

STATE WATER RESOURCES CONTROL BOARD
10 AUG 19 AM 10:37
DIV. OF WATER RIGHTS SACRAMENTO

1 ELLISON, SCHNEIDER & HARRIS L.L.P.
2 Robert E. Donlan (State Bar No. 186185)
3 Elizabeth P. Ewens (State Bar No. 213046)
4 2600 Capitol Avenue, Suite 400
5 Sacramento, California 95816
6 Telephone: (916) 447-2166
7 Facsimile: (916) 447-3512

8 Attorneys for Gallo Vineyards, Inc.

9 BEFORE THE STATE OF CALIFORNIA
10 STATE WATER RESOURCES CONTROL BOARD

11 In the Matter of Draft Cease and Desist Order No.
12 2009-00XX DWR enforcement Action No. 74, Draft
13 Cease and Desist Order Gallo Vineyards, Inc.

**MEMORANDUM OF POINTS AND
14 AUTHORITIES IN OPPOSITION
15 TO PETITION FOR
16 RECONSIDERATION OF ORDER
17 WR 2010-0026-EXEC**

18 Gallo Vineyards, Inc. ("Gallo") respectfully submits this Memorandum in Opposition to
19 the Petition for Reconsideration of Order WR 2010-0026-EXEC¹ filed by Water Authority and
20 the SWC (collectively "Petitioners"). Because there is no legal or factual basis to either
21 reconsider or overturn the Order, the pending Petition should be denied in its entirety.

I. BACKGROUND

22 On December 14, 2009, a Draft Cease and Desist Order was issued against Gallo alleging
23 unauthorized diversion and use of water on lands belonging to Gallo in San Joaquin County.
24 Gallo timely requested a hearing on the Draft Cease and Desist Order. Following negotiations
25 and Gallo's submittal of extensive supporting information, Gallo and the State Water Resources
26 Control Board's ("SWRCB") Division of Water Rights "prosecution team" negotiated and
27 entered into a settlement agreement, resolving all contested matters relating to Gallo's riparian

28 ¹ As used herein, "Petition" refers to the Petition for Reconsideration of Order WR 2010-0026-EXEC filed by the San Luis & Delta-Mendota Water Authority ("Water Authority") and State Water Contractors ("SWC"), and "Order" refers to Order WR- 2010-0026-EXEC.

1 water rights to serve the lands at issue. The Settlement Agreement subsequently was approved
2 by the SWRCB's Executive Director in an Order dated July 2, 2010.²

3 Although they were not parties to the Settlement Agreement, on August 2, 2010
4 Petitioners filed a Petition for Reconsideration of the Order approving the Settlement Agreement,
5 and the Settlement Agreement itself. However, as detailed herein, Petitioners have no legal or
6 factual basis to challenge the SWRCB's Order.

7 II. ARGUMENT

8 A. In approving the Settlement Agreement and issuing its Order, the SWRCB acted 9 fully within the authority delegated to the Executive Director.

10 The SWRCB has broad statutory authority and prosecutorial discretion to initiate
11 enforcement proceedings, and also to settle or dismiss claims at issue. There is no authority that
12 allows a collateral attack on prosecutorial decisions, nor should there be. To permit Petitioners
13 to challenge the SWRCB's decision to resolve enforcement proceedings would undermine the
14 authority specifically delegated to the SWRCB by statute to conduct and resolve enforcement
15 proceedings, including the power and discretion to settle any such actions.

16 Water Code section 1831 *et seq.* gives the SWRCB broad authority to issue draft cease
17 and desist orders when it determines that a party may be engaged in the unauthorized diversion
18 and use of water. Prior to adoption of the cease and desist order, the party allegedly engaged in a
19 violation can request a hearing to dispute the allegations. Water Code §1834. Indeed, Gallo
20 requested such a hearing immediately following its receipt of notice from the SWRCB. Gallo
21 and the SWRCB successfully resolved all issues prior to the hearing by way of settlement. There
22 were no other parties to these proceedings.³

23 As a state agency, the SWRCB has specific statutory authorization to resolve pending
24 matters through settlement. Government Code section 11415.60 provides:

26 ² For the convenience of the SWRCB, a true and correct copy of the Settlement Agreement and Order
Approving Settlement Agreement are attached hereto as Exhibit "A".

