on Insufficient Flow to Meet All Needs

To Whom it May Concern:

The SWRCB failed to document rights for the state in passing the emergency regulation. As a matter of fact, the State of California cannot document all waters and water rights of Deer Creek are waters of the State for regulation by the SWRCB. Rumiano Farms holds reserved rights, among other rights, superior to any claim by the State to the waters of Deer Creek which is the subject of the emergency regulation. The State does not possess Rumiano Farm's reserved rights to the waters of Deer Creek to exercise them with the emergency regulation. It would constitute trespasses by the State upon all reserved water right holders of Deer, Antelope, and Mill Creek if the emergency regulation were approved. The cost of approving the emergency regulation could be upwards of hundreds of millions of dollars for the State of California. What is most interesting in this matter is that with the United States Department of Commerce's manipulation and persuasion, all liability for this illegal emergency regulation rests upon the State of California.

Being involved in water, what one will find, is that some proponents of the emergency regulation believe "All water within the State is the property of the people of the State", but the State

cannot support the claim with necessary documentation. In fact, the California Constitution makes no such claim. Article 10, section 2 of the California Constitution states “It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources **of the State** be put to beneficial use to the fullest extent of which they are capable,...”. What is of particular interest in the Constitution and this passage is that the Constitution does not claim all waters within the State and limits the State’s jurisdiction to only the “extent of which they are capable”. The SWRCB cannot document appropriate jurisdiction to the waters of Deer Creek for the emergency regulation to be lawful. The Constitution recognizes prior rights, as well as the California Fish and Game Code, Section 3 and the California Water Code Section 4, and they must be honored. Article 3, section 3.5 of the California Constitution states “An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:(a) To declare a statute unenforceable, or refuse to enforce a statute...”.

This emergency regulation is improper by how it encompasses United States land Patents CACAAA002833 (Albert Toomes Rio De Los Molinos) and CACAAA 001106 (Henry Gerke Rancho Bosquejo) and wrongfully claims rights associated with these land patents that the State of California cannot show title to and/or superior right. The United States Government did not have the waters and water rights to Deer Creek in 1850 to convey to the State of California upon California’s admission to the Union. The State cannot show a chain of title to any of the waters or water rights of Deer Creek associated with Rumiano Farm’s portions of the land patents named and neither can the National Marine Fisheries Service. The majority of property in the Stanford Vina Ranch Irrigation Company (SVRIC) and the Main Diversion owned by the SVRIC are also on property which was patented under authority of the treaty.

Rumiano Farm’s portions of the United States Land Patents cited became part of the United States following the war with Mexico, which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. Rumiano Farm’s predecessors-in-interest had their interest in the land patents confirmed in federal patent proceedings pursuant to an 1851 Act that had been enacted to implement the treaty, and that provided that the validity of claims to California lands would be decided according to Mexican law. California made no claim to any interest in the land patents at the time of the patent proceedings, and no mention was made of any such interest in the patents that were issued. Since the time of the patent proceedings, the State of California cannot show any rights to Deer Creek held by Rumiano Farms have been conveyed to the State of California and the SWRCB, for State jurisdictional oversight.

Given SUMMA CORP. v. CALIFORNIA EX REL. LANDS COMM’N, 466 U.S. 198 (1984)

“California cannot at this late date assert its public trust easement over petitioner’s property, when petitioner’s predecessors-in-interest had their interest confirmed without any mention of such an easement in the federal patent proceedings. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred. Cf. Barker v. Harvey, 181 U.S. 481; United States v. Title Ins. & Trust [466 U.S. 198, 199] Co., 265

U.S. 472; United States v. Coronado Beach Co., 255 U.S. 472. Pp. 205-209.”

As was found in the Summa case, the State of California cannot document jurisdiction and rights necessary to assert over the waters of Deer Creek as proposed with the emergency regulation.

The two land patents cited are on file at the California Secretary of State and can be obtained from there or from the United States Bureau of Land Management. Rumiano Farms provided a copy of the land patents to the SWRCB in 2005. No emergency exists as presented by the SWRCB. The SWRCB has known of the States lack of jurisdiction in connection with the land patents and has waited for the governor to sign a broad proclamation of a drought emergency that the SWRCB, California Department of Fish and Wildlife and United States Department of Commerce are wrongfully using to try to circumvent statutes. Without specific evidentiary facts to support proof of proper rights to Deer Creek for the State of California, the OAL should disapprove the regulation.

Rumiano Farms received a notice from the SWRCB on May 16, 2014 notifying Rumiano Farms to the emergency regulation. The SWRCB obviously has a record that Rumiano Farms has rights to Deer Creek. Neither the California Department of Fish and Wildlife nor the United States Government has ever contacted Rumiano Farms regarding the waters of Deer Creek. There have been cooperative efforts in the past between California Fish and Wildlife and water right holders to Deer Creek and cooperative efforts can still be accomplished. The so called “emergency” has been falsely claimed by the California Department of Fish and Wildlife, the National Marine Fisheries Service and the SWRCB. These agencies are attempting to bamboozle the OAL into thinking what they have done is proper, lawful and can be accomplished through the improper use of claim of emergency. The situation addressed by the emergency regulation is not an emergency and cannot be lawfully achieved by the emergency regulation.

Rumiano Farms reserves the right to submit further comments to the OAL within the time period allowed. This communication has or will be sent via all of the methods listed.

Thank you,



Gary Rumiano



Craig Rumiano



Keith Rumiano