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**BEFORE THE CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of Draft Cease  
and Desist Order No.  
2009-00XX-DWR against Thomas  
Hill, Steven Gomes and  
Millview County Water  
District.

Ref. No. 363:JO:262.0(23-03-06)

**CLOSING BRIEF OF RESPONDENTS  
TOM HILL, STEVE GOMES**

Hearing: January 26, 2010

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**Exhibits to Brief**

- Exhibit CC - 3-page print-out from the SWRCB website as of March 23, 2010
- Exhibit DD - SWRCB answer, served October 14, 2008, in Superior Court lawsuit
- Exhibit EE - Hearing Officer Baggett December 3, 2009, letter denying Gomes, Hill request for additional discovery

1 **Table of Authorities**

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19 Nicoll v. Rudnick (2008) 160 Cal.App.4th 550 ..... 6, 12

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\* review granted)

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10 **California Constitution**

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6 **Treatises**

7 Hutchins, California Law of Water Rights (1956) p. 297 ..... 7

8 **SWRCB Publications/Orders**

9 **Information 14 Pertaining to Water Rights in California - 1990** ..... 7  
10 **Information Pertaining to Investigating Water Rights Complaints** ..... 7  
11 **in California - February 2005**  
12 **In the Matter of Applications 29919, 29920, 22921, and 29922** ..... 8  
13 **Water Rights Order 2001-22**

14  
15 **Abbreviations**

- 16 afa - acre feet per annum  
17 Answer - SWRCB answer, served October 14, 2008, to Hill/Gomes/Millview petition  
18 for writ of mandate in Millview v. SWRCB, Mendocino County Superior  
Court, Case No. SCWL-CVPT '08 51448 (HG Exhibit DD)  
19 APA - Administrative Procedures Act, Govt. Code §§11340-11529  
20 Board - State Water Resources Control Board  
21 CDO - cease and desist order  
22 DCDO - draft cease and desist order, served April 10, 2009  
23 DWR - SWRCB, Division of Water Rights  
24 HG - Hill Gomes exhibit  
25 Investigation - investigation conducted by Rich in response to Lee Howard February  
26 27, 2006, letter/complaint  
27 Mill - Millview exhibit  
28 Millview - Millview County Water District

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**Abbreviations**

PT - Prosecution team exhibit

Report - June 1, 2007, report by Rich re results, recommendations from Investigation

Rich - Charles E. Rich, Chief, DWR Complaints Unit, author of Report

RRFCD - Russian River Flood Control and Water Conservation Improvement District

RT - Reporter's transcript of January 26, 2010, hearing

SCWA - Sonoma County Water Agency

SWRCB - State Water Resources Control Board

Waldteufel Right - pre-1914 water right recorded by J. A. Waldteufel in Mendocino County, dated and recorded March 24, 1914 (Hill Gomes Exhibit C)

1           **1. INTRODUCTION.** The waters of this State are to “be put to beneficial use to  
2 the fullest extent of which they are capable”. The best and highest use of such water  
3 is domestic use, and the State Water Resources Control Board (“**SWRCB**” or  
4 “**Board**”) shall be guided by that policy. A pre-1914 water right is a vested private  
5 property right, over which SWRCB (formed in December 1914) has no regulatory  
6 jurisdiction (including Water Code §1831 cease and desist orders) except where  
7 water is being wasted (not an issue herein). SWRCB has a duty to protect, not  
8 undermine, pre-1914 water rights.

9           A suit to forfeit a pre-1914 water right must be brought in a court of law, by a  
10 party with a competing claim to the water. The plaintiff in such action has the burden  
11 of proving that water was available but not used during the entire five years  
12 immediately preceding the suit.

13           Due process requires advance notice of claims/charges, an opportunity to  
14 present evidence, a fair hearing and an impartial forum/judge. Amendments to an  
15 agency’s rules or policies must be effected pursuant to the Administrative  
16 Procedures Act (“**APA**”), which includes notice to and input from interested persons.

17           These laws are found in the Constitution, statutes and common law of this  
18 State. SWRCB’s own publications have for 20 years or more reiterated several of  
19 these rules, and SWRCB has recently asserted its lack of jurisdiction over pre-1914  
20 water rights in a case pending before the California Supreme Court.

21           Something has changed, however, as evidenced by this and several other  
22 cases pending before this Board.<sup>1</sup> Here, SWRCB staff is asking the Board to issue a  
23 cease and desist order (“**CDO**”) to the effect that a pre-1914 water right (“**Waldteufel**  
24 **Right**”) that a Ukiah water district (“**Millview**”) owns and uses to provide water to its  
25 customers for domestic use has been forfeited from approximately 1,447 acre feet

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26  
27           <sup>1</sup> Attached hereto as Exhibit CC (respondent’s next in order) is a print-out of three pages from the  
28 SWRCB website as of March 23, 2010, on which several pre-1914 water right cases are identified as pending  
before the Board. Hill and Gomes request that official/judicial notice thereof be taken pursuant to Govt. Code  
§11515 and/or Evid. Code §§450, *et seq.*

1 per year ("afa") to 15 afa - a 98.96% diminution. This, on the basis of a brief, one-  
2 sided investigation ("**Investigation**") conducted by Charles Rich ("**Rich**"; Chief of  
3 SWRCB's Division of Water Rights' Complaint Unit) and the prosecution team's  
4 presentation to this Board that ignores or rejects almost all of these significant laws.

5 The report issued after Rich's Investigation ("**Report**") concluded that the  
6 Waldteufel Right is a pre-1914 water right that "has a valid basis". But, "due to the  
7 forfeiture provisions of California Water law, the right has degraded to the point  
8 where the maximum allowed diversion is 15 acre fee per annum". The Report says  
9 nothing about what other use would be made of the 'forfeited' 1,432 afa, or by  
10 whom.<sup>2</sup>

11 Perhaps recognizing that the Report and recommended result effectively  
12 violated **every single one** of the long-standing laws referenced above, and that it  
13 might be on thin ice, DWR decided in April 2008 to close the file without taking  
14 formal action. This effectively left the threat of prosecution hanging over Millview.  
15 Respondents Millview, Hill and Gomes promptly filed suit in Mendocino County  
16 Superior Court. In January 2009 a Judge of that Court issued an order that stated  
17 that that DWR's "proposed inaction would be an abuse of discretion" and that the  
18

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19 <sup>2</sup> It should be noted that Lee Howard, whose letter/complaint initiated the Investigation, was the  
20 President of the Board (Mill-14 at 3) of the Russian River Flood Control and Water Conservation Improvement  
21 District ("**RRFCD**"), which has rights to 8,000 afa stored in Lake Mendocino. While SWRCB staff may intend  
22 or desire to reward RRFCD and increase its water supply, there is no evidence in the record of any intended  
23 use by RRFCD of the affected water, and RRFCD does not have any claim to water in the West Fork of the  
24 Russian River.

23 Sonoma County Water Agency ("**SCWA**") is a participant in this dispute. It was represented at the  
24 hearing and put on evidence. But SCWA did not offer any evidence of intended use of the subject water, and  
25 the record contains no such evidence. SCWA's rights arose in or about 1949, and are junior to the Waldteufel  
26 Right (RT254:15 - 255:5), and its witness drew attention to Millview's new point of diversion. Millview's Tim  
27 Bradley testified, however, that Millview intends to invest funds for a new point of diversion on the West Fork  
28 of the Russian River once SWRCB's assault upon the Waldteufel Right is defeated ((Mill-14 at 4-6; RT191:6-  
9).

28 Millview uses and desires to use the Waldteufel Right to distribute water to customers for domestic  
use in Ukiah. The record does not contain any evidence of the proposed use, or the proposed user, of the  
1,432 afa at issue herein if this Board issues the requested CDO.



1 "SWRCB should either disavow the conclusion of forfeiture or pursue a due process  
2 course to reviewable finality" (Hill/Gomes' Exhibit V [hereafter "HG-V"] at p. 2).  
3 Shortly thereafter, in April 2009, SWRCB staff issued a draft CDO ("DCDO") that  
4 incorporates Rich's Report and its premises, findings, conclusions and  
5 recommendations (but omitting some of the 'forfeiture' language). Staff is asking this  
6 Board to go along with staff by issuing a CDO forfeiting 99% of the pre-1914  
7 Waldteufel Right.

8 Respondents requested a hearing, and sought additional/extraordinary  
9 discovery. The Hearing Officer denied same, stating that the DCDO stated the facts  
10 and grounds for the proposed order. Respondents prepared for the hearing  
11 accordingly. At the hearing in Sacramento in January 2010, however, SWRCB's  
12 'prosecution team' promoted a brand new theory for the 99% forfeiture of the  
13 Waldteufel Right: Rich testified that nobody proved to him during his Investigation  
14 that the Waldteufel Right had ever been fully utilized and thus perfected. When  
15 asked if he believes that the statement in HG-AA at pp. 7-8 (that the Board "does not  
16 have authority to determine the validity of vested rights other than appropriate  
17 rights initiated December 19, 1914 or later") is an "accurate statement of [the  
18 Board's] authority", he said "No, I do not." Reporter's Transcript ("RT") 96:23 - 97:5.  
19 Rich also testified that he believes that the Board considers that language as "dicta":  
20 "I don't believe the Board believes that it has to follow it. It has evolved over the  
21 years. [¶] I think that the intent of the [quoted] statement was that the Board is not  
22 obligated to pursue those things, but the Board has the discretion to do it." RT97:12-  
23 17.

