

Robert A. Luciano

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May 26, 2004

Victoria A. Whitney
Division Chief - Division of Water Rights
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95812

SENT VIA MAIL AND FACSIMILE - (916) 341-5400

Dear Victoria:

I am writing in regard to your letter of May 14, 2004 (341:SMC:262.0(32-22-01)). There must be a misunderstanding at some level, because I cannot think of another reason for the escalating nature of the letter. We have contacted your agency through Mr. Shapiro in an attempt to resolve this matter, but thus far, have been unsuccessful. I am writing this letter in hopes of providing some direct input, as an owner, not an attorney; as someone who cares very dearly about this project and has put his heart and soul into our family farm development, and into being responsive to communications from the State Water Resources Control Board (SWRCB).

I have committed countless effort and enormous sums of money in analysis alone, based upon the SWRCB's earlier agreements to allow us the opportunity to respond to the notice of violation initiated in response to the complaint made by Hughes. I have done this because our investment (of time, money, and effort) in this property and this project are of such significant levels that we cannot afford to let this issue be resolved without full factual support and reasoned evaluation and review.

To force or rush this process by the threat of a cease and desist order without the benefit of a cooperative review of the extensive work and effort that we have put into this process, under agreement with the SWRCB, is simply wrong. It is especially wrong in light of the agreement that we would present data and conclusions, to be provided to you in the spring of 2004; only now to find that during that same period, you have unnecessarily escalated the matter.

The recent position of the SWRCB is particularly perplexing due to its contradiction with the earlier position of your office, that we based our actions, decisions and investments on. While your file for the matter may start with the complaint filed by Mr. Hughes, my family actually contacted the SWRCB in 1997 to understand our rights in regard to this project. At that time, by letter dated September 4, 1997 authored by Robert Been, the SWRCB stated:

"The State Water Resources Control Board (SWRCB) does not have jurisdiction over riparian or pre-1914 water rights, the courts do. Consequently, the Division can only record your client's Statement [of water diversion]. We have reviewed the documents your client has provided and they appear to support his pre-1914 claim. The courts have jurisdiction regarding any final determination of riparian or pre-1914 rights." [331:RJB:266.0] ← could not find

Based in part on this statement, and in part upon an independent review by our attorneys, we concluded that our operations were proper and legal. Since the complaint was filed, we have expended significant resources gathering the data to conclusively prove the legality of our operations. I trust you can appreciate my frustration that after this history, to receive your letter of May 14, 2004 provides a high level of exasperation and significant concern of equitable treatment.

As you may know, we collect groundwater to fill the ponds we have constructed. We specifically located the ponds in areas of high groundwater. In fact, we counted thirteen artesian springs that flowed year round prior to construction. We also constructed an elaborate network of French drains to collect this flow to feed the pond. We then use riparian rights to flow water through the ponds to keep the ponds fresh and to irrigate the meadows below the ponds. We also exercise pre-1914 rights to irrigate non-riparian meadows and an old orchard. All of this has been challenged by Mr. Hughes, et. al in their complaints.

To address the complaints, we have needed to understand all of the flows and sources of water and how they inter-relate. The monitoring and fact finding in this case is a very complex problem and has required additional testing and monitoring as we have discovered and uncovered formerly misunderstood aspects of the flows associated with our project.

Addressing this complexity is compounded by the false representations made by Hughes. Our only (and appropriate) recourse is to validate actual facts. (For your background, Hughes' agenda goes well beyond these complaints; this is only a portion of the harassing tactics dating back since I purchased this property in 1995.) We are not in any way, and never have been, attempting to stretch out this process. We are simply committed to providing factual-based information to ensure that an objective analysis is possible.

