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5 Attorney for Petitioner,  
MILLVIEW COUNTY WATER DISTRICT

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8 444 North State Street  
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9 Telephone: (707) 462-6694  
Facsimile: (707) 462-7839  
10 email: jaredcarter@pacific.net

11 Attorneys for Petitioners,  
THOMAS P. HILL and STEVEN L. GOMES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF MENDOCINO

14  
15 MILLVIEW COUNTY WATER DISTRICT,  
a Public Agency; THOMAS P. HILL; and  
16 STEVEN L. GOMES,

17 Petitioners,

18 v.

19 CALIFORNIA STATE WATER  
RESOURCES CONTROL BOARD, a  
20 Public Agency; Any and All Persons  
Unknown Claiming Any Legal or  
21 Equitable Right, Title, Estate, Lien or  
Interest in the Property Described in the  
22 Complaint Adverse to Plaintiff's Title, or  
Any Cloud Upon Plaintiff's Title Thereto;  
23 and DOES 1 through 1000, inclusive,

24 Respondents.

UNLIMITED  
Case No. SCWL-CVPT-08-51448

NOTICE OF LODGING OF THE  
ADMINISTRATIVE RECORD

Date: June 13, 2008  
Time: 9:30 a.m.  
Dept: E

25  
26  
27 NOTICE OF LODGING OF ADMINISTRATIVE RECORD  
Case No. SCWL-CVPT-08-51448

EXHIBIT U

ENDORSED-FILED

APR 23 2008

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA  
~~CAMERON SMITH~~

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Petitioners MILLVIEW and THOMAS HILL and  
3 STEVE GOMES hereby lodge with the Court the Administrative Record (herein AR). The record  
4 consists of documents obtained from Respondents as a result of Petitioners' November 15, 2007  
5 Public Records Request pertaining to the pre-1914 appropriative water right established by Mr.  
6 J.A. Waldteufel and now owned by Plaintiffs HILL and GOMES. The documents are numbered  
7 from 10001 to 10270 and breakdown as follows:

8 1. Contact Report dated 1/17/07 re T.Hill call to acquire a notice for Application 31534;  
9 AP 10003-10006.

10 2. 5/28/98 fax to T. Hill from A.Chu, Division of Water Rights (DWR) re Notice of  
11 Assignment form; AP 10007-10008.

12 3. 6/8/98 fax to A.Chu, DWR, from T.Hill re completed Notice of Assignment form; AP  
13 10009-10010.

14 4. 2/14/67 Lester Wood's Statement of Water Diversion and Use; AP 10011-10012.

15 5. 2/15/67 letter to L. Wood from SWRB acknowledging receipt of statement & assigning  
16 Inventory of Water Diversions and Use, No. 272; AP 10013.

17 6. 2/13/70 L.Wood Supplemental Statement of Water Diversion and Use; AP 10014.

18 7. March 1976 letter to water users from SWRCB re required supplemental statements  
19 required every 3 years; AP 10015.

20 8. 1/19/82 L.Wood Supplemental Statement of Water Diversion and Use; AP 10016.

21 9. 12/30/87 L.Wood Supplemental Statement of Water Diversion and Use; AP 10017.

22 10. 4/27/98 letter to C.Brennan, Mendocino County Russian River Flood Control &  
23 Water Conservation Improvement District, from A.Chu, DWR, re inquiry of registration J.A.  
24 Waldteufel (Pre-1914 Water Right); AR 10018.

25 11. 3/30/98 letter to A.Chu, DWR, from C.Brennan, Mendocino County Russian River  
26 Flood Control & Water Conservation Improvement District, re inquiry into registration of  
27 Waldteufel right, with enclosures; AR 10019-10026:

28 A. 3/24/1914 water right claim of J.A. Waldteufel, AR 10020;

- 1 B. 1/5/98 grant deed from R.Wood to T.Hill & S.Gomes, AR 10021-10024;
- 2 C. Chain of title 4/1/13 through 01-8-98 re AR # 169-130-13,10025-10026.
- 3 12. 1/7/98 Assignment of Water Rights from R.Wood to T.Hill and S. Gomes; AR10027.
- 4 13. Divider - Statement of Water Diversion and Use File # S015625; AR 10028.
- 5 14. 12/21/05 handwritten note re need for map to plot, 1 1/4 CFS; AR 10029.
- 6 15. 7/2/01 Statement of Water Diversion and Use Route Slip; claimant Creekbridge
- 7 Homes; AR 10030-10043.
- 8 16. Divider - 262.0 Complaints and Investigations, East Fork Russian River, Mendocino
- 9 23-03 (Folder 2); AR 10044.
- 10 17. 11/28/07 letter to J.Carter, Hill & Gomes, from J.Kassel, DWR, re Public Records
- 11 Act Request & transmittal of records; AR 10045.
- 12 18. 11/15/07 letter to J.Kassel, DWR, from J.Carter, Hill & Gomes, re Public Records
- 13 Act Request (with attachment 6/1/07 C.Rich of DWR Memorandum to the file 262.0(23-03-06) -
- 14 Report of Investigation for complaint filed by L.Howard re diversion from East Fork of Russian
- 15 River); AR 10046-10064.
- 16 19. 8/2/07 Email to D.Rapport, City of Ukiah, from C.Rich, DWR, responding to
- 17 Rapport's request of public records related to L.Howard's complaint; AR 10065.
- 18 20. 8/1/07 Email to C.Rich, DWR, from D.Rapport, City of Ukiah, requesting copies of
- 19 records related to L.Howard's complaint; AR 10066.
- 20 21. 7/31/07 letter to C.Rich, DWR, from R. Sanford, Mendocino County Water Agency,
- 21 inquiring re SWRCB June 1, 2007 preliminary report; AR 10068-10069.
- 22 22. 7/31/07 letter to C.Rich, DWR, from C.Neary, Millview, responding to SWRCB June
- 23 1, 2007 DWR's preliminary report; AR 10070-10073.
- 24 23. 7/24/07 letter to C.Rich, DWR, from J.Carter, Hill & Gomes, responding to SWRCB
- 25 June 1, 2007 DWR's preliminary report; AR 10074-10078.
- 26 24. 6/15/07 letter to C.Rich, DWR, from C.Neary, Millview, re 30 day extension for
- 27 additional submission of evidence; AR 10079.

28 //

1 25. 6/1/07 Letter to T.Hill & L.Howard from C.Rich, DWR, re conclusions drawn from  
2 Staff Report of Investigation (attached) re L.Howard's complaint; AR 10080-10099.

3 26. 5/21/07 return receipt to Millview from DWR - "return to sender, no mail receptacle,  
4 unable to forward"; AR 10100.

5 27. 5/18/07 letter to B.Spazek, Mendocino County Russian River Flood Control & Water  
6 Conservation Improvement District, from C.Rich, DWR, re potential abandonment of Wood  
7 water right, with attachments (AR 10101-10118):

8 A. 5/7/07 letter to C.Rich, DWR, from C.Neary, Millview, with attachments:

9 (i) Assignment of water rights, AR 10106;

10 (ii) Grant deed, AR 10107-10110;

11 (iii) Negative Declaration, AR 10111-10112;

12 (iv) Conditions of Approval, AR 10113-10118;

13 (v) Subdivision Map (missing here, "see pocket folder").

14 28. 4/30/07 letter to T.Hill from SWRCB re water right complaint affecting Millview;  
15 requesting evidence/documents; AR 10119-10120.

16 29. 4/19/07 letter to C.Rich, DWR, from B.Spazek, Russian River Flood Control & Water  
17 Conservation Improvement District, re water right complaint, with attachments; AR 10121-  
18 10130:

19 A. USGS Gage Readings - West Fork Russian River, AR 10123-10127;

20 B. Russian River Flood Control & Water Conservation Improvement District

21 Minutes of 3/10/03 meeting, AR 10128-10130;

22 30. USGS Gage Readings - West Fork Russian River. Full Listing. AR 10131-10145.

23 31. 4/16/07 facsimile to L.Howard from C.Rich, DWR, re Senator Wiggins' letter; AR  
24 10146-10147.

25 32. 3/28/07 Email to C.Rich, DWR, from A.Sawyer, DWR, re legal issue; AR10148-  
26 10149.

27 33. 3/27/07 Email to A.Sawyer, DWR, from B.Leidigh, DWR, re legal issue re complaint;  
28 AR 10150-10151.

1 34. 3/20/07 Email to C.Rich, DWR, from A.Sawyer, DWR, re legal issue; BP10152-  
2 10153.

3 35. 4/16/07 facsimile to L.Howard from C.Rich, DWR, transmitting Senator Wiggins'  
4 letter re complaint; AR 10154-10156.

5 36. 9/5/06 letter to L.Howard from C.Rich, DWR, with sworn statement of Floyd  
6 Lawrence; AR 10157-10207.

7 37. 5/23/06 facsimile to L.Howard from C.Rich, DWR, re Millview response to  
8 complaint, with attachments (AR 10208-10214):

9 A. 4/24/06 letter to C.Rich, DWR, from T.Bradley, Millview, re complaint, with  
10 attachments, AR 10210-10211:

11 (i) Map of point of diversion, AR 10212;

12 (ii) 7/16/1870 Deed from Doolan and Hastings to Horeman, AR 10213;

13 (iii) Map of diversion point, AR 10214.

14 38. 3/29/06 letter to Hill, Gomes, Millview & Creekbridge Homes from C.Rich, DWR,  
15 re L.Howard complaint, with attachment (AR 10215-10225):

16 A. 2/27/06 letter to V.Whitney, DWR, from L.Howard re formal complaint, with  
17 attachment, AR 10219:

18 (i) 6/10/05 Supplemental Statement of Water Diversion and Use by S.Gomes,  
19 AR 10220-10221;

20 (ii) Statement of Water Diversion 2001-2004, AR 10222;

21 (iii) License & Assignment of Water Rights, 10/11/2002, AR 10223-10225.

22 39. 3/6/08 letter to Victoria Whitney, SWRCB, from J.Carter, Hill & Gomes, re petition  
23 for reconsideration pursuant to Water Code § 1122; with attachments, AR 10226-10270:

24 A. 6/1/07 SWRCB Report cover letter, AR 10234-10136;

25 B. 6/1/07 SWRCB Report of Investigation for a Complaint Filed, AR 10237-  
26 10254;

27 C. 7/24/07 letter to C.Rich, DWR, from J.Carter, Hill & Gomes, re 6/1/07  
28 SWRCB Report, AR 10255-10260;

1 D. 7/31/07 letter to C.Rich, DWR, from C.Neary, Millview, re 6/1/07 SWRCB  
2 Report, AR 10261-10265;

3 E. 7/31/07 letter to C.Rich, DWR, from R.Sanford, Mendocino County Water  
4 Agency, re 6/1/07 SWRCB Report, AR 10266-10268;

5 F. Proof of Service, AR 10269-10270.

6  
7 Respectfully submitted,

8  
9 DATED: April 24, 2008

  
CARTER, VANNUCCI & MOMSEN LLP

10 By: JARED G. CARTER  
11 Attorney for Petitioners  
12 THOMAS P. HILL and STEVEN L. GOMES  
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SAC-001859

STEP \_\_\_\_\_ OF \_\_\_\_\_

Firm Name Carter, Vannucci Today's Date: 12-14 Time In: \_\_\_\_\_  
 Address: 444 North STATE ST. Date Due: 12-17 Time Due: UPS  
 Zip: 95482 Phone: (707) 462-6694 # Of Copies: X1 Price Per Copy \_\_\_\_\_  
 Ordered By: Brian Carter / Gina Special Delivery Instructions: \_\_\_\_\_  
 Client Matter # S000272, S015625 CC #  
 Case Name \_\_\_\_\_ Fed-X #  
 # Of Originals: \_\_\_\_\_  
 # Of Boxes: \_\_\_\_\_  
 Grade: A \_\_\_\_\_ B \_\_\_\_\_ C \_\_\_\_\_ D \_\_\_\_\_ E \_\_\_\_\_

SPECIAL INSTRUCTIONS SEE BACK

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<input type="checkbox"/> All 8 1/2 x 14	<input type="checkbox"/> Convert 1 Sided To 2 Sided	COVERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> All 11 x 17	<input type="checkbox"/> Convert 2 Sided To 1 Sided <input type="checkbox"/> S <input type="checkbox"/> C <input type="checkbox"/> L	REDWELLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Size For Size	<input type="checkbox"/> Copy Only Tagged Originals	SPINES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Copy Only Clipped Originals		DIVIDER TABS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		FILE FOLDER TABS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		FILE FOLDERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		POST IT NOTES (S)(C)(L)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		STANDARD LANGUAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**OverSize Documents**

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 Blow ups Size \_\_\_\_\_  
 Color for Color  B/W

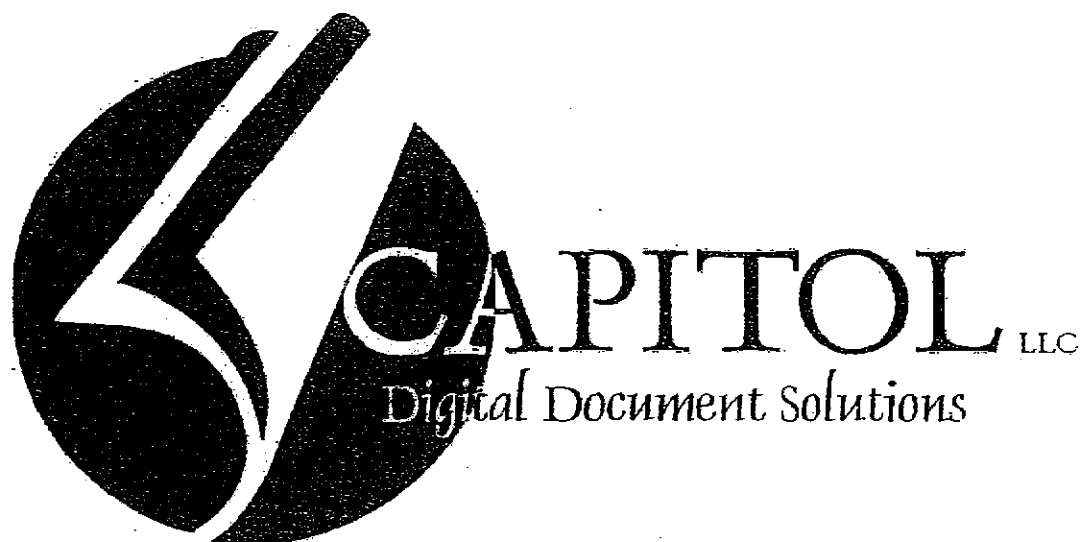
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 Restaple Originals  2 Hole Drill  Orig  Copy  
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 Do Not Restaple Or Reclip Originals  Depo Bind  Orig  Copy  Top  Side  Covers  
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 Color \_\_\_\_\_  Per \_\_\_\_\_  Manila Folders—Re-Create  
 Rubber band Copies  As Original  Tabs  As Original  Side  Bottom  
 Per \_\_\_\_\_  Numeric  Alpha  Exhibit  
 Custom

Client Signature: \_\_\_\_\_ Account Mgr/CSR: \_\_\_\_\_

10001



555 Capitol Mall, Suite 540  
Sacramento, CA 95814

# COPIES

## Office

**Phone: 916 · 449 · 2820**

**Fax: 916 · 449 · 2821**

**Dave Wilkinson**  
**916 · 343 · 9500**

**Ignacio Solorio**  
**916 · 439 · 2546**



# CONTACT REPORT

Subject: S000272

**DIVISION OF WATER RIGHTS**  
**STATE WATER RESOURCES CONTROL BOARD**

**Division** Jennifer Dick-

**Personnel** McFadden

**Date** 1/17/07

**Time** 9:00am

**Personal**  **Where**

**Telephone**  **Number** 760-777-7472

**Individual(s)/Agency Contacted** Thomas Hill

**Conversation Description:** Thomas Hill was sent a notice for Application 31534 as a downstream user. The notice came back as an insufficient address. I contacted him by phone and he provided me with his current information.

Phone: 760-777-7472

Mailing Address: 54925 Riviera La Quinta, CA 92253

Address: P.O. Box 691 Ukiah, CA 95482

**Decision(s)**

**Action Items** Update information in eWRIMS

5000272

10/29/1998

5000272 01 5000272 01

EAST FORK RUSSIAN RIVER

100523000

2.5

3

5000272 5000272 01

2

01

0558700

1661600

23 MENDOCINO

2.5

C

33

16 FF007

N UKIAH

12 7.5

W

M

10/29/1998

KENB

09/15/1994

SHIUHLIN

10/29/1998

KENB

09/15/1994

SHIUHLIN

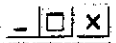
*Dead snags  
w/brush*

*Warms corrected  
12/21/05 Site*

*Pre 1914  
Propositioned to  
SO15625 -  
per attached  
letter W*

*July - 9/1/05  
We need to pull the  
data out - see attached  
letter - see attached  
CA sheet - CA sheet  
location -*

QUERY



Exit Form	Application	Applicant-NameLink	Source - Tributary	Source - Pod	Water Use	<a href="#">Print (Tables 1-5)</a>
	Term	Decision	Extension	FERC	Irrigation	<a href="#">Print (Tables 6-10)</a>

# WRIMS General Query

Today's Date: 12/21/2005

[Query All Records](#)

(Active Records Only)

Query On View Wquery

Appl Id	<input type="text" value="5000272"/>	Appl File Date	<input type="text" value="02/14/1967"/>	Wrapp_record_delete	<input type="text" value="N"/>
Appl Status Code	<input type="text" value="A"/>	Permit Issue Date	<input type="text"/>		
Permit	<input type="text"/>	License Issue Date	<input type="text"/>		
License	<input type="text"/>				
Primary Owner	<input checked="" type="radio"/> Yes <input type="radio"/> No	Agent	<input type="radio"/> Yes <input checked="" type="radio"/> No	Wname_record_delete	<input type="text" value="N"/>
Last Name	<input type="text" value="HILL"/>				
First Name	<input type="text" value="THOMAS"/>				
Middle Name	<input type="text"/>				
Company	<input type="text"/>				
Street Number	<input type="text" value="110 SOUTH HIGHLAND AVE"/>				
Pobox	<input type="text"/>				
City	<input type="text" value="UKIAH"/>				
State	<input type="text" value="CA"/>	Zip	<input type="text" value="95482"/>		
Area Code	<input type="text" value="707"/>	Phone Number	<input type="text" value="4623719"/>		
Source Name	<input type="text" value="EAST FORK RUSSIAN RIVER"/>			Wrsour_record_delete	<input type="text" value="N"/>
Stream Code	<input type="text" value="100523000"/>				
County Code	<input type="text" value="23 - LOV"/>	County Name	<input type="text" value="MENDOCINO"/>		
Quad Map Name	<input type="text" value="UKIAH"/>				
				Wrpod_record_delete	<input type="text" value="N"/>

General Query	Application	Applicant-NameLink	Source - Tributary	Source - Pod	Water Use
	Term	Decision	Extension	FERC	Irrigation

Today's Date: 12/21/2005

WRAPP

Record Delete  Yes  No

Record Delete Reason

### Water Rights Application

Appl Id	<u>5000272</u>	Appl Recvd Date	<input type="text"/>
Appl Status Code	<u>A</u>	Appl Status Date	<u>02/14/1967</u>
Appl File Date	<u>02/14/1967</u>	Date Advertised	<input type="text"/>
Protest	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Cust No	<input type="text"/>	Cust Type	<input type="text"/>
Appl Fee Amt	<input type="text"/>	Appl Fee Amt Recd	<input type="text"/>
Max Dd Appl	<u>2.5</u>	Max Dd Units	<u>C</u>
Max Dd Ann	<input type="text"/>	Max Storage	<input type="text"/>
Max Use Ann	<input type="text"/>	Year First Use	<u>1914</u>
Permit	<input type="text"/>	Permit Issue Date	<input type="text"/>
Permit Fee Amt	<input type="text"/>	Permit Fee Amt Rec	<input type="text"/>
Const Begin	<input type="text"/>	Const End	<input type="text"/>
Complete Use	<input type="text"/>		
License	<input type="text"/>	License Issue Date	<input type="text"/>

Record Update User Id	<u>KENB</u>
Record Update Date	<u>10/29/1998</u>
Record Create User Id	<u>SHUHLIN</u>
Record Create Date	<u>09/15/1994</u>

S 272



Cal/EPA



Pete Wilson  
Governor

facsimile transmittal

State Water  
Resources  
Control Board

Division of  
Water Rights

Mailing Address:  
P.O. Box 2000  
Sacramento, CA  
95812-2000

901 P Street  
Sacramento, CA  
95814  
(916) 657-2170  
FAX (916) 657-1485

To: Mr. Thomas Hill Fax: 707-462-3719

From: Andy Chu Date: 5-28-98

Re: Statement 272 Pages: 2

CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycl

Notes:

Please complete the notice of assignment form. Let me know if you have any questions.  
My phone # is (916) 657-1015.