24 DWR's conduct in this case contrasts markedly with the way things used to  
25 done,<sup>3</sup> and the way the law appears to require that things be done. In a nutshell,

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27 <sup>3</sup> In 1998, before Hill and Gomes purchased the Waldteufel Right, The Board's staff (Mr. Chu) told  
28 Gomes that the Waldteufel Right had been perfected and was valid to the full extent claimed in the recorded  
notice. HG-A, 2:26 - 3:3; RT216:13-22.

1 SWRCB has formerly protected and respected pre-1914 rights, but is now in the  
2 business of forfeiting them throughout the State. It might be more accurate to state  
3 that SWRCB staff has decided to forfeit pre-1914 water rights throughout the State,  
4 and is asking this Board to approve of this new "policy".

5 Respondents Hill and Gomes urge the Board to resist staff and its clearly  
6 unlawful course, which assumes that several fundamental tenets of California law  
7 have suddenly changed without notice to anybody outside of SWRCB's walls.  
8 Issuance of the requested CDO would represent a damaging blow to the rule of law  
9 and to the economy of this State. Certainly water has become more precious, and  
10 critical habitat needs to be protected. But nobody that appreciates the virtues of  
11 Constitutional government and the rule of law would think that these objectives  
12 warrant a sudden, secret (and illegal) effort to destroy the value of pre-1914 rights  
13 throughout the State. Hill and Gomes therefore urge this Board to reject staff's  
14 request and to refuse to issue a CDO in any form.

15 **2. CALIFORNIA WATER LAW.** California law regarding pre-1914 rights is  
16 embodied and articulated in the California Constitution, the California Water Code,  
17 and common law articulated by California Courts, and includes the following:

18 (a) California Constitution. The following is arguably the most  
19 fundamental rule of California water law:

20 "It is hereby declared that because of the conditions prevailing in  
21 this State the general welfare requires that the water resources of the  
22 State be put to beneficial use to the fullest extent of which they are  
23 capable, and . . . nothing herein contained shall be construed . . . as  
24 depriving any appropriator of water to which the appropriator is lawfully  
25 entitled.

26 This section shall be self-executing...."

27 Cal. Const., Article X, §2. See Environmental Defense Fund, Inc. v. East Bay Muni.  
28 Utility Dist. (1980) 26 Cal.3d 183, 193.

(b) Statutes. The California Water Code states that the "established  
policy of this State [is] that the use of water for domestic purposes is the highest use

1 of water". Water Code §106. SWRCB "shall be guided by [that] policy". Water  
2 Code §1254. The Legislature's use of "shall" means that SWRCB does not have  
3 discretion to disregard or disagree with this policy.

4 SWRCB's jurisdiction to issue CDO's is addressed in Water Code §1831  
5 (entitled "Cease and desist order"). Subdivision (e) of §1831 states that "[t]his article  
6 shall not authorize the board to regulate in any manner, the diversion or use of water  
7 not otherwise subject to regulation of the board under this part." Section 1831 is part  
8 of Article 2 (starting with §1831) of Chapter 12 (§§1825-1851) of Part 2 of Division 2  
9 of the Water Code (§§1200-1851; the current Water Commission Act, initially  
10 enacted in Stats. 1913, Chapter 586). Part 2 of Division 2 does not deal with pre-  
11 1914 water rights. Pre-1914 water rights, therefore, are "not . . . subject to regulation  
12 of the board under this part" and this Board may not issue a cease and desist order  
13 with respect to a pre-1914 water right where there is zero evidence of waste.

14 (c) Common Law. California appellate courts have created a significant  
15 body of common law regarding the appropriation of water, both before and after the  
16 Water Commission Act took effect.

17 With respect to the nature of a pre-1914 water right, the California Supreme  
18 Court stated 98 years ago that a pre-1914 water right is a "private property" right.  
19 Thayer v. California Development Co. (1912) 164 Cal. 117, 125.

20 With respect to this Board's ability to administratively forfeit a pre-1914 water  
21 right, the Courts have held:

22 - The Board has a duty to protect valid pre-1914 rights. "It should be the first  
23 concern . . . of the [SWRCB] in the exercise of its powers under the act to recognize  
24 and protect the interests of those who have prior and paramount rights to the use of  
25 the waters of the stream. The highest use in accordance with the law is for domestic  
26 purposes, and the next highest use is for irrigation." Meridian, Ltd. v. San Francisco  
27 (1939) 13 Cal.2d 424, 450.

28 - Water Code §1241's forfeiture procedure "was intended to refer only to water

1 which had been appropriated under . . . a license or permit” under the Water  
2 Commission Act. Pasadena v. Alhambra (1949) 33 Cal.2d 908, 933-4. See also  
3 Bloss v. Rahilly (1940) 16 Cal.2d 70, 76 (water to be appropriated under the Act “in  
4 so far as that can be done without interfering with vested rights”).

5 - “The rights not subject to the statutory appropriation procedures are narrowly  
6 circumscribed by the exception clause of the statute and include only riparian rights  
7 and those which have been otherwise appropriated prior to December 19, 1914, the  
8 effective date of the statute.” People v. Shirokow (1980) 26 Cal.3d 301, 309;

9 - “Appropriative rights initiated prior to the 1913 amendment . . . are not subject  
10 to [the Water Commission Act] for purposes of acquisition and supervision of use.  
11 These rights are commonly referred to as ‘pre-1914 rights.’” People v. Murrison  
12 (2002) 101 Cal.App.4th 349, 359 n.6; and

13 - “A pre-1914 appropriative right is not subject to the 1913 statutory scheme for  
14 purposes of acquisition and supervision of use.” Nicoll v. Rudnick (2008) 160  
15 Cal.App.4th 550, 557;

16 Charles Rich testified at the hearing that he does not believe, and he believes  
17 that this Board does not believe, that SWRCB “does not have authority to determine  
18 the validity of vested rights other than appropriative rights initiated December 19,  
19 1914 or later” (see HG-AA, pp.7-8); in other words, Rich and SWRCB both believe  
20 that SWRCB does have jurisdiction and discretion to ‘determine the validity’ of such  
21 rights. 96:23 - 97:17. Rich’s Investigation and Report reflect that belief. Mr. Rich’s  
22 opinion is not, however, the law of this State.

23 With respect to the procedures and burden of proof applicable to a challenge to  
24 a pre-1914 water right, the Courts have held:

25 - the claim shall be brought “through a quiet title or declaratory judgment action  
26 brought by one with a conflicting claim to the unused water”, such that there is a  
27 “clash of rights”. North Kern Water Storage Dist. V. Kern Delta Water Dist. (2007)  
28 147 Cal.App.4th 555, 560.

1 - Only the failure to use "available" water can result in forfeiture of a pre-1914  
2 water right. North Kern, 147 Cal.App.4th at 580-582.

3 - the period of non-use of available water required to establish the forfeiture of  
4 some or all of a pre-1914 water right must be the entire five years "immediately prior  
5 to the plaintiff's assertion of its conflicting right to the water." North Kern, 147  
6 Cal.App.4th at 560. See also Smith v. Hawkins (1895) 110 Cal. 122, 127-128.

7 - the claimant of a competing water right has the burden of proof as to five  
8 years of non-use of available water. North Kern, 147 Cal.App.4th at 560. See also  
9 Erickson v. Queen Valley Ranch Co. (1971) 22 Cal.App.3d 578, 582 (competing  
10 claimant that bases claim "on the forfeiture of a preexisting right" has "the burden of  
11 proving facts constituting a forfeiture"); Ward v. City of Monrovia (1940) 16 Cal.2d  
12 815, 820 ("burden was on the plaintiff to prove his right to the use of any part of the  
13 waters . . . claimed to have been abandoned"); Lema v. Ferrari (1938) 27  
14 Cal.App.2d. 65, 73 (burden of proof on party claiming loss of right); Hutchins,  
15 California Law of Water Rights (1956) p. 297.

16 - "To establish a forfeiture . . . , the [competing claimant] had to offer evidence  
17 that, for a period of at least five years, such 'excess' water was, in fact, available for  
18 diversion, but the [right owner] failed to divert it." Barnes v. Hussa (2006) 136  
19 Cal.App.4th 1358, 1372.

20 **3. SWRCB LITERATURE, LITIGATION POSITIONS.** SWRCB has  
21 consistently taken the position in public that it does not have jurisdiction over pre-  
22 1914 water rights (except for waste).

23 In a 1990 publication (Information 14 Pertaining to Water Rights in California -  
24 1990; HG-AA, pp. 7-8), the Board stated: "The SWRCB does not have the authority  
25 to determine the validity of vested rights other than appropriative rights initiated  
26 December 19, 1914 or later."

27 In a 2005 publication (Information Pertaining to Investigating Water Rights  
28 Complaints in California - February 2005, HG-BB, p. 3), SWRCB stated: "In some

1 cases, the SWRCB may decide not to process a complaint because of...a  
2 determination that the issues more appropriately fall under the jurisdiction of the  
3 court system. This situation is most common for major operations involving claimed  
4 riparian and/or pre-1914 water rights”.

