

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com



Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti
Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

November 19, 2012

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812-0100

Re: Comment Letter – 12-04-12 Board Meeting:
Gallo Reconsideration (WR 2010-0026-EXEC)

Dear Ms. Townsend:

The South Delta Water Agency supports the State Water Resources Control Board's draft Order Denying Reconsideration in the above matter.

The draft Order addresses all of the Petitioners' issues and concerns and fully explains the law and reasoning which supports the underlying settlement and the denial of the Petition for Reconsideration.

Petitioners' argue that evidence of violations (illegal diversions) must be included in the record and that the SWRCB must include in its adoption of the settlement citations to evidence supporting the settlement provision dealing with the acquiescence to certain land being riparian. No such evidence or citations are necessary.

Petitioners' arguments would make the SWRCB's investigation process meaningless. A finding of a violation is the conclusion to be reached (or not reached) after a hearing, not during its investigation. Requiring some sort of finding of a violation is contrary to its duties and would preclude any settlements. A listing of the evidence supporting the riparian right would indicate a finding of such right notwithstanding the lack of a hearing which would test any such evidence. The Prosecution Team's conclusions are based on an evaluation of the evidence. Listing the evidence would suggest a finding, not a settlement. Although the SDWA disagrees with the SWRCB's claimed right to issue enforcement orders on riparian and pre-1914 rights, the Petitioners' proposals/arguments would make any such investigatory process meaningless.

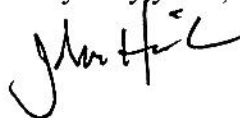
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Lastly, in support of the Prosecution Team's analysis leading to the settlement, even a cursory review of the appropriate San Joaquin County Assessor maps indicates that much of the Gallo land in question has always been physically connected to Middle River and thus retained a riparian right.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Herrick", written in a cursive style.

JOHN HERRICK

cc (via e-mail):

Robert E. Donlan, Esq.

David Rose, Esq.

Jon d. Rubin, Esq.

Stanley C. Powell, Esq.

Dean Ruiz, Esq.

DeeAnn M. Gillick, Esq.

Tim O'Laughlin, Esq.

K. Petruzzelli, Esq.

Valerie Kincaid, Esq.

Mr. Bruce Blodgett

James Mizell, Esq.