NOTICE OF ASSIGNMENT

State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Gentlemen:

I have assigned all my right, title, and interest in

~~Application~~ *Statement* 272, ~~Permit~~ \_\_\_\_\_, ~~License~~ \_\_\_\_\_

on file with the State Water Resources Control Board to:

\_\_\_\_\_  
\_\_\_\_\_

whose address is:

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State) (Zip code)

Telephone No. ( ) \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Telephone No. ( ) \_\_\_\_\_

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

*New  
owner* →

*rev.  
owner* →

FROM : TOM HILL

PHONE NO. : 707 462 37

AC

P01

TO: Andy Chu

FROM: Tom Hill  
707-462-3719

~~148~~ 5000272  
file

NOTICE OF ASSIGNMENT

State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Gentlemen:

I have assigned all my right, title, and interest in

~~Statement~~  
Application 272, Permit \_\_\_\_\_, License \_\_\_\_\_

on file with the State Water Resources Control Board to:

THOMAS HILL AND  
STEVE GOMES

whose address is:

110 SOUTH HIGHLAND AVE.  
(Address)

UKIAH  
(City)

CALIF. 95482  
(State) (Zip code)

Telephone No. (707) 462-3719

Thomas Hill Steve Gomes  
(Signature)

[Signature]  
(Signature)

Telephone No. (707) 468-8413

Dated: 6-8-98

New owner →

Prev. owner →

WRMS UPDATED  
6/16/98  
KCS



STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
STATE WATER RIGHTS BOARD

STATEMENT OF WATER DIVERSION AND USE

This statement should be typewritten or legibly written in ink.

A. Name of person diverting water Lester Wood  
Address R.F.D. #2 Box #632 Ukiah, Calif. 95482

B. Name of body of water at point of diversion WEST BRANCH RUSSIAN RIVER  
Tributary to \_\_\_\_\_

C. Place of diversion BW 1/4 SE 1/4 Section 33 Township 16N Range 12W M.D. 82M  
MENDOCINO County, or locate it on sketch of section grid on reverse side with regard to section lines or prominent local landmarks.

D. Name of works \_\_\_\_\_

E. Capacity of diversion works APPROX 175 cubic feet per second  
Capacity of storage reservoir NO RESERVOIR gallons per minute  
State quantity of water used each month in gallons or acre-feet gallons  
acre-feet

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
						X	X						

If monthly and annual use are not known, check months in which water was used. State extent of use in units, such as acres of each crop irrigated, average number of persons served, number of stock watered, etc. 15 ACRES GRAPES  
15 ACRES WALNUTS

Maximum annual water use in recent years 15 acre-feet/year gallons  
Minimum annual water use in recent years 7.5 acre-feet/year acre-feet  
Type of diversion facility: gravity \_\_\_\_\_, pump X acre-feet

Method of measurement: weir \_\_\_\_\_, flume \_\_\_\_\_, electric power meter \_\_\_\_\_, water meter \_\_\_\_\_, estimate X (use required)

F. Purpose of use (what water is being used for) IRRIGATION

G. General description or location of place of use (use sketch of section grid on reverse side if you desire) \_\_\_\_\_

H. Year of first use as nearly as known 1914 Reference Vol 3 P17 Records of County Recorder, Mendocino County.

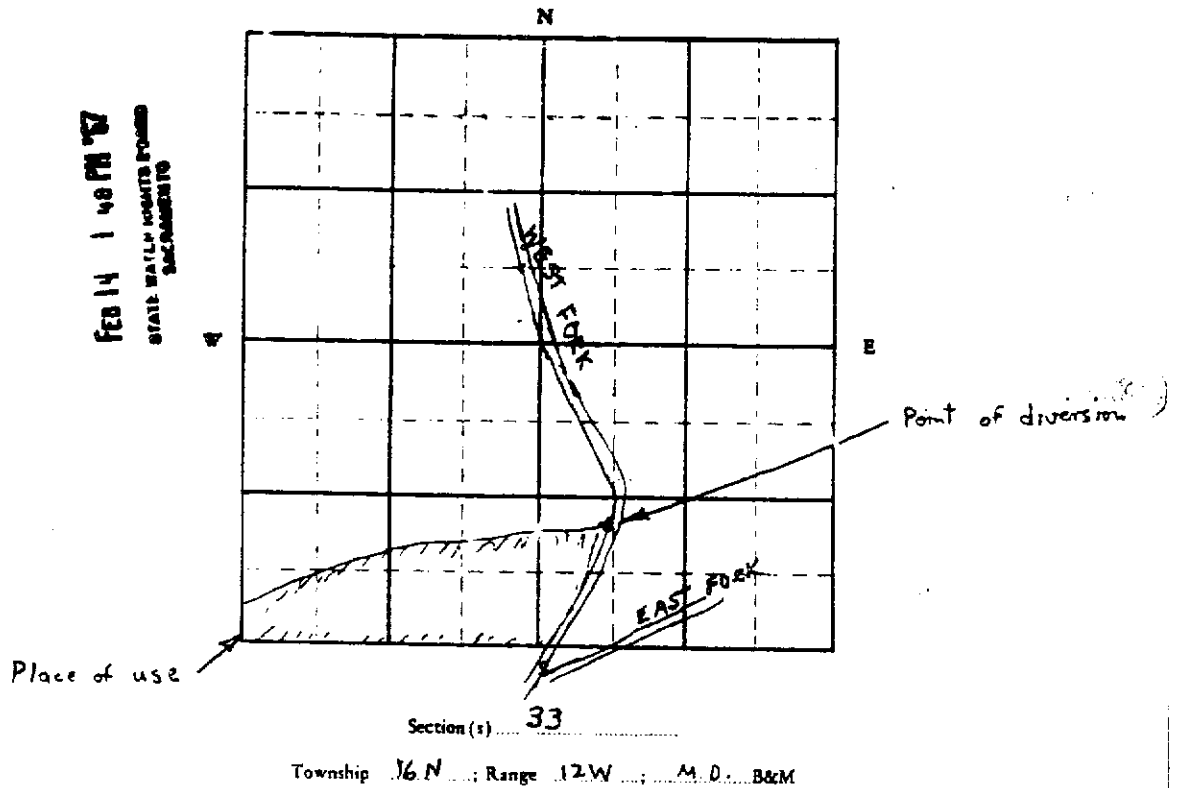
I. Name of person filing statement Lester Wood  
Position \_\_\_\_\_ Organization \_\_\_\_\_  
Address \_\_\_\_\_

I certify that the foregoing statements are true and correct to the best of my knowledge and belief.

Date signed 2/14/67 Signature Lester Wood

See Instructions on Reverse Side

The location of the diversion point and the place of use may be sketched on this section grid. If it is used, please enter the section(s), township and range below and show any streams or other landmarks that will assist in identifying the area.



Instructions

A statement should be filed except where—

1. The diversion is on file with the State Water Rights Board by means of an application, permit or license.
2. The diversion is supervised by a state-appointed watermaster.
3. The water is pumped from a ground water basin.

A separate statement should be filed for each point of diversion.

The statement should be filed by the diverter or his designated agent.

When completing Item E, please cross out the term that does not apply where a choice is given.

A duplicate copy should be retained for your file.

Please send the completed statement to: State Water Rights Board  
Room 1140, Resources Building  
1416 Ninth Street  
Sacramento, California 95814

STATE OF CALIFORNIA—RESOURCE AGENCY

**STATE WATER RIGHTS BOARD**

RESOURCE BUILDING, ROOM 1148  
NINTH AND O STREETS • SACRAMENTO 95814

GERT REYTHORN, Chairman  
RALPH J. MERRILL, Member  
W. A. ABERNETHY, Member

RONALD REAGAN, Governor



February 15, 1967

Mr. Lester Wood  
R.F.D. #2, Box 632  
Ukiah, California 95422

Subject: Inventory of Water Diversions and Use, No. 272

Dear Mr. Woods:

Your statement of water diversion and use for 1966 has been received and assigned the above number. You should refer to this number in any future correspondence to this office regarding the statement.

Please notify us of any change in address or change in ownership.

As the law requires that supplemental statements be filed at three-year intervals, we will send you the next notice of statement near the end of 1969.

Sincerely,

*L. K. Hill*

L. K. Hill  
Executive Officer

SWRB  
40E (10-66)

BT

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
STATE WATER RESOURCES CONTROL BOARD

No. 5 212  
Wasco  
County

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

Complete items A, B, C and I. The other items need not be completed unless there have been project changes since the last report.

A. Name of person diverting water LESTER - HOOD  
Address PO Box 682 Ukiah Calif 95482

B. Name of body of water at point of diversion EAST BRANCH RUSSIAN RIVER  
Tributary to RUSSIAN RIVER

C. State quantity of water used each month in gallons  or acre-foot  (Check units reported or show other here \_\_\_\_\_)

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1970	:	:	:	:	/	:	/	:	/	:	:	:	:
1971	:	:	:	:	/	:	/	:	/	:	:	:	:
1972	:	:	:	:	/	:	/	:	/	:	:	:	:

If monthly and annual use are not known, check months in which water was used. State extent of \_\_\_\_\_ in units, such as acres of each crop irrigated, average number of persons served, number of stock watered etc.

May 202 - Sprinkler @ 500 gal per min. 2.5 hrs Frost protection  
July 202 " " " " 100 hrs irrigation  
Sept 202 " " " " 24 hrs "

D. Place of diversion \_\_\_\_\_ Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, B&M.

E. Name of works \_\_\_\_\_

F. Capacity of diversion works \_\_\_\_\_  
Capacity of storage reservoir \_\_\_\_\_  
Type of diversion facility: gravity \_\_\_\_\_, pump \_\_\_\_\_  
Method of measurement: weir \_\_\_\_\_, flume \_\_\_\_\_, electric power meter \_\_\_\_\_, water meter \_\_\_\_\_, estimate \_\_\_\_\_

G. Purpose of use (what water is being used for) \_\_\_\_\_

H. General description or location of place of use \_\_\_\_\_

I. Name of person filing statement LESTER HOOD  
Position Owner Organization \_\_\_\_\_  
Address RT # 2 - Box 682 Ukiah CA 95482

I certify that the foregoing statements are true and correct to the best of my knowledge and belief.

Date signed 2/12/70 Signature Lester Hood

Use reverse side for additional information, if needed

MA  
1/4

STATE OF CALIFORNIA—THE RESOURCES AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
2128 19TH STREET  
SACRAMENTO, CALIFORNIA 95818

(916) 445-0848

March 1976

To: Water Users

SUPPLEMENTAL STATEMENTS OF WATER DIVERSION AND  
USE

Our records show that you filed a Statement of  
Water Diversion and Use, as required by Sections  
5100 through 5108 of the Water Code.

After filing a statement reporting the diversion  
and use of water, supplemental statements are  
required every three years.

Copies of supplemental statement forms are en-  
closed. Please complete and return one copy  
for each statement originally filed.

If you have permanently discontinued use of  
water, changed your address, or sold the project  
on which water was used, please let us know so  
we can revise our records. If you have used no  
water but may resume use in the future, please  
return the supplemental statement form showing  
no use.

*R. L. Rosenberger*  
R. L. Rosenberger, Chief  
Division of Water Rights

Enclosures

SWRCB 40h (1/76)

STATE OF CALIFORNIA  
 STATE WATER RESOURCES CONTROL BOARD  
 Division of Water Rights  
 77 CADILLAC DRIVE, SACRAMENTO, CALIFORNIA 95825

(916) 924-2446  
 SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

DIVERTER OF RECORD:

STATEMENT NO: 000272

LESTER MOOD  
 501 LAKE MENDOCINO DRIVE  
 UKIAH, CA  
 95482

TELEPHONE NUMBER:  
 (209) 468-2417

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: EAST BRANCH RUSSIAN RIVER

TRIBUTARY TO:

COUNTY: MENDOCINO

DIVERSION  
 WITHIN: S41/4 OF SE1/4 SECTION 33, T16N, R12W, M08E4.

INSTRUCTIONS: Please complete items A, B and C. Item D should be completed if you replaced all or part of your regular water supply with reclaimed or polluted water. Return one copy of this form by July 1, 1982. (Additional information on reverse side of this form.)

- A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used. Amounts below are:  Gallons  Acre-feet  \_\_\_\_\_ (other)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1977				X	X	X	X	X	X				
1980				X	X	X	X	X	X				
1981				X	X	X	X	X	X				

- B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation Grapes, walnuts  
 Stockwatering \_\_\_\_\_  
 Domestic \_\_\_\_\_  
 Other (specify) \_\_\_\_\_

- C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: Jan 19, 1982, at UKIAH, California

Signature: Lester Mood

STATE WATER RESOURCES CONTROL BOARD  
Division of Water Rights

P.O. BOX 2000 SACRAMENTO CA 95810  
901 P ST SACRAMENTO, CA  
916 322 4609

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

JAN - 5 PM 2:58

STATEMENT NO: 100176  
SACRAMENTO

DIVERTER'S NAME:

LESTER WOOD  
301 LAKE MENDOCINO DRIVE  
DUBAI, CA 95628

TELEPHONE NUMBER:  
(714) 641-8113

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: EAST FORK RUSSIAN RIVER

TRIBUTARY TO: RUSSIAN RIVER

COUNTY: MENDOCINO

DIVERSION WITHIN: S41/4 OF SE1/4 SECTION 33, T14N, R12E, M086M.

INSTRUCTIONS: Please complete items A, B and C. Item D should be completed if you divert all or part of your regular water supply with reclaimed or polluted water. RETURN THIS FORM BY JULY 1, 1988. (Additional information on reverse side of this form.)

A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used. Amounts below are:  Gallons  Acre-feet  Other

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual
1985				✓	✓	✓	✓	✓	✓				
1986				✓	✓	✓	✓	✓	✓				
1987				✓	✓	✓	✓	✓	✓				

B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation 30 Acres

Stockwatering \_\_\_\_\_

Domestic \_\_\_\_\_

Other (specify) \_\_\_\_\_

C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATE: Dec. 30, 19 87, at Dubai

Signature: [Signature]



**Cal/EPA**

State Water  
Resources  
Control Board

Division of  
Water Rights

Mailing Address:  
P.O. Box 2000  
Sacramento, CA  
95812-2000

901 P Street  
Sacramento, CA  
95814

(916) 657-1015  
FAX (916) 657-1485



Pete Wilson  
Governor

In Reply Refer  
to:333:AC:S00272

**APR 27 1998**

Mr. Clayton L. Brennan  
525 South Main Street, Suite B  
Ukiah, CA 95482

Dear Mr. Brennan:

STATEMENT 272--PRE-1914 CLAIM ON WEST FORK RUSSIAN RIVER IN  
MENDOCINO COUNTY

Pursuant to your letter dated March 30, 1998, you requested any information related to the above water rights filed with our office. Enclosed are copies of the records we have in the office. Please be advised that the above Statement is currently inactive because the discontinuation of the submittals of the Supplemental Statement from the previous claim holder, Mr. Lester Wood. In order to re-activate the above Statement, the current owner of the property needs to provide the records showing the continuous uses of previous claim since 1987.

If you have any questions, please call me at (916) 657-1015.

Sincerely,

Andy Chu  
Associate WRC Engineer  
Application and Petition Section

Enclosures

AChu:ac/pminer:4-24-98  
u:acts272



LAW OFFICE OF  
CLAYTON LANE BRENNAN  
525 SOUTH MAIN STREET  
SUITE B  
UKIAH, CALIFORNIA 95482  
Telephone (707) 462-0867 • Telecopier (707) 462-4942

~~AC~~  
S000272

March 30, 1998

Mr. Andy Chu  
STATE WATER RESOURCES CONTROL BOARD  
P. O. Box 2000  
Sacramento, CA 95812-2000

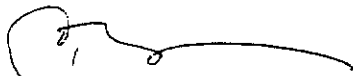
Re: Claim of J.A. Waldteufel (Pre-1914 Water Right)

Dear Mr. Chu:

As you will recall, I am interested in determining whether the water right referred to in enclosed grant deed has ever been registered with your agency. I have previously submitted your office a copy of the recorded "claim of water right" along with maps and other descriptions of the property for your review. Despite your best efforts (which we greatly appreciate) you were unable to find any record of the right in your office. However, you did indicate that running the names of the previous owners through your data base would be the best way to exhaust your records. I have now conducted a chain of title search on all previous owners of the subject property. I am enclosing the list of names for your review.

Please run these names through your data base and advise me if SWRCB has any information concerning the water right. If you discover any information, please send me copies of everything you find. I will gladly pay the copying expense.

Very truly yours,



CLAYTON L. BRENNAN

Enclosures

cc: Steven Thomas  
Chairman, MCRRFCWCID

- WATER - RIGHT -

.....	CLAIM	"	Vol. J. P. 17.
		"	
	OF	"	DATED, March 24th, 1914.
		"	
.....	J. A. Waldteufel.	"	RECORDED, Mar. 24", 1914.
		"	

ACKNOWLEDGED, March 24th, 1914, by J. A. Waldteufel  
 before E. L. Waldteufel, a Notary Public in and  
 " SEAL " for the County of Mendocino, State of California  
 March 24th, 1914. /

NOTICE is hereby given that I hereby claim the water flow-  
 ing in the West fork of Russian River in Mendocino County,  
 California, at the point where this notice is posted to the  
 extent of One Hundred (100) inches measured under a four inch  
 pressure that the purpose for which I claim it is for domestic  
 and culinary purposes upon the lands owned by me, hereinafter  
 described, contiguous to said river and for the irrigation of  
 said lands; that the place of intended use is on Lot #103 of  
 Henley's Survey and Map of Yokayo Rancho and that I intend  
 to divert said water <sup>by</sup> means of an Electric Motor and a six inch  
 centrifugal pump at said point of diversion.

J. A. Waldteufel.

The foregoing is a copy of a notice posted by me on  
 March 24th, 1914 in a conspicuous place at the point of in-  
 tended diversion of the above named water in Lot #103 of  
 Henley's Survey and Map of Yokayo Rancho, said point being about  
 four chains South of where the County Road to Potter Valley  
 and Lake County intersects the West fork of Russian River.

J. A. Waldteufel.

Order No.  
Escrow No. 203707 DN  
Loan No.

WHEN RECORDED MAIL TO:

Thomas P. Hill  
Steven L. Gomes  
110 S. Highland Avenue  
Ukiah, CA 95482

	\$20.00 PAID
*	PCD FILED
	Exempt

00000386  
Recorded at the request of  
FIRST AMERICAN TITLE CO  
Book 2470 Page 699  
01/08/1998 02:49P  
Fee: \$16.00 No of Pages:4

OFFICIAL RECORDS  
MENDOCINO COUNTY CALIF  
MARSHA A. YOUNG, RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ 1,047.75

Computed on the consideration or value of property conveyed; OR  
 Computed on the consideration or value less liens or encumbrances remaining at time of sale.

As declared by the undersigned Grantor  
Signature of Declarant or Agent determining tax - Firm Name

### GRANT DEED

169-130-17,  
178-CID-C1

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Robert Wood, as Trustee of The Robert Wood Living Trust dated December 13, 1993**

hereby GRANT(S) to

**Thomas P. Hill, a married man, as his sole and separate property, as to an undivided one-half interest; and  
Steven L. Gomes, an unmarried man, as to an undivided one-half interest**

the real property **Unincorporated Area** State of California, described as  
County of **Mendocino**

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Dated January 5, 1998

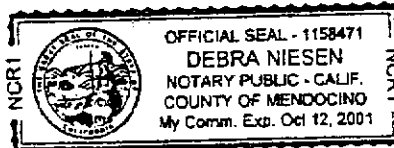
  
Robert Wood

STATE OF CALIFORNIA )  
COUNTY OF Mendocino ) ss.

On Jan. 6, 1998 before me.  
Debra Niesen  
personally appeared Robert Wood

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature Debra Niesen  
Debra Niesen  
MAIL TAX STATEMENTS TO:



(This area for official notarial seal)

SAME AS ABOVE

1002-SM (1/94)

*Legal*

Order No. 203707 DN

DESCRIPTION

The land referred to herein is situated in the State of California, County of Mendocino, and is described as follows:

Parcel One:

Commencing at the Northeast corner of Lot 82 of the Yokayo Rancho, where the third standard line crosses Russian River; thence running West along said standard line and the North line of said Lot 82, South 89° 50' West 16.80 chains to a stake from which a white oak tree 10 inches in diameter marked "XBT" bears West 36 links distant; thence North 0° 16' East along the East line of the land of W. P. Burk, 11.12 1/2 chains to the County road leading from Ukiah to Potter Valley; thence North 86° 46' East 2.73 chains to a stake from which a black oak tree 36 inches in diameter, marked "LR4BT" bears South 65 1/2° West 41 links distant; thence North 69° 30' East 11.82 chains; thence North 74° 2' East 1.63 chains; thence North 88° 50' East 12.05 chains to the center of the channel of the West branch of Russian River; thence down the center of said channel, South 6° 21' West 3.77 chains; thence South 26° 12' West 6.13 chains; thence South 34° 52' West 2.22 chains; thence South 50° 41' West 8.03 1/2 chains to the point of beginning.

Together with the following described parcel of land:

Beginning at a 6" x 6" CHC monument on the Southerly line of Lake Mendocino Drive (County Road 227B) at the easterly terminus of the course "North 70° 22' 03" East, 916.13 feet" as shown on a map filed in Map Case 2, Drawer 41, Page 92, Mendocino County Records; thence along the said Southerly line South 70° 22' 03" West, 301.95 feet; thence leaving the said southerly line South 16° 00' East 200.00 feet; thence North 74° 00' East, 429.32 feet; thence 213.95 feet to the said southerly line; thence along the said southerly line South 87° 31' 30" West, 85.69 feet; thence South 70° 22' 03" West, 103.85 feet to the point of beginning.

Excepting from the above described land any portion thereof lying North of the South line of the Ukiah Tahoe State Highway, (County Road #227-B) - Lake Mendocino Drive; as described in that Deed to the State of California, recorded July 6, 1921 in Book 160 of Deeds at page 76.