27 ³ While Petitioners expressed an interest in the proceedings, the SWRCB never formally approved their
28 request to intervene and therefore Petitioners were not parties to this enforcement action. Indeed, there is no
statutory or regulatory authority for intervention in enforcement proceedings.

1 An agency may formulate and issue a decision by settlement, pursuant to an
2 agreement of the parties, without conducting an adjudicative proceeding ... the
3 settlement may be on any terms the parties determine are appropriate.

4 Gov't Code §11415(a). Nothing in this code section or otherwise requires the SWRCB to
5 conduct adjudicative proceedings or to demonstrate that the settlement or order approving
6 settlement is supported by "substantial evidence," as claimed by Petitioners. Moreover, while
7 Petitioners request disclosure and consideration of written evidence provided by Gallo to the
8 SWRCB during the course of settlement discussions, this information is specifically protected
9 from disclosure. Evid. Code §§ 1152 and 1154 (statements and information exchanged during
10 the course of settlement negotiations are inadmissible); Gov't Code §11415(a) (evidence of
11 conduct or statements made in settlement negotiations with agency is not admissible).

12 In addition to its authority to settle a dispute prior to an adjudicative hearing, the Board
13 also has full, independent authority to "modify, revoke, or stay in whole or in part any cease and
14 desist order issued pursuant to this chapter." Water Code § 1832. In combination, Water Code
15 section 1832 and Government Code section 11415 give the SWRCB complete discretion not
16 only initiate enforcement proceedings, but also to settle or dismiss such proceedings at any stage.
17 Approving the Settlement Agreement reached with Gallo was a proper exercise of the SWRCB's
18 authority, and the authority delegated by SWRCB to its Executive Director and Deputy
19 Director.⁴

20 B. The regulation cited by Petitions is irrelevant to these proceedings.

21 Notwithstanding the above, Petitioners argue that the SWRCB should reconsider its
22 Order based on California Code of Regulations, title 23, section 768. This is the only procedural
23 authority cited by Petitioners to support its Petition for Reconsideration, and is inapplicable to
24 this proceeding. In sum, Section 768 applies only to appropriative water right proceedings, and
25 the water rights at issue are riparian rights.

26 ⁴ The authority to initiate and resolve enforcement proceedings pursuant to Water Code section 1831 *et seq.*
27 was specifically delegated by the SWRCB to its Deputy Director and Assistant Deputy Directors, subject to certain
28 exceptions that are inapplicable to the instant action. SWRCB Resolution No. 2007-0057, paragraph 4.9.1.
Authority to issue a decision or order by settlement of the parties under Government Code section 11415.60 also
was properly delegated by the SWRCB to the Executive Director in SWRCB Resolution No. 2002-0104.

1 Section 768, on its face, only authorizes a petition for reconsideration by a "person
2 interested in any application, permit or license affected by the decision or order" at issue. 23
3 CCR §768.⁵ These regulations do not govern the process associated with enforcement
4 proceedings. Because these proceedings involved a draft cease and desist order concerning the
5 proper exercise of riparian rights, and not an application, permit, or license relating to an
6 appropriative water right, Petitioners' reliance on this regulation is without foundation. Even if,
7 *arguendo*, section 768 was interpreted to permit reconsideration of an order arising out of
8 enforcement proceedings involving riparian rights, Petitioners still have not met the other
9 threshold requirement of demonstrating a legitimate interest in the action. Petitioners were not
10 parties to these proceedings and no where in their Petition do they state or allege a factual basis
11 for their claim to have an interest in "any application, permit or license affected by the decision
12 or order."

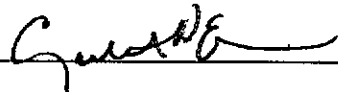
13 III. CONCLUSION

14 The SWRCB properly exercised its discretion to approve the settlement agreement with
15 Gallo. Accordingly, in the absence of any legal authority which would permit Petitioners to
16 either intervene in the SWRCB's enforcement proceedings or to contest the resulting Settlement
17 Agreement and Order, their Petition for Reconsideration should be denied in its entirety.

