



**Linda S. Adams**  
*Secretary for  
Environmental Protection*

# State Water Resources Control Board

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**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
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**Arnold Schwarzenegger**  
*Governor*

## NOTICE OF PUBLIC HEARING

### Russian River and Russian River Underflow in Mendocino County

The State Water Resources Control Board will hold a  
Public Hearing to Determine whether to adopt a  
draft **Cease and Desist Order**  
against  
Thomas Hill, Steven Gomes, and  
Millview County Water District

The **Public Hearing** will commence  
on  
**Tuesday, January 26, 2010, at 9:00 a.m.**  
in  
the Coastal Hearing Room  
Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

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### **PURPOSE OF HEARING**

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) 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.

### **BACKGROUND**

When the State Water Board determines that any person is violating, or threatening to violate, any requirements described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation.

The State Water Board may issue such a cease and desist order only after notice and an opportunity for hearing. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing.

On April 10, 2009, the Assistant Deputy Director for Water Rights issued a draft CDO against Thomas Hill, Steven Gomes, and Millview County Water District for the threatened unauthorized diversion, collection and use of water in violation of the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water. The draft CDO requires Thomas Hill, Steven Gomes, and Millview County Water District to restrict diversions of water

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*California Environmental Protection Agency*

from the Russian River, its tributaries or underflow, and to maintain records of all diversion of water. A copy of the draft CDO is enclosed with this notice.

By letters dated April 28, 2009 and April 29, 2009, Thomas Hill and Steven Gomes, jointly, and Millview County Water District requested a hearing on the draft CDO.

This notice and other hearing project related material will be posted at:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/millview/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/millview/)

### **KEY ISSUE**

Should the State Water Board adopt the draft CDO issued on April 10, 2009? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order, and what is the basis for such modifications?

### **HEARING OFFICER AND HEARING TEAM**

State Water Board Members Arthur G. Baggett, Jr. and Tam M. Doduc will preside as co-hearing officers over this proceeding. State Water Board staff hearing team members will include Dana Heinrich, Staff Counsel; Ernest Mona, Water Resource Control Engineer and Jean McCue, Water Resource Control Engineer. The hearing team is supervised by Charles Lindsay, Hearings Unit Chief; Les Grober, Hearings and Special Programs Manager; and Victoria Whitney, Deputy Director for Water Rights. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

### **SEPARATION OF FUNCTIONS**

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include David Rose, Staff Counsel; and Charles Rich, Senior Water Resource Control Engineer. The prosecution team is supervised by John O'Hagan, Enforcement Section Manager; and James Kassel, Assistant Deputy Director for Water Rights.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with the hearing officer, other members of the State Water Board, and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. This separation of functions also applies to the supervisors of each team.

### **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings at Board Meetings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If Thomas Hill, Steven Gomes, and Millview County Water District fail to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem their request for a hearing regarding the draft CDO to be withdrawn and a CDO may be adopted without further notice.**

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**12 Noon, Tuesday, December 1, 2009** Deadline for receipt of Notice of Intent to Appear.

**12 Noon, Tuesday, January 5, 2010** Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

### **SUBMITTALS TO THE WATER BOARD**

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board  
Attention: Ernest Mona  
P.O. Box 2000, Sacramento, CA 95812-2000 (by mail)  
1001 I Street, 2<sup>nd</sup> Floor, Sacramento, CA 95814 (by hand delivery)

Phone: (916) 341-5359  
Fax: (916) 341-5400

Email: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)  
**With Subject of "Millview et al. CDO Hearing"**

### **IF YOU HAVE ANY QUESTIONS**


During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Staff Counsel Dana Heinrich at (916) 5188, or by email to [dheinrich@waterboards.ca.gov](mailto:dheinrich@waterboards.ca.gov), or Staff Engineer Ernest Mona at (916) 341-5359, or by email to [emona@waterboards.ca.gov](mailto:emona@waterboards.ca.gov).

**PARKING, ACCESSIBILITY AND SECURITY**

A map to the Joe Serna Jr./Cal-EPA Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. For security purposes, all visitors are required to sign in and receive a badge prior to entering the building. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process.