Also excepting therefrom that portion thereof conveyed in the Deed to the County of Mendocino, recorded July 28, 1986 in Book 1571 Official Records, Page 109, Mendocino County Records.

Also excepting therefrom an undivided one-half interest "in and to all oil, gas, petroleum, naphtha, other hydrocarbon substances and minerals of whatsoever kind and nature in, upon or beneath the property hereinabove described, together with the right of entry and all other rights, including all rights of way and easements, which may be necessary for the development, production and removal of all such substances and minerals and the full enjoyment of the Grantor's interest herein " as reserved in the Deed from The Federal Land Bank of Berkeley, a corporation, recorded February 19, 1947 in Book 210 Official Records, Page 137, Mendocino County Records.

Book: 2470

Page: 700

Also excepting therefrom that parcel of land more particularly described as follows:

Commencing at a ½" iron pipe marked R.C.E. 15311 on the Southerly line of Lake Mendocino Drive (County Road 227B) at the Westerly terminus of the course "North 70°22'03" East, 916.13 feet" as shown on a map filed in Map Case 2, Drawer 41, page 92, Mendocino County Records; thence along said Southerly line North 70°22'51" East, 657.09 feet to the point of beginning of this description; thence continuing along said Southerly line North 70°23'20" East, 365.79 feet; thence South 89°18'47" East, 192.84 feet; thence South 85°16'55" East, 141.73 feet; thence from a tangent that bears South 8°31'50" East, through the arc of a curve to the right with a radius of 35.00 feet, a central angle of 13°14'55" and a length of 8.09 feet; thence leaving said Southerly line South 4°43'05" West, 76.98 feet; thence through the arc of a curve to the right with a radius of 35.00 feet, a central angle of 90°00'00" and a length of 54.98 feet; thence North 85°16'55" West, 91.05 feet; thence through the arc of a curve to the left with a radius of 352.00 feet; a central angle of 4°01'52" and a length of 24.77 feet; thence North 89°18'47" West, 91.74 feet; thence through the arc of a curve to left with a radius of 352.00 feet, a central angle of 20°18'13" and a length of 124.74 feet; thence South 70°22'59" West, 281.24 feet; thence North 19°37'01" West, 120.03 feet to the point of beginning and the end of this description.

APN 169-130-17

Parcel Two:

All that portion of the land conveyed by A. E. Garaventa, et ux to C. MacKintosh by Deed dated October 4th, 1929 and recorded in Book 46, Official Records, page 311, Mendocino County Records, as follows:

Beginning at the Northwest corner of said MacKintosh land and running Easterly along the Northerly line thereof to the center of the channel of the East branch of the Russian River; thence Southwesterly along the center of the channel of the East branch of the Russian River to its intersection with the center of the channel of the West branch of the Russian River; thence Northerly along the center of said West branch to the point of beginning.

Parcel Three:

All that portion of the parcel of land designated as Parcel "A" on the map entitled River Wood Terrace Unit No. 2, which map was filed in the office of the Recorder of the County of Mendocino, State of California on November 22, 1967 in Map Case 2, Drawer 10, at page 20 that lies West of the following described line:

Beginning at a point in the center of the East branch of the Russian River, said point being on the South line of said Parcel "A" distant thereon 130 feet West of the West line of Lot 1 as designated on said map of Riverwood Terrace Unit No. 2; thence from said point of beginning along said centerline as follows:

Order No. 203707 DN

North 50° 38' 55" East, 267.60 feet; North 34° 45' 16" East, 219.04 feet;  
North 57° 57' 20" East, 324.13 feet and North 20° 44' 52" East, 323.24 feet  
to a point on the North line of said parcel "A" distant thereon North 89° 47'  
West, 206.73 feet from the West line of Lot 9 as designated on said map of  
Riverwood Terrace Unit No. 2.

Excepting therefrom all that portion thereof described in Parcel Three  
hereinabove described.

A. P. No. 178-010-01

TOGETHER WITH all water rights and claims of title to water of the grantors  
in or adjacent to the above parcels 1,2 and 3.

Book: 2470 Page: 702

\*\*\*Please note that in the early days all deeds were ongoing on the same legal document\*\*\*

**REAL PROPERTY**

**Commonly known as 501 Lake Mendocino Drive**

**Ukiah, CA 95482**

**Assessor's Parcel Number: 169-130-13**

RECORDED DATE      OWNER(S)

04-01-13	Frederick Halling (Deed): Gustaf Henry Swanson
04-04-13	C.T. Chadon and Mollie Chadon (Deed): J.A. Waldteufel
07-25-17	J. A. Waldteufel (Deed): T. G. Roberts
03-20-18	T. G. Roberts and Christina E. Roberts (Deed): J. L. Dowling and A. J. Dowling
12-24-26	A. J. Dowling and J. L. Dowling (QUITCLAIM): Josephine K. W. Dowling
04-24-28	Isabel Miller (Quitclaims): Josephine K. W. Dowling
11-28-33	Josephine K. W. Dowling (Deed) J. L. Allenby
10-5-38	John Leslie Allenby aka J. L. Allenby and Mabel Allenby (Quitclaim): The Federal Land Bank of Berkeley
10-2-39	J. W. Kingren, duly appointed, qualified and acting Commissioner (Commissioner's Deed): The Federal Land Bank of Berkeley
04-10-45	The Federal Land Bank of Berkeley (Deed) : Lester Wood and Bertha Wood

- 04-2-74 Lester Wood and Bertha Wood (Individual Grant Deed): Lester Wood and Bertha Wood, as Trustees of the Declaration of Trust made the 2nd day of April, 1974
- 05-24-88 Robert Wood, as successor trustee of the Declaration of Trust by Lester Wood and Bertha Wood} (Grant Deed): Robert Wood, a married man as his sole and separate property
- 06-19-89 Laura K. Wood (interspousal Transfer Grant Deed): Robert Wood, a married man as his sole and separate property
- 07-24-92 Robert Wood, a married man as his sole and separate property, QUITCLAIM DEED: Robert Wood, a married man as his sole and separate property
- 12-14-93 Robert Wood (Trust Transfer Deed): Robert Wood, as Trustee of the Robert Wood Living Trust
- 03-28-94 Laura K. Wood (Quit Claim Deed): Robert Wood, as trustee of the ROBERT WOOD LIVING TRUST
- 09-10-96 Laura K. Wood (Interspousal Transfer Deed & Quit Claim): Robert Wood
- 01-8-98 Robert Wood (Grant Deed): Thomas P. Hill 1/2 interest and Steven L. Gomes, 1/2 interest
- 01-8-98 Thomas P. Hill (Interspousal Transfer Grand Deed): Micky Hill



## ASSIGNMENT OF WATER RIGHTS

Robert Wood, as Trustee of The Robert Wood Living Trust dated December 13, 1993, ASSIGNOR, hereby assigns all rights, title and interest that ASSIGNOR may have in and to any water rights or claims of title to water in adjacent to or in the vicinity of the lands described in Attached Exhibit "A"; unto Thomas P. Hill, a married man as his sole and separate property as to an undivided 1/2 interest; and Steven L. Gomes, an unmarried man, as to an undivided 1/2 interest. ASSIGNEES.

This Assignment includes rights acquired by use, grant, or other means and includes all riparain or other rights to the waters of the Russian River and also includes the rights created in the document recorded March 24, 1914 in Book 3 of Deeds, Page 17.

  
\_\_\_\_\_

Robert Wood

Dated: Jan. 7, 1998

S015625



12/21/05

Letter needs  
to state we need  
a map to plot

Place of case  
was her work -

1/4 CFS  
if you can -

STATE WATER RESOURCES CONTROL BOARD  
Division of Water Rights

STATEMENT OF WATER DIVERSION AND USE ROUTE SLIP

STATEMENT # S           8015625          

CLAIMANT CREEK-BRIDGE HOMES LP DATE RECEIVED 7/2/01

DATE	INITIALS	ROUTE	✓	TASKS
6/22/05	BR	1. Data Management Unit (DMU)	✓	Review for acceptance (WC 5103)
			✓	Plot POD and S number in Blue ink on spot map
			—	Complete 40e or 40e PL
			—	Enter data in WRIMS & Tracking Database
		2. Secretary	—	Type 40e or 40e PL
		3. DMU Staff	—	Review, surname letter, and attach enclosures
			—	Sign letter and close database
		4. Secretary	—	Mail letter with copy of STATEMENT and map
		5. Files	—	Make folder and File

ST-RT (3-98)

*Handwritten notes:*  
 8/1/05  
 1000 - 1000  
 1000 - 1000  
 1000 - 1000  
 1000 - 1000

8015625

STATEMENT OF WATER DIVERSION & USE

CLAIMANT: CREEK BRIDGE HOMES LP

FILE NUMBER: \_\_\_\_\_ NAME INDX(S): \_\_\_\_\_

CLAIM(S) RECEIVED BY: MAIL  OC \_\_\_\_\_ DATE REC'D: 7/2/01

ACCEPT: \_\_\_\_\_ RETURN: \_\_\_\_\_ STREAM CODE: 100500000

QUAD MAP CODE: FF-007 QUAD MAP NAME: UKIAH  
WEST FORK RUSSIAN RIVER

CALIF COORD: ZONE 2 N 558,700 E 166,600

REMARKS: SAME POD AS S000272

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8015625

01 JUL -2 PM 7:36  
DIVISION OF WATER RIGHTS  
STATE OF CALIFORNIA

State of California  
State Water Resources Control Board  
DIVISION OF WATER RIGHTS  
P.O. Box 2000, Sacramento, CA 95812-2000  
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

STATEMENT OF WATER DIVERSION AND USE

(This is not a Water Right)  
This Statement should be typewritten or legibly written in ink and submitted to the address above.  
A separate statement should be filed for each point of diversion. A duplicate copy will be returned for your file.

A. Name of person diverting water CREEK BRIDGE HOMES L.P.  
Address 2093 LANDINGS DRIVE MOUNTAIN VIEW CALIFORNIA Telephone: (650) 969-7722

B. Water is used under: Riparian claim  Pre 1914 right  Other (explain) \_\_\_\_\_

C. Name of the body of water at the point of diversion WEST FORK OF THE RUSSIAN RIVER, MENDOCINO COUNTY  
Tributary to RUSSIAN RIVER

D. Point of diversion is located within MENDOCINO County on Assessors Parcel # 16A-130-17, being within the 1/4 of 1/4 of Section \_\_\_\_\_, of Township \_\_\_\_\_, Range \_\_\_\_\_ B&M.  
Name of works A PORTION OF LOT 118 YOKAYO RANCHO

E. Do you own the land at the point of diversion? Yes  NO  The name and address of the owner of the land is: THOMAS R. HILL, 601 STATE STREET, UKIAH, CA 95482

F. Capacity of diversion works 800 (cfs, gpm or gpd) Capacity of storage tanks or reservoir 12,000 (gallons or acre-feet)  
Type of diversion facility: Gravity  Pump   
Method of measurement: Weir  Flume  Electrometer  Estimate \_\_\_\_\_

G. Enter the amount (or approximate amount) of water used each month.  
Amounts below are shown in: Gallons  Acre-feet \_\_\_\_\_ Other \_\_\_\_\_

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total Annual
2001	N/A	N/A	N/A	N/A	N/A	332659 (meter)	332659 (meter)		1.53 mgd (est.)				7,117,977 gal (estimate)

H. Annual water use in recent years: Maximum not known (gallons or acre-feet) Minimum not known (gallons or acre-feet) Year of first use (nearly as known) 1914 (I will provide information once received.)

I. Purpose of use: What is the water being used for: (example: number of acres and type of crop irrigated, average number of persons served, number of stock watered, etc.) 10.5 ± acres of land for fruit tree irrigation, construction dust control and domestic water for a 51 unit subdivision.

J. General description or location of place of use (example: 40 acres of pasture located 3 miles from Happyville on Alpha Road) 10.5 ± acres of land located 1/4 mile east of North State Street on Lake Mendocino Drive next to West fork of

K. Map: Please locate the point of diversion and place of use on a print of a USGS quad map, or make a sketch on the section and provided on the reverse side of this form. The sketch should identify the section lines, prominent local landmarks and roads, your point of diversion, and your place of use (your house, acreage irrigated, etc.) Russian River.

301562E

Please answer only those questions below which are applicable to your project.

- 1. Conservation of water
  - a. Describe any water conservation efforts you may have started: N/A
  
- 2. Water quality and wastewater reclamation
  - a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES NO

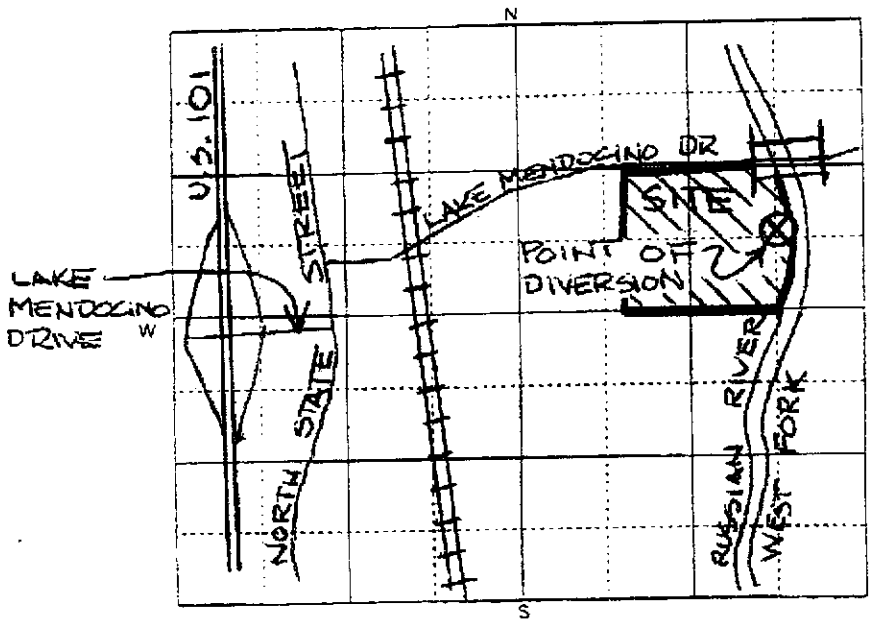
I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATE: JUNE 30, 2001 at SALINAS, California

SIGNATURE: MATTHEW K LEWIS (VICE PRES. CREEK BRIDGE HOMES)

PRINTED NAME: MATTHEW K. LEWIS  
(first name) (middle init.) (last name)

COMPANY NAME: CREEKBRIDGE HOMES L.P.



The location of the diversion point and the place of use may be sketched on the section grid provided. If it is used, please enter the section(s), township, range and the base & meridian below. Also, show any streams or other landmarks that will assist in identifying the area.

Section(s) \_\_\_\_\_

Township \_\_\_\_\_

Range \_\_\_\_\_

B&M \_\_\_\_\_

APN # 169-130-17  
 A PORTION OF LOT #118  
 YOKAYO RANCH

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An **appropriative right** is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by a riparian and per-1914 appropriative water users. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include: (1) Statements of Water Diversion and Use, (2) Information Pertaining to Water Rights in California and (3) Appropriation of Water in California.



S015625

ATTENTION: Mr. Koso Nodohara  
COMPANY: S.O.C. Division of Water Rights

DATE: June 30, 2001  
TOTAL PAGES: 3

FROM: Matt Lewis  
Vice President - Development Engineering  
(831) 443-0928 Phone  
(831) 443-7173 Fax

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Please call me          | <input type="checkbox"/> As requested by you   | <input type="checkbox"/> Revise as noted           |
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Need more information | <input type="checkbox"/> For your approval         |
| <input type="checkbox"/> For review and comment. |  | <input type="checkbox"/> Received your information |

COMMENTS:

Mr. Nodohara, Creekbridge Homes just recently purchased the property described on the attached form in Ukiah adjacent to the West Fork of the Russian River along with the reservation of the proportional water right for this property which was established and recorded prior to December of 1914. I received notice of your Departments required form only days ago and am submitting it for filing. I have not been able to get the past usage information from the previous Owner due to the fact that he is out of town. I will provide you with the past use information as soon as I receive it. We took possession of the property in late may and have set up a flow meter and storage tank to keep track of the use. I have shown what our actual usage was for the month of June and projected our best guess of what the water usage will be for the rest of the year. Our usagc for the year 2002 should be based ou 1.53 million gallons per month for each month which is a total of 18,360,000 gallons per year.

53,338 gal

Please contact me at (831) 443-0928 with any questions or if you need any additional information.

Thank you,

21025 L. Boronda Rd., Salinas, CA 93906-4834  
Phone 831-443-0928, Fax 831-443-7172





ATTENTION: Mr. Koso Nodohara  
 COMPANY: S.O.C. Division of Water Rights

DATE: June 30, 2001  
 TOTAL PAGES: 3

FROM: Matt Lewis  
 Vice President - Development Engineering  
 (831) 443-0928 Phone  
 (831) 443-7173 Fax

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Please call me          | <input type="checkbox"/> As requested by you   | <input type="checkbox"/> Revise as noted           |
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Need more information | <input type="checkbox"/> For your approval         |
| <input type="checkbox"/> For review and comment  |  | <input type="checkbox"/> Received your information |

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21025 L. Boronda Rd., Salinas, CA 93906-4834  
 Phone 831-443-0928 Fax 831-443-7172

State of California  
 State Water Resources Control Board  
 DIVISION OF WATER RIGHTS  
 P.O. Box 2000, Sacramento, CA 95812-2000  
 Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

**STATEMENT OF WATER DIVERSION AND USE**

(This is not a Water Right)  
 This Statement should be typewritten or legibly written in ink and submitted to the address above.  
 A separate statement should be filed for each point of diversion. A duplicate copy will be returned for your file.

A. Name of person diverting water CREEKBRIDGE HOMES LP.  
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B. Water is used under: Riparian claim: \_\_\_\_\_ Pre 1914 right: X Other (explain) \_\_\_\_\_

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Tributary to RUSSIAN RIVER  
 D. Point of diversion is located within MENDOCINO County on Assessors Parcel # 16A-130-17 being within the \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ of Township \_\_\_\_\_ Range \_\_\_\_\_ B&M.  
 Name of works A PORTION OF LOT 118 YOKAYO RANCHO

E. Do you own the land at the point of diversion? Yes \_\_\_\_\_ NO X The name and address of the owner of the land is: THOMAS P. HILL, 601 STATE STREET, UKIAH, CA 95482

F. Capacity of diversion works 800 (cfs, gpm) or gpd Capacity of storage tanks or reservoir 12,000 (gallons) or acre-feet  
 Type of diversion facility: Gravity \_\_\_\_\_ Pump X  
 Method or measurement: Weir \_\_\_\_\_ Flume \_\_\_\_\_ Electric Meter X Estimate \_\_\_\_\_

G. Enter the amount (or approximate amount) of water used each month.  
 Amounts below are shown in: Gallons X Acre-feet \_\_\_\_\_ Other \_\_\_\_\_

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total Annual
2001	N/A	N/A	N/A	N/A	N/A	33265 (meter)	33265 (est.)		1.53 (est. mgd)				7,117,977 gallons (estimate year 2001)

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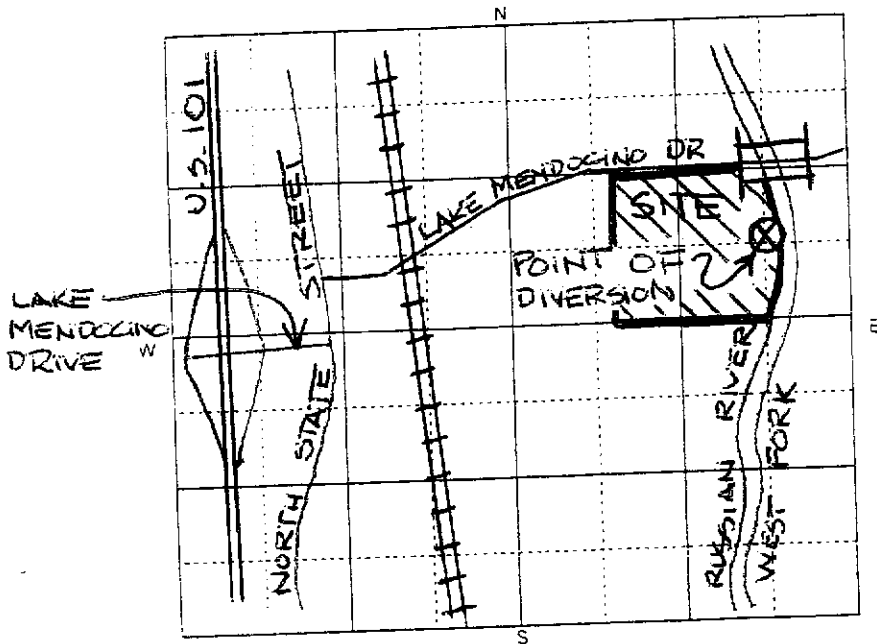
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  - a. Describe any water conservation efforts you may have started: N/A
  
2. Water quality and wastewater reclamation
  - a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES  NO

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATE: JUNE 30, 2001 at SALINAS, California  
 SIGNATURE: MATTHEW K. LEWIS (VICE PRES CREEK BRIDGE HOMES)  
 PRINTED NAME: MATTHEW K. LEWIS  
(first name) (middle init.) (last name)  
 COMPANY NAME: CREEKBRIDGE HOMES L.P.