18 Dated: August 17, 2010

Respectfully submitted,

19 ELLISON, SCHNEIDER & HARRIS L.L.P.

20
21 By 

22 Robert E. Donlan
23 Elizabeth P. Ewens
24 2600 Capitol Avenue, Suite 400
25 Sacramento, California 95816
26 Telephone: (916) 447-2166
27 Facsimile: (916) 447-3512

Attorneys for Gallo Vineyards, Inc.

28 ⁵ Section 768 is part of Title 23, Division 3, Chapter 2 of the California Code of Regulations governing the appropriation of water. See 23 Cal. Code Regs. §650 *et seq.*

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2010-0026-EXEC

In the Matter of the Diversion and Use of Water by
Gallo Vineyards, Inc.

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a draft Cease and Desist Order (CDO) to Gallo Vineyards, Inc. (Gallo). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights prosecution team (Prosecution Team) and Gallo have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

Gallo owns land in San Joaquin County identified by Assessor Parcel Nos. 191-050-05, 191-060-02, 191-060-03, 191-060-05, and 191-060-06.

On December 14, 2009, the Assistant Deputy Director for Water Rights issued a Draft Cease and Desist Order (Draft CDO) against Gallo alleging an unauthorized diversion and use of water in violation of section 1052 of the Water Code.

By letter dated December 3, 2009, Gallo timely requested a hearing on the Draft CDO. The State Water Board scheduled a hearing for the Draft CDO on May 5, 2010.

¹ State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

Gallo and the Prosecution Team agreed to settle the matters identified in the Draft CDO through this Settlement Agreement in lieu of hearings on said matters.

3.0 SETTLEMENT AGREEMENT

Gallo and the Prosecution Team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Settlement Agreement that is attached hereto. The general terms of the settlement are that: (1) the Prosecution Team does not contest Gallo's riparian basis of right to serve San Joaquin County Assessor Parcel Nos. 191-060-02, 191-060-03, 191-060-05, 191-060-06, excepting a strip of land within the northern portion of Parcel Nos. 191-060-02 and 191-060-03 consisting of approximately 3.6 acres (hereinafter "Excluded Land") from Old River, and (2) Gallo will immediately cease any diversion or use of Old River for use on Assessors Parcel No. 191-050-05 and the Excluded Land, and will immediately: (a) file a revised Statement of Water Diversion and Use form for its Old River point of diversion, and (b) install and maintain measuring devices on (i) its Old River pumping facility, (ii) its connection to any alternative water source to be used to serve the Assessors Parcel No. 191-050-05 and the Excluded Land, and (iii) any water conveyance system delivering water to Assessors Parcel No. 191-050-05 and the Excluded Land, such that Gallo can document that water use on Assessors Parcel No. 191-050-05 and the Excluded Land comes from a source other than Old River.

4.0 DISCUSSION

The State Water Board may approve a settlement agreement and issue a decision by settlement, provided that the terms of the settlement are not contrary to statute, regulation, or public policy. (Gov. Code, § 11415.60; *Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110, 115-116.) The Board has delegated this authority to the Executive Director. (State Water Board Resolution 2002-0104, par. 5.) I have reviewed the Settlement Agreement, and have determined that it should be approved, subject to the following clarification regarding Gallo's claimed riparian rights.

As set forth above, the Settlement Agreement provides that the Prosecution Team does not contest Gallo's riparian basis of right to use Old River water on specified parcels (or portions of parcels) of land. As a matter of law, riparian rights extend only to the natural flow in a stream. (*Bloss v. Rahilly* (1940) 16 Cal.2d 70, 74-76.) In addition, the State Water Board has found that

natural flow in the southern Sacramento-San Joaquin Delta (Delta), where Old River is located, is not adequate to satisfy all the riparian rights that may exist in the southern Delta during certain months of the year under certain hydrologic conditions. (State Water Board Decision 1641, pp. 30-33.) Under these circumstances, all riparian right holders must reduce their diversions proportionately. (*United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 104.) In addition, riparian right holders may be required to curtail their diversions to the extent necessary to protect instream beneficial uses. (*Id.* at pp. 105-106, 129-130.) In accordance with these principles, approval of the Settlement Agreement should not be construed as authorization or approval of Gallo's use of water from Old River to the extent that natural flow is inadequate to fully satisfy Gallo's claimed riparian rights, taking into account the reasonable needs of other riparian right holders and instream beneficial uses, during any given period of time.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and Gallo is approved and is incorporated by reference into this Order.