The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

September 3, 2009  
Date

  
Jeanine Townsend  
Clerk to the Board

Enclosures

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2009-00XX-DWR

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**CEASE AND DESIST ORDER**

In the Matter of the Threat of an Unauthorized Diversion of Water  
Pursuant to a Claim of pre-1914 Appropriative Rights by

**Thomas Hill, Steven Gomes, and  
Millview County Water District**

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SOURCE: Russian River and Russian River Underflow

COUNTY: Mendocino

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The State Water Resources Control Board (State Water Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Thomas Hill, Steven Gomes, and the Millview County Water District (Millview) to cease the threatened unauthorized diversion, collection and use of water in violation of the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water.

Messrs. Hill and Gomes and Millview are alleged to have violated or are threatening to violate Water Code section 1831, which states:

The State Water Resources Control Board (State Water Board) is authorized to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On **{DATE}**, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Messrs. Hill and Gomes and Millview for the threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

## FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. J.A. Waldteufel recorded a water right notice on March 24, 1914 initiating the process to obtain a pre-1914 appropriative claim of right to divert water from the West Fork Russian River. According to this notice, Mr. Waldteufel claimed a right to divert 100 miners inches under a 4-inch pressure, or 2 cubic feet per second (cfs), for domestic, culinary, and irrigation purposes on Lot #103 of the Yokayo Rancho (Waldteufel property).
2. The Waldteufel property consisted of about 165 acres circa 1914 located both north and south of what is now Lake Mendocino Drive and on the west side of the West Fork Russian River. Portions of the property have been sold. The portion of the original Waldteufel property located on the south side of Lake Mendocino Drive involved in this action currently includes Mendocino County Assessor Parcel No.169-130-68, consisting of about 5 acres and 125 residential lots with separate parcel numbers within the CreekBridge Home Subdivision, totaling about 28.5 acres.
3. Records available to the Division indicate that between 1914 and 1967, the Waldteufel property was held by eight (8) different parties. The Division did not receive records of diversion and use of water by most of these different property owners to support continuous beneficial use of water under the pre-1914 claim of right. The Division did receive a copy of a sworn statement from a long-time resident of the area, stating that alfalfa, oat hay, pears, string beans, and vineyard crops were grown on the portion of the Waldteufel property located south of Lake Mendocino Drive between 1920 and 2001. While the sworn statement suggests that some farming occurred on the property from the early 1920's, it does not establish a reliable record for diversion of water, season of use, or acreage being served by crop type to quantify any continuous use of water. It also does not establish that water was available for use from the West Fork Russian River.
4. Mr. Lester Wood purchased a portion of the Waldteufel property in 1945. In 1967, Mr. Wood filed Statement of Water Diversion and Use (Statement) S000272 with the State Water Board consistent with the requirements of Water Code section 5100, et seq. Supplemental statements for Statement S000272 were also filed for the years 1970-72, 1979-81, 1985-87, and 2002-04<sup>1</sup>. The amount of water that Mr. Wood or his son, Robert Wood, reported as being diverted and put to beneficial use ranged between 7.5 and 15 acre-feet per annum with a maximum, instantaneous diversion rate of 1.1 cfs (500 gallons per minute).
5. In January 1998, Thomas Hill and Steven Gomes purchased approximately 30 acres of the Waldteufel property located immediately south of Lake Mendocino Drive and adjacent to the West Fork Russian River<sup>2</sup> from the Robert Wood Living Trust. The Grant Deed covering this transaction indicates that all water rights and claims of title to water that may have been associated with the land were included in the sale by the grantors. The land purchased by Messrs. Hill and Gomes consists of the southeastern portion of the Waldteufel property and contains roughly 20% of the acreage originally described in the Waldteufel notice of proposed appropriation.
6. CreekBridge Homes L.P. (CreekBridge) bought about 85% of the property owned by Messrs. Hill and Gomes in 2001 and subsequently built 125 homes on the property. CreekBridge Homes filed Statement S015625 in 2001. According to information contained with this statement, CreekBridge not only purchased the property but also obtained "the reservation of the proportional water right for this property which was established and recorded prior to December 1914." The Division's records show that only the original statement was filed. No supplemental statements from CreekBridge are contained in the file for Statement S015625.

<sup>1</sup> - The 2002-04 supplemental statement was filed by Mr. Gomes and contains conflicting information. All of the others were filed by either Lester Wood or his son, Robert Wood.