5 In Cal. Farm Bureau Federation v. Cal. SWRCB, 2007 Cal.App.LEXIS 54  
6 (initially reported at 146 Cal.App.4th 1126; review granted by the California Supreme  
7 Court), the Board filed a brief stating that the Division of Water Rights “has no  
8 statutory authority over riparian, pueblo and pre-1914 appropriative water rights  
9 represented by ‘Statements of Water Diversion & Use’ that account for 38 percent of  
10 the state’s water subject to water rights”; the Board submitted an Appendix for the  
11 appellate court decision labeling that 38 percent as “No SWRCB Authority”. A similar  
12 disclaimer of jurisdiction and authority is found in In the Matter of Applications 29919,  
13 29920, 22921, and 29922 Water Rights Order 2001-22, pp. 25-26.<sup>4</sup>

14 This Board is therefore on the record as recognizing and respecting the  
15 limitations on its authority and jurisdiction, consistent with statutory and common law,  
16 which limitations specifically include a lack of jurisdiction “to determine the validity of  
17 vested” pre-1914 water rights such as the Waldteufel Right, and a lack of jurisdiction  
18 “for purposes of acquisition and supervision of use” except in the case of waste.  
19 There is no issue of waste or unreasonable use<sup>5</sup> in this case: Millview is using the  
20 water for its best and highest use.

21 The obvious question, therefore, is how SWRCB can take the position in this  
22 case that the Board, in the circumstances and by the procedures of this case, can  
23 issue a CDO that prohibits a water district from distributing, for its customers’

24 \_\_\_\_\_  
25 <sup>4</sup> The relevant statement in that order is: “The SWRCB has jurisdiction to impose such a reporting  
26 requirement to the extent necessary to ascertain whether EID’s water use is covered by a valid pre-1914  
27 appropriative water right. With the exception of riparian rights or appropriative rights perfected prior to  
December 19, 1914, all water use is conditioned upon compliance with the statutory appropriation procedures  
set forth in division 2 of the Water Code (commencing with section 1000). (Wat. Code, §§ 1225, 1201.)”

28 <sup>5</sup> The Board’s staff has recently conducted hearings on the question of whether grape farmers  
spraying water on their vines to avoid major losses due to frost is an ‘unreasonable’ use of water.

1 domestic use, 99% of a pre-1914 water right, particularly where there is no  
2 competing or other use or user specified for the affected water. This position is  
3 inconsistent with the above Constitution, statutes, common law and SWRCB's own  
4 literature and litigation positions. If SWRCB staff believes that the law has changed,  
5 it needs to explain what laws have changed, and how. Absent a Constitutionally  
6 valid change in the relevant laws (i.e., one that effectively changed the law while all  
7 of the above-referenced law remains on the books; see p. 15, fn. 7, *infra*), this  
8 Board's issuance of the requested CDO would be illegal.

9 **4. EVIDENCE/RECORD.** The evidence in the record clearly establishes that  
10 the Waldteufel Right of 100 miner's inches under a 4 inch pressure (1,447 afa  
11 according to Millview) was perfected - prior to the effective date of the Water  
12 Commission Act - as is shown in Millview's closing brief, which Hill and Gomes  
13 hereby adopt. In summary, the evidence establishes the following:

14 A. In 1913, alfalfa and pears were grown on the 165-acre property described in  
15 the document Mr. Waldteufel recorded in March 1914. (PT-5 at 26:15-  
24; PT-10 at 11; Mill-1.)

16 B. Alfalfa was grown on the Waldteufel property in and after 1913, and was  
17 flood irrigated (PT-5 at 26:15-24; Mill-1; evidence cited in Millview closing brief).  
18 Flood irrigating 160 acres (+/-) of alfalfa on the subject property, with its sandy soil,  
during a typical year would require between 923 and 1,310 afa of water (Mill-10).

19 C. A large diversion pipe and a powerful pump were installed in the Russian  
20 River and were in place in the early 20<sup>th</sup> century on the property Waldteufel owned;  
these facilities were capable of pumping all of the water claimed by Waldteufel. (PT-  
5 at 21:1-2; Mill-2; Mill-9 at pp.1, 3; HG-A at 4:3-11).

21 D. The Waldteufel claim was recorded in Mendocino County in March 1914  
22 (Mill-2); the resulting water right - the Waldteufel Right - is a pre-1914 water right.

23 E. Floyd Lawrence resided across the river from the subject property in and  
24 after 1914; he recalled hearing the pump running with great frequency, he frequently  
swam in the resulting water hole in the summer and he observed that the Waldteufel  
property was flood irrigated. (PT-5 at 21:1 - 22:19).

25 F. In 1998, before Hill and Gomes purchased the Waldteufel Right, The  
26 Board's staff (Mr. Chu) told Gomes that the Waldteufel Right had been perfected and  
was valid to the full extent claimed in the recorded notice. (HG-A at 2:26-3:3; RT  
27 216:13-22).

28 G. Due to a lack of water supply, Millview is and since 2001 has been under a  
Cal. Dept. Of Public Health moratorium against new customer hook-ups. (Mill-14 at

1) 1

2 H. In 2002, to terminate the moratorium and be able to issue new hookups,  
3 Millview obtained a license to and subsequently purchased from Hill and Gomes the  
4 1,447 afa, pre-1914 Waldteufel Right (Mill-14 at p. 3; Mill-15).

5 I. The complaint that initiated Rich's Investigation was filed in February 2006  
6 by Mr. Lee Howard, who asserts no claim to any of the water in the Russian River.  
7 (Mill-11; HG-G; RT108:7-8).

8 J. Charles Rich did not give advance notice, in any form, to Millview, Hill or  
9 Gomes or anybody else that his investigation might result in the forfeiture of 99% of  
10 the Waldteufel Right (RT93:1-25). On March 29, 2006, Rich did send a letter to Hill,  
11 Gomes, Millview and Creekbridge Homes L.P., in which he posed questions and  
12 asked for answers, "in order to determine what action, if any, should be taken by the  
13 Complaint Unit with respect to Mr. Howard's complaint" (HG-G, p. 3).

14 K. Rich's Investigation consumed about 80% of the time Rich typically spends  
15 on an investigation; Rich spent only one day Ukiah during the Investigation (PT-1 p.  
16 3; RT44:10-12).

17 L. Hill and Gomes were not represented by counsel in connection with the  
18 Investigation (RT101:17-19).

19 M. Neither Rich nor SWRCB conducted a hearing of any sort, in any forum,  
20 before Rich issued his Report (RT93:13-16).

21 N. Rich's June 1, 2007, Report makes no reference to the availability of water  
22 in the West Fork of the Russian River in the five years immediately preceding the  
23 Investigation or in any other period (PT-10; RT80:25 - 81:7).

24 O. In his Report, Rich concludes that the Waldteufel Right is a pre-1914 right  
25 that "has a valid basis". (PT-10, p. 16).

26 P. In his Report, Rich concluded that the Waldteufel Right had been forfeited  
27 and/or reduced from its original amount (1,447 afa +/-) to 15 afa (PT-10, p. 16). In  
28 reaching this conclusion, Rich wrongfully relied entirely upon one statement of use  
filed by Mr. Wood in 1967. This statement, however, discusses actual use in only  
one year. A 1970 statement contains projections only. This falls far short of  
establishing non-use of available water for five full years.

Q. On April 17, 2008, instead of seeking a cease and desist order against  
Millview, DWR closed the file without further action (HG-T, p. 2 - "complaint is  
considered closed"; PT-10 at 17). Millview was left under the threat of further  
SWRCB action if it used more than 15 afa under the Waldteufel Right.

R. On April 28, 2008, Millview, Hill and Gomes petitioned the Mendocino  
County Superior Court for a writ of mandamus setting aside DWR's April 17 action  
(Millview v. SWRCB, Case No. SCWL-CVPT '08 51448); on or about October 14,  
2008, SWRCB filed an answer ("**Answer**"; copy attached hereto as **Exhibit DD**) to  
the petition, stating: "State Board admits that State Board staff conducted an  
investigation of a certain pre-1914 water right originated by Mr. Waldteufel, and  
transferred over time to Woods, Hill and Gomes, and Millview. The State Board  
further admits that State Board staff concluded that due to the forfeiture provisions of  
California Water Law, the pre-1914 water right had been degraded from the original



1 amount of diversion" (HG-DD, ¶¶ 7, 10 and 17; underlining added).<sup>6</sup>

2 S. In January 2009, Superior Court Judge Philip Schafer stated in a written  
3 order in the above lawsuit that DWR's "proposed inaction would be an abuse of  
4 discretion" and that the "SWRCB should either disavow the conclusion of forfeiture or  
5 pursue a due process course to reviewable finality" (HG-V at 2).

6 T. On or around April 10, 2009, SWRCB issued the DCDO at issue herein; the  
7 DCDO substantially mirrors, and adopts the conclusions in, the Report, including that  
8 the Waldteufel Right "has a valid basis", and that the Waldteufel Right "has degraded  
9 to the point where the maximum authorized diversion is 15 acre-feet per annum at a  
10 maximum instantaneous rate not to exceed 500 gallons per minute or 1.1 cfs."

11 V. Rich testified at the hearing on the draft CDO that he does not believe that  
12 the statement in SWRCB's own literature (that SWRCB does not have jurisdiction to  
13 "determine the validity of vested" pre-1914 rights) is accurate; that he believes that  
14 SWRCB has the "discretion" to pursue and challenge the validity of pre-1914 rights;  
15 and that he believes that the Board shares his belief (RT96:22 - 97:17).

