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JWK  
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Request for hearing

February 2, 2010

Via UPS Next Day Delivery  
and email [JKASSEL@waterboards.ca.gov](mailto: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  
Loren and Dolores Ohm APN 162-120-09

Dear Mr. Kassel:

I represent Loren and Dolores Ohm in this matter and submit this letter on their behalf. Your January 13, 2010, 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 now received a chain of title for the subject parcel but have not completed my review. 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. 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.

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DIVISION OF WATER RIGHTS  
SACRAMENTO

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

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February 2, 2010

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 NOMELLINI

DJN:ju

cc: Loren and Dolores Ohm