<sup>2</sup> - This reach of the river is identified as the Russian River by the U.S. Geological Survey, but is often called the West Fork of the Russian River by locals. It will be referred to as the West Fork in this order.

7. Messrs. Hill and Gomes entered into a "License and Assignment of Water Rights Agreement" with Millview in May 2001. This agreement provides for the lease and option to purchase by Millview of the Waldteufel claim of pre-1914 appropriative right held by Messrs. Hill and Gomes. The recitals of this agreement include the following statement:

*Licensors (Messrs. Hill and Gomes) is the owner of those certain water rights established by the claim of J.A. Waldteufel dated March 24, 1914, by which J.A. Waldteufel claimed the water flowing in the West Fork of the Russian River at the point of posting to the extent of 100 inches measured under a four inch pressure, (approximately 1450 acre foot), the purpose for such claim being for domestic and culinary purposes (the "Water Right").* (Underline added for emphasis.)

The agreement also reserves 125,000 gallons per day (gpd) to Messrs. Hill and Gomes. The effective period of the agreement is listed as being from October 15, 2002, until October 14, 2006. Division staff understands that the effective period of this agreement has been extended and is still in effect.

8. Lee Howard filed a complaint against Thomas Hill with the Division on March 6, 2006 regarding the diversion and use of water reported pursuant to Statement S000272. Mr. Howard alleges that :
- While the basis of right pursuant to Statement S000272 claimed by Messrs. Hill and Gomes is a pre-1914 appropriative claim, any basis of this particular type of right has been lost due to nonuse between 1914 and 2001.
  - The point of diversion for Statement S000272 has been moved downstream from a location on the West Fork of the Russian River to a location on the main stem Russian River.
9. By letter dated March 29, 2006, the Division requested that Messrs. Hill and Gomes, Millview, and CreekBridge respond to the complaint. Only Millview responded via a letter dated April 24, 2006 which contains the following pertinent points:
- Messrs. Hill and Gomes believe they are the legal owners of a pre-1914 appropriative right. Diversions made under this claim of right are reported via Statement S000272.
  - Water reported pursuant to a supplemental statement dated June 10, 2005 for the months of May through November under Statement S000272 occurred at Millview's point of diversion located immediately downstream of the confluence of the East and West Forks of the Russian River. This water was used to supply the 125 homes constructed on the property previously owned by Mr. Wood.
  - Millview understands that Messrs. Hill and Gomes, via the lease agreement, "granted, conveyed, and assigned all right, title and interest to the water right Statement S000272 to" Millview except for a collective reservation of 125,000 gpd to be applied equally to each of the 125 homes constructed by CreekBridge<sup>3</sup>.
  - CreekBridge diverted water under the claimed right from July 2001 through September 2002 pursuant to Statement S015625.
  - Millview currently supplies water to the place of use identified under Statements S000272 and S015625, which is completely within Millview's boundaries, during the months of May through November. Water service is supplied during the months of December through April pursuant to Millview's License 492 (Application 3601), Permit 13936 (Application 17587) and a water supply agreement with the Mendocino County Russian River Flood Control and Water Conservation Improvement District (MCRRFC&WCID).
  - Based on conversations between Millview's legal counsel and Robert Wood prior to his death, Millview believes that the pre-1914 claim of right was not forfeited due to non-use during Mr. Wood's ownership of the property.

<sup>3</sup> - Apparently, 1,000 gpd was reserved from the portion of the right withheld by Messrs. Hill and Gomes for domestic purposes at each of the 125 homes built and sold by CreekBridge.