Dated: 7-2-10

Dorothy Rice
Dorothy Rice
Executive Director

Attachment

**CONFIDENTIAL AND PRIVILEGED
SETTLEMENT COMMUNICATION
SUBJECT TO EVIDENCE CODE §§ 1152 and 1154
AND GOVERNMENT CODE § 11415.60**

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the Gallo Vineyards, Inc. ("Gallo") and the Prosecution Team of the State Water Resources Control Board's ("State Water Board") Division of Water Rights ("Division Prosecution Team") and is executed this 23 day of March 2010.

RECITALS

- A. Gallo owns land in San Joaquin County identified by Assessor Parcels Nos. 191-050-05, 191-060-02, 191-060-03, 191-060-05, and 191-060-06.
- B. On December 14, 2009, the Assistant Deputy Director for Water Rights issued a Draft Cease and Desist Order ("Draft CDO") against Gallo alleging an unauthorized diversion and use of water in violation of section 1052 of the Water Code.
- C. By letter dated December 3, 2009, Gallo timely requested a hearing on the Draft CDO. The State Water Board scheduled a hearing for the Draft CDO on May 5, 2010.
- D. In lieu of said hearing, Gallo and the Division Prosecution Team agree to settle the matters identified in the Draft CDO through this Settlement Agreement.
- E. This Settlement Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, Gallo and the Division Prosecution Team do hereby agree to settle the Draft CDO as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Stipulations.** Gallo and the Division Prosecution Team do hereby jointly stipulate and agree as follows:

**CONFIDENTIAL AND PRIVILEGED
SETTLEMENT COMMUNICATION
SUBJECT TO EVIDENCE CODE §§ 1152 and 1154
AND GOVERNMENT CODE § 11415.60**

a. Riparian Rights For Diversion and Use of Water on Assessor Parcel Nos. 191-060-02, 191-060-03, 191-060-05, 191-060-06, excepting the Excluded Land

- i. Gallo has submitted written evidence to the Division regarding Gallo's claim of a riparian basis of water right to serve San Joaquin County Assessor Parcel Nos. 191-060-02, 191-060-03, 191-060-05, 191-060-06, excepting a strip of land within the northern portion of Parcel Nos. 191-060-02 and 191-060-03, consisting of approximately 3.6 acres (hereinafter referred to as the "Excluded Land"). At this time it appears to Division's Prosecution Team that these parcels, less the Excluded Land, have a riparian basis of right to water from Old River. The riparian parcels, Excluded Land and Assessor's Parcel No. 191-050-05 are depicted on the map attached hereto as Exhibit A. At this time the Division Prosecution Team is satisfied that Gallo appears to be exercising valid riparian rights with regard to the riparian parcels or portions of parcels, and therefore the Division Prosecution Team does not contest Gallo's use of Old River water on these riparian parcels or portions of parcels.
- ii. Nothing in paragraph 3.a.i. is intended to limit or expand any other basis of water right that Gallo may now possess, or in the future obtain, for diversion and use of water on Assessor Parcel Nos. 191-060-02, 191-060-03, 191-060-05, 191-060-06, excepting the Excluded Land.
- iii. Nothing in paragraph 3.a.i. is intended to restrict the Division of Water Rights' (Division) authority to limit or condition Gallo's diversion and use of water on Assessor Parcel Nos. 191-060-02, 191-060-03, 191-060-05, 191-060-06 pursuant to the Division's reasonable exercise of its regulatory and statutory authorities.