16 **5. THE REQUESTED CDO WOULD VIOLATE SUBSTANTIVE AND**  
17 **PROCEDURAL CALIFORNIA WATER LAW.** The CDO would amount to this Board  
18 administratively forfeiting 99% of a pre-1914 water right that a water district is using  
19 to send water to its customers for their domestic use. This would violate virtually  
20 every law and guideline discussed above.

21 Constitution and statutes - Cal. Const., Article X, Section 2, requires that the  
22 water of the State "be put to beneficial use to the fullest extent of which they are  
23 capable": The CDO would prevent Millview from providing water to its customers for  
24 domestic use, while saying nothing about how, where or by whom the affected water  
25 (1,432 afa +/-) would otherwise be put to beneficial use. This would violate the self-  
26 executing Constitutional mandate.

27 - Water Code §106 states that the "established policy of this State [is] that the  
28 use of water for domestic purposes is the highest use of water", and Water Code  
§1254 provides that SWRCB "shall be guided by [that] policy": The CDO would

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<sup>6</sup> Official/judicial notice of this answer was requested by Hill and Gomes on January 4, 2010, in their request that such notice be taken of the Superior Court's entire file (2:15-18). A copy of the Board's answer is attached hereto as Exhibit DD. See, e.g., Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 878 ("When the plaintiff pleads inconsistently *in separate actions*, the plaintiff's complaint is nothing more than a sham"; italics in original). The Board's judicial admission in its answer in the Superior Court case, and the Board's brief in the California Supreme Court, are thus binding on the Board herein.

1 prevent Millview from providing water to its customers for domestic use, while stating  
2 nothing about how or by whom the affected 1,432 afa would be used. This would  
3 violate the mandates of these statutes.

4 - Water Code §1831(e) provides that the Board may not issue a CDO with  
5 respect to “the diversion or use of water not otherwise subject to regulation of the  
6 board”: The Board would only have jurisdiction regarding the pre-1914 Waldteufel  
7 Right to the extent Millview is shown to be committing waste, which has not been  
8 shown herein (use of water for domestic purposes is the opposite of waste).  
9 Issuance of the requested CDO would violate Water Code §1831(e).

10 Common Law - The proposed forfeiture of 99% of the Waldteufel Right in a  
11 purely administrative setting is inconsistent with a pre-1914 water right’s status as  
12 “private property” (as opposed to an entitlement, license, permit, etc.); Thayer, 164  
13 Cal. at 125; a challenge to a pre-1914 right must be filed in a court of law.

14 - The CDO would amount to this Board regulating and/or exercising jurisdiction  
15 over a pre-1914 water right, unless this Board believes that an administratively  
16 imposed 99% forfeiture - in the absence of any waste - does not amount to same.  
17 This would violate the holdings in Nicoll v. Rudnick (2008) 160 Cal.App.4th 550, 557;  
18 People v. Shirokow (1980) 26 Cal.3d 301, 309; People v. Murrison (2002) 101  
19 Cal.App.4th 349, 359 n.6; Pasadena v. Alhambra (1949) 33 Cal.2d 908, 933-4; Bloss  
20 v. Rahilly (1940) 16 Cal.2d 70, 76.

21 - The CDO would be the opposite of protecting the Waldteufel Right, and would  
22 thus violate the holding in Meridian, Ltd. v. San Francisco (1939) 13 Cal.2d 424, 450.

23 - There is no person or entity before the Board in this case that asserts a  
24 competing claim to the water at issue herein; there is no ‘clash of rights’. The CDO  
25 would thus violate the holding in North Kern Water Storage Dist. V. Kern Delta Water  
26 Dist. (2007) 147 Cal.App.4th 555, 560.

27 - There has been no showing, by the prosecution team or anybody else, that for  
28 five consecutive years water was available in the West Fork of the Russian River but

1 was not used by Millview. The CDO would thus violate the holdings in North Kern at  
2 147 Cal.App.4th at 580-582, and Barnes v. Hussa (2006) 136 Cal.App.4th 1358,  
3 1372.

4 - The CDO is sought on the basis of periods of alleged non-use shorter than  
5 and other than the five (5) years immediately preceding the complaint. The CDO  
6 would thus violate the holdings in North Kern, 147 Cal.App.4th at 560, and Smith v.  
7 Hawkins (1895) 110 Cal. 122, 127-128.

8 - The CDO is sought on the basis of Millview/Hill/Gomes not having proven to  
9 Rich the absence of a forfeiture, and/or their not having proven to Rich that the right  
10 was fully utilized and perfected. The CDO would thus violate the burden of proof  
11 allocation holdings in North Kern, 147 Cal.App.4th at 560, Barnes v. Hussa (2006)  
12 136 Cal.App.4th 1358, 1372, Erickson v. Queen Valley Ranch Co. (1971) 22  
13 Cal.App.3d 578, 582, Ward v. City of Monrovia (1940) 16 Cal.2d 815, 820, and Lema  
14 v. Ferrari (1938) 27 Cal.App.2d. 65, 73.

15 **6. THE REQUESTED CDO WOULD VIOLATE RESPONDENTS' DUE**  
16 **PROCESS RIGHTS UNDER THE CALIFORNIA AND U.S. CONSTITUTIONS.**

17 Administrative proceedings such as this must comport with the due process  
18 protections of the state and federal constitutions.

19 "Under the Fifth Amendment to the United States Constitution, '[n]o  
20 person shall ... be deprived of life, liberty, or property, without due  
21 process of law.' (See also U.S. Const., 14th Amend. ['[n]o state shall ...  
22 deprive any person of life, liberty, or property, without due process of  
23 law'.]) In almost identical words, the California Constitution likewise  
24 guarantees due process of law. (Cal. Const., art. I, §§ 7, subd. (a) ['A  
25 person may not be deprived of life, liberty, or property without due process  
26 of law'], 15 ['Persons may not ... be deprived of life, liberty, or property  
27 without due process of law'.].)

28 When, as here, an administrative agency conducts adjudicative  
proceedings, the constitutional guarantee of due process of law requires a  
fair tribunal. . . . A fair tribunal is one in which the judge or other decision  
maker is free of bias for or against a party."

29 Morongo Band of Mission Indians v. State Water Resources Control Board (2009) 45  
30 Cal.4th 731, 736-7. See Howitt v. Superior Court (1992) 3 Cal.App.4th 1575, 1585

1 ("[T]rue objectivity [is] a constitutionally necessary characteristic of an adjudicator. . .  
2 . To allow an advocate for one party to also act as counsel to the decision maker  
3 creates the substantial risk that the advice given to the decision maker, perhaps  
4 unconsciously . . . , will be skewed."; citation omitted). The current proceedings fail  
5 these tests for each of the following reasons.

6 (a) Lack of Notice Before Investigation. Lee Howard's letter/complaint is  
7 dated February 27, 2006 (HG-G). On March 29, 2006, Rich sent a letter to Hill and  
8 Gomes (at Hill's residence), Millview and Creekbridge Homes L.P., in which letter  
9 Rich advised of the Howard complaint, posed several questions and stated "I would  
10 appreciate answer to these questions within 30 days from the date of this letter in  
11 order to determine what action, if any, should be taken by the Complaint Unit with  
12 respect to Mr. Howard's complaint" (HG-G at 3). The record does not contain any  
13 evidence of Rich ever giving Millview, Hill or Gomes advance notice that the  
14 Investigation he was conducting might result in the forfeiture of 99% of the  
15 Waldteufel Right.

16 Millview, Hill and Gomes could not be faulted for concluding that no  
17 administrative action by Rich, DWR or SWRCB would significantly affect their  
18 interest, given that no water was being wasted and SWRCB has no jurisdiction to  
19 declare a forfeiture of a pre-1914 water right. But Millview (General Manager Bradley  
20 and counsel Neary) and Gomes did meet with Rich - on the one day that he was  
21 present in Ukiah during his investigation - and tried to assist in his Investigation in  
22 good faith.

23 If Rich had warned that he might purport to find the Waldteufel Right 99%  
24 forfeited, it is obvious that Millview, Hill and Gomes would have devoted much more  
25 time, energy and resources to protecting their interests, including possibly by seeking  
26 judicial intervention. In the absence of such warning, Hill and Gomes did not have  
27 their counsel attend, Millview did not have all of its records organized and available,  
28 and judicial intervention was not sought. When the Report came out, it reasonably

1 appeared to Millview, Hill and Gomes that Rich had all along intended a result that  
2 he had not dared to disclose to the owners of the Waldteufel Right that he intended  
3 to destroy. This amounted to a denial of due process, a central component of which  
4 is advance, actual notice of the actions being contemplated. The fact that the  
5 actions being contemplated also included a result that was patently illegal is also a  
6 deprivation of due process, in that Millview, Hill and Gomes cannot reasonably be  
7 expected to have anticipated that Rich, DWR and/or the Board would take an illegal -  
8 and thus unforeseeable - action in response to Howard's complaint.

9 (b) Lack of Notice of New, Illegally Adopted SWRCB Policy. If SWRCB's  
10 policies with respect to its limited jurisdiction over pre-1914 rights and the best and  
11 highest use of water has been changed, as appears to be the case, Millview, Hill and  
12 Gomes were entitled to notice, from the very beginning, of that important fact.  
13 Indeed, they were entitled to have input in the proceedings that produced the policy  
14 change.