10. On August 30, 2006, Division staff conducted a field investigation regarding the Howard complaint. Staff met with Messrs. Hill and Gomes as well as Millview's General Manager and legal counsel. The property formerly owned by the Wood family was visited. During this visit, Division staff observed an old wooden crib inlet channel about two hundred feet below the Lake Mendocino Drive bridge on the west bank of the West Fork Russian River. Some piping was still in place. No diversion appeared to have occurred at this location in recent years. Mr. Gomes stated that some diversion of water to the Wood property for irrigation of crops including grapes continued from this point of diversion until the land was graded for houses in 2001. Flow in the river at this location was less than 1 cfs. Millview's point of diversion is located on the main stem Russian River about 2,000 feet downstream of the abandoned Wood point of diversion and about 600 feet below the confluence of the East and West Forks of the Russian River. Flows at this location consist of water coming from the West Fork of the Russian River combined with releases from Lake Mendocino. Flow in the river at this location was approximately 227 cfs.
11. At the conclusion of the complaint inspection, Messrs. Hill and Gomes and the General Manager and legal counsel for Millview, provided the following information in response to specific questions posed by Division staff:
  - Diversions to serve the 125 CreekBridge homes during the May to November period (i.e., the historic irrigation season on the former Wood property) are made pursuant to the pre-14 claim of right. Diversions during the December through April period are made under either Millview's post-1914 appropriative rights; i.e., License 492 (Application A003601) or Permit 13936 (Application A017587); or under the contract between Millview and the MCRRFC&WCID pursuant to Permit 012947B (Application A012919B).
  - All use reported under Statement S000272 or made pursuant to a pre-1914 appropriative claim of right initiated by E.L. Waldteufel since 2001 has occurred at the 125 CreekBridge homes.
  - Millview does not possess a deposition, declaration, or other written document regarding any testimony that may have been provided by Robert Wood or his predecessors in interest regarding the use of water pursuant to the Waldteufel pre-1914 appropriative claim of right while owned by the Wood family.
  - The 125,000 gpd allotment (that according to the letter in response to the Howard complaint by Millview dated April 24, 2006, was decided to the 125 CreekBridge homes at 1,000 gpd each for a total of 125,000 gpd) has been transferred to Millview pursuant to the License and Assignment of Water Rights Agreement between Messrs. Hill and Gomes and Millview.
12. During the summer and early fall, flow at Millview's point of diversion is dominated by releases from Lake Mendocino. The U.S. Geological Survey (USGS) maintains a flow monitoring station (#11461000 – Russian River near Ukiah, CA) at the upstream end of the Wood property that provides a good accounting of the flows available for diversion pursuant to the Waldteufel pre-1914 appropriative claim of right. The USGS also maintains a flow monitoring station (#11462000 - East Fork Russian River near Ukiah, CA) immediately below the outlet of Lake Mendocino. The following tables identify the average, maximum, and minimum monthly flows over the period of record for both of these gages:



**USGS 11461000 Russian River Near Ukiah, CA (aka West Fork Russian River)  
 Main Daily Discharge (cfs) for 59 years of record (1911-10-01 to 2008-09-30)**

Month	Avg	Max	Min
Oct	7.6	146.8	0.0
Nov	102	682.4	0.1
Dec	377	1,663.0	1.8
Jan	557	1,986.0	3.8
Feb	507	1,975.0	14
Mar	351	1,436.0	20
Apr	166	770.4	4.3
May	47	242.8	3.2
Jun	12	57.4	0.2
Jul	2.5	10.8	0.0
Aug	0.7	3.75	0.0
Sep	0.6	2.7	0.0

**USGS 11462000 East Fork Russian River near Ukiah, CA (below Coyote Dam)  
 Main Daily Discharge (cfs) for 48 years of record (10/1/1959 to 9/30/2008)**

Month	Avg	Max	Min
Oct	225	419	42
Nov	231	635	13
Dec	341	1,175	7.0
Jan	604	1,905	21
Feb	595	1,934	18
Mar	411	1,780	13
Apr	317	1,026	53
May	230	577	76
Jun	215	361	104
Jul	247	336	179
Aug	255	388	163
Sep	242	416	93

This data indicates that the flow at the current Millview point of diversion is often well in excess of that available at the point of diversion used to divert water pursuant to the Waldteufel pre-1914 appropriative claim of right until 2001; especially during the late summer and early fall.

- The staff Report of Investigation prepared in response to the Howard complaint was sent to the parties on June 1, 2007. Staff concluded that the pre-1914 appropriative claim of right initiated by Mr. Waldteufel in December 1914 and transferred over time to the Woods, Messrs. Hill and Gomes, and Millview likely has a valid basis. However, the right has degraded to the point where the maximum authorized diversion is 15 acre-feet per annum at a maximum instantaneous rate not to exceed 500 gallons per minute or 1.1 cfs; or possibly less if the maximum rate of diversion since 2001 for a period of five (5) consecutive years has been less than this rate. Interested parties were provided an opportunity to submit additional evidence if they disagreed with the staff conclusions.

