

MARCH 25, 2016

CALIFORNIA DEPT. OF WATER RESOURCES
ATTN. LAUREEN BISNETT - PUBLIC AFFAIRS OFFICE
P.O. BOX 942 836
SACRAMENTO, CALIFORNIA, 94236

SUBJECT: 2nd comment - DRAFT G.S.P. Emergency Regulations
DEAR LAUREEN BISNETT

New information has been received by me from M.F.D. "DISTRICT" since my first comment letter dated MARCH 20, 2016. I have received a threat/ULTIMATUM from "DISTRICT" general counsel Phillip R. McMurray regarding "Recorded Document" - "The" "DISTRICT" IS CLAIMING A Prescriptive Easement TO AVOID providing surface WATER in the historical nature, character, and volume of use by "Trust" property. The CALIFORNIA DEPT. OF WATER RESOURCES should consider "DISTRICT'S" position as AN ATTEMPT to defeat restoring ground water (MERCED BASIN) in AN IDENTIFIED CRITICAL OVERDRAFT CONDITION. I AM IN "dire need" of CALIFORNIA Dept of WATER RESOURCES help and/or ASSISTANCE TO AVOID AN UNLAWFUL curtailment of WATER by "DISTRICT."

Respectfully,

Enclosures Exhibits "1" & "2"

By Hand Delivery
M. I. D. Office

MARCH 24, 2016

MARCH 24, 2016

MR. Phillip M. Murray Esq.
744 West 20th Street
MERCED, CA. 95340

SUBJECT LETTER DATED MARCH 15th 2016

DEAR MR. M. Murray Esq.

I have received your letter on Tues
MARCH 27, 2016. Your demand
that I immediately record a recession
of document [REDACTED] is denied.
In regards to your alleged claim
of a prescriptive easement to use a
[REDACTED] TRUST AS AN ATTORNEY
you must realize that any claimed
prescriptive^{claim} use must adhere to
the nature, character and volume of
use. (See *MRS Pipkin v. Per TORRESIAN* 35 Cal.
3d 722, 111 Cal. Rptr. 46 & *O'Banion v. BORBA*
32 C 2d 145 [195 P 2d 10]. Therefore your alleged
Prescriptive Easement claim would be the same
as the Recorded Permissive Use Document.

Enclosure Notes on
Letter dated March 15, 2016
"Exhibit 1"

Respectfully
[REDACTED]



MERCED IRRIGATION DISTRICT

March 15, 2016



Subject: Second Amended Notice of Consent to Use Land; Merced County Recorder's Office Document Number

Dear

I have received your recent correspondence regarding the above referenced document purporting to grant to MID a right-of-way conditioned upon, among other things, delivery to your family trust certain amounts of surface water annually. It appears you have changed the purported conditions of use to the provision of water under certain water year types together with carryover storage levels in Lake McClure. This is a significant change from the last document you filed with the Recorders Office.

In any event and regardless to the document you have filed or the purported conditions you assert, we have discussed at length previously and on several occasions that the District's position has not changed with regards to its ownership interest in the land described in your Notice of Consent or Second Amended Notice of Consent. I am not aware of any operational issues involving this land, nor am I aware of any damage that has occurred to any of your property. If there are operational concerns or damage that has occurred, please contact me immediately so that we can resolve any such issues.

As you are aware, MID and/or its predecessors-in-interest have used the subject right-of-way for decades and thus established a prescriptive easement.

Exhibit "2"

DAMAGE TO
Hole of
Destruction
of Forest
by horse
due to change
of canal
Hole on west
How did MID
Destroy Hole with
moving from west
Bank to EAST
BANK?? Requesting
Replacement of
75' hole
Immediately
3-24-2016

"To obtain a prescriptive easement, [claimants] or their predecessors must have used the property "for the statutory period of five years, which use has been (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under claim of right." (*King v. Wu* (2013) 218 Cal. App. 4th 1211, 1214.) "Periods of prescriptive use by successive owners of the dominant estate can be "tacked" together if the first three elements are satisfied." (*Windsor Pac. LLC v. Samwood Co.* (2013) 213 Cal. App. 4th 263, 270.)

Your attempt to grant "permission" to MID, whether such "permission" was conditional or not, had no effect on the prescriptive rights already obtained. (See, e.g., *Jordan v. Worthen* (1977) 68 Cal.App.3d 310, 326.) In other words, while a prescriptive right may not be established through permissive use, an already-established right cannot be defeated through subsequent permissive use.

To be clear, the District does not intend to treat your property differently from any other property in the District. You will not receive water annually as demanded in your recorded document, and no other special benefit or District obligation identified in your document will be honored. Since your property is located in the District's Class 2 service area, your property is entitled to receive 50% of the surface water made available to the District's Class 1 service area. As you know, this determination is made each year by our Board of Directors. Please note that under no circumstances will MID's continued use of its prescriptive easement constitute agreement in any way with any condition(s) purportedly imposed by the permissive use documents, or any other document/agreement.

In closing, the above-referenced document potentially clouds MID's title to the subject property. Please consider this a second demand that you immediately record a rescission of said document. In the absence of immediate rescission of the purported permissive use documents, the District will have no choice but to consider all of its legal options moving forward.

Respectfully,

Phillip R. McMurray
General Counsel

Alleged Prescriptive Easement Claim is now being amended differently NOT allowed by LRM even though Alleged Prescriptive Right valid, IT STILL must be And remain under the nature character and volume of use when developed herebefore your claim of 50% at all times is legal effect AND of KIP
2/23/2016

Exhibit #2