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Section(s) \_\_\_\_\_  
 Township \_\_\_\_\_  
 Range \_\_\_\_\_  
 \_\_\_\_\_ B&M  
 APN # 169-130-17  
A PORTION OF LOT #118  
YOKAYO RANCHO

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Alan C. Lloyd, Ph.D.  
Agency Secretary

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • 916 341 5300  
Mailing Address: P.O. Box 2000 • Sacramento, California 95812-2000  
FAX: 916 341 5400 • www.waterrights.ca.gov



Arnold Schwarzenegger  
Governor

In Reply Refer  
to:331:GS:S015625

Creekbridge Homes, L.P.  
c/o Matthew Lewis  
2093 Landing Dr.  
Mountain View, CA 94043

Ladies and Gentlemen:

### STATEMENT OF WATER DIVERSION AND USE NO. S015625 FOR DIVERSION FROM WEST FORK RUSSIAN RIVER IN MENDOCINO COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division), received your Statement of Water Diversion and Use (Statement) ~~filed~~ on *filed* July 2, 2001. Your Statement has been assigned identification Number S015625. A copy of the Statement is enclosed for your records. Please reference this number in any correspondence regarding this Statement.

Please notify us of any change in mailing address, or if there is a change of ownership.

State Law requires that supplemental statements be filed at three-year intervals. The form is automatically sent to you by the State Water Board at the close of the three-year period.

Thank you for your cooperation. If you have any questions or concerns, please contact me at (916) 341-5315.

Sincerely,

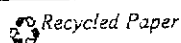
Susan J. Wilson  
Sanitary Engineering Associate  
Water Right Processing Unit

Enclosure: Copy of Statement

cc: sjw (without enclosure)

U:\LICDR\Students\GSokolis\Statements\S015625\_GS.doc

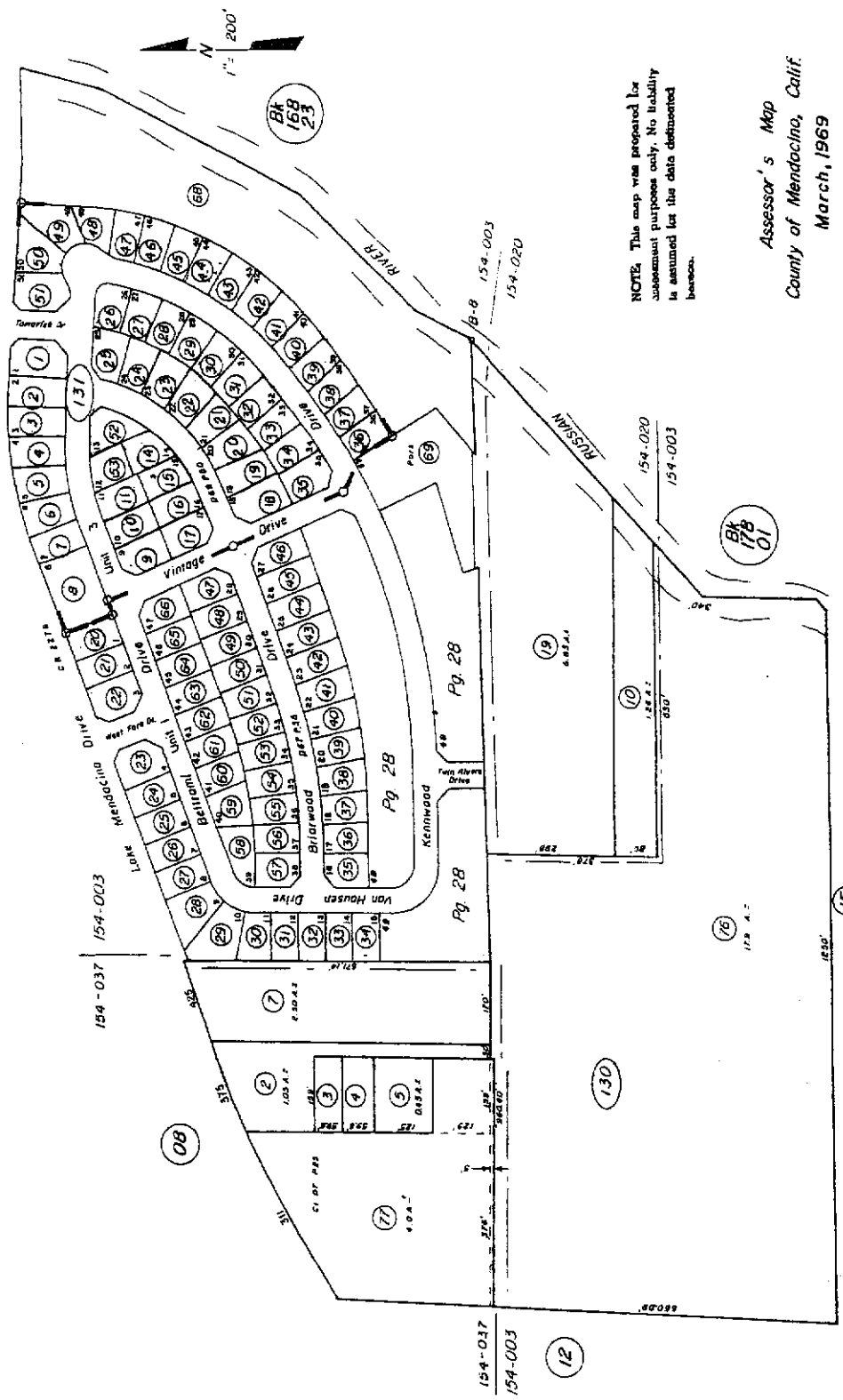
*California Environmental Protection Agency*



10038

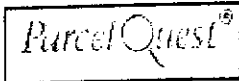
154-003  
154-020  
154-037

**Par. of Lots 82 & 103 of Yokayo Rancho**  
West Fork Subd. Unit One D67 P35  
West Fork Subd. Unit Three D69 P50



NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

Assessor's Map  
County of Mendocino, Calif.  
March, 1969



- Search
- Contact
- Support
- Feedback Form
- Logout

**Property Search**

[New Search](#)

Click on the APN to view a detailed report or click the Map Link to view a parcel map.

**SELECTED COUNTY: Mendocino, CA**

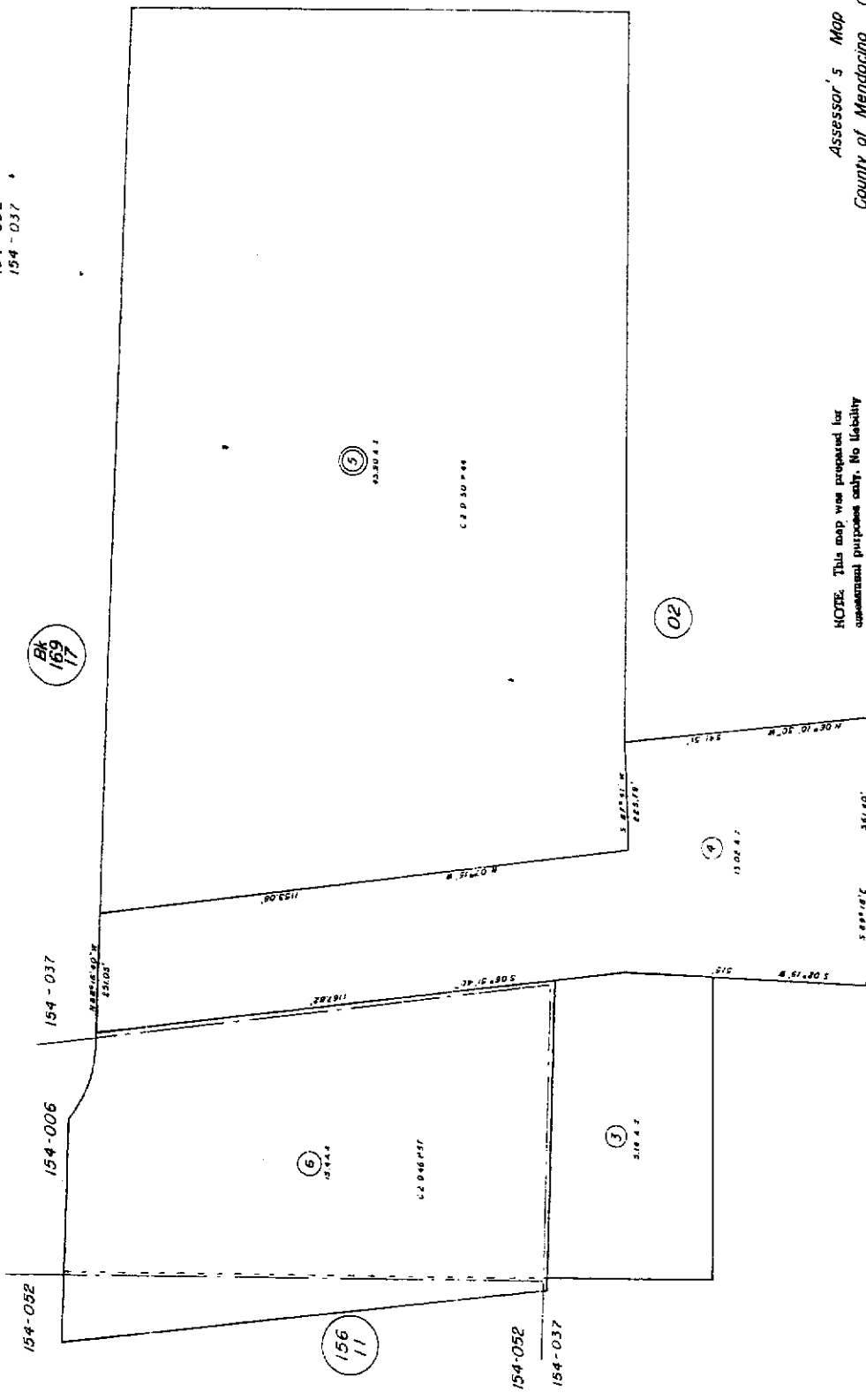
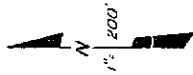
APN	Owner Name	Situs Address	Map Link
<a href="#">170-010-05</a>	CREEKBRIDGE HOMES LLC		<a href="#">Map</a>
<a href="#">170-020-07</a>	CREEKBRIDGE HOMES LLC		<a href="#">Map</a>
<a href="#">170-020-08</a>	CREEKBRIDGE HOMEBUILDERS LLC	720 LOVERS LN UKIAH CA 95482	<a href="#">Map</a>
<a href="#">170-030-03</a>	CREEKBRIDGE HOMES LLC		<a href="#">Map</a>
<a href="#">170-030-05</a>	CREEKBRIDGE HOMES LLC		<a href="#">Map</a>
<a href="#">170-030-06</a>	CREEKBRIDGE HOMES LLC		<a href="#">Map</a>
<a href="#">170-040-03</a>	CREEKBRIDGE HOMES LLC	610 LOVERS LN UKIAH CA 95482	<a href="#">Map</a>
<a href="#">170-040-04</a>	CREEKBRIDGE HOMES LLC		<a href="#">Map</a>
<a href="#">170-040-05</a>	CREEKBRIDGE HOMES LLC	156 LOVERS LN UKIAH CA 95482	<a href="#">Map</a>

\*\*\*The information provided here is deemed reliable, but is not guaranteed.

170-01

154-006  
154-052  
154-037

Part of Lot 14 of Yokayo Rancho



Assessor's Map  
County of Mendocino, Calif.  
March, 1969

NOTE: This map was prepared for  
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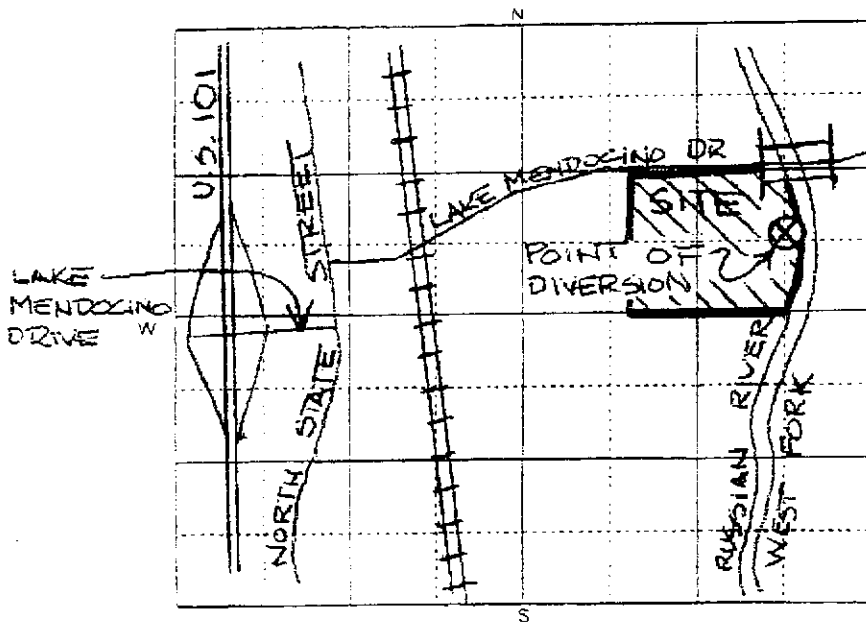
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COMPANY NAME: CREEK BRIDGE HOMES L.P.



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Section(s) P 33

Township 16N APN # 16A-130-17

Range 12W A PORTION OF LOT #118

MD 3&M YOKAYO RANCH

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262.0 COMPLAINTS AND INVESTIGATIONS

EAST FORK RUSSIAN RIVER

MENDO

10044



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board **SURNAME FILES**



Arnold Schwarzenegger  
Governor

## 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  
FAX: 916 341 5400 • www.waterrights.ca.gov

NOV 28 2007

In Reply Refer to:  
CAR:262.0(23-03-06)

Mr. Jared G. Carter  
444 N. State Street  
Ukiah, CA 95482

Dear Mr. Carter:

### PUBLIC RECORDS ACT REQUEST REGARDING A COMPLAINT FILED AGAINST MESSRS. THOMAS HILL AND STEVE GOMES

In response to your letter of November 15, 2007, received in this office on November 19<sup>th</sup>, the records you request are contained in the following files:

- Complaint File # 262.0(23-03-06)
- Statement of Water Diversion and Use File # S000272
- Statement of Water Diversion and Use File # S015625

You request that copies of all of these records be prepared and submitted to your office whereupon the cost of reproduction pursuant to an itemized invoice would be remitted to this office. Please note that the Division of Water Rights does not make copies without receiving payment first.

If you wish to have copies of the files made, you can request that the files be sent to an outside vendor for reproduction. The vendor will call you and provide an estimate of the costs and arrange for payment prior to copying the files. If you wish to utilize this method to obtain copies of the files, please contact the Records Unit at (916) 341-5421 and let them know which files you wish sent out to the vendor.

If you, or someone representing you, wish to review these files before requesting copies, they are available for inspection in our Records Unit between the hours of 8 a.m. and 5 p.m., Monday through Friday. The Records Unit is located on the 2<sup>nd</sup> Floor of the Cal EPA Building at 1001 I Street in downtown Sacramento. In order to make sure the files are waiting, please call the Records Unit at (916) 341-5421 or Charles Rich at (916) 341-5377 and let them know when someone will be visiting the office. Please reference the above numbered files.

Sincerely,

### ORIGINAL SIGNED BY:

James W. Kassel  
Assistant Chief

CRich\lfischer 11.26.2007  
U:\Comdrv\CRich\Hill-Gomes PRA Request.doc Control Tag 19657 due: 11.29.07

SURNAME  
DWR 540

California Environmental Protection Agency

Recycled Paper

Kassel 11/26/07

10045

**CARTER, VANNUCCI & MOMSEN, LLP**

444 N. STATE STREET  
POST OFFICE BOX 1709  
UKIAH, CALIFORNIA 95482

JARED G. CARTER  
BRIAN C. CARTER  
BRIAN S. MOMSEN  
PHILIP M. VANNUCCI  
SHANNON S. LINDSAY

PHONE (707) 462-6694  
FAX (707) 462-7839  
E-MAIL [pcarter@pacific.net](mailto:pcarter@pacific.net)

November 15, 2007

**VIA U.S. MAIL**

Jim Kassel  
Chief, Hearings & Special Projects  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA, 95812-2000

Re: Pre-1914 Appropriative Right (and/or Claims) Owned by  
Thomas Hill and Steve Gomes; Your File  
363:CAR:262.0(23-03-06), Discussed in Charles A. Rich's  
Memorandum to File Dated June 1, 2007; Request for  
Public Records Pursuant to California Public Records  
Act, Government Code §§6250, et seq.

Dear Mr. Kassel:

This firm represents Messrs. Thomas Hill and Steven Gomes, the owners of the Pre-1914 Water Right discussed in the above-referenced June 1, 2007, memorandum by Charles A. Rich, Chief, Complaint Unit, Division of Water Rights, State Water Resources Control Board (copy of memo attached). Hereinafter this water right is referred to as the "Hill/Gomes right."

The following is a request for public records made pursuant to the California Public Records Act, Government Code §§6250, et seq., with respect to the Hill/Gomes right.

Please provide to the undersigned the following records in your possession:

1. All files and records pertaining the Hill/Gomes right, including, without limitation, all documents and records available to Mr. Rich in the preparation of his enclosed June 1, 2007, memorandum.

2. All files and records pertaining to the amount of the Hill/Gomes right that was recognized or otherwise considered valid when your Department determined, on April 7, 1986, in Decision 1610, that the Russian River was fully appropriated in the summer months.

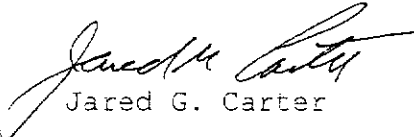
Jim Kassel  
State Water Resources Control Board  
November 15, 2007  
Page 2

3. All files and records pertaining to facts and events occurring between April 17, 1986, (the date the Russian River was stated to be fully appropriated during the summer months) and June 1, 2007 (the date of Mr. Rich's memo), that changed the amount or volume of the Hill/Gomes right recognized by your department as valid and remaining available for the use or sale by Messrs. Hill and Gomes, including, without limitation, any files and records pertaining to the use of water subject to the Hill/Gomes right that was being used by other users of water.

By law you have ten (10) calendar days in which to comply with this request. If more time will be required, please contact the undersigned. Authorized fees will be paid to you upon delivery of the requested documents, pursuant to an itemized invoice.

Please contact the undersigned with any questions. Thank you for your anticipated assistance and cooperation.

Sincerely,

  
Jared G. Carter

Enclosure



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

Division of Water Rights  
201 Street, 14<sup>th</sup> Floor • Sacramento, California 95834 • 916-341-5200  
P.O. Box 2000 • Sacramento, California 95810-2000  
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Arnold Schwarzenegger  
Governor

## MEMORANDUM

TO: Files - 262.0(23-03-06)

FROM: Charles A. Rich  
Charles A. Rich, Chief  
Complaint Unit  
DIVISION OF WATER RIGHTS

DATE: June 1, 2007

SUBJECT: REPORT OF INVESTIGATION FOR A COMPLAINT FILED BY LEE HOWARD REGARDING DIVERSION FROM THE EAST FORK OF THE RUSSIAN RIVER

### BACKGROUND

In January 1998, Thomas Hill and Steven Gomes purchased 32 acres ± located immediately south of Lake Mendocino Drive and adjacent to the Russian River<sup>1</sup> near the City of Ukiah from the Robert Wood Living Trust. The Grant Deed covering this transaction indicates that all water rights and claims of title to water of the grantors associated with the land were included in the sale.

One of Mr. Wood's predecessors-in-interest, E.L. Waldteufel, recorded a water right notice on March 24, 1914. 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) from the West Fork of the Russian River for domestic, culinary, and irrigation purposes on Lot #103 of the Yokayo Rancho. The land purchased by Messrs. Hill and Gomes consists of the southeastern portion of Lot #103 and contains roughly 20% of the acreage originally contained in Lot #103.

Mr. Lester Wood, Robert Wood's father, originally filed Statement of Water Diversion and Use (Statement) S000272 in 1967 which reported the diversion and use of water on the Wood property. Supplemental statements for S000272 were also filed for the years 1970-72, 1979-81, 1985-87, and 2002-04<sup>2</sup>.

CreekBridge Homes L.P. (CreekBridge) bought a sizable portion of the property from Messrs. Hill and Gomes in 2001 and subsequently built 125 homes on the property. A buffer strip to provide an open space / riparian corridor approximately 100 feet wide between the West

<sup>1</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 report.

<sup>2</sup> - This supplemental statement was filed by Mr. Gomes. All of the others were filed by Lester Wood or his son, Robert Wood.

Fork Russian River channel and the property purchased by CreekBridge was retained by Messrs. Hill and Gomes. 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." Only the original statement was filed. No supplemental statements have been received from CreekBridge Homes for Statement S015625.

Messrs. Hill and Gomes entered into an agreement with the Millview County Water District (Millview) in October 2002. This agreement provides for the lease and/or purchase by Millview of a pre-1914 claim of appropriative right allegedly held by Messrs. Hill and Gomes, use of which has been reported under Statement S000272. 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").*

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. Complaint Unit staff understand that the effective period of this agreement has been extended.

Lee Howard filed a complaint against Thomas Hill on March 6, 2006 regarding the diversion and use of water reported pursuant to Statement S000272. Mr. Howard's complaint contains the following allegations:

- While the basis of right pursuant to 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.
- All use prior to 2001 under this claim of right occurred on lands that have a valid riparian basis of right. (The implication being that any use that occurred was made under a riparian claim of right and a valid pre-1914 appropriative claim of right was never initiated or vested.)
- The point of diversion for 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.