15 One can reasonably question (and Hill/Gomes do) whether SWRCB can adopt  
16 a "policy" that is the opposite of the law stated in the State's Constitution, statutes,  
17 common law and SWRCB's own literature, and which operates to destroy vested  
18 private property rights that are at least 96 years old.<sup>7</sup> But, to the extent that SWRCB  
19 has the power to adopt such a "policy", the point is that the owners of pre-1914 rights  
20 were entitled to advance notice of same when dealing with the Board and its staff.  
21 SWRCB did not go through the public rule making or amending process required by  
22 law. See Tidewater Marine Western, Inc. v. Bradshaw (1996) 14 Cal.4th 557, 568,  
23 575 ("One purpose of the APA is to ensure that those . . . whom a regulation will  
24 affect will have a voice in its creation", at 568; adopting policies of general application  
25

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26 <sup>7</sup> See Govt. Code §11342.2 ("no regulation adopted is valid or effective unless consistent and not in  
27 conflict with the statute and reasonably necessary to effectuate the purpose of the statute"); Morris v. Williams  
28 (1967) 67 Cal.2d 733, 748 ("[F]inal responsibility for the interpretation of the law rests with the courts. . . .  
Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts  
not only may, but it is their obligation to strike down such regulations."); Rosas v. Montgomery (1970) 10  
Cal.App.3d 77, 88 (same).

1 is “essentially legislative in nature”, at 575); Govt. Code §§11342.600, 11340.5 (“No  
2 state agency shall . . . enforce . . . any . . . rule . . . unless [it] . . . has been adopted”).

3 Here, nobody outside of SWRCB and/or DWR had notice of SWRCB’s and/or  
4 DWR’s ‘new policy’ of endeavoring to forfeit pre-1914 water rights all across the  
5 State without a competing claimant (i.e., SWRCB essentially acting as the competing  
6 claimant and obtaining jurisdiction over the newly unappropriated water; compare  
7 Meridian, Pasadena, Bloss, cited *supra* at 5:27 - 6:4). Millview, Hill and Gomes  
8 received no advance notice of that new policy until Rich testified to it at the hearing  
9 herein. This amounts to a denial of due process and a violation of the APA.

10 (c) Prosecution Team’s Late Change of Theory/Position. The  
11 prosecution team’s theory of the case at the hearing in Sacramento was not that the  
12 Waldteufel Right had degraded under principles of forfeiture (the language of the  
13 DCDO and the position clearly stated in the Board’s answer in the Superior Court  
14 case [HG-DD]). Instead, the prosecution’s theory at the hearing was that Millview,  
15 Hill and Gomes had failed to prove to Rich that the right had ever been perfected.  
16 This last-minute change in theories denied Millview, Hill and Gomes a fair hearing in  
17 multiple ways.

18 The notice of hearing stated that the DCDO stated the facts and issues that  
19 would be contested at the hearing (i.e., “due to . . . forfeiture . . . the right has  
20 degraded); this turned out not to be true. The Hearing Officer denied Hill/Gomes’  
21 request for additional discovery before the hearing, on the grounds, *inter alia*, that  
22 “most of the [subject] information . . . either has been or will be provided . . . pursuant  
23 to the . . . hearing procedures”, and that “[t]he legal and factual basis for the  
24 proposed enforcement action . . . is described in the draft cease and desist order.”<sup>8</sup>  
25 The Hearing Officer further wrote that: “Accordingly, the evidence that . . . staff relies  
26 upon in asserting that a portion of the claimed pre-1914 right held by Millview, et al.

27 \_\_\_\_\_  
28 <sup>8</sup> Hill/Gomes hereby request that the Board take official notice of that letter pursuant to Govt. Code §11515; a copy is attached hereto as HG Exhibit EE.

1 has been **forfeited** should be provided to Millview, et al. prior to the hearing, without  
2 the need for formal discovery.” HG-EE at 2 (bolding supplied). Millview, Hill and  
3 Gomes, having prepared for the case so outlined, were thereby deprived of the  
4 ability to prepare for the ‘full use not proven to me’ case that Rich and the  
5 prosecution team actually presented at the hearing. If the Hearing Officer had known  
6 that the prosecution team would present at the hearing the new theory, he may well  
7 have allowed Hill/Gomes to conduct additional discovery, which in turn may have  
8 enabled Hill/Gomes to be prepared for the new theory at the hearing. This  
9 amounted to a denial of due process.

10 (d) Lack of Separation of Advisory and Prosecutorial Functions. The  
11 inclusion of Rich as a member of the prosecution team, and its main witness,  
12 constitutes a failure to completely separate the Board’s advocacy/prosecution  
13 function from its adjudicatory function, in violation of (1) Govt. Code §§11425.10,  
14 11425.30, and (2) Hill, Gomes and Millview’s due process rights. The APA requires  
15 that there be a firewall, i.e., complete separation, between the advocates  
16 (prosecution team) and the adjudicators (Board members). See Dept. of Alcoholic  
17 Beverage Control v. Alcoholic Beverage Control Appeals Board (2006) 40 Cal.4th 1,  
18 8.

19 Here, Rich is and for 11 years has been the Chief of DWR’s Complaints Unit.  
20 At the hearing he was the prosecution team’s star witness. He was cross-examined  
21 about some of the many inconsistencies between the Board’s publicly stated policies  
22 and DWR/Rich’s actions in this case. Rich testified that the Board’s policy “evolved  
23 over the years” from “Board does not have authority to determine the validity of  
24 vested” pre-1914 rights (see 1990 Board publication HG-AA, pp. 7-8) to the current  
25 policy that the Board does have the authority and discretion to do exactly that.

26 Most significantly, Rich also testified as to what the Board believes: “I don’t  
27 believe the Board believes it has to follow” the above publication’s policy statement  
28 (RT97:12-13). The unavoidable inference from this testimony is that Rich has for

1 many years directly consulted with, given advice to and received instructions from  
2 this Board and its members, and probably participated in the formation of the current,  
3 illegal (i.e., 'underground'; see Tidewater Marine, 14 Cal.4th at 574) policy of  
4 invalidating pre-1914 water rights across the State.

5 It is simply not possible to describe the Board's relationship with Rich, given this  
6 testimony and the reasonable inferences therefrom, as there being a "firewall"  
7 between the two! The Board is in this case required to choose to side with either  
8 Millview, Hill and Gomes, on the one hand, or Rich, a high-ranking, long-standing  
9 officer, confidant and policy maker for the Board, on the other hand. That the Board  
10 will be reluctant to rule against Rich, which would disappoint or embarrass him,  
11 and/or damage the Board's relationship with him, is evident. See Howitt, 3  
12 Cal.App.4th at 1585. This amounts to a failure to separate the advocates/  
13 prosecutors from the adjudicators, which violates the APA and deprives Hill, Gomes  
14 and Millview of due process.

15 (e) Lack of Full Court Protections. The Waldteufel Right is not a driver's  
16 license. It is vested, private property that is 96 years old. If the CDO is issued,  
17 Millview, Hill and Gomes will have been deprived of property without the full  
18 protections normally available to owners of property in a Court of law. The lack of full  
19 discovery, the relaxed standard of review in a mandamus case, the lack of a full and  
20 fair hearing before an objectively unbiased judge and/or a jury, are but a few of the  
21 protections unavailable to them in this proceeding. This violates the California and  
22 U.S. Constitutions, as indicated in Morongo and Howitt, *supra*, 13:19 - 14:5.

23 **7. CONCLUSION.** California has an arid climate - it hardly ever rains in the  
24 summer. This makes it critical that the residents of the State put to productive use  
25 what little water is available. This is such a fundamental and important component of  
26 this State's economic reality that the mandate that water be put to the maximum  
27 possible beneficial use, and not wasted, was embedded in the California  
28 Constitution. The Legislature provided further guidance by expressly articulating



1 public policy in a statute: the best and highest use of water is for domestic purposes,  
2 and the second best/highest use is for irrigation. California's economy has  
3 performed admirably under this public policy. The productive use of water is critical  
4 to California's economic success.

5 These are still the law in this State. The actions of SWRCB staff, however,  
6 suggest that this is not the law inside the walls of the SWRCB. Rich testified to his  
7 belief, and the Board's belief, that "does not have authority to determine the validity  
8 of vested" pre-1914 rights has "evolved" into 'has authority, and discretion, to do just  
9 that'. Staff has disregarded several laws and contradicted SWRCB's publications  
10 and SWRCB litigation positions in asking this Board to find the Waldteufel Right 99%  
11 forfeited/degraded. And this is just one of several such cases. Staff's contention  
12 that this is not 'regulating', and that the Board can require current owners of pre-1914  
13 rights to prove events from a century ago or lose their rights, is incredible.

14 This Board now must decide whether it agrees with and will go along with staff's  
15 gambit. In making that decision, Hill and Gomes trust that the Board will exercise  
16 impartial, independent judgment, based only upon the law and the evidence, rather  
17 than a desire to not disappoint, embarrass or alienate staff. Hill and Gomes are  
18 entitled to an impartial decision that follows the law.

19 The suggestion that the 99% forfeiture of a pre-1914 water right is within this  
20 Board's jurisdiction, in the complete absence of any waste, while all of the above-  
21 referenced laws remain in effect, and while this Board tells the public and the  
22 California Supreme Court that the Board has no jurisdiction over such rights, would  
23 cause the Board to lose credibility with the public and with other branches of  
24 government.