b. Assessors Parcel No. 191-050-05, and Excluded Land

- i. Gallo will immediately cease any diversion or use of Old River for use on Assessors Parcel No. 191-050-05 and the Excluded Land. Gallo will immediately: (1) file a revised Statement of Water Diversion and Use form for its Old River point of diversion, and (2) install and maintain measuring devices on (a) its Old River pumping facility, (b) its connection to any alternative water source to be used to serve the Assessors Parcel No. 191-050-05 and the Excluded Land, and (c) any water conveyance system delivering water to Assessors Parcel No. 191-050-05 and the Excluded Land, such that Gallo can document that water use on Assessors Parcel No. 191-050-05 and the Excluded Land comes from a source other than Old River. Gallo will maintain

**CONFIDENTIAL AND PRIVILEGED
SETTLEMENT COMMUNICATION
SUBJECT TO EVIDENCE CODE §§ 1152 and 1154
AND GOVERNMENT CODE § 11415.60**

monthly records of its diversion and use of water under riparian claim to the riparian parcels, and from other sources for use on Assessors Parcel No. 191-050-05 and the Excluded Land, and will submit that information to the Division upon request or when required by law.

- ii. Notwithstanding the stipulation in paragraph 3.b.i, this stipulation does not limit or restrict Gallo's right to divert and use water on Assessors Parcel No. 191-050-05 and the Excluded Land from sources that are not subject to the State Water Board's permitting authority, or that do not require State Water Board or Division approval. For example, but not as a limitation, this stipulation does not limit or restrict Gallo's right to use percolating groundwater, recycled water, or water acquired from another party by transfer, sale or lease. To the extent applicable, Gallo will comply with all permitting and approval requirements for the use of such waters, including any petitions for change or transfer required by the State Water Board.
- iii. Notwithstanding the stipulation in paragraph 3.b.i, Gallo does not waive, limit or forfeit any water rights that Gallo may now have, or in the future obtain, for diversion and use of surface water on Assessors Parcel No. 191-050-05 and the Excluded Land; provided that, Gallo will first submit additional evidence to the State Water Board or Division as to the existence of surface water rights for use on Assessors Parcel No. 191-050-05 and the Excluded Land, including but not limited to riparian and/or pre-1914 appropriative rights. Upon the submission of such additional evidence, Gallo will not divert surface water under riparian or pre-1914 appropriative claim of right to Assessors Parcel No. 191-050-05 and the Excluded Land, unless its evidence is first accepted by the State Water Board or Division. The State Water Board or Division shall not unreasonably withhold acceptance of such evidence to support the claimed riparian and/or pre-1914 appropriative rights, and Gallo preserves all rights to seek review of any finding or determination with respect riparian and/or pre-1914 appropriative rights claims.
- iv. Nothing in paragraphs 3.b.ii or 3.b.iii is intended to restrict the State Water Board's or Division's authority to limit or condition Gallo's diversion and use of water on Assessor Parcel Nos. 191-050-05 and the Excluded Land pursuant to the State Water Board's Division's reasonable exercise of its regulatory or statutory authorities.

4. **Postpone Hearing.** Gallo and the Division Prosecution Team have requested that the hearing in this matter, scheduled for May 5, 2010, be indefinitely postponed pending approval of this Settlement Agreement by the Executive Director.
5. **Waiver of Reconsideration.** Gallo waives its right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement,

**CONFIDENTIAL AND PRIVILEGED
SETTLEMENT COMMUNICATION
SUBJECT TO EVIDENCE CODE §§ 1152 and 1154
AND GOVERNMENT CODE § 11415.60**

provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.

6. **Successors.** This Settlement Agreement is binding on any successors or assigns of Gallo and the State Water Board.
7. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
8. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board. This Settlement Agreement also shall not be construed to be an admission by Gallo of the liability or of any of the allegations set forth in the Draft CDO.
9. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
10. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
11. **Mutual Agreement.** The parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
12. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
13. **Reasonableness of Settlement.** The parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
14. **Section Headings.** The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any

**CONFIDENTIAL AND PRIVILEGED
SETTLEMENT COMMUNICATION
SUBJECT TO EVIDENCE CODE §§ 1152 and 1154
AND GOVERNMENT CODE § 11415.60**

manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.

15. **Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement.

16. **Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.

