



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NOV 16 2011

In Reply Refer to:
CA:S016192

Eni Menconi Trust
c/o Mia S. Brown
Neumiller & Beardslee
P.O. Box 20
Stockton, CA 95201-3020

Dear Ms. Brown:

WITHDRAWAL OF THE DRAFT CEASE AND DESIST ORDER AGAINST ENI MENCONI TRUST - PARCELS 189-22-017 AND 189-22-019

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has received and reviewed your letters of March 22, 2010 and April 15, 2011. These letters provide additional information regarding the claimed riparian status of the Eni Menconi Trust (Menconi Trust) property. You believe this additional information is sufficient to resolve the issue and for the Division to dismiss the draft Cease and Desist Order (CDO) dated January 28, 2009.

To withdraw the draft CDO and support cancellation of the pending hearing, the Division's Prosecution Team needs evidence supporting a valid basis of right for Menconi Trust property that was not available when the draft CDO was issued.

Staff of the Division's Prosecution Team recently re-evaluated all available information pertinent to this case in light of the recent Delta Hearing Proceedings and your submittals. Clarifications resulting from those hearings indicate that riparian rights may be preserved if there is sufficient evidence demonstrating that a grantor of a property intended to convey the rights to a grantee. Viewing of the facts of your case in light of the hearing proceedings supports a conclusion that there was sufficient intent to preserve the riparian rights within the Williams' family. Those rights were later conveyed to the Menconi property through Indenture.

The Division's Prosecution Team concludes that as a result of the 1889 Decree in Partition, the Williams Ranch property was contiguous to Middle River and therefore would enjoy a riparian right to the natural flow of Middle River. Based on subsequent indentures, the Division's Prosecution Team concludes that a riparian right to the natural flow of Middle River was preserved for Menconi's property, initially through the transfer and distribution of Thomas Williams' Sr. estate and subsequently by the continuous physical connection of the subsequent properties to Middle River. Based on this information, the Division's Prosecution Team concludes that a riparian right to the natural flow of Middle River exists for the Menconi Trust property. The Delta Watermaster has reviewed the documents for this matter and concurs with this finding. The Division also acknowledges the Menconi Trust Statement of Water Diversion and Use.

The Division's Prosecution Team hereby withdraws the draft CDO dated January 28, 2009. By copy of this letter, the hearing team is advised that the draft CDO is withdrawn and that the Division's Prosecution Team does not intend to go forward with any prosecution of this action. The Prosecution Team has not made a finding as to any pre-1914 right claimed by the Menconi Trust, or the availability of natural flow in Middle River.

If you have any questions regarding the matter, please call John O'Hagan at (916) 341-5368. The Division may also be reached by writing to: The Division of Water Rights, P.O.Box 2000, Sacramento, CA, 95812-2000.

Sincerely,

ORIGINAL SIGNED BY:

James W. Kassel, Assistant Deputy Director
Division of Water Rights

cc: See attached Mailing List



Mailing List:

Eni Menconi Trust
c/o Ann Del Barba
4299 Carlin Road
Stockton, CA 95206

Modesto Irrigation District
c/o Tim O'Laughlin
O'Laughlin & Paris LLP
P.O. Box 9259
Chico, CA 95927
towater@olaughlinparis.com

San Luis & Delta Mendota Water Agency
c/o Jon Rubin and Valerie Kinkaid
Diepenbrock Harrison PC
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
jrubin@diepenbrock.com: vkinkaid@diepenbrock.com

State Water Contractors
c/o Stan Powell and Cliff Schulz
Kronick Moskowitz Tiedeman & Girard, PC
400 Capitol Mall, Suite 2700
Sacramento, CA 95814
spowell@kmtg.com: cschulz@kmtg.com

John Herrick
4255 Pacific Avenue, Suite 2
Stockton, CA 95207
Jherrlaw@aol.com

Dante Nomellini
Nomellini, Grilli, and McDaniel
P.O. Box 1461
Stockton, CA 95201-1461
NGMPLCS@Pacbell.net