25 Even if the Board can issue the proposed CDO, staff's faulty Investigation and  
26 presentation of this case (including switching theories at the hearing to one not  
27 articulated in the DCDO) compels a refusal to do so. There are too many defects in  
28 the record for the Board or its staff to want this to be a test case in a court of law,

1 which will certainly happen if the CDO is issued. The Board could reasonably  
2 conclude that having the facts and law of this case, and SWRCB staff's actions (and  
3 policies), critically and objectively examined would not be in the Board's best  
4 interests.

5 Pre-1914 water rights are an important component of the State's economy. In  
6 this case, having the Waldteufel Right in private hands (Hill/Gomes') resulted in the  
7 correct allocation of this valuable resource: they sold to Millview, which is selling the  
8 water to consumers who use it in their homes! Having the Board or its staff in control  
9 of this water - to give to some unidentified party or parties, for unidentified uses -  
10 could not produce an allocation of this scarce resource more in accord with the  
11 public policy of this State. Indeed, given that there is no competing claimant, it is not  
12 in the least bit clear what would happen with the disputed water. One can only  
13 wonder what the impact on the economy of the Gold Country and the Delta - where  
14 many pre-1914 rights exist - would be from a precedent upholding the staff's position  
15 in this case.

16 Millview should not be enjoined from distributing this water to its customers.  
17 Protecting this pre-1914 right will result in the lifting of the moratorium and the  
18 resumption of new hook ups, which in turn will promote economic growth and the  
19 general welfare of California residents, in accord with Article X, §2, of the California  
20 Constitution. This Board should decline to issue a CDO in any form.

21  
22 Dated: April 5, 2010

  
CARTER & MOMSEN, LLP

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Brian C. Carter  
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## Hearings Program

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### CURRENT PROJECTS

#### Submitted Requests for Hearing

*Please check back for periodic updates!*

#### Hearings to be Held – *Decision or Order Pending*

##### Juan Navarro: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Juan Navarro - Middle River in San Joaquin County

##### George Speckman Testamentary Trust: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against George Speckman Testamentary Trust - Whiskey Slough in San Joaquin County

##### Truckee River Watershed Hearing

The State Water Resources Control Board will hold a public hearing to determine whether to approve four change petitions and process two applications related to the Truckee River Operating Agreement within the Truckee River watershed.

##### Eddie Vierra Farms: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Eddie Vierra Farms – Burns Cutoff, Middle River and Trapper Slough in San Joaquin County

##### Woods Irrigation Company: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Woods Irrigation Co – Middle River in San Joaquin County

##### Nelly Mussi: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Nelly Mussi - Whiskey Slough in San Joaquin County

##### Eni Menconi Trust: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Eni Menconi Trust – Middle River in San Joaquin County

##### Dunkel: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Mark and Valla Dunkel – Middle River in San Joaquin County.

##### Mussi et al: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Rudy Mussi, Toni Mussi and Lori C. Mussi Investment LP - Middle River in San Joaquin County.

##### Pak & Young: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Yong Pak and Sun Young – Duck Slough in San Joaquin County.

EXHIBIT CC

Millview County Water District Revocation Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether License 5763 (Application 15679) should be revoked because the Licensee has ceased to put water granted under the license to useful or beneficial purpose and has failed to observe terms and conditions of the license. – Russian River (Subterranean Stream) in Mendocino County

**Postponed Hearings - Pending Rescheduling or Cancellation**

Gallo Vineyards, Inc.: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Gallo Vineyards, Inc Old River in San Joaquin County

Garrapata Water Company: ACL/CDO Hearing

The State Water Board will hold a hearing to receive evidence to determine whether to impose administrative civil liability and adopt a Cease and Desist Order against Garrapata Water Company - Garrapata Creek in Monterey County

B.J. Deis, A California Corporation: Revocation Hearing

The State Water Board will hold a hearing to receive evidence to determine whether water right Permits 18257,19159,19160 and 19161 (Applications 25917, 27087, 27088 and 27089) should be revoked - Willow Creek in Lassen County

**Hearings Previously Held – Decision or Order Pending**

Hidden Lakes Estates Waste and Unreasonable Use Hearing

The State Water Resources Control Board will hold a public hearing to receive evidence relevant to determining if a misuse of water exists at Hidden Lakes Estates Homeowners Associations northern lake and, if so, what corrective actions should be taken - Linda Creek tributary to Dry Creek in Placer County.

Thomas Hill, Steven Gomes, and Millview County Water District: CDO Hearing

The State Water Resources Control Board will hold a hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) against Thomas Hill, Steven Gomes, and Millview County Water District. - Russian River and Russian River Underflow.

Cachuma Project Hearing

The State Water Board held Phase II of a hearing regarding the U.S. Bureau of Reclamation water rights Permits (Application 11331 and 11332) to determine whether any modifications in permit terms or conditions are necessary to protect public trust values and downstream water rights on the Santa Ynez River below Bradbury Dam (Cachuma Reservoir)...Santa Barbara County.

**Hearings Previously Held – Issued Order/Decision Under Reconsideration**

Consolidated Place of Use Petition Hearing - The State Water Board held a hearing to receive evidence relevant to determining whether to approve California Department of Water Resources (DWR) and United States Bureau of Reclamation's (USBR) petition to consolidate the authorized place of use of the USBR's permits and license to include the State Water Project (SWP) authorized place of use downstream of the Barker Slough and Harvey Banks Pumping Plants, and the DWR permits to include the Central Valley Project (CVP) and Friant authorized places of use downstream of the confluence of the Sacramento and Feather Rivers.

Kern River "FAS" Hearing

The purpose of this hearing was for the State Water Resources Control Board to receive evidence regarding petitions to revise the Declaration of Fully Appropriated Stream Systems for the Kern River stream system in Kern County.

Modification of Order WR 2006-0006 Hearing

The purpose of this hearing is for the State Water Resources Control Board to receive evidence relevant to determining whether to modify the Cease and Desist Order issued against the Department of Water Resources and the United States Bureau of Reclamation in Part A of State Water Board Order WR 2006-0006.

## Special Projects

### El Sur Ranch

As the state lead agency under the California Environmental Quality Act (CEQA), the State Water Resources Control Board, Division of Water Rights Division will direct the preparation of a Draft Environmental Impact Report (EIR) that will review the environmental effects associated with the issuance of a water right permit pursuant to water right Application 30166 seeking an appropriation of water from the Big Sur River subterranean stream to the El Sur Ranch.

### Russian River Frost Protection

The State Water Board will hold a series of workshops regarding water diversions for purposes of Frost Protection in Mendocino and Sonoma Counties.

(Updated 3/23/10)

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The Board is one of six boards, departments, and offices under the umbrella of the California Environmental Protection Agency.  
[Cal/EPA](#) | [ARB](#) | [DPR](#) | [DTSC](#) | [OEHHA](#) | [SWRCB](#)

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 MARY E. HACKENBRACHT  
Senior Assistant Attorney General  
3 JOHN DAVIDSON  
Supervising Deputy Attorney General  
4 WILLIAM JENKINS, State Bar No. 143616  
Deputy Attorney General  
5 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
6 Telephone: (415) 703-5527  
Fax: (415) 703-5480  
7 E-mail: William.Jenkins@doj.ca.gov

8 Attorneys for Respondent  
State Water Resources Control Board

9

10

SUPERIOR COURT OF CALIFORNIA

11

COUNTY OF MENDOCINO

12

UKIAH DIVISION

13

14

**MILLVIEW COUNTY WATER DISTRICT, a  
public agency; THOMAS P. HILL, AND STEVEN  
L. GOMES,**

SCWL CVG 08 51448

15

**STATE WATER RESOURCES  
CONTROL BOARD'S  
ANSWER TO PETITION FOR  
WRIT OF ORDINARY  
AND/OR ADMINISTRATIVE  
MANDAMUS**

16

Petitioners,

17

v.

18

**CALIFORNIA, STATE WATER RESOURCES  
CONTROL BOARD, a Public Agency; and DOES 1  
through 1000, inclusive,**

19

Petitioners.

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22

Respondent, State Water Resources Control Board (State Board), answers the Petition for

23

Writ of Ordinary and/or Administrative Mandamus (Petition) as follows:

24

1. Answering paragraph 1 of the Petition, the State Board lacks sufficient information to

25

form a belief as to admit or deny the allegations of the first sentence of paragraph 1 and on that

26

basis denies them. As a response to the second sentence of paragraph 1, the allegation is a legal

27

conclusion to which no response is required. To the extent a response is required, the State

28

Board denies the allegations of the second sentence of paragraph 1.

1           2. Answering paragraph 2 of the Petition, the State Board lacks sufficient information to  
2 form a belief as to admit or deny the allegations of this portion of the Petition, and on that basis  
3 denies each and every allegation of this portion of the Petition.

4           3. Answering paragraph 3 of the Petition, the State Board admits that it is the successor to  
5 the California Water Commission. Except as specifically admitted, the remaining allegations are  
6 legal conclusions to which no response is required. To the extent a response is required, the  
7 State Board denies each and every remaining allegation of this portion of the complaint.

8           4. Answering paragraph 4 of the Petition, the State Board lacks sufficient information to  
9 form a belief as to admit or deny the allegations of this portion of the Petition, and on that basis  
10 denies each and every allegation of this portion of the Petition.