By letter dated March 29, 2006, Messrs. Hill and Gomes, Millview, and CreekBridge Homes were asked to 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 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. Woods.
- Millview understands that Messrs. Hill and Gomes via the lease agreement, "granted, conveyed, and assigned all right, title and interest to the water right 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 S015625.
- Millview currently supplies water to all of the place of use identified under 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 (Flood Control District).
- Based on conversations between Millview's legal counsel and Robert Woods 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.

### FIELD INVESTIGATION

On August 30, 2006, Division staff (Charles Rich and Chuck NeSmith) conducted a field investigation regarding the subject complaint. Staff met with Messrs. Hill and Gomes, Tim Bradley (Millview's General Manager), and Christopher Neary (Millview's legal counsel). Mr. Howard was not available for the inspection. However, Complaint Unit staff met with him immediately after the inspection and provided a brief outline of the activities that occurred during the inspection.

The property formerly owned by the Wood family was visited. An old wooden crib inlet channel was observed 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 appears 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 until the land was graded for houses in 2001.

Some flow was observed in the river channel. The U.S. Geological Survey (USGS) maintains a flow monitoring station (11461000) a short distance upstream of this location. According to

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<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.



records available on the internet at a later date, the flow at the time of our inspection was approximately 0.93 cfs.

After leaving the property formerly owned by Mr. Wood, we visited the District's point of diversion (POD) on the main stem Russian River. This point is located about 2,000 feet downstream of the Wood POD and about 600 feet below the confluence of the East and West Forks of the Russian River. Based on outflow measurements at Lake Mendocino contained in the database at the California Data Exchange Center (CDEC) and USGS data for Gage 11461000, flows in the Russian River in the vicinity of the District's POD were about 227 cfs during our visit (226 cfs outflow + 0.93 cfs at Gage 11461000).

A small pump was diverting water from the surface flow of the Russian River into Millview's recharge basin located about 150 feet east of the river. Water seeps from this basin into the ground and is recovered by a number of wells located within 75 to 150 feet on both the north and south sides of the recharge basin. The soils in the area appeared to be quite sandy and probably act as a rapid sand filter. The production wells on the north side of the recharge basin run in a generally east / west line that extends about 600 feet from the river. Millview's wells probably draw water coming from: 1) the recharge basin, and 2) the subterranean stream channel of the Russian River.

After visiting the District's facilities, all of the participants sat down together and I asked the following questions of Messrs. Hill and Gomes as well as the Millview representatives and received the answers indicated below:

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Question #1: Did the diversion pursuant to S015625 by CreekBridge Homes cease as of September 2002?

Answer #1: Yes. CreekBridge Homes no longer has any interest in water rights associated with the property formerly owned by the Woods.

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Question #2: Has any diversion of water been made from the West Fork Russian River to serve the 125 homes constructed by CreekBridge Homes?

Answer #2: No. All water supplied to the 125 homes located on the former Wood property has been provided by Millview using the POD's located below the confluence of the East and West Forks.

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Question #3: Do diversions to the 125 CreekBridge Homes made pursuant to the claim of right reported under S000272 occur only during the months of May to November (i.e., the historic irrigation season on the former Wood property)?

Answer #3: Yes. Diversions to serve the 125 CreekBridge Homes during the May to November period 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 with the Flood Control District.

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Question #4: Are any diversions reported under S000272 or claimed under the pre-1914 appropriative right originally associated with the former Wood property used to supply any place of use other than the 125 CreekBridge Homes?

Answer #4: No. All use reported under S000272 or made pursuant to a pre-1914 claim of right initiated by E.L. Waldteufel since 2001 has occurred at the 125 CreekBridge Homes

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Question #5: Is there a way of measuring the amount of water used by the 125 CreekBridge Homes under the pre-1914 claim of right?

Answer #5: Yes. Each house has a separate water meter that is read on a periodic basis.

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Question #6: Is a deposition, declaration, or other written document available regarding testimony provided by Robert Wood or his predecessors in interest dealing with the use of water pursuant to the pre-1914 appropriative claim of right?

Answer #6: No. Such a document is not available.

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Question #7: Is any other testimony by a party with first-hand knowledge regarding use of water pursuant to the pre-1914 appropriative claim of right available?

Answer #7: Yes. A sworn statement of Floyd Lawrence, taken by Mr. Neary, was provided<sup>1</sup>

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Question #8: The Millview response letter dated April 24, 2006 states that the Hill/Gomes reservation may have been deeded to the 125 CreekBridge homes @ 1,000 gpd each for a total of 125,000 gpd. Is this correct?

Answer #8: No. The 125,000 gpd allotment has been transferred to Millview pursuant to the lease agreement with Millview.

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<sup>1</sup> - A copy of this statement was sent to Mr. Howard via the U.S. mail on September 5, 2006

## ANALYSIS

In order to fully address Mr. Howard's complaint, the following issues must be analyzed:

1. Could diversions to the parcel of land owned by Messrs. Waldteufel, Woods, and Hill/Gomes as well as the diversions made to satisfy the 125 new homes been made under a valid riparian claim of right?
2. If the parcel in question does in fact qualify for a riparian claim of right, were the diversions that occurred between 1914 and 2001 made under a pre-1914 appropriative claim of right or a riparian claim of right?
3. If diversions were made pursuant to a pre-1914 appropriative claim of right, what is the current extent of this right (i.e., how much water can be diverted and during which season)?
4. Has the change in POD resulted in the diversion of more water pursuant to a pre-1914 appropriative claim of right than would have been available at the previous POD?
5. Did Mr. Wood abandon his basis of right at the time of the approval of the West Fork Subdivision?

### Issue #1 – Riparian Claim of Right

Although the legislature has enacted few laws relating to riparian rights, several court decisions have resulted in the following general rules regarding the applicability of a riparian claim of right to a particular parcel of land:

- A property owner may have a riparian water right when a stream flows through the property or when the property borders a stream or lake.
- If such a parcel is subdivided such that one or more of the subdivided parcels no longer touches the stream, each parcel is deemed to have been "severed" and the riparian status of each parcel is terminated forever unless: 1) the riparian status is preserved via specific language in the conveyance document; or 2) clear evidence is available to demonstrate that a) use of water had been occurring on the severed parcel; and b) the new owner purchased the severed parcel with the intent of continuing use of water as if the parcel had not been severed.
- A riparian right will be lost forever if the right is legally "severed" from the parcel (i.e., if a riparian land owner via a grant, contract, title transaction, etc. either separates and abandons the riparian status or conveys the parcel to another party and specifically excludes the riparian right).
- Riparian water right holders may only divert a share of the natural flow of water in the stream. The natural streamflow is the flow that occurs in a watercourse due to accretions from rainfall, snowmelt, springs and rising groundwater. To the extent that flow in its natural state reaches or flows through their property, riparian water right holders have a

proportional right, based on need, to the use of the natural flow. In times of water shortage, riparian diverters must share the available natural flow.

- A riparian right does not allow diversion of water that is "foreign" to the stream source. Water imported to the watershed from a separate watershed, water that is seasonally stored in a reservoir and subsequently released later in time into the system, or irrigation runoff from percolating groundwater applied to upstream lands may not be diverted under a riparian claim of right.
- Water diverted under claim of riparian right may only be used on the parcel of land that abuts the stream (or on a "severed parcel" for which the riparian status has been retained as discussed above), and then only on that portion of the parcel that drains back into the stream (i.e., is within the watershed of the source stream).
- Riparian rights are not lost by nonuse of the water.
- Water may not be stored during one season for use in a later season. However, water may be retained for strictly "regulatory" purposes. "Regulation" of water means the direct diversion of water to a tank or reservoir in order that the water may be put to use shortly thereafter at a rate larger than the rate at which it could have been diverted continuously from its source.
- Water diverted pursuant to a riparian right is subject to the doctrine of reasonable use, which limits the use of water to that quantity reasonably required for beneficial purposes.

The parcel of land purchased by Messrs. Hill and Gomes touches the West Fork of the Russian River and the entire parcel drains back into this source. Complaint Unit staff are not aware of any "foreign" water in the West Fork<sup>5</sup> nor has any evidence come to light indicating that a prior owner "legally severed" or abandoned the riparian claim of right. Consequently, all of the available evidence supports a claim of riparian right for the original parcel purchased by Messrs. Hill and Gomes from Robert Wood in 1998.

The land that CreekBridge purchased to construct the 125 homes does not touch the West Fork Russian River. This land was thereby physically severed from the river. However, Complaint Unit staff have not reviewed the title transactions that led to this physical severance to determine what language might have been included to preserve the riparian status. The cover document that transmitted Statement S015625 states:

*"... Creekbridge Homes just recently purchased the property described on the attached form in Ukiah adjacent to the West Fork of the Russian River along with the reservation of the proportional water right for this property which was established and recorded prior to 1914" (underlining added)*

<sup>5</sup> - A large portion of the flows available at Millview's POD comes from the East Fork of the Russian River and are either "foreign in time" (i.e., releases from seasonal storage in Lake Mendocino) and/or "foreign in place" (i.e., imported from the Eel River watershed via the Potter Valley Project). Such flows are not available for diversion pursuant to a riparian claim of right.

While this passage refers to a pre-1914 appropriative claim of right, a court might find that this language coupled with specific language in the conveyance document is adequate to have provided a reservation of the riparian status of the parcel(s) purchased by CreekBridge.

CreekBridge subdivided this parcel(s), constructed 125 homes, and sold the homes and parcels on which the homes were constructed to individuals. Complaint Unit staff have no knowledge of the details involved in these title transactions. If adequate language was not included in the title conveyance documents, these parcels probably are no longer riparian to the stream. While Millview has always provided water to the homes, Complaint Unit staff question whether Millview could serve water to the homes under a riparian claim of right held by individual home owners<sup>3</sup>. The answer to this question is probably unnecessary as Millview has maintained that such service was provided pursuant to a pre-1914 claim of appropriative right and not pursuant to a riparian claim of right.

#### **Issue #2 – Existence Of A Pre-1914 Appropriative Right On A Riparian Parcel**

This question is important because diversions of water made first by Mr. Waldteufel in 1914 and later on by the Wood family, could have been made pursuant to a riparian claim of right. Such a right cannot be separated from the parcel, except to permanently terminate the right. If the diversions were made under a riparian basis of right, a pre-1914 appropriative right (which can be separated from the parcel on which the right was originated) would not have accrued and there would be no right to transfer to Millview.

Wells Hutchins addresses this issue beginning on page 208 of his book, The California Law of Water Rights. Complaint Unit staff have also conferred with legal counsel from the State Water Resources Control Board's Office of Chief Counsel. Based on this research, Complaint Unit staff believe that a pre-1914 appropriative right can be initiated and perfected on a riparian parcel. Consequently, the October 2002 agreement appears to have conveyed or transferred a valid pre-1914 appropriative claim of right from Messrs. Hill and Gomes to Millview -- at least on a temporary basis.

According to Section 1706 of the Water Code:

*"The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code (i.e., a pre-1914 appropriative claim of right)*

<sup>3</sup> - A governmental entity such as a municipality or water district can possess a riparian claim of right. However, the governmental entity can only use the water under this basis of right on parcels of land that are owned by the entity and that are riparian to the source of supply (see page 207 of Wells Hutchins' California Law of Water Rights). Riparian right holders, by entering into a specific agreement, can make a water company their agent for the purpose of distributing the waters to which the riparian right holders are entitled (see page 255 of Wells Hutchins' California Law of Water Rights). Complaint Unit staff are not aware of a similar precedent that would enable a governmental entity, such as Millview, to serve in the same capacity as a water company; i.e., as an agent for the individual riparian right holders who merely delivers water to the parcel but holds no water rights.

*may change the point of diversion, place of use, or purpose of use **if others are not injured by such change** and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made." (Underlining and bolding added)*

Millview changed the POD to a location downstream of the confluence of the East and West Forks of the Russian River. Based on the information provided by Millview representatives during the field investigation, the place of use has remained the same. However, Millview could change the place of use as well.

The permissibility of changes such as these pursuant to California water law are all predicated on the condition that such changes do not result in injury to others. If diversions were resumed on the property formerly owned by Messrs. Waldteufel and Wood under a riparian claim of right<sup>7</sup>, the transfer of the right to Millview could result in injury to other downstream right holders such as the Flood Control District, City of Ukiah, Willow County Water District, Sonoma County Water Agency, etc. unless Millview were to reduce diversions by an equivalent amount. Any right holder (including post-1914 appropriative right holders) that is adversely impacted, could ask a court to require that Millview reduce or eliminate diversions under the pre-1914 appropriative claim of right until such time as the injury is alleviated.

Insuring that the use of water under a riparian claim on the property formerly owned by Messrs. Waldteufel and Wood does not begin again could be achieved by either terminating the riparian status of the property via a title transaction (i.e., "strip" the riparian status of the property) or via a contractual obligation with Millview whereby diversions under the riparian claim of right would have to be reduced or terminated in the event another right holder could demonstrate injury.

### **Issue #3 – Extent Of The Pre-1914 Appropriative Right**

Prior to 1914 appropriative water rights could be acquired by simply diverting and putting water to beneficial use pursuant to common law. These rights are often referred to as "common law" or "nonstatutory" pre-1914 appropriative rights. The priority of the right relates back to the date when the first substantial act toward putting the water to beneficial use was undertaken; provided the appropriation was completed with reasonable diligence. If the project was not commenced with reasonable diligence, the priority of the right did not attach until beneficial use commenced.

Between 1872 and 1914, a "statutory" appropriative right could also be initiated by complying with Civil Code Sections 1410 et seq. Under these procedures, a person wishing to initiate an appropriation of water could post a written notice at the point of intended diversion and record a

<sup>7</sup> - Mr. Gomes mentioned during the field investigation the possibility of using some water to control dust and/or maintain landscaping in the future on the strip of land still owned by Messrs. Hill and Gomes. If the 125 homes constructed by CreekBridge still possess a valid riparian claim of right, the owners could also divert water under such a claim. However, Millview could not exercise this right on their behalf. In view of the need for a treated water supply, there is little potential for these homeowners to divert water on their own.

copy of the notice with the County Recorders Office within 10 days. The notice was required to include information regarding the amount of water appropriated, the purpose for which the appropriated water would be used, the place of use, and the means by which the water would be diverted and conveyed to the place of use. Commencement of construction was also required within 60 days after the notice was posted and must have been prosecuted diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain. If these procedures were followed and the diversion and use of water was commenced with reasonable diligence, the priority of the right was the date that the notice was posted. Failure to do this meant that the priority of the right did not attach until beneficial use occurred. However, since the effective date of the Water Commission Act (i.e., December 19, 1914), the only method of initiating an appropriative right has been to file an application with the State Water Resources Control Board (State Water Board) or one of its predecessors in interest (Water Code Sections 1200 et seq.).

Once a pre-1914 appropriation has been perfected, the right can be maintained only by continuous beneficial use. Therefore, regardless of the amount claimed in the original notice of appropriation, or at the time diversion and use first began, the amount which can now be rightfully claimed under a pre-1914 appropriative right, has in general become fixed by actual beneficial use, as to both amount and season of diversion.

There are two methods by which a pre-1914 appropriative right may be lost, abandonment and nonuse. To constitute abandonment of an appropriative right, there must be concurrence of act and intent, the relinquishment of possession, and the intent not to resume it for a beneficial use, so that abandonment is always voluntary, and a question of fact. Nonuse is distinguished from abandonment. Nonuse (or forfeiture) means failure to put water to beneficial use for a sufficient period of time when the water was available. The courts have held that pre-1914 rights can be lost as the result of five years' nonuse.

Successful assertion of a pre-1914 appropriative right, where the validity of the right is disputed, requires evidence of both the initial appropriation and the subsequent maintenance of the right by continuous and diligent application of water to beneficial use. Frequently such evidence consists of oral testimony of persons who have actual knowledge of the relevant facts. As the years pass, such testimony, dependent upon the recollection of individuals, may become difficult or impossible to secure. At least a partial remedy for this situation may be found in the procedure for perpetuation of testimony set forth in Section 2035 of the Code of Civil Procedure. A record on water use under any pre-1914 appropriative right should be established and maintained by filing a Statement unless such a filing is exempted pursuant to the requirements of Section 5101 of the Water Code.

The notice recorded by E.L. Waldteufel in 1914 clearly demonstrates an intent to initiate diversion pursuant to a pre-1914 appropriative right. However, very little evidence exists to substantiate how much water was actually placed to beneficial use prior to December 14, 1914<sup>3</sup>

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<sup>3</sup> - This is the effective date of the Water Commission Act. Initiation of appropriative rights after this date, including increasing diversions under rights already established, other than by filing an application with the State Water Board (or a predecessor in interest) is prohibited by California water law

or shortly thereafter in a diligent fashion. Only two sources of information are currently available to Complaint Unit staff that provide evidence regarding diversion and use of water made on the property formerly owned by Messrs. Waldteufel and Wood between 1914 and 1998 when Messrs. Hill and Gomes purchased the property. The first source of information includes Statements filed by the Woods, CreekBridge Homes, and Mr. Gomes on behalf of Millview. The second source is a 'Sworn Statement of Floyd Lawrence' taken on August 2, 2006 and provided by Millview's legal counsel.

Table 1, on the following page, provides a summary of the information reported pursuant to Statements S000272 and S015625. Diversion and use reported by the Woods did not exceed an instantaneous diversion rate of 500 gallons per minute (gpm) or 1.1 cfs with a total annual diversion of 15 acre-feet (ac-ft). Diversion and use reported by CreekBridge Homes did not exceed 36 gpm with a total annual diversion of about 22 ac-ft. Millview's reported diversion and use did not exceed 60 gpm with a total annual diversion pursuant to the pre-1914 appropriative claim of right of about 44 ac-ft.

Mr. Lawrence's sworn statement provides very little quantifiable information. He lived in the immediate vicinity of the Waldteufel/Wood/Hill/Gomes property for almost the entire period between 1914 and 2006 when his statement was taken. His earliest recollections would have been around 1920. He recalls that alfalfa, oat hay, pears, string beans, and vineyard crops were the only crops grown on the property but did not provide any evidence regarding the amount of water that might have been diverted to grow these crops. He estimated that the fruit tree orchard was no more than four acres in size. The Woods only reported diversion for vineyard and trees (either fruit or walnut) and made no mention of irrigation for alfalfa or oat hay in the statements they filed. While Mr. Lawrence's sworn statement does not provide much quantitative data, he does state that agricultural operations continued right up until CreekBridge Homes began construction of new homes on the property, or around 2001-02. This indicates that at least some amount of use continued in a fairly uninterrupted fashion from the early 1920's to today.

Members of the Wood family first purchased the property in April 1945 and owned the land until Messrs. Hill and Gomes purchased the property in January 1998, a period of more than 50 years. The original Statement and Supplemental Statements filed by the Wood family indicate that the maximum diversion rate did not exceed 1.1 cfs and the annual depletion from the stream was less than 15 ac-ft. Consequently, a logical conclusion based on the currently available evidence would be that considerably more than 5-years passed without diversions exceeding these amounts. Pursuant to California water law, the Woods would have forfeited that portion of the pre-1914 appropriative right to any diversions in excess of these amounts. The maximum diversion rate reported for the years 2001 through 2004 has been under 68 gpm or 0.15 cfs. Consequently, the maximum rate of diversion authorized pursuant to this right may have further degraded to this rate.



TABLE 1  
WATER USE REPORTED UNDER STATEMENTS S000272 AND S015625

Year	Party Diverting	Months water was diverted	Diversion Rate	Volume Diverted	Purpose
1966	Wood	JUL JUL	175 gpm	annual amount = 15 ac-ft <sup>1)</sup>	irrigation of 15 acres of grapes & walnuts
1970 1971 1972	Wood	MAY JUL SEP of each year	500 gpm " "	2.3 ac-ft 9.2 ac-ft 2.2 ac-ft annual total = 13.7 ac-ft	frost protection (May) irrigation (Jul) irrigation (Sep)
1979 1980 1981	Wood	APR thru SEP	not specified	not specified	irrigation of grapes and walnuts
1985 1986 1987	Wood	APR thru SEP	not specified	not specified	irrigation of 30 acres
2001	CreekBridge Homes	JUN JUL AUG SEP OCT NOV DEC	7.7 gpm 7.45 gpm 7.45 gpm 35.42 gpm 34.27 gpm 35.42 gpm 34.27 gpm	1.02 ac-ft 1.02 ac-ft 1.02 ac-ft 4.70 ac-ft 4.70 ac-ft 4.70 ac-ft 4.70 ac-ft annual total = 21.85 ac-ft	Irrigation on 10.5 acres of fruit trees, home construction, dust control & domestic use for 51 homes
2002	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	12.90 gpm 17.27 gpm 21.44 gpm 16.20 gpm 15.12 gpm 17.32 gpm 10.01 gpm	1.77 ac-ft 2.37 ac-ft 2.94 ac-ft 2.22 ac-ft 2.07 ac-ft 2.37 ac-ft 1.37 ac-ft annual total = 15.11 ac-ft	Domestic use for 350 people
2003	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	28.00 gpm 30.91 gpm 30.02 gpm 53.54 gpm 34.27 gpm 35.93 gpm 18.88 gpm	3.34 ac-ft 4.24 ac-ft 4.11 ac-ft 7.34 ac-ft 4.70 ac-ft 4.92 ac-ft 2.59 ac-ft annual total = 31.73 ac-ft	Domestic use for 350 people
2004	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	47.27 gpm 42.90 gpm 67.43 gpm 58.87 gpm 55.94 gpm 31.56 gpm 16.04 gpm	6.48 ac-ft 5.88 ac-ft 9.24 ac-ft 3.07 ac-ft 7.66 ac-ft 4.32 ac-ft 2.20 ac-ft annual total = 43.84 ac-ft	Domestic use for 350 people

<sup>1)</sup> - Maximum annual use in recent years listed as 15 afa. Minimum annual use in recent years listed as 7.5 afa.