14. Three letters of comment were received but these letters contained no additional evidence that would change the staff recommendation. The complaint was closed via a letter dated April 17, 2008. The parties were informed that any diversion and use of water pursuant to the Waldteufel pre-1914 appropriative claim of right in excess of the staff finding would be considered an unauthorized diversion and a trespass against the State of California. However, as evidence was not available at that time to indicate that Millview's diversions exceeded those authorized by the combined rights available to Millview (i.e., the Waldteufel pre-1914 appropriative claim of right, License 492, Permit 13936 and the contract with the MCRRFC&WCID), no enforcement action was initiated.
15. Millview recently provided 402 pages of material in response to a Public Records Act (PRA) request issued by the State Water Board dated January 29, 2009<sup>4</sup>. The information contained in these pages document the diversion and use of water during the calendar years 2001 through 2008 by Millview pursuant to several claims of right. The use of water reported in these pages pursuant to the Waldteufel pre-1914 appropriative claim of right is as shown in the table below<sup>5</sup>:

**Diversions Claimed Pursuant to the Waldteufel pre-1914 Appropriative Right in ac-ft**

Month/Year	2001	2002	2003	2004	2005	2006	2007	2008
January	0.000	0.479	1.093	2.029	72.337	1.654	41.900	72.429
February	0.000	0.559	1.243	1.679	65.386	2.154	35.280	81.593
March	0.000	0.703	1.381	3.799	80.221	1.878	45.457	78.340
April	0.009	1.040	1.995	4.766	81.891	2.461	56.505	100.071
May	0.067	1.768	3.836	6.475	110.757	6.248	72.343	118.951
June	0.243	2.385	4.257	5.877	119.000	7.632	88.581	118.951
July	0.284	2.940	4.128	9.237	119.000	8.111	32.807	118.951
August	0.960	2.219	7.359	8.065	119.000	7.387	39.834	118.951
September	0.613	2.072	4.689	7.663	119.000	6.230	27.436	0.000
October	0.566	2.372	4.923	4.324	119.000	3.830	18.413	0.000
November	0.697	1.372	2.590	2.197	88.522	4.787	89.756	0.000
December	0.318	1.234	2.627	2.744	80.638	2.793	74.814	0.000
<b>Total</b>	<b>3.76</b>	<b>19.14</b>	<b>40.12</b>	<b>58.86</b>	<b>1,174.75</b>	<b>55.167</b>	<b>623.12</b>	<b>808.23</b>

16. Millview's reported average monthly rate of diversion pursuant to the Waldteufel pre-1914 appropriative claim of right exceeded the maximum authorized diversion rate under this claim of right (i.e., 1.1 cfs or less) 25% of the time during the 2001 to 2008 period. The annual limitation of 15 acre-feet per annum was exceeded in 7 of the 8 years or 88% of the time. In addition, Millview's average monthly rate of diversion under the Waldteufel pre-1914 appropriative claim of right at Millview's point of diversion located below the confluence of the East and West Forks of the Russian River, (which has higher flows due to the outflow from Lake Mendocino), exceeded the flows in the West Fork Russian River at the original point of diversion for the claimed right, over 22% of the time during the low flow period (June through November) between 2001 and 2008. Consequently, Millview was diverting water in excess of the amount authorized under the Waldteufel pre-1914 appropriative claim of right. However, it appears that the total amount of water diverted by Millview

<sup>4</sup> - All of the documents contained in Millview's response to the PRA request are stamped with the following notation: "SWRCB Subpoena Response". These documents appear to have been prepared in response to a subpoena duces tecum issued to Millview by the Division on July 31, 2008, but were never sent until requested pursuant to the January 29, 2009 PRA request.

<sup>5</sup> - There is a significant discrepancy between the numbers reported in the response to the PRA request and the numbers contained in the Progress Report by Permittee signed under penalty of perjury for Permit 13936 as well as a smaller, but still noticeable, difference between the numbers in the PRA request response and the use reported on the Reports of Licensee pursuant to License 492. Use reported under Permit 13936 in the Progress Reports for 2005 and 2007 is 740.75 and 403.04 acre-feet respectively. Use reported in the response to the PRA request under Permit 13936 for 2005 and 2007 is 0.00 and 340.06 acre-feet respectively.