11           5. Answering paragraph 5 of the Petition, the State Board lacks sufficient information to  
12 form a belief as to admit or deny the allegations of this portion of the Petition, and on that basis  
13 denies each and every allegation of this portion of the Petition. No other defendants have been  
14 named.

15           6. Answering paragraphs 6, 7, and 8, of the Petition, the State Board lacks sufficient  
16 information to form a belief as to admit or deny the allegations of this portion of the Petition, and  
17 on that basis denies each and every allegation of this portion of the Petition.

18           7. Answering paragraph 9 of the Petition, the State Board admits that State Board staff  
19 conducted an investigation of a certain pre-1914 water right originated by Mr. Waldteufel, and  
20 transferred over time to Woods, Hill and Gomes, and Millview. The State Board further admits  
21 that State Board staff concluded that due to the forfeiture provisions of California law, the pre-  
22 1914 water right had been degraded from the original amount of diversion. Except as  
23 specifically admitted, the State Board denies each an every remaining allegation of this portion of  
24 the Petition.

25           8. Answering paragraphs 10, 11, 12, the State Board lacks sufficient information to form a  
26 belief as to admit or deny the allegations of this portion of the Petition, and on that basis denies  
27 each and every allegation of this portion of the Petition.

28           9. Answering paragraph 13 of the Petition, this allegation is Petitioners' characterization of

1 the content of a complaint filed by Lee O. Howard, which speaks for itself. To the extent a  
2 response is required, the State Board denies the allegations of this portion of the complaint on the  
3 ground that the complaint of Lee O. Howard is the best evidence of its contents. As a further  
4 response to paragraph 13, to the extent that the allegations are legal conclusions, no response is  
5 required, and the State Board denies the allegations of this portion of the complaint on that  
6 ground.

7 10. Answering paragraph 14 of the Petition, the State Board admits that State Board staff  
8 conducted an investigation of a certain pre-1914 water right originated by Mr. Waldteufel, and  
9 transferred over time to Woods, Hill and Gomes, and Millview. The State Board further admits  
10 that State Board staff concluded that due to the forfeiture provisions of California law, the pre-  
11 1914 water right had been degraded from the original amount of diversion. As a further  
12 response to paragraph 14 of the Petition, the allegations are Petitioners' characterization of the  
13 content of the staff report following the investigation, which speaks for itself. To the extent a  
14 response is required, the State Board denies the allegations of this portion of the complaint on the  
15 ground that the staff report is the best evidence of its contents. As a further response to  
16 paragraph 14, to the extent that the allegations are legal conclusions, no response is required, and  
17 the State Board denies the allegations of this portion of the complaint on that ground.

18 11. Answering paragraph 15 of the Petition, the State Board lacks sufficient information to  
19 form a belief as to admit or deny the allegations of this portion of the Petition, and on that basis  
20 denies each and every allegation of this portion of the Petition.

21 12. Answering paragraph 16 of the Petition, the State Board admits that the investigation of  
22 the Lee Howard complaint was closed. For a further answer to this portion of the Petition, the  
23 allegations are Petitioners' characterization of the content of correspondence from Victoria  
24 Whitney regarding the Lee Howard complaint indicating that the investigation had been closed,  
25 which speaks for itself. To the extent a response is required, the State Board denies the  
26 allegations of this portion of the complaint on the ground that the correspondence is the best  
27 evidence of its contents. As a further response to paragraph 16, to the extent that the allegations  
28 are legal conclusions, no response is required, and the State Board denies the allegations of this



1 portion of the complaint on that ground.

2 13. Answering paragraph 17 of the Petition, the State Board lacks sufficient information to  
3 form a belief as to admit or deny the allegations of this portion of the Petition, and on that basis  
4 denies each and every allegation of this portion of the Petition. As a further response to  
5 paragraph 17, to the extent that the allegations are legal conclusions, no response is required, and  
6 the State Board denies the allegations of this portion of the complaint on that ground.

7 14. Answering paragraph 18 of the Petition, the allegations are Petitioners' characterization  
8 of the content of correspondence attached to the Petition as Exhibits C and D, which  
9 correspondence speaks for itself. To the extent a response is required, the State Board denies the  
10 allegations of this portion of the complaint on the ground that the correspondence is the best  
11 evidence of its contents. As a further response to paragraph 16, to the extent that the allegations  
12 are legal conclusions, no response is required, and the State Board denies the allegations of this  
13 portion of the complaint on that ground.

14 15. Answering paragraph 19 of the Petition, the State Board incorporates by reference and  
15 re-alleges its responses to paragraphs 1 through 18 as though fully set forth herein.

16 16. Answering paragraphs 20 and 21 of the Petition, these allegations are legal conclusions,  
17 and no response is required. To the extent a response is required, the State Board denies the  
18 allegations of this portion of the complaint on that ground.

19 17. Answering paragraphs 22, 23, 24, of the Petition, the State Board admits that State  
20 Board staff conducted an investigation of a certain pre-1914 water right originated by Mr.  
21 Waldteufel, and transferred over time to Woods, Hill and Gomes, and Millview. The State  
22 Board further admits that State Board staff concluded that due to the forfeiture provisions of  
23 California law, the pre-1914 water right had been degraded from the original amount of  
24 diversion. Except as specifically admitted, the State Board denies each and every remaining  
25 allegation of this portion of the complaint.

26 18. Answering paragraph 25 of the Petition, the State Board denies the first sentence of  
27 paragraph 25. Further answering paragraph 25, the second and third sentences of paragraph 25  
28 are Petitioners' characterization of the content of correspondence attached to the Petition as

1 Exhibit E, which correspondence speaks for itself. To the extent a response is required, the State  
2 Board denies the allegations of this portion of the complaint on the ground that the  
3 correspondence is the best evidence of its contents. Further answering paragraph 25 of the  
4 Petition, the State Board denies the allegations of the fourth and fifth sentences of paragraph 25.

5 19. Answering paragraph 26 of the Petition, the State Board lacks sufficient information to  
6 form a belief as to admit or deny the allegations of this portion of the Petition, and on that basis  
7 denies each and every allegation of this portion of the Petition.

8 20. Answering paragraph 27 of the Petition, these allegations are legal conclusions for  
9 which no response is required. To the extent a response is required, the State Board denies them.

10 21. Answering paragraph 28 of the Petition, the State Board incorporates by reference and  
11 re-alleges its responses to paragraphs 1 through 18 as though fully set forth herein.

12 22. Answering paragraph 29 of the Petition, the State Board admits that it has not yet  
13 completed an administrative action, or issued any final decision or order regarding Millview's  
14 diversion of water under the pre-1914 water right at issue in this matter. Except as specifically  
15 admitted, the State Board denies each and every remaining allegation in this portion of the  
16 Petition.

17 23. Answering paragraphs 30 and 31 of the Petition, these allegations are legal conclusions  
18 for which no response is required. To the extent a response is required, the State Board denies  
19 them.

20 24. Answering the prayer for relief at page 10-11, paragraphs 1 through 6, the State Board  
21 denies that Petitioners are entitled to any relief whatsoever.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**  
24 **(Failure to Exhaust Administrative Remedies)**

25 Petitioners have failed to exhaust their available administrative remedies under the Water  
26 Code.

27 **SECOND AFFIRMATIVE DEFENSE**  
28 **(Ripeness)**

The State Board has not yet completed an administrative process, and has not yet issued a

1 final decision or order, and therefore the court has no jurisdiction because the matter is not ripe.

2 **WHEREFORE**, the State Board prays that:

- 3 1. The Petition be dismissed;
- 4 2. Petitioners take nothing by their action;
- 5 3. Judgement be awarded against Petitioner and in favor of Respondents;
- 6 4. Any other relief deemed appropriate by the Court.

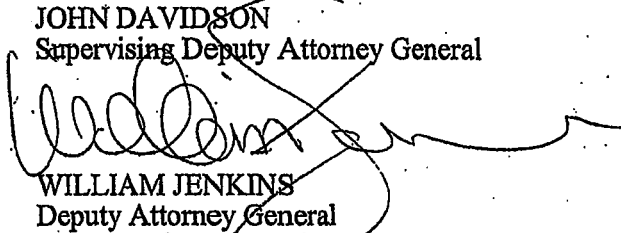
7 Dated: October 14, 2008

8 Respectfully submitted,

9 EDMUND G. BROWN JR.  
Attorney General of the State of California

10 MARY E. HACKENBRACHT  
Senior Assistant Attorney General

11 JOHN DAVIDSON  
Supervising Deputy Attorney General

12   
13  
14 WILLIAM JENKINS  
15 Deputy Attorney General  
16 Attorneys for Respondent  
17 State Water Resources Control Board

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Millview County Water District v. State Water Resources Control Board.**

Case No.: **CV 08 51448**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 15, 2008, I served the attached **STATE WATER RESOURCES CONTROL BOARD'S ANSWER TO PETITION FOR WRIT OF ORDINARY AND/OR ADMINISTRATIVE MANDAMUS**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Christopher J. Neary, Esq.  
Law Office of Christopher J. Neary  
110 South Main Street, Suite C  
Willits, CA 95490

Cory W. O'Donnell, Esq.  
Office of the Sonoma County Counsel  
575 Administration Drive, Room 105  
Santa Rosa, CA 95403

Jared G. Carter, Esq.  
Carter & Momsen, LLC  
444 N. State Street  
Ukiah, CA 95482

Michael R. Woods, Esq.  
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David J. Rapport, Esq.  
Rapport and Marston  
P.O. Box 488  
Ukiah, CA 95482

Alan B. Lilly, Esq.  
Bartkiewicz, Kronick & Shanhan  
1011 Twenty-Second Street  
Sacramento, CA 95816

Marc J. DelPiero  
Attorney at Law  
4062 El Bosque Drive  
Pebble Beach, CA 93953-3011

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 15, 2008, at San Francisco, California.