#### Issue #4 – Impact of Moving the POD on the Pre-1914 Appropriative Claim of Right

Pursuant to California water law, the point of diversion under an appropriative right can be changed as long as the change will neither: a) in effect initiate a new right; nor b) injure any other legal user of water.

Initiation of a new right – If a diverter who holds a valid pre-1914 appropriative right moves the POD because the watershed above the POD is incapable of providing a fully adequate supply throughout the authorized season of diversion, the incremental increase in the water supply obtained constitutes the initiation of a new appropriation. Such an appropriation is subject to the requirements in effect at the time the new appropriation is initiated. If the initiation occurred after December 19, 1914, the new appropriation would have to be made in accordance with the requirements of the Water Commission Act as codified in the California Water Code or via acquisition of a permit from the State Water Board

Injury to a legal user of water - Section 1706 of the California Water Code states:

*The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use **if others are not injured by such change**, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made. (underlining and bolding added)*

Flow records for the U.S. Geological Survey gage #11461000 on the West Fork of the Russian River<sup>3</sup> are available for water years 1912-13 and 1953-2006. Table 2 (below) provides a summary of flow exceedence for these records during the season of use for the pre-1914 appropriative claim of right.

Table 2

**USGS Gage #11461000 - Russian River near Ukiah, CA**

Month / Flow	Exceedence <sup>10</sup>		
	0.1 cfs	0.5 cfs	1.1 cfs
May	100%	100%	100%
June	99%	97%	95%
July	88%	75%	62%
August	73%	44%	23%
September	76%	39%	20%
October	86%	58%	40%
November	97%	90%	85%

<sup>3</sup> - As discussed previously the USGS refers to this water body as the Russian River near Ukiah, CA. However, locals often refer to this body of water as the West Fork Russian River.

<sup>10</sup> - "Exceedence" means the amount of time the specified flow was exceeded during the historical record for that particular month

This table demonstrates that while obtaining 15 acre-feet of water per irrigation season from the West Fork is quite feasible, diverting at the maximum rate reported by the Woods of 500 gpm is problematic, especially during the months of July through October.

Millview has effectively moved the POD for the Waidteufel/Woods/Hill/Gomes pre-1914 appropriative claim of right downstream below the confluence of the East and West Forks of the Russian River. Floyd Lawrence's sworn statement indicates that, at times, the historical flows in the East Fork during the summer season prior to the construction of Coyote Dam that impounds Lake Mendocino were actually less than those in the West Fork.

Flows in the East Fork below Lake Mendocino are influenced by imports from the Eel River through the Snow Mountain Tunnel to Potter Valley and diversions to and releases from seasonal storage in Lake Mendocino. The Eel River imports are "foreign in place" whereas the releases from Lake Mendocino are "foreign in time". Both of these sources of supply currently augment the natural flows substantially; especially during the summer and fall seasons. Table 3 depicts the recent maximum, minimum, and average daily flows below Lake Mendocino by month.

**Table 3**

**Outflows (cfs) from Lake Mendocino  
For water years 1997-2006**

Month	Maximum	Minimum	Average
Oct	335	125	223
Nov	507	29	178
Dec	3,092	31	301
Jan	4,725	10	727
Feb	4,548	27	718
Mar	2,100	26	308
Apr	1,988	45	372
May	1,801	93	283
Jun	593	149	240
Jul	341	138	261
Aug	350	161	260
Sep	362	106	247

Water released from storage in Lake Mendocino belongs to either the Sonoma County Water Agency or the Mendocino County Russian River Flood Control and Water Conservation Improvement District and/or their contractors pursuant to Permits 12947 A & B (Applications A012919A & B).

Any imported water from the Eel River that reaches Lake Mendocino is deemed to be "abandoned" and is available for appropriation based on diverters who hold valid appropriative

rights for this water. However, while the Eel River imports had been occurring for about 6 years, E.L. Waldteufel did not anticipate making use of either of these sources of water when he filed his appropriation notice in December 1914 as he only identified a POD on the West Fork. Consequently, moving the POD for the pre-1914 appropriative claim of right downstream below the confluence of the East and West Forks will result in either the initiation of a new appropriation or injure others if the diversions made under this claim of right exceed the flows available in the West Fork at the old POD. Any diversion of water under this claim or right in excess of the flows available from the West Fork are unauthorized and constitute a trespass against the State of California and may harm the interests of other right holders.

Diversions made by either CreekBridge Homes or Millview under the pre-1914 appropriative claim of right during the period 2001 to 2004 did not exceed the rate of diversion authorized. However, the annual diversions exceeded 15 acre-feet in 3 of the 4 years with the maximum reported diversion in 2004 exceeding the authorized amounts by almost 300%.

#### **Issue #5 – Abandonment of pre-14 claim of appropriative right by Mr. Wood**

Ms. Barbara Spazek, Executive Director of the Flood Control District, submitted a letter to Complaint Unit staff on April 20, 2007. This letter contains the following passage:

*... the property associated with the Pre-1914 water right was sold to Mr. Hill by Robert Wood, a former member of the Board of the MCRRFCD. Mr. Wood, on several occasions, mentioned during meetings that he had abandoned this water right at the time of approval of the West Fork Subdivision. One of these occasions was recorded in our Minutes dated, March 10, 2003. For your information I am attaching a copy of these minutes (Exhibit B).*

Mr. Wood is no longer alive and cannot be consulted for more information than is contained in the minutes. A letter was sent to Mr. Hill, along with copies to other interested parties, on April 30, 2007. This letter transmitted a copy of Ms. Spazek's April 20<sup>th</sup> letter and asked for any information that might have a bearing on the abandonment issue including any information (e.g., maps, environmental review documents, conditional use permits, etc.) that might shed further light on the status of the pre-1914 appropriative claim of right. Mr. Neary, legal counsel for Millview, responded via a letter dated May 7, 2007. Copies of the following documents were included with this letter:

- a) "Assignment of Water Rights"
- b) Grant Deed between Robert Wood, as Trustee of The Robert Wood Living Trust, and Messrs. Hill and Gomes
- c) Negative Declaration for the West Fork Subdivision
- d) Final Conditions of Approval for Subdivision #S 1-97, Wood issued by the County of Mendocino
- e) Subdivision Maps for the West Fork Subdivision

Mr. Neary contends that the evidence currently available supports a conclusion that Mr. Wood did **not** abandon any water rights related to the property purchased by Messrs. Hill and Gomes regardless of the fact that the minutes for the March 10, 2003 meeting of the Flood Control District, on face value, suggests otherwise. The documents provided by Mr. Neary contain no reference to any action by either the County of Mendocino or Mr. Wood that would indicate that the pre-1914 appropriative claim of right was abandoned at the time the West Fork subdivision was approved by the County of Mendocino. If the County had truly required such an action as part of the approval process, at least one of these documents should have contained such information.

Ms. Spazek was provided a copy of Mr. Neary's letter as well as the documents he submitted via a letter dated May 18, 2007. She was asked to contact Complaint Unit staff by the close of business on May 25, 2007 if she could provide any additional evidence that would have a bearing on the matter. She did not contact Complaint Unit staff. Consequently, convincing evidence that Mr. Wood abandoned the water right is not currently available and staff assume that no such abandonment has occurred.

### CONCLUSIONS

1. Evidence is not currently available to suggest that the portion of the property formerly owned by Messrs. Waldteufel and Wood and currently owned by Messrs. Hill and Gomes (i.e., the ≈100-ft wide buffer strip adjacent to the West Fork Russian River) is not riparian to the West Fork Russian River. The property on which CreekBridge Homes constructed 125 homes has been physically severed from the West Fork Russian River. Unless evidence exists that the riparian status of this land was somehow reserved at the time the title transaction resulted in physical severance, these parcels no longer possess a riparian claim of right.
2. The pre-1914 appropriative claim of right originated by Mr. Waldteufel in December 1914 and transferred over time to the Woods, Messrs. Hill and Gomes, and Millview has a valid basis. However, due to the forfeiture provisions of California water law, 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 gpm or 1.1 cfs; or possibly less if the maximum instantaneous rate of diversion since 2001 for a period of 5 consecutive years has been less than this rate.
3. The POD for this pre-1914 appropriative claim of right can be moved downstream to Millview's facilities. However, the maximum instantaneous rate of diversion under this right at this location cannot exceed the **lesser** of either 500 gpm (or a smaller rate if recent use has been less as discussed in conclusion #1 above) or the amount of water in the West Fork at USGS Gage # 11461000.
4. CreekBridge and Millview may have diverted water in excess of the amount authorized under the pre-1914 appropriative claim of right. At least a threat of unauthorized diversion exists unless Millview keeps close track of the basis of right for all water diverted at Millview's facilities.

**RECOMMENDATIONS**

1. That Millview be formally directed to reduce diversions pursuant to the claim of a pre-1914 appropriative right and develop a detailed accounting methodology to track water diverted under the following bases of right:
  - a. the claim of a pre-1914 appropriative right (unless Millview terminates the agreement with Messrs Hill and Gomes and ceases all diversions under this base of right);
  - b. License 492 (Application A003601);
  - c. Permit 13936 (Application A017587); and
  - d. Contract with the Flood Control District pursuant to Permit 12947B (Application A012919B).
  
2. That the complaint filed by Lee Howard against Thomas Hill be closed. Closure of the complaint would not preclude enforcement action against Millview for a potential unauthorized diversion.

**From:** Chuck Rich  
**To:** drapport  
**Date:** 8/2/2007 11:42:50 AM  
**Subject:** PUBLIC RECORDS ACT REQUEST

Dear Mr. Rapport:

In response to your e-mail of 8/1/07 requesting copies of public records under the California Public Records Act related to the complaint filed by Lee Howard against Tom Hill [file #262.0 (23-03-06)], these records are available for review in our office or you can request that the entire file be copied and sent to you. If you or your staff wish to review the file in person, please let me know a day or so ahead of schedule so that I can make sure the file is waiting in our file room when you arrive. Our file room is located on the 2nd Floor of the Cal EPA building at 1001 I Street in Sacramento.

If you wish to have the entire file copied, please provide me with a written request to have the file copied and notification that you are willing to pay for the costs involved. The entire file for this complaint is currently about an inch thick and includes two large oversize plot plans provided by Chris Neary on behalf of Millview. If you request a complete copy of the file, it would most likely be sent out to a vendor for copying. Please include contact information in your request so the vendor can arrange for reimbursement and also indicate if you want the vendor to provide an estimate of the cost of reproduction before the work is done.

I have attached Adobe Acrobat (.pdf) files containing the following key documents related to this complaint:

- o The complaint filed by Mr. Howard
- o My letter requesting an answer to the complaint
- o The formal response to the complaint provided by Millview's General Manager
- o My letter transmitting a copy of the Report of Investigation
- o The Report of Investigation

If there are any additional questions or you wish to have the entire file copied, I can be reached as indicated below.

Charles Rich, Chief  
Complaint Unit  
(916) 341-5377  
[CRich@waterboards.ca.gov](mailto:CRich@waterboards.ca.gov)

**From:** drapport <drapport@pacbell.net>  
**To:** <crich@waterboards.ca.gov>, Candace Horsley <candace@cityofukiah.com>  
**Date:** 8/1/2007 11:10:14 AM  
**Subject:** Complaint No. 363:CAR:262.0 (23-03-06) Complaint by Lee Howard Against Thomas Hill

Dear Mr. Rich:

I am the City Attorney for the City of Ukiah. A City Council member received a copy of a letter addressed to you from Jared G. Carter on behalf of Thomas Hill, responding to a Preliminary Report prepared by the Complaint Division as a result of investigating a complaint filed by Lee Howard.

I have been asked to advise the City on the status of this investigation and any action the City should take concerning the complaint and the impact of the issue on the City's water rights.

All I have is the letter from Mr. Carter. I would like to see the complaint, the answer filed by Messrs. Hill and Gomes, the Preliminary Report, and any other information in the file which is subject to public disclosure.

Could you let me know whether this information is available and the best way to obtain copies of these documents. Please consider this a request for copies of public records under the California Public Records Act.

Thank you for your assistance.

David Rapport

David J. Rapport  
Rapport and Marston  
405 W. Perkins Street  
P.O. Box 488  
Ukiah, CA. 95482  
Phone: 707-462-6846  
Fax: 707-462-4235  
drapport@pacbell.net





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262.0(23-03-06)

**MENDOCINO COUNTY WATER AGENCY**

890 North Bush Street, Room 20  
Ukiah, California 95482  
(707) 463-4589 fax (707) 463-4643

July 31, 2007

Mr. Charles A. Rich, Chief  
Complaint Unit, Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
1001 "I" Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Re: 363:CAR:262.0 (23-03-06)

Water Right Complaint by Lee Howard Against Thomas Hill Regarding Diversion of Water by  
The Millview County Water District in Mendocino

Dear Mr. Rich:

Although not a party to the on going Millview County Water District (Millview) water right complaint investigation, the Mendocino County Water Agency is very interested in the results of the investigation, as they may have significant economic consequences for the Ukiah Valley. The Ukiah Valley's developed water supply is generally insufficient to meet existing water demands during extended drought periods and as a result, economic development of the Ukiah Valley has been stymied. Accordingly, the potential loss of any existing water right that may contribute to the valley's economic development, such as the pre-1914 water right obtained by Millview from Thomas Hill and Steve Gomes, is of concern.

The Water Agency staff is familiar with the technical and legal arguments made by the respective parties, but in the absence of additional information, is unable to advocate a position on this matter, other than the general plea to proceed cautiously and methodically through the investigation, given the potentially significant economic ramifications of the findings. In reviewing your June 1, 2007 preliminary report and the associated letter from the attorneys for Thomas Hill and Steve Gomes (Carter, Vannucci & Momsen, LLP), dated July 24, 2007, several questions have arisen, which Water Agency staff urge you to more fully address in your final report:

- 1) What is the State Water Resources Control Board's position regarding the forfeiture of appropriative or pre-1914 water rights – does forfeiture automatically occur after a five year period of non use, even if no other party has asserted a claim to the unused water?
- 2) Does the five-year period of non use immediately proceed the date of any asserted claim to the unused water, as argued by the attorneys for Thomas Hill and Steve Gomes?



**MENDOCINO COUNTY WATER AGENCY**

890 North Bush Street, Room 20  
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- 3) Can a diversion that began prior to 1914, from what was initially assumed to be a "percolating groundwater" source but is now identified as "underflow", now be considered a pre-1914 water right – assuming beneficial use is demonstrated?

Based on the available information, it appears that the answers to these three questions could not only play a pivotal role in the quantification of the pre-1914 water right obtained by Millview from Thomas Hill and Steve Gomes, but also the quantification of other appropriative and pre-1914 water rights currently asserted by other water right holders in the Ukiah Valley and surrounding region. Any information you could provide with respect to these three questions would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Roland A. Sanford".

Roland A. Sanford  
General Manager

Cc: Tim Bradley  
Thomas Hill  
Steve Gomes  
Lee Howard  
Barbara Spazek  
Senator Wiggins Office  
Jared Carter

CAR  
262(23-03-06)

CHRISTOPHER J. NEARY

ATTORNEY AT LAW

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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").

Charles A. Rich, Chief  
July 31, 2007  
Page 2

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.

Charles A. Rich, Chief  
July 31, 2007  
Page 3

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.

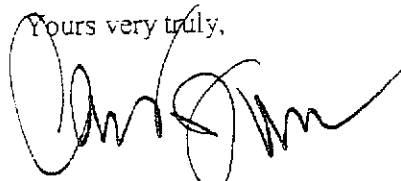
Charles A. Rich, Chief  
July 31, 2007  
Page 4

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.4<sup>th</sup> 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

CJN: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.

LAW OFFICES OF

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CAR  
262(23-03-06)

July 24, 2007

Charles A. Rich, Chief  
Complaint Unit, Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
1001 "I" Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Re: 363:CAR:262.0 (23-03-06)  
Water Right Complaint by Lee Howard Against Thomas Hill  
Re Diversion of Water by the Millview County Water District in Mendocino County

Dear Mr. Rich:

We represent Messrs. Thomas P. Hill and Steve Gomes; and this letter replies to your Preliminary Report of Investigation for the Complaint filed by Lee Howard regarding diversion from the Russian River ("Preliminary Report") on their behalf as owners and holders of the water right claimed by J.A. Waldteufel, recorded in Mendocino County Official Records on March 24, 1914 at Volume 3, Page 17.

Mr. Howard's Complaint dated February 27, 2006 asserted that the pre-1914 right "no longer exists and that individuals as well as Millview County Water District ("Millview"), have no basis of proof that this water has been used in like amounts and in like manner, since 1914."

When Messrs. Hill and Gomes purchased this water right in 1998 they checked with a member of the staff of the Water Resources Control Board and were assured the right was valid. They even received a printed memorandum from that agency stating, in part, "that pre-1914 rights can be lost as the result of five years' nonuse (*Smith v. Hawkins* 42 P. 454)." They understood that *Smith v. Hawkins* involved a situation where the first appropriator never put his appropriation to any beneficial use for five years and the water was claimed and used by a second appropriator who did. They relied upon these understandings.

Today, Messrs. Hill and Gomes generally agree with your findings that they "conveyed or transferred [by lease with an option to purchase] a valid pre-1914 appropriative claim of right" to Millview. Under the "no-injury" rule Millview has changed the purpose and place of

Charles Rich, DWR  
1 of 3  
7/24/2007

use. Msrs. Hill and Gomes also agree with your conclusion that while Mr. Waldteufel could have claimed or asserted a riparian right, he instead claimed a common law appropriative right which continues to be used to this date.

Before addressing conclusions in the Preliminary Report that are questioned, it is appropriate to address Question No. 4, quoted at page 5 of your Preliminary Report, as to whether or not "any diversions reported under S000272 have been used in any place other than the 125 Creekbridge Homes." While the use reported under S000272 includes use at the West Fork Subdivision, it is not correct to say that Millview has limited the place of use to the West Fork Subdivision since 2001. In actuality, Millview has leased the entire Waldteufel water right in response to a determination by the California Department of Health that Millview suffered from inadequate water supply source to supply its customers. Since 2001 Millview has utilized the claim initiated by E.L. Waldteufel in its entirety to supplement its source supply and had done so for some time prior to the date of Mr. Howard's Complaint; the water diverted pursuant to this right has been used in its entirety throughout the Millview service area. It was Msrs. Hill's and Gomes' intent that such use be made to protect the viability of their water right.

Turning to the Lee Howard Complaint, it should be noted that Mr. Howard has no standing to file the complaint he has filed as he makes no allegation of harm to a conflicting right of water use. Forfeiture of the right to appropriate water can be established only by one with a conflicting claim. Mr. Howard lacks standing to assert forfeiture of this valuable property right in the abstract, and his complaint should be dismissed without any adjudication.

Moreover, with respect, we believe your office should not pursue this issue on the basis of its authority independent from a justiciable claim by Mr. Howard. First, as outlined below, the bases for any forfeiture have not been established and will be extremely costly and time consuming to all concerned to pursue. Second, and perhaps more importantly, as a matter of discretion no private or public interest that is now apparent would be served if you could, after much time and costly effort, establish that some part of this water right has been forfeited. For at least the following reasons, your office's only appropriate action should be to dismiss Mr. Howard's Complaint.

a. Your office's efforts to establish forfeiture of this water right would create confusion and doubt about the total amount of water available for use in the Russian River watershed at a time when confusion is already great because flows from the Eel into the Russian are being curtailed. Projected economic activity within Millview's service area, in particular, and in the broader Ukiah Valley, where the 8,000 acre feet of water made available for this area from the Coyote Dam project are consumed, will be stymied. Forfeiture of some part of this water right will certainly not redound to the benefit of the holder of that 8,000 acre feet water right, which is to an entirely different source of water, and may well not redound to the benefit of any Mendocino County water rights holder. The questions of who would benefit, and where and how such rights could be applied, would take many dollars and years to answer - while uncertainty and confusion reigned.



b. The law respecting forfeiture of pre-1914 appropriative rights is not clear. *Smith v. Hawkins* is not controlling in the instant case; it applies only in a situation where the appropriator never perfected his right by putting it to use in a five year period. and there was a competing appropriator who had perfected his right. Up until the 90's, at least, your agency was publicly stating in a handout entitled "Information Pertaining to WATER RIGHTS in California." correctly we believe, that "nonuse [or forfeiture] means failure to put water to beneficial use for a period of years. The courts have held that pre-1914 rights can be lost as a result of five years' non-use," citing *Smith v. Hawkins*. The recent *North Kern v. Kern Delta* case, which did hold that perfected pre-1914 rights can be lost by nonuse, even if completely valid in all respects, which we question, established the great complexity involved in determining just how much of the right to appropriate water, and during what time periods, can be forfeited as a result of water availability and operations over the controlling five (5) year period. To impose upon Mssrs. Hill and Gomes and Millview the cost of litigating these issues with your agency. after your agency assured them this water right is valid and that pre-1914 appropriative rights are subject to forfeiture within the standards set by *Smith v. Hawkins*, would be unconscionable, as well, we believe, as unlawful.

c. If your office were successful in establishing that this water right is subject to forfeiture, and, indeed, that some portion of the right has been forfeited, the principles involved would apply to many other rights on this river - and other rivers and streams - where the rights have previously been considered valid and have been counted as such in determining that the River is "fully appropriated," thereby preventing further appropriations under post-1914 procedures. Water agencies, and individuals, relying upon the purchase of water rights they assumed to be valid to justify long term development plans would be subject to disruptive, and possibly fatal, forfeiture proceedings by 3<sup>rd</sup> parties, or at least your office. This would all be very inconsistent with the planning processes required for modern investment decisions and the CEQA process required by the Supreme Court in its recent *Vineyards* decision. It would also be inconsistent with at least the spirit of Article X, Section 2 of the Constitution, which strongly and clearly establishes state policy that water should be beneficially used to support the state's growing economy.