17. **Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

18. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Gallo, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Gallo, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

Dated: 23 March 2010

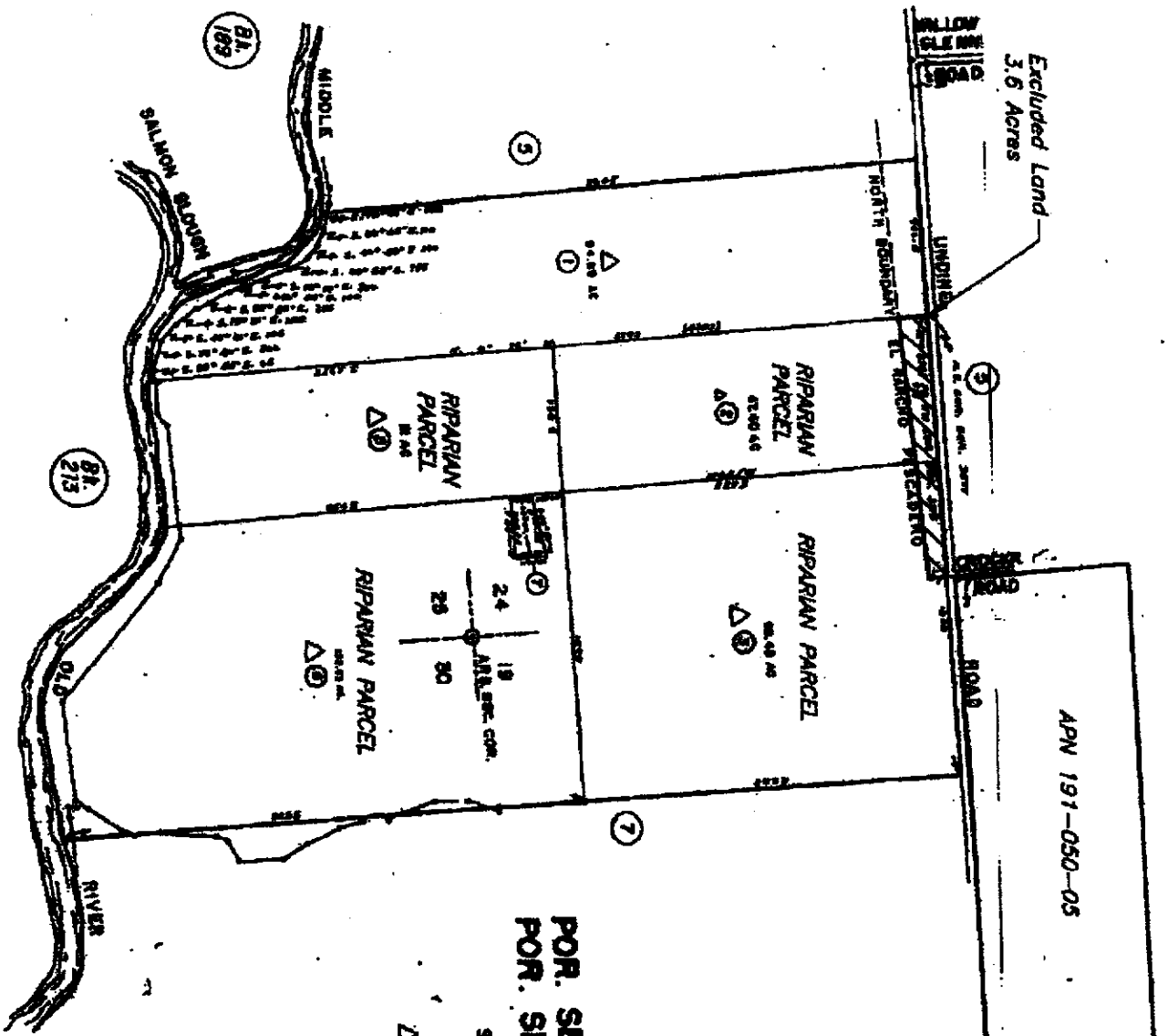
State Water Board Division of Water Rights
Prosecution Team


By: James W. Kassel
Assistant Deputy Director

Dated: 18 March 2010

Gallo Vineyards, Inc.