during this same period did not exceed the total amount authorized pursuant to the combined rights available to Millview (i.e., Waldteufel pre-1914 appropriative claim of right, License 492, Permit 13936, and the contract with the MCRRFC&WCID). Therefore, unauthorized diversion apparently has not as yet occurred. However, if Millview's diversions continue to expand and Millview continues to divert water in excess of that authorized pursuant to the Waldteufel pre-1914 appropriative claim of right, unauthorized diversion will occur at some point in the near future. Consequently, a threat of unauthorized diversion exists.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, that Messrs. Hill and Gomes and Millview take the following actions to prevent a threatened unauthorized diversion as set forth in section 1052 of the California Water Code:

1. Restrict all diversions from the Russian River, its tributaries or underflow, or a subterranean stream associated with the Russian River valley pursuant to the Waldteufel pre-1914 appropriative claim of right to:
  - an instantaneous rate of 1.1 cfs;
  - an annual amount of 15 acre-feet; and
  - a rate no greater than the rate of flow available from the West Fork Russian River as measured at the USGS gage #11461000 (Russian River Near Ukiah, CA).
2. Maintain a record of all diversions of water on a daily basis. This record shall identify the amount of water diverted each day at Millview's points of diversion and the basis of right utilized to justify the diversion of water including, but not limited to:
  - a. the Waldteufel pre-1914 appropriative claim of right (as reported under Statements S000272 and S015625 or any other reporting document);
  - b. License 492 (Application A003601);
  - c. Permit 13936 (Application A017587); and
  - d. the contract with the MCRRFC&WCID pursuant to Permit 012947B (Application A012919B).

The record shall also identify any water wheeled for other entities (e.g., Calpella County Water District, the City of Ukiah, etc.) pursuant to a valid basis of right. This record shall be updated at least weekly and made available for inspection on the next business day after receipt of a written request from any interested party. A copy of the annual record for each calendar year shall be submitted to the following address no later than February 1<sup>st</sup> of each year:

Division of Water Rights  
Attention Program Manager, Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000

An electronic copy shall be submitted to a specified e-mail address if so directed in writing by the Deputy Director for Water Rights.

In the event that Messrs. Hill and Gomes or Millview fail to comply with the requirements, Messrs. Hill and Gomes or Millview shall be in violation of this CDO and subject to administrative civil liability and further enforcement actions as described below:

**Failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter may subject that person to further enforcement action, including assessment of civil liability of up to one thousand dollars a day and referral to the Attorney General for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)**

STATE WATER RESOURCES CONTROL BOARD

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

Dated:

DRAFT

## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are Thomas Hill, Steven Gomes, Millview County Water District, and the Prosecution Team for the State Water Board. Other persons or entities wishing to participate as parties may do so only if authorized by the hearing officer. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

The Notice of Intent to Appear must state: (1) the name and address of the participant; (2) the name of each witness who will testify on the participant's behalf; (3) a brief description of each witness' proposed testimony; and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.

Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>1</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the hearing notice.** Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see section 5 for details regarding electronic submissions.

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<sup>1</sup> The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.**

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
- c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements; written policy statements; written testimony; exhibits; and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be

sent via electronic mail to: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov) with a subject of "Millview et al. CDO Hearing." Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Each electronically submitted exhibit must be saved as a separate PDF file with the file name in lower case lettering!

Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants to the e-mail address provided on the Notice of Intent. Participants who agree to electronic service may request that specific documents be provided to them in paper copy, or by mail on CD. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received.

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at his or her discretion.
  - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
    - i. Policy statements are not subject to the pre-hearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
    - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to **five minutes** or such other time as established by the hearing officer.
  - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed. Each participant will be allowed up to **one hour** total to present its opening statement and all of its direct testimony.<sup>2</sup>

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<sup>2</sup> The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. In addition, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.



- i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
    - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses should summarize or emphasize their written testimony on direct examination.
    - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to **one hour** per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross-examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
  - c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
  - d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments.
7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and
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supervisors, and any of the other participants, including the members of the prosecution team and their supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:  
[http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

**NOTICE OF INTENT TO APPEAR**

\_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

**Proposed Cease and Desist Order Hearing**

**Thomas Hill, Steven Gomes, and  
Millview County Water District  
Russian River and Russian River Underflow  
In Mendocino County**

**scheduled to commence  
January 26, 2010**

**Check all that apply:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ . Fax Number: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