Turning to the merits of your report, Mssrs. Hill and Gomes dispute the Preliminary Report's conclusions that the maximum rate of diversion authorized pursuant to the claim of E.L. Waldteufel *may* have "degraded to the point where the maximum authorized diversion is 15 acre-feet per annum at a maximum instantaneous rate not to exceed 500 gpm or 1.1 cfs . . ." The purpose of this response is to convince you to change these preliminary conclusions and point to circumstances negating forfeiture or, at least, mandating dismissal of Mr. Howard's complaint.

#### 1. **The Law Abhors a Forfeiture.**

To suggest that the Waldteufel water right "has degraded" is to suggest that a portion of the right claimed by E.L. Waldteufel is forfeited. This is inconsistent with the findings of the Preliminary Report that the lease and option agreement to Millview "conveyed or transferred a valid pre-1914 appropriative claim of right." Also, it is axiomatic that the law abhors a

forfeiture and forfeiture is never presumed. The burden is on he who claims a forfeiture. To meet this burden requires establishment of the proper measurement period and actual proof – not inferences based on speculation – of use, as well as water available, during these periods, by a user with a conflicting claim. Mr. Howard did not advance any data in his complaint and, as such, provided an insufficient basis for the Division of Water Rights to make a finding of forfeiture; and your Preliminary Report does not fill the void.

Any conclusion of forfeiture deriving from the Preliminary Report would have to be drawn from the four corners of the Preliminary Report dated June 1, 2007. This data is lacking. It is not enough to say that evidence of continued use of the water right through the present is non-quantitative; it's not the water right holder's burden to prove non-forfeiture. Also, the Preliminary Report failed to recognize that Millview has held and used the right for the five years preceding the Howard Complaint.

We believe that the measurement periods of any asserted forfeiture are each day during the five years preceding the Howard Complaint and, for that measurement period, the right was held and controlled by Millview either directly or indirectly.

## **2. Water Usage Computations.**

The Preliminary Report extrapolates data from Lester Wood's reported usage on statements of water diversion and use. As pointed out above, the applicable measurement period is five years next preceding Mr. Howard's Complaint, not usage in the 1960s or 1970s. Nonetheless, Lester Wood's reported usage is ambiguous as it is unclear whether the diversions reported by him were each using 500 gallons per minute, or using 500 gallons per minutes in the aggregate as assumed in the Preliminary Report. Furthermore, the sworn statement of Floyd Lawrence references flood irrigation throughout the Waldteufel place of use. Mr. Wood's report is limited to usage upon property then owned by Lester Wood.

## **3. Flow Data Not Supportive of Forfeiture.**

It is also axiomatic that the inability to obtain water because of a natural shortage cannot be the basis of a forfeiture. All this would have to be accounted for in the assertion of forfeiture.

It is notable that the USGS gage, although near the point of diversion claimed by E.L. Waldteufel, is not necessarily reflective of the flow at the point of diversion. There is no reliable information about flow in the Russian River, including underflow, at the Millview point of diversion. In 1914, Mr. Waldteufel sited the point of diversion at the place where there was the greatest flow, so there is not necessarily a correlation between the flow at the USGS gage and the point of diversion claimed by Mr. Waldteufel. This is supported by Floyd Lawrence's sworn statement in which he noted that the point of diversion was also at the location of the best swimming hole on the West Fork. Mr. Waldteufel and his successors apparently diverted with a very large pump from a deep hole on or near the river.

Although the USGS gage measures surface flow, it is not reflective as to whether or not there is sufficient subterranean water available to supply the vested right in full. In fact, water used upon the lands of Waldteufel supplementing surface flow, previously thought to be percolating groundwater and not included in statement so diversion, is likely to have been surface water under the definition of "surface flow" as applied by the Division of Water Rights.

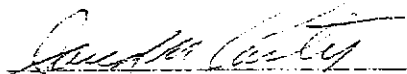
**4. Right Claimed Under Pre-1914 Authority.**

The J.A. Waldteufel water right was claimed under Civil Code Part 4, Title 8, Water Rights, and specifically the procedures set forth in Civil Code § 1415. It is part of the same statutory scheme as Civil Code § 1416 which recognizes that when a governmental agency such as the Millview county Water District acquires an appropriation in accordance with the provision of Civil Code § 1415, it shall not be necessary to commence work for development of more of the water so claimed than is actually necessary for the immediate needs of the agency to preclude forfeiture.

Millview County Water District is in the initial stages of environmental review for permanent acquisition of the J.A. Waldteufel water right leased by it since October 15, 2001. It is submitted that the statutory scheme under which the right is claimed qualifies Water Code § 1240. Water Code § 1241 is inapplicable to non-Water Commission Act appropriations.

Please reconsider your intended report and recommendations. They are not justified by the information relied upon and they will cause much, very costly mischief and not be of benefit to any identified person.

Sincerely,

  
-----  
Jared G. Carter

cc: Tim Bradley  
Thomas P. Hill  
Steven Gomes  
Lee Howard  
Barbara Spazek  
Senator Wiggins Office

CAR  
262-0(23-03-06)

**CHRISTOPHER J. NEARY**

ATTORNEY AT LAW

110 SOUTH MAIN STREET, SUITE C  
WILLITS, CALIFORNIA 95490

FAX: (707) 459-3018  
cjneary@pacific.net

(707) 459-5551

June 15, 2007

Charles A. Rich  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
1001 "I" Street, 14th Floor  
Sacramento, CA 95812-2000

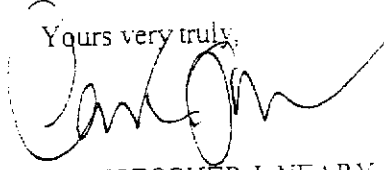
Re: 363:CAR.262.0 (23-03-06)  
Water Right Complaint by Lee Howard Against Thomas Hill  
Re Diversion of Water by the Millview County Water District  
in Mendocino County

Dear Mr. Rich:

This letter will confirm our telephone conversation in which you agreed that Mr. Hill will have an additional thirty days through to and including July 31, 2007 to provide additional evidence concerning your letter and report dated June 1, 2007 concerning the above-referenced matter

Thank you for your courtesy in granting a thirty day extension for additional submission of evidence before you finalize your report.

To keep everyone posted, I am sending copies of this letter to all of the interested parties.

Yours very truly,  
  
CHRISTOPHER J. NEARY

CJN:jen  
File: 3188  
cc: Tim Bradley  
Thomas P. Hill  
Steven Gomes  
Lee Howard  
Barbara Spazek  
Senator Wiggins Office



# State Water Resources Control Board



## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • 916 341 5300  
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Fax: 916 341 5400 • www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

Linda S. Adams  
Secretary for  
Environmental Protection

June 1, 2007

In Reply Refer to:  
363:CAR:262.0(23-03-06)

Mr. Thomas P. Hill  
54925 Riviera  
La Quinta, CA 92253

Mr. Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

Dear Messrs. Hill and Howard:

### WATER RIGHT COMPLAINT BY LEE HOWARD AGAINST THOMAS HILL REGARDING DIVERSION OF WATER BY THE MILLVIEW COUNTY WATER DISTRICT IN MENDOCINO COUNTY

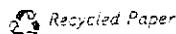
Enclosed is a copy of the staff Report of Investigation regarding Mr. Howard's complaint against Mr. Hill concerning the pre-1914 appropriative claim of right currently being exercised by the Millview County Water District. My conclusions are:

1. Evidence is not currently available to suggest that the portion of the property formerly owned by Messrs. Waldteufel and Wood and currently owned by Messrs. Hill and Gomes (i.e., the ≈100-ft wide buffer strip adjacent to the West Fork Russian River) is not riparian to the West Fork Russian River. The property on which CreekBridge Homes constructed 125 homes has been physically severed from the West Fork Russian River. Unless evidence exists that the riparian status of this land was somehow reserved at the time the title transaction resulted in physical severance, these parcels no longer possess a riparian claim of right.
2. The pre-1914 appropriative claim of right originated by Mr. Waldteufel in December 1914 and transferred over time to the Woods, Messrs. Hill and Gomes, and Millview has a valid basis. However, due to the forfeiture provisions of California water law, 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 gpm or 1.1 cfs; or possibly less if the maximum rate of diversion since 2001 for a period of 5 consecutive years has been less than this rate.
3. The point of diversion for this pre-1914 appropriative claim of right can be moved downstream to Millview's facilities. However, the maximum instantaneous rate of diversion under this right at this location cannot exceed the lesser of either 500 gpm (or a smaller rate if recent use has been less) or the amount of water in the West Fork at USGS Gage # 11461000.
4. CreekBridge and Millview may have diverted water in excess of the amount authorized under the pre-1914 appropriative claim of right. At least a threat of unauthorized diversion exists

SURNAME  
DWR 540

MR  
6/1/07

California Environmental Protection Agency



10080

unless Millview keeps close track of the basis of right for all water diverted at Millview's facilities.

In view of these conclusions, I am prepared to make the following recommendations to management unless additional evidence justifying a different course of action is brought forth.

- a) That Millview be formally directed to reduce diversions pursuant to the claim of a pre-1914 appropriative right and develop a detailed accounting methodology to track water diverted under the following bases of right:
- the claim of a pre-1914 appropriative right (unless Millview terminates the agreement with Messrs. Hill and Gomes and ceases all diversions under this base of right);
  - License 492 (Application A003601);
  - Permit 13936 (Application A017587); and
  - Contract with the Flood Control District pursuant to Permit 12947B (Application A012919B).
- b) That the complaint filed by Lee Howard against Thomas Hill be closed. Closure of the complaint would not preclude enforcement action against Millview for a potential unauthorized diversion.

Unless additional evidence is provided to me within 30 days from the date of this letter that would result in different conclusions and/or recommendations, I will submit my recommendations to Division Management. If additional evidence is submitted, please submit copies to all the parties whose addresses are identified on this letter.

If there are any questions, I can be reached at the phone number or e-mail address listed below.

Sincerely,

Charles A. Rich, Chief  
Complaint Unit

Phone: (916) 341-5377  
FAX: (916) 341-5400

e-mail: [Crich@waterboards.ca.gov](mailto:Crich@waterboards.ca.gov)

Enclosure – Report of Investigation Howard v Hill Complaint

Messrs. Howard and Hill

- 3 -

June 1, 2007

cc: (with enclosure)

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

Mr. Tim Bradley, General Manager  
Millview County Water District  
3981 North State Street  
Ukiah, CA 95482

Ms. Barbara Spazek  
Executive Director  
Mendocino County Russian River Flood Control &  
Water Conesevation Improvement District  
151 Laws Avenue, Suite D  
Ukiah, CA 95482

Senator Wiggins Office  
P.O. Box 785  
Ukiah, CA 95482

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Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## 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  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger  
Governor

## MEMORANDUM

**TO:** Files - 262.0(23-03-06)

**FROM:** Charles A. Rich  
Charles A. Rich, Chief  
Complaint Unit  
**DIVISION OF WATER RIGHTS**

**DATE:** June 1, 2007

**SUBJECT:** REPORT OF INVESTIGATION FOR A COMPLAINT FILED BY LEE HOWARD REGARDING DIVERSION FROM THE EAST FORK OF THE RUSSIAN RIVER

### BACKGROUND

In January 1998, Thomas Hill and Steven Gomes purchased 32 acres ± located immediately south of Lake Mendocino Drive and adjacent to the Russian River<sup>1</sup> near the City of Ukiah from the Robert Wood Living Trust. The Grant Deed covering this transaction indicates that all water rights and claims of title to water of the grantors associated with the land were included in the sale.

One of Mr. Wood's predecessors-in-interest, E.L. Waldteufel, recorded a water right notice on March 24, 1914. 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) from the West Fork of the Russian River for domestic, culinary, and irrigation purposes on Lot #103 of the Yokayo Rancho. The land purchased by Messrs. Hill and Gomes consists of the southeastern portion of Lot #103 and contains roughly 20% of the acreage originally contained in Lot #103.

Mr. Lester Wood, Robert Wood's father, originally filed Statement of Water Diversion and Use (Statement) S000272 in 1967 which reported the diversion and use of water on the Wood property. Supplemental statements for S000272 were also filed for the years 1970-72, 1979-81; 1985-87; and 2002-04<sup>2</sup>.

CreekBridge Homes L.P. (CreekBridge) bought a sizable portion of the property from Messrs. Hill and Gomes in 2001 and subsequently built 125 homes on the property. A buffer strip to provide an open space / riparian corridor approximately 100 feet wide between the West

<sup>1</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 report.

<sup>2</sup> - This supplemental statement was filed by Mr. Gomes. All of the others were filed by Lester Wood or his son, Robert Wood.



Fork Russian River channel and the property purchased by CreekBridge was retained by Messrs. Hill and Gomes. 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." Only the original statement was filed. No supplemental statements have been received from CreekBridge Homes for Statement S015625.

Messrs. Hill and Gomes entered into an agreement with the Millview County Water District (Millview) in October 2002. This agreement provides for the lease and/or purchase by Millview of a pre-1914 claim of appropriative right allegedly held by Messrs. Hill and Gomes, use of which has been reported under Statement S000272. 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").*

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. Complaint Unit staff understand that the effective period of this agreement has been extended.

Lee Howard filed a complaint against Thomas Hill on March 6, 2006 regarding the diversion and use of water reported pursuant to Statement S000272. Mr. Howard's complaint contains the following allegations:

- While the basis of right pursuant to 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.
- All use prior to 2001 under this claim of right occurred on lands that have a valid riparian basis of right. (The implication being that any use that occurred was made under a riparian claim of right and a valid pre-1914 appropriative claim of right was never initiated or vested.)
- The point of diversion for 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.

By letter dated March 29, 2006, Messrs. Hill and Gomes, Millview, and CreekBridge Homes were asked to 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 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. Woods.
- Millview understands that Messrs. Hill and Gomes via the lease agreement, "*granted, conveyed, and assigned all right, title and interest to the water right 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 S015625.
- Millview currently supplies water to all of the place of use identified under 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 (Flood Control District).
- Based on conversations between Millview's legal counsel and Robert Woods 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.

### FIELD INVESTIGATION

On August 30, 2006, Division staff (Charles Rich and Chuck NeSmith) conducted a field investigation regarding the subject complaint. Staff met with Messrs. Hill and Gomes, Tim Bradley (Millview's General Manager), and Christopher Neary (Millview's legal counsel). Mr. Howard was not available for the inspection. However, Complaint Unit staff met with him immediately after the inspection and provided a brief outline of the activities that occurred during the inspection.

The property formerly owned by the Wood family was visited. An old wooden crib inlet channel was observed 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 appears 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 until the land was graded for houses in 2001.

Some flow was observed in the river channel. The U.S. Geological Survey (USGS) maintains a flow monitoring station (11461000) a short distance upstream of this location. According to

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<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.

records available on the internet at a later date, the flow at the time of our inspection was approximately 0.93 cfs.

After leaving the property formerly owned by Mr. Wood, we visited the District's point of diversion (POD) on the main stem Russian River. This point is located about 2,000 feet downstream of the Wood POD and about 600 feet below the confluence of the East and West Forks of the Russian River. Based on outflow measurements at Lake Mendocino contained in the database at the California Data Exchange Center (CDEC) and USGS data for Gage 11461000, flows in the Russian River in the vicinity of the District's POD were about 227 cfs during our visit (226 cfs outflow + 0.93 cfs at Gage 11461000).

A small pump was diverting water from the surface flow of the Russian River into Millview's recharge basin located about 150 feet east of the river. Water seeps from this basin into the ground and is recovered by a number of wells located within 75 to 150 feet on both the north and south sides of the recharge basin. The soils in the area appeared to be quite sandy and probably act as a rapid sand filter. The production wells on the north side of the recharge basin run in a generally east / west line that extends about 600 feet from the river. Millview's wells probably draw water coming from: 1) the recharge basin, and 2) the subterranean stream channel of the Russian River.

After visiting the District's facilities, all of the participants sat down together and I asked the following questions of Messrs. Hill and Gomes as well as the Millview representatives and received the answers indicated below:

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Question #1: Did the diversion pursuant to S015625 by CreekBridge Homes cease as of September 2002?

Answer #1: Yes. CreekBridge Homes no longer has any interest in water rights associated with the property formerly owned by the Woods.

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Question #2: Has any diversion of water been made from the West Fork Russian River to serve the 125 homes constructed by CreekBridge Homes?

Answer #2: No. All water supplied to the 125 homes located on the former Wood property has been provided by Millview using the POD's located below the confluence of the East and West Forks.

-----  
Question #3: Do diversions to the 125 CreekBridge Homes made pursuant to the claim of right reported under S000272 occur only during the months of May to November (i.e., the historic irrigation season on the former Wood property)?

Answer #3: Yes. Diversions to serve the 125 CreekBridge Homes during the May to November period 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 with the Flood Control District.

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Question #4: Are any diversions reported under S000272 or claimed under the pre-1914 appropriative right originally associated with the former Wood property used to supply any place of use other than the 125 CreekBridge Homes?

Answer #4: No. All use reported under S000272 or made pursuant to a pre-1914 claim of right initiated by E.L. Waldteufel since 2001 has occurred at the 125 CreekBridge Homes.

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Question #5: Is there a way of measuring the amount of water used by the 125 CreekBridge Homes under the pre-1914 claim of right?

Answer #5: Yes. Each house has a separate water meter that is read on a periodic basis.

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Question #6: Is a deposition, declaration, or other written document available regarding testimony provided by Robert Wood or his predecessors in interest dealing with the use of water pursuant to the pre-1914 appropriative claim of right?

Answer #6: No. Such a document is not available.

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Question #7: Is any other testimony by a party with first-hand knowledge regarding use of water pursuant to the pre-1914 appropriative claim of right available?

Answer #7: Yes. A sworn statement of Floyd Lawrence, taken by Mr. Neary, was provided.<sup>4</sup>

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Question #8: The Millview response letter dated April 24, 2006 states that the Hill/Gomes reservation may have been deeded to the 125 CreekBridge homes @ 1,000 gpd each for a total of 125,000 gpd. Is this correct?

Answer #8: No. The 125,000 gpd allotment has been transferred to Millview pursuant to the lease agreement with Millview.

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<sup>4</sup> - A copy of this statement was sent to Mr. Howard via the U.S. mail on September 5, 2006.

**ANALYSIS**

In order to fully address Mr. Howard's complaint, the following issues must be analyzed:

1. Could diversions to the parcel of land owned by Messrs. Waldteufel, Woods, and Hill/Gomes as well as the diversions made to satisfy the 125 new homes been made under a valid riparian claim of right?
2. If the parcel in question does in fact qualify for a riparian claim of right, were the diversions that occurred between 1914 and 2001 made under a pre-1914 appropriative claim of right or a riparian claim of right?
3. If diversions were made pursuant to a pre-1914 appropriative claim of right, what is the current extent of this right (i.e., how much water can be diverted and during which season)?
4. Has the change in POD resulted in the diversion of more water pursuant to a pre-1914 appropriative claim of right than would have been available at the previous POD?
5. Did Mr. Wood abandon his basis of right at the time of the approval of the West Fork Subdivision?

**Issue #1 – Riparian Claim of Right**

Although the legislature has enacted few laws relating to riparian rights, several court decisions have resulted in the following general rules regarding the applicability of a riparian claim of right to a particular parcel of land:

- A property owner may have a riparian water right when a stream flows through the property or when the property borders a stream or lake.
- If such a parcel is subdivided such that one or more of the subdivided parcels no longer touches the stream, each parcel is deemed to have been "severed" and the riparian status of each parcel is terminated forever unless: 1) the riparian status is preserved via specific language in the conveyance document; or 2) clear evidence is available to demonstrate that a) use of water had been occurring on the severed parcel; and b) the new owner purchased the severed parcel with the intent of continuing use of water as if the parcel had not been severed.
- A riparian right will be lost forever if the right is legally "severed" from the parcel (i.e., if a riparian land owner via a grant, contract, title transaction, etc. either separates and abandons the riparian status or conveys the parcel to another party and specifically excludes the riparian right).
- Riparian water right holders may only divert a share of the natural flow of water in the stream. The natural streamflow is the flow that occurs in a watercourse due to accretions from rainfall, snowmelt, springs and rising groundwater. To the extent that flow in its natural state reaches or flows through their property, riparian water right holders have a

proportional right, based on need, to the use of the natural flow. In times of water shortage, riparian diverters must share the available natural flow.