I have never done this type of monitoring or testing before, but with the collective experience of the SWRCB, surely you can comprehend the complexity involved with an accurate measurement of water inflows and outflows in a complex system such as ours. In the year of the flow analysis we have performed, we have identified several new underground or nominally subsurface channels of outflows, not previously measured, which we believe will significantly alter the outcome of the flow analysis performed by your engineer on site, and performed by our experts based on data collected early on. We are already in the process of site alterations to allow us to capture and measure these flows. Additionally, we have started monitoring other newly identified sources which

have a significant impact on the water analysis and balance that we are performing. We are prepared to share all of this with you at a meeting that we hope you will agree to be scheduled shortly.

Now after investing such incredible time, effort and money, it is gravely concerning to me that the SWRCB seeks to back-out of the working agreement that we have been operating under, and is holding the threat of a cease and desist order over my head. The development of this property and this project has been a long involved effort spanning over ten years. Ours is a serious and committed effort to develop and manage a spectacular farm for our family and heirs.

For further background, our project has had significant environmental benefit as well. Mountain lions have been coming down to the ponds to drink and occasionally feed on deer. Gray herons, geese, mallards, loons, golden eagles, osprey, and bald eagles regularly feed from these ponds. We spawn both brown and rainbow trout, both ducks and geese are on their second year of offspring. In fact, the bald eagles are on their third generation of offspring that feed on the fish that we raise. We operate as a State licensed fishery and have a long history of working with the local community college to help preserve and foster specific trout species to help provide new generations of trout for the repopulation of local streams.

In addition to helping local species, our project also puts water to beneficial use. We use the diverted water to irrigate active meadows as we operate a real farm. In addition to the trout, we raise sheep, cattle, turkeys, guinea hens and chickens. We have plans to rebuild the apple orchards, plant grape vineyards, and additional tree farming in the modern tradition following the long history and development of the original homestead by Ezra Culver and his successors.

Regarding the irrigation of the upper meadows (including the old orchard), the allegations in the complaint are completely erroneous. We have diligently, and at considerable expense, compiled the actual factual basis of our pre-1914 irrigation rights and are prepared to present this information to your staff.

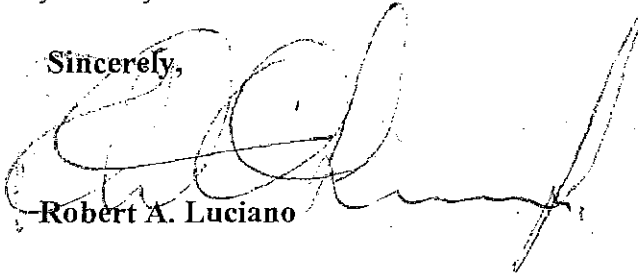
In addition, the existing stream bed for Wash Creek is unstable and our diversion of water to run through the pond (as the water that we divert largely flows back to the same water course) helps avoid an unstable section of stream bed. While there have been allegations that there is little water left in Wash Creek as a result of our diversions, Bob Hughes, in a public hearing, stated on tape: "In spite of the drought conditions there is more water flowing in the stream than ever before." This is flow after the limited diversion that we use. I can make that tape available to you if you wish.

Although we believe that the data we have collected, and our final analysis of that data will completely validate our actions and claims, we are fully committed and prepared to pursue several physical remedies available to us should the data and analysis indicate otherwise.

We take the possibility of a hearing and the threatened cease and desist order very seriously and therefore are fully prepared to exercise all of our rights to protect the resources that we have enhanced and to protect the species that rely on these resources. Surely it is not the intention of the SWRCB to prematurely force this matter into a hearing with the severe distraction, cost, and most importantly the very real potential for a bad decision being rendered due to incomplete and/or erroneous information. We request the SWRCB staff stand by their earlier commitment to us and allow us to properly report on the work we have completed.

In that regard, we are prepared to meet with you within the next month to present data and discuss conclusions. We respectfully ask for you to rescind the letter of May 14, 2004 and allow us the opportunity provide our findings as originally agreed to. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Luciano", written over a horizontal line.

Robert A. Luciano

cc: Scott Shapiro