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262(23-03-06)

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July 31, 2007

Charles A. Rich, Chief
Complaint Unit
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Water Right Complaint by Lee Howard
Regarding the Diversion of Water by the Millview County Water District
In Mendocino County
363:CA:R:262.0 (23-03-06)

Dear Mr. Rich:

This letter responds to your Preliminary Report of Investigation for the Complaint filed by Lee Howard regarding diversion from the Russian River ("Preliminary Report") in its capacity as licensee of the water right claimed by J.A. Waldteufel recorded in Mendocino County Official Records on March 24, 1914 at Volume 3, Page 17 (the "Waldteufel Right").

Millview County Water District ("Millview") is in general agreement with the Preliminary Report to the extent that it concludes that the Waldteufel Right is an appropriative right rather than a riparian right and that the Waldteufel Right is valid, having been in continuous use since March 1914; and that such right has not been abandoned at any time after March 1914.

Millview disagrees with any suggestion in the Preliminary Report that the Waldteufel Right "may have degraded" by partial forfeiture.

The Preliminary Report references Question 4 inquiring whether there were "any diversions reported under S000272 or claimed under the Waldteufel Right used to supply any place of use other than the 125 Creekbridge Homes." The Preliminary Report indicated Millview's response as being negative. There has been a misunderstanding, in that Millview's response was limited to the portion of the Waldteufel Right which has been set aside for the West Fork Subdivision (the "Reserved Waldteufel Right").

EX-0

On March 29, 2006, the Division of Water Rights inquired whether Millview was providing water to any place of use identified under S000272 or S015625. Tim Bradley's response on April 24, 2006 provided:

"The District supplies water to the places of use identified in both statements, which is fully encompassed within the District's boundaries. The amounts of water reported for the months of May through November on the Supplemental Statement of Diversion reflect the District's pumping from its direct diversion point. The remaining months are reported under License 492 (Application 3601); Permit 13936 (Application 17587) and the Water Supply Agreement with the Mendocino County Flood Control and Water Conservation Improvement District."

The informal response referred to in the Preliminary Report referred to the Reserved Waldteufel Right of 51,000 gpd to Hill and 74,000 gpd to Gomes; a portion of which was assigned to West Fork Subdivision Homeowners. There is substantial confusion as to the effect of this transfer by Hill and Gomes to Creekbridge Homes and the subsequent transfer of a portion of such right to individual homeowners and the subsequent protective reservation from the Hill and Gomes License to Millview. This was further complicated by the filing of S000272 in 2005 relating to this right, not the portion of the right licensed to Millview.

Frankly, Millview is uncertain as to how this reserved usage should be reported. Millview makes the following observations: (1) the right belonged to Hill and Gomes; (2) Hill and Gomes transferred a portion of the right to Creekbridge Homes who, in turn, transferred that which they received to individual homeowners; (3) Millview provides water service to the West Fork Subdivision in reliance upon the Reserved Waldteufel Right; (4) the Department of Health recognized the Reserved Waldteufel Right as the source for exemption of Creekbridge Homes Project from its moratorium imposed upon Millview; and, lastly, (5) Millview currently provides municipal water service to the West Fork Subdivision in reliance upon the Reserved Waldteufel Right.

This is to say that there are numerous thorny issues as to the effect of the reservation transactions and Millview is solicitous of any advice the Division may have as how to recast the reservation transactions to correctly reflect the reality of the situation. The reality is that Millview has for several years relied upon the Reserved Waldteufel Right to provide municipal water service to the West Fork Subdivision.

To avoid any further confusion as to the effect of the anomalous reservation arrangements for the West Fork Subdivision, the remainder of this response focuses upon Millview's interest in preserving the entire balance of the Waldteufel Right currently used by Millview in its entirety, separate and apart from the Reserved Waldteufel Right.

Millview asserts that apart from future resolution of the Reserved Waldteufel Right, none of the Waldteufel Right has been forfeited.

While the District holds License No. 492 and Permit 13936, neither of these rights address dry month source requirements for Millview which provides water service year round. Millview's rights were limited by the Division of Water Rights in contemplation that Millview would be a beneficiary of a portion of the 8,000 ac/ft reservation to the Mendocino County Flood Control and Water Conservation Improvement District ("Improvement District").

The nature of Millview's rights in the 8,000 ac/ft reservation is not entirely clear. Some clarity was extended in 2005 when Millview contracted with the Improvement District for an allotment of "Project Water" but many questions remain as to the effect and construction of that contract. This is not intended to be a criticism of the Improvement District which endeavored to meet its mandate under difficult conditions amidst a chorus of competing interests. However, some have interpreted the Agreement as being a "use it or lose it" arrangement. Such an interpretation is not only inconsistent with the needs of a municipal water purveyor, but if interpreted to its logical conclusion, might constitute impermissible waste and unreasonable allocation and use of water. Millview does not believe that the Improvement District intended any unreasonable effect.

Suffice it to say that Millview is currently uncertain as to how the Improvement District Agreement will be implemented or interpreted. However, Millview believes that the Improvement District shares Millview's goal for maximizing the water resources available to Mendocino County water purveyors. To implement this goal, Millview considers that the Waldteufel Rights licensed to it by Hill and Gomes have been used by it, at least as far back as the current throwback period for statements of water diversion, in its entirety, to the extent jurisdictional water is physically available for appropriation.

Millview is aware that SB 862 relating to Statements of Water Diversion is presently under consideration by the California Legislature and will likely be finalized within the next sixty days. When SB 862 is enacted, Millview intends to file a Statement of Water Diversion demonstrating full use of the Waldteufel Water Right for the years 2004-2005; 2005-2006; and 2006-2007, for use which has been throughout the entirety of Millview's District.

Millview believes that in connection with Mr. Howard's assertion that there has been a forfeiture, the relevant measurement period is for the five years immediately preceding the date of Mr. Howard's Complaint. When so measured, it is clear there has been no forfeiture of *any* portion of the Waldteufel Right and that it is fully in force and properly being used and enjoyed by Millview under its existing License from Hill and Gomes.

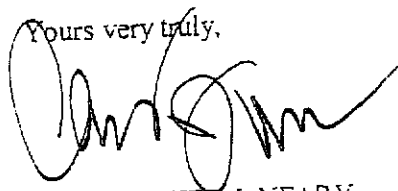
Charles A. Rich, Chief
July 31, 2007
Page 4

Therefore, Millview believes that the analysis reviewing the statements of water diversion filed in the 1960s is irrelevant to the Howard Complaint. See *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555, 560.

In summary, Millview agrees with the finding of the Preliminary Report that Hill and Gomes "conveyed or transferred a valid pre-1914 appropriative claim of right" to Millview. Millview asserts that Mr. Howard's Complaint failed to meet the burden of proof to establish the forfeiture of any portion of the Waldteufel Right and that the Right is in full force and effect and presently being enjoyed in its entirety by Millview to the extent that jurisdictional water is physically available.

Millview would appreciate your finalization of the Report dismissing the Howard Complaint and removing any cloud upon the validity of this right which Millview intends to purchase.

Yours very truly,



CHRISTOPHER J. NEARY

CFN:jen
File: 3138-01

cc: Board of Directors, Millview County Water District
Tim Bradley
Thomas P. Hill
Steve Gomes
Lee Howard
Barbara Spazek
Senator Patricia Wiggins
Jared Carter, Esq.