- A riparian right does not allow diversion of water that is "foreign" to the stream source. Water imported to the watershed from a separate watershed, water that is seasonally stored in a reservoir and subsequently released later in time into the system, or irrigation runoff from percolating groundwater applied to upstream lands may not be diverted under a riparian claim of right.
- Water diverted under claim of riparian right may only be used on the parcel of land that abuts the stream (or on a "severed parcel" for which the riparian status has been retained as discussed above), and then only on that portion of the parcel that drains back into the stream (i.e., is within the watershed of the source stream).
- Riparian rights are not lost by nonuse of the water.
- Water may not be stored during one season for use in a later season. However, water may be retained for strictly "regulatory" purposes. "Regulation" of water means the direct diversion of water to a tank or reservoir in order that the water may be put to use shortly thereafter at a rate larger than the rate at which it could have been diverted continuously from its source.
- Water diverted pursuant to a riparian right is subject to the doctrine of reasonable use, which limits the use of water to that quantity reasonably required for beneficial purposes.

The parcel of land purchased by Messrs. Hill and Gomes touches the West Fork of the Russian River and the entire parcel drains back into this source. Complaint Unit staff are not aware of any "foreign" water in the West Fork<sup>5</sup> nor has any evidence come to light indicating that a prior owner "legally severed" or abandoned the riparian claim of right. Consequently, all of the available evidence supports a claim of riparian right for the original parcel purchased by Messrs. Hill and Gomes from Robert Wood in 1998.

The land that CreekBridge purchased to construct the 125 homes does not touch the West Fork Russian River. This land was thereby physically severed from the river. However, Complaint Unit staff have not reviewed the title transactions that led to this physical severance to determine what language might have been included to preserve the riparian status. The cover document that transmitted Statement S015625 states:

*"... Creekbridge Homes just recently purchased the property described on the attached form in Ukiah adjacent to the West Fork of the Russian River along with the reservation of the proportional water right for this property which was established and recorded prior to 1914." (underlining added)*

<sup>5</sup> - A large portion of the flows available at Millview's POD comes from the East Fork of the Russian River and are either "foreign in time" (i.e., releases from seasonal storage in Lake Mendocino) and/or "foreign in place" (i.e., imported from the Eel River watershed via the Potter Valley Project). Such flows are not available for diversion pursuant to a riparian claim of right.

While this passage refers to a pre-1914 appropriative claim of right, a court might find that this language coupled with specific language in the conveyance document is adequate to have provided a reservation of the riparian status of the parcel(s) purchased by CreekBridge.

CreekBridge subdivided this parcel(s), constructed 125 homes, and sold the homes and parcels on which the homes were constructed to individuals. Complaint Unit staff have no knowledge of the details involved in these title transactions. If adequate language was not included in the title conveyance documents, these parcels probably are no longer riparian to the stream. While Millview has always provided water to the homes, Complaint Unit staff question whether Millview could serve water to the homes under a riparian claim of right held by individual home owners<sup>6</sup>. The answer to this question is probably unnecessary as Millview has maintained that such service was provided pursuant to a pre-1914 claim of appropriative right and not pursuant to a riparian claim of right.

#### **Issue #2 – Existence Of A Pre-1914 Appropriative Right On A Riparian Parcel**

This question is important because diversions of water made first by Mr. Waldteufel in 1914 and later on by the Wood family, could have been made pursuant to a riparian claim of right. Such a right cannot be separated from the parcel, except to permanently terminate the right. If the diversions were made under a riparian basis of right, a pre-1914 appropriative right (which can be separated from the parcel on which the right was originated) would not have accrued and there would be no right to transfer to Millview.

Wells Hutchins addresses this issue beginning on page 208 of his book, The California Law of Water Rights. Complaint Unit staff have also conferred with legal counsel from the State Water Resources Control Board's Office of Chief Counsel. Based on this research, Complaint Unit staff believe that a pre-1914 appropriative right can be initiated and perfected on a riparian parcel. Consequently, the October 2002 agreement appears to have conveyed or transferred a valid pre-1914 appropriative claim of right from Messrs. Hill and Gomes to Millview - - at least on a temporary basis.

According to Section 1706 of the Water Code:

*"The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code (i.e., a pre-1914 appropriative claim of right)*

<sup>6</sup> - A governmental entity such as a municipality or water district can possess a riparian claim of right. However, the governmental entity can only use the water under this basis of right on parcels of land that are owned by the entity and that are riparian to the source of supply (see page 207 of Wells Hutchins' California Law of Water Rights). Riparian right holders, by entering into a specific agreement, can make a water company their agent for the purpose of distributing the waters to which the riparian right holders are entitled (see page 255 of Wells Hutchins' California Law of Water Rights). Complaint Unit staff are not aware of a similar precedent that would enable a governmental entity, such as Millview, to serve in the same capacity as a water company; i.e., as an agent for the individual riparian right holders who merely delivers water to the parcel but holds no water rights.

may change the point of diversion, place of use, or purpose of use **if others are not injured by such change**, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made." (Underlining and bolding added)

Millview changed the POD to a location downstream of the confluence of the East and West Forks of the Russian River. Based on the information provided by Millview representatives during the field investigation, the place of use has remained the same. However, Millview could change the place of use as well.

The permissibility of changes such as these pursuant to California water law are all predicated on the condition that such changes do not result in injury to others. If diversions were resumed on the property formerly owned by Messrs. Waldteufel and Wood under a riparian claim of right<sup>7</sup>, the transfer of the right to Millview could result in injury to other downstream right holders such as the Flood Control District, City of Ukiah, Willow County Water District, Sonoma County Water Agency, etc. unless Millview were to reduce diversions by an equivalent amount. Any right holder (including post-1914 appropriative right holders) that is adversely impacted, could ask a court to require that Millview reduce or eliminate diversions under the pre-1914 appropriative claim of right until such time as the injury is alleviated.

Insuring that the use of water under a riparian claim on the property formerly owned by Messrs. Waldteufel and Wood does not begin again could be achieved by either terminating the riparian status of the property via a title transaction (i.e., "strip" the riparian status of the property) or via a contractual obligation with Millview whereby diversions under the riparian claim of right would have to be reduced or terminated in the event another right holder could demonstrate injury.

### **Issue #3 – Extent Of The Pre-1914 Appropriative Right**

Prior to 1914 appropriative water rights could be acquired by simply diverting and putting water to beneficial use pursuant to common law. These rights are often referred to as "common law" or "nonstatutory" pre-1914 appropriative rights. The priority of the right relates back to the date when the first substantial act toward putting the water to beneficial use was undertaken; provided the appropriation was completed with reasonable diligence. If the project was not commenced with reasonable diligence, the priority of the right did not attach until beneficial use commenced.

Between 1872 and 1914, a "statutory" appropriative right could also be initiated by complying with Civil Code Sections 1410 et seq. Under these procedures, a person wishing to initiate an appropriation of water could post a written notice at the point of intended diversion and record a

<sup>7</sup> - Mr. Gomes mentioned during the field investigation the possibility of using some water to control dust and/or maintain landscaping in the future on the strip of land still owned by Messrs. Hill and Gomes. If the 125 homes constructed by CreekBridge still possess a valid riparian claim of right, the owners could also divert water under such a claim. However, Millview could not exercise this right on their behalf. In view of the need for a treated water supply, there is little potential for these homeowners to divert water on their own.



copy of the notice with the County Recorders Office within 10 days. The notice was required to include information regarding the amount of water appropriated, the purpose for which the appropriated water would be used, the place of use, and the means by which the water would be diverted and conveyed to the place of use. Commencement of construction was also required within 60 days after the notice was posted and must have been prosecuted diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain. If these procedures were followed and the diversion and use of water was commenced with reasonable diligence, the priority of the right was the date that the notice was posted. Failure to do this meant that the priority of the right did not attach until beneficial use occurred. However, since the effective date of the Water Commission Act (i.e., December 19, 1914), the only method of initiating an appropriative right has been to file an application with the State Water Resources Control Board (State Water Board) or one of its predecessors in interest (Water Code Sections 1200 et seq.).

Once a pre-1914 appropriation has been perfected, the right can be maintained only by continuous beneficial use. Therefore, regardless of the amount claimed in the original notice of appropriation, or at the time diversion and use first began, the amount which can now be rightfully claimed under a pre-1914 appropriative right, has in general become fixed by actual beneficial use, as to both amount and season of diversion.

There are two methods by which a pre-1914 appropriative right may be lost, abandonment and nonuse. To constitute abandonment of an appropriative right, there must be concurrence of act and intent, the relinquishment of possession, and the intent not to resume it for a beneficial use, so that abandonment is always voluntary, and a question of fact. Nonuse is distinguished from abandonment. Nonuse (or forfeiture) means failure to put water to beneficial use for a sufficient period of time when the water was available. The courts have held that pre-1914 rights can be lost as the result of five years' nonuse.

Successful assertion of a pre-1914 appropriative right, where the validity of the right is disputed, requires evidence of both the initial appropriation and the subsequent maintenance of the right by continuous and diligent application of water to beneficial use. Frequently such evidence consists of oral testimony of persons who have actual knowledge of the relevant facts. As the years pass, such testimony, dependent upon the recollection of individuals, may become difficult or impossible to secure. At least a partial remedy for this situation may be found in the procedure for perpetuation of testimony set forth in Section 2035 of the Code of Civil Procedure. A record on water use under any pre-1914 appropriative right should be established and maintained by filing a Statement unless such a filing is exempted pursuant to the requirements of Section 5101 of the Water Code.

The notice recorded by E.L. Waldteufel in 1914 clearly demonstrates an intent to initiate diversion pursuant to a pre-1914 appropriative right. However, very little evidence exists to substantiate how much water was actually placed to beneficial use prior to December 14, 1914<sup>8</sup>

<sup>8</sup> - This is the effective date of the Water Commission Act. Initiation of appropriative rights after this date, including increasing diversions under rights already established, other than by filing an application with the State Water Board (or a predecessor in interest) is prohibited by California water law.

or shortly thereafter in a diligent fashion. Only two sources of information are currently available to Complaint Unit staff that provide evidence regarding diversion and use of water made on the property formerly owned by Messrs. Waldteufel and Wood between 1914 and 1998 when Messrs. Hill and Gomes purchased the property. The first source of information includes Statements filed by the Woods, CreekBridge Homes, and Mr. Gomes on behalf of Millview. The second source is a "Sworn Statement of Floyd Lawrence" taken on August 2, 2006 and provided by Millview's legal counsel.

Table 1, on the following page, provides a summary of the information reported pursuant to Statements S000272 and S015625. Diversion and use reported by the Woods did not exceed an instantaneous diversion rate of 500 gallons per minute (gpm) or 1.1 cfs with a total annual diversion of 15 acre-feet (ac-ft). Diversion and use reported by CreekBridge Homes did not exceed 36 gpm with a total annual diversion of about 22 ac-ft. Millview's reported diversion and use did not exceed 60 gpm with a total annual diversion pursuant to the pre-1914 appropriative claim of right of about 44 ac-ft.

Mr. Lawrence's sworn statement provides very little quantifiable information. He lived in the immediate vicinity of the Waldteufel/Wood/Hill/Gomes property for almost the entire period between 1914 and 2006 when his statement was taken. His earliest recollections would have been around 1920. He recalls that alfalfa, oat hay, pears, string beans, and vineyard crops were the only crops grown on the property but did not provide any evidence regarding the amount of water that might have been diverted to grow these crops. He estimated that the fruit tree orchard was no more than four acres in size. The Woods only reported diversion for vineyard and trees (either fruit or walnut) and made no mention of irrigation for alfalfa or oat hay in the statements they filed. While Mr. Lawrence's sworn statement does not provide much quantitative data, he does state that agricultural operations continued right up until CreekBridge Homes began construction of new homes on the property; or around 2001-02. This indicates that at least some amount of use continued in a fairly uninterrupted fashion from the early 1920's to today.

Members of the Wood family first purchased the property in April 1945 and owned the land until Messrs. Hill and Gomes purchased the property in January 1998, a period of more than 50 years. The original Statement and Supplemental Statements filed by the Wood family indicate that the maximum diversion rate did not exceed 1.1 cfs and the annual depletion from the stream was less than 15 ac-ft. Consequently, a logical conclusion based on the currently available evidence would be that considerably more than 5-years passed without diversions exceeding these amounts. Pursuant to California water law, the Woods would have forfeited that portion of the pre-1914 appropriative right to any diversions in excess of these amounts. The maximum diversion rate reported for the years 2001 through 2004 has been under 68 gpm or 0.15 cfs. Consequently, the maximum rate of diversion authorized pursuant to this right may have further degraded to this rate.

**TABLE 1**  
**WATER USE REPORTED UNDER STATEMENTS S000272 AND S015625**

Year	Party Diverting	Months water was diverted	Diversion Rate	Volume Diverted	Purpose
1966	Wood	JUL JUL	175 gpm " "	annual amount = <b>15 ac-ft<sup>1/2</sup></b>	irrigation of 15 acres of grapes & walnuts
1970 1971 1972	Wood " "	MAY JUL SEP of each year	500 gpm " " " "	2.3 ac-ft 9.2 ac-ft 2.2 ac-ft annual total <b>= 13.7 ac-ft</b>	frost protection (May) irrigation (Jul) irrigation (Sep)
1979 1980 1981	Wood " "	APR thru SEP	not specified	not specified	irrigation of grapes and walnuts
1985 1986 1987	Wood " "	APR thru SEP	not specified	not specified	irrigation of 30 acres
2001	CreekBridge Homes	JUN JUL AUG SEP OCT NOV DEC	7.7 gpm 7.45 gpm 7.45 gpm 35.42 gpm 34.27 gpm 35.42 gpm 34.27 gpm	1.02 ac-ft 1.02 ac-ft 1.02 ac-ft 4.70 ac-ft 4.70 ac-ft 4.70 ac-ft 4.70 ac-ft annual total <b>= 21.85 ac-ft</b>	irrigation on 10.5 acres of fruit trees, home construction, dust control & domestic use for 51 homes
2002	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	12.90 gpm 17.27 gpm 21.44 gpm 16.20 gpm 15.12 gpm 17.32 gpm 10.01 gpm	1.77 ac-ft 2.37 ac-ft 2.94 ac-ft 2.22 ac-ft 2.07 ac-ft 2.37 ac-ft 1.37 ac-ft annual total <b>= 15.11 ac-ft</b>	Domestic use for 350 people
2003	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	28.00 gpm 30.91 gpm 30.02 gpm 53.54 gpm 34.27 gpm 35.93 gpm 18.88 gpm	3.84 ac-ft 4.24 ac-ft 4.11 ac-ft 7.34 ac-ft 4.70 ac-ft 4.92 ac-ft 2.59 ac-ft annual total <b>= 31.73 ac-ft</b>	Domestic use for 350 people
2004	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	47.27 gpm 42.90 gpm 67.43 gpm 58.87 gpm 55.94 gpm 31.56 gpm 16.04 gpm	6.48 ac-ft 5.88 ac-ft 9.24 ac-ft 8.07 ac-ft 7.66 ac-ft 4.32 ac-ft 2.20 ac-ft annual total <b>= 43.84 ac-ft</b>	Domestic use for 350 people

<sup>1/2</sup> - Maximum annual use in recent years listed as 15 afa. Minimum annual use in recent years listed as 7.5 afa.

**Issue #4 – Impact of Moving the POD on the Pre-1914 Appropriative Claim of Right**

Pursuant to California water law, the point of diversion under an appropriative right can be changed as long as the change will neither: a) in effect initiate a new right; nor b) injure any other legal user of water.

Initiation of a new right – If a diverter who holds a valid pre-1914 appropriative right moves the POD because the watershed above the POD is incapable of providing a fully adequate supply throughout the authorized season of diversion, the incremental increase in the water supply obtained constitutes the initiation of a new appropriation. Such an appropriation is subject to the requirements in effect at the time the new appropriation is initiated. If the initiation occurred after December 19, 1914, the new appropriation would have to be made in accordance with the requirements of the Water Commission Act as codified in the California Water Code or via acquisition of a permit from the State Water Board.

Injury to a legal user of water - Section 1706 of the California Water Code states:

*The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the **point of diversion**, place of use, or purpose of use **if others are not injured by such change**, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made. (underlining and bolding added)*

Flow records for the U.S. Geological Survey gage #11461000 on the West Fork of the Russian River<sup>9</sup> are available for water years 1912-13 and 1953-2006. Table 2 (below) provides a summary of flow exceedence for these records during the season of use for the pre-1914 appropriative claim of right.

**Table 2**

**USGS Gage #11461000 - Russian River near Ukiah, CA**

Month / Flow	Exceedence <sup>10</sup>		
	0.1 cfs	0.5 cfs	1.1 cfs
May	100%	100%	100%
June	99%	97%	95%
July	88%	75%	62%
August	73%	44%	23%
September	76%	39%	20%
October	86%	58%	40%
November	97%	90%	85%

<sup>9</sup> - As discussed previously the USGS refers to this water body as the Russian River near Ukiah, CA. However, locals often refer to this body of water as the West Fork Russian River.

<sup>10</sup> - "Exceedence" means the amount of time the specified flow was exceeded during the historical record for that particular month.

This table demonstrates that while obtaining 15 acre-feet of water per irrigation season from the West Fork is quite feasible, diverting at the maximum rate reported by the Woods of 500 gpm is problematic; especially during the months of July through October.

Millview has effectively moved the POD for the Waldteufel/Woods/Hill/Gomes pre-1914 appropriative claim of right downstream below the confluence of the East and West Forks of the Russian River. Floyd Lawrence's sworn statement indicates that, at times, the historical flows in the East Fork during the summer season prior to the construction of Coyote Dam that impounds Lake Mendocino were actually less than those in the West Fork.

Flows in the East Fork below Lake Mendocino are influenced by imports from the Eel River through the Snow Mountain Tunnel to Potter Valley and diversions to and releases from seasonal storage in Lake Mendocino. The Eel River imports are "foreign in place" whereas the releases from Lake Mendocino are "foreign in time". Both of these sources of supply currently augment the natural flows substantially; especially during the summer and fall seasons. Table 3 depicts the recent maximum, minimum, and average daily flows below Lake Mendocino by month.

**Table 3**

**Outflows (cfs) from Lake Mendocino  
For water years 1997-2006**

Month	Maximum	Minimum	Average
Oct	335	125	223
Nov	507	29	178
Dec	3,092	31	301
Jan	4,725	10	727
Feb	4,548	27	718
Mar	2,100	26	308
Apr	1,988	45	372
May	1,801	93	283
Jun	593	149	240
Jul	341	138	261
Aug	350	161	260
Sep	362	106	247

Water released from storage in Lake Mendocino belongs to either the Sonoma County Water Agency or the Mendocino County Russian River Flood Control and Water Conservation Improvement District and/or their contractors pursuant to Permits 12947 A & B (Applications A012919A & B).

Any imported water from the Eel River that reaches Lake Mendocino is deemed to be "abandoned" and is available for appropriation based on diverters who hold valid appropriative

rights for this water. However, while the Eel River imports had been occurring for about 6 years, E.L. Waldteufel did not anticipate making use of either of these sources of water when he filed his appropriation notice in December 1914 as he only identified a POD on the West Fork. Consequently, moving the POD for the pre-1914 appropriative claim of right downstream below the confluence of the East and West Forks will result in either the initiation of a new appropriation or injure others if the diversions made under this claim of right exceed the flows available in the West Fork at the old POD. Any diversion of water under this claim or right in excess of the flows available from the West Fork are unauthorized and constitute a trespass against the State of California and may harm the interests of other right holders.

Diversions made by either CreekBridge Homes or Millview under the pre-1914 appropriative claim of right during the period 2001 to 2004 did not exceed the rate of diversion authorized. However, the annual diversions exceeded 15 acre-feet in 3 of the 4 years with the maximum reported diversion in 2004 exceeding the authorized amounts by almost 300%.

#### **Issue #5 – Abandonment of pre-14 claim of appropriative right by Mr. Wood**

Ms. Barbara Spazek, Executive Director of the Flood Control District, submitted a letter to Complaint Unit staff on April 20, 2007. This letter contains the following passage:

*... the property associated with the Pre-1914 water right was sold to Mr. Hill by Robert Wood, a former member of the Board of the MCRRFCD. Mr. Wood, on several occasions, mentioned during meetings that he had abandoned this water right at the time of approval of the West Fork Subdivision. One of these occasions was recorded in our Minutes dated, March 10, 2003. For your information I am attaching a copy of these minutes (Exhibit B).*

Mr. Wood is no longer alive and cannot be consulted for more information than is contained in the minutes. A letter was sent to Mr. Hill, along with copies to other interested parties, on April 30, 2007. This letter transmitted a copy of Ms. Spazek's April 20<sup>th</sup> letter and asked for any information that might have a bearing on the abandonment issue including any information (e.g., maps, environmental review documents, conditional use permits, etc.) that might shed further light on the status of the pre-1914 appropriative claim of right. Mr. Neary, legal counsel for Millview, responded via a letter dated May 7, 2007. Copies of the following documents were included with this letter:

- a) "Assignment of Water Rights"
- b) Grant Deed between Robert Wood, as Trustee of The Robert Wood Living Trust, and Messrs. Hill and Gomes
- c) Negative Declaration for the West Fork Subdivision
- d) Final Conditions of Approval for Subdivision #S 1-97, Wood issued by the County of Mendocino
- e) Subdivision Maps for the West Fork Subdivision

Mr. Neary contends that the evidence currently available supports a conclusion that Mr. Wood did not abandon any water rights