By: Tom Smith
Vice President



POR. SEC. 24 8 26 T.15. R. 6E.1
POR. SEC. 19 8 30 T.15. R. 6E.1

SCALE 1" = 800'
SAN JOAQUIN COUNTY
ASSESSOR MAPS

WILLIAM J. WICKS



THIS MAP FOR
ASSESSMENT USE ONLY

191-06

EXHIBIT A

84
215

84
189

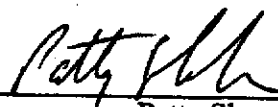
1 PROOF OF SERVICE

2
3 I, Patty Slomski, declare that:

4 I am employed in the County of Sacramento, State of California. I am over the age of
5 eighteen years and am not a party to the within action. My business address is ELLISON,
6 SCHNEIDER & HARRIS L.L.P.; 2600 Capitol Avenue, Suite 400; Sacramento, California
7 95816; telephone (916) 447-2166.

8 On August 17, 2010, I served the attached *MEMORANDUM OF POINTS AND*
9 *AUTHORITIES IN OPPOSITION TO PETITION FOR RECONCIDERATION OF ORDER*
10 *WR 2010-0026-EXEC* by putting a true copy thereof in a sealed envelope, with postage thereon
11 fully prepaid, in the United States mail at Sacramento, California, addressed to each person
12 shown on the attached service list and also caused a true and correct scanned image (.PDF file)
13 copy to be transmitted via the electronic mail transfer system in place at Ellison, Schneider &
14 Harris, originating from the undersigned at 2600 Capitol Avenue, Suite 400, Sacramento,
15 California, to the e-mail address(es) indicated below.

16 I declare under penalty of perjury that the foregoing is true and correct and that this
17 declaration was executed on August 17, 2010, at Sacramento, California.

18 

19 _____
20 Patty Slomski
21
22
23
24
25
26
27
28

SERVICE LIST
(VIA ELECTRONIC MAIL)

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>	<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM c/o David Rose State Water Resources Control Board 1001 I Street Sacramento, CA 95814 DRose@waterboards.ca.gov</p>	<p>MARK AND VALLA DUNKEL c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherlaw@aol.com</p> <p>c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>
<p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>YOUNG PAK AND SUN YOUNG c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherlaw@aol.com</p> <p>c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>	<p>RUDY MUSSI, TONI MUSSI, AND LORY C. MUSSI INVESTMENT LP c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherlaw@aol.com</p> <p>c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>
<p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p>	<p>SOUTH DELTA WATER AGENCY c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherlaw@aol.com</p> <p>c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>	<p>CENTRAL DELTA WATER AGENCY c/o Dean Ruiz, Esq. Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>
<p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>STATE WATER CONTRACTORS c/o Stanley C. Powell Clifford W. Schulz Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 spowell@kmtg.com cshulz@kmtg.com</p>	<p>SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT c/o DeeAnne M. Gillick Neumiller & Beardslee P.O. Box 20 Stockton, CA 95201-3020 dgillick@neumiller.com tshepard@neumiller.com</p>

<p>1 MODESTO IRRIGATION DISTRICT 2 c/o Tim O'Laughlin 3 Ken Petruzzelli 4 O'Laughlin & Paris LLP 5 117 Meyers Street, Suite 110 6 P.O. Box 9259 7 Chico, CA 95927-9259 8 towater@olaughlinparis.com 9 kpetruzzelli@olaughlinparis.com</p>	<p>CALIFORNIA DEPARTMENT OF WATER RESOURCES c/o Erick Soderlund 1416 Ninth Street, Room 1118 Sacramento, CA 95814 esoderlu@water.ca.gov</p>
<p>6 SAN JOAQUIN FARM BUREAU 7 c/o Bruce Blodgett 8 3290 North Ad Art Road 9 Stockton, CA 95215-2296 10 director@sjfb.org</p>	<p>ATTORNEYS FOR THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY Jon D. Rubin Valerie C. Kincaid Diepenbrock Harrison A Professional Corporation 400 Capitol Mall, Suite 1800 Sacramento, CA 95814-4413 jrubin@diepenbrock.com vkincaid@diepenbrock.com</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28