Jóan Randolph  
Declarant

  
Signature



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

**Executive Office**  
Charles R. Hoppin, Chairman  
1001 I Street • Sacramento, California • 95814 • 916.341.5615  
P.O. Box 100 • Sacramento, California • 95812-0100  
Fax 916.341.5621 • www.waterboards.ca.gov

Arnold Schwarzenegger  
Governor

December 3, 2009

Christopher J. Neary, Esq.  
110 South Main Street, Suite C  
Willits, CA 95490

CARTER & MOMSEN, LLP  
Jared G. Carter, Esq.  
Brian C. Carter, Esq.  
Matisse M. Knight, Esq.  
444 North State Street  
Ukiah, CA 95482

Dear Gentlemen:

**WATER RIGHT HEARING REGARDING PROPOSED CEASE AND DESIST  
ORDER AGAINST MILLVIEW COUNTY WATER DISTRICT, THOMAS P. HILL,  
AND STEVEN L. GOMES**

This letter responds to the request for authorization to conduct pre-hearing discovery pursuant to the Civil Discovery Act (Code Civ. Proc., §§ 2016.010-2036.050) submitted by Millview County Water District, Thomas P. Hill and Steven L. Gomes (hereafter referred to as Millview et al.) on November 12, 2009.

Millview et al. contend that, consistent with due process requirements, the State Water Resources Control Board (State Water Board or Board) should authorize pre-hearing discovery pursuant to the Civil Discovery Act. Millview et al. argue that they need to conduct discovery in order to determine in advance of the hearing what authority the Board asserts over the issues in this proceeding, and what evidence the Board's staff relied upon in making the determination that a portion of a claimed pre-1914 appropriative water right held by Millview et al. has been forfeited. In addition, Millview et al. seek discovery related to previous Board decisions on applications to appropriate water from the West Fork of the Russian River and the Board's determination that the Russian River is fully appropriated. Millview et al. seek to propound special interrogatories, make inspection demands, make requests for admissions, and take the depositions of the persons most knowledgeable about the issues in this proceeding.

For the reasons set forth below, Millview et al.'s request is denied.

Preliminarily, the State Water Board's procedures for adjudicative proceedings provide for notice and an opportunity to be heard, discourage surprise testimony and exhibits,

California Environmental Protection Agency

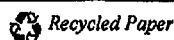


EXHIBIT EE

Christopher J. Neary, Esq.  
Jared G. Carter, Esq.  
Brian C. Carter, Esq.  
Matisse M. Knight, Esq.

- 2 -

December 3, 2009

and allow for discovery in appropriate cases. (See generally Gov. Code, § 11400 et seq.; Wat. Code, § 1100; Cal. Code Regs., tit. 23, §§ 648, 648.4.)

The State Water Board's prior approval is not required for a party to conduct discovery pursuant to Water Code section 1100 and sections 11450.10 and 11450.20 of the Government Code. Water Code section 1100 authorizes parties to adjudicative proceedings before the State Water Board to take the depositions of witnesses in accordance with the Civil Discovery Act. Government Code sections 11450.10 and 11450.20 authorize a party's attorney of record to issue a subpoena for attendance at a hearing or a subpoenas *duces tecum* for the production of documents. (See also Cal. Code of Regs., tit. 23, § 649.6.)

Millview et al. are cautioned, however, that any discovery sought pursuant to these provisions is subject to a motion for a protective order. Pursuant to the Civil Discovery Act, a protective order prohibiting or limiting depositions may be issued to protect a party or deponent from undue burden and expense. (Cal. Code Civ. Proc., § 2025.420, subd. (b).) Similarly, a protective order may be issued if the discovery sought would be "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." (*Id.*, § 2019.030, subds. (a) & (b).) Pursuant to Government Code section 11450.30, a protective order may be issued to protect a person served with a subpoena or subpoena *duces tecum* from unreasonable or oppressive demands.

At this stage in this proceeding, it appears that a protective order would be warranted because the discovery Millview et al. seek is obtainable from a more convenient, less burdensome, and less expensive source. Specifically, most of the information that Millview et al. seek to obtain either has been or will be provided to Millview et al. pursuant to the State Water Board's hearing procedures. The legal and factual basis for the proposed enforcement action against Millview et al. is described in the draft cease and desist order. In addition, the Prosecution Team has identified its expert witnesses on the Prosecution Team's Notice of Intent to Appear, and the Prosecution Team will serve Millview et al. with the Prosecution Team's written testimony and exhibits in advance of the hearing. Accordingly, the evidence that State Water Board staff relies upon in asserting that a portion of the claimed pre-1914 right held by Millview et al. has been forfeited should be provided to Millview et al. prior to the hearing, without the need for formal discovery. Finally, information concerning previous Board decisions on applications to appropriate water from the West Fork of the Russian River, and information concerning the Board's fully appropriated stream determination pertaining to the Russian River, can be obtained by reviewing the Division of Water Rights' files. The Division's files are open to the public during regular business hours, and Millview et al. can arrange to have copies made of specific files or documents.

Christopher J. Neary, Esq.  
Jared G. Carter, Esq.  
Brian C. Carter, Esq.  
Matisse M. Knight, Esq.

- 3 -

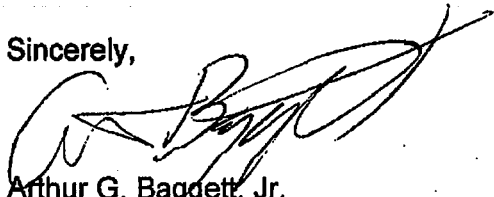
December 3, 2009

Millview et al. has not served any notice of deposition or subpoena under Water Code section 1100 and Government Code sections 11450.10 and 11450.20, and this ruling does not necessarily address the appropriateness of any specific discovery request under those provisions. For the reasons explained above, however, Millview et al. should be aware that discovery, other than that already provided for through the identification of expert witnesses and the presubmission of direct testimony and exhibits, does not appear to be warranted at this stage in the proceeding. The information that Millview et al. seek to obtain can be obtained in a less burdensome manner from the Prosecution Team's pre-hearing submittals or by reviewing the State Water Board's files. If after reviewing the Prosecution Team's exhibits and the State Water Board's files, Millview et al. conclude that discovery is necessary, they may initiate discovery pursuant to Water Code section 1100 or Government Code sections 11450.10 and 11450.20.

Water Code section 1100 and Government Code sections 11450.10 and 11450.20 do not authorize all of the forms of discovery that are permissible pursuant to the Civil Discovery Act, including interrogatories, inspection demands, and requests for admission. To the extent that Millview et al. seek authorization to conduct forms of discovery that are not authorized under Water Code section 1100 and Government Code sections 11450.10 and 11450.20, Millview et al.'s request is denied. Millview et al. have not provided any support for the contention that authorizing other forms of discovery is necessary to satisfy due process requirements.

If you have any questions about this letter, please contact Dana Heinrich, Senior Staff Counsel, at (916) 341-5188.

Sincerely,



Arthur G. Baggett, Jr.  
Hearing Officer

cc: Division of Water Rights Prosecution Team  
c/o David Rose, Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Sonoma County Water Agency  
c/o Alan B. Lilly  
1011 22nd Street  
Sacramento, CA 95816-4907



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PROOF OF SERVICE BY E-MAIL, OVERNIGHT COURIER

(In the Matter of Draft Cease and Desist Order No. 2009-00XX-DWR against Thomas Hill, Steven Gomes and Millview County Water District; Cal. State Water Resources Control Board; No. 363:JO:262.0(23-03-06))

STATE OF CALIFORNIA        }  
COUNTY OF MENDOCINO    }

I am employed in the County of Mendocino, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 444 North State Street, Ukiah, California.

On April 5, 2010, I served the document entitled **POST-HEARING BRIEF OF RESPONDENTS HILL, GOMES** on the interested parties by e-mailing same to all counsel, and by placing true and complete copies thereof, in sealed envelopes with postage thereon provided for in full, in the custody of Federal Express, for overnight/next-day delivery, at Ukiah, California, addressed as follows:

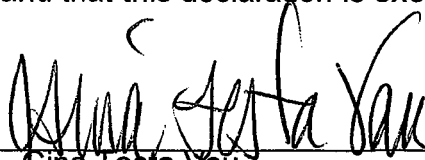
DIVISION OF WATER RIGHTS  
Hearings and Special Projects  
c/o Ernest Mora  
State Water Resources Control Board  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA, 95814

DIVISION OF WATER RIGHTS PROSECUTION TEAM  
c/o David Rose, Esq.  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA, 95814

SONOMA COUNTY WATER AGENCY  
c/o Alan B. Lilly, Esq.  
1011 22nd Street  
Sacramento, CA, 95816-4907

MILLVIEW COUNTY WATER DISTRICT  
c/o Christopher J. Neary  
110 S. Main Street, Suite C  
Willits, CA, 95490

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on April 5, 2010, at Ukiah, California.

  
\_\_\_\_\_  
Gina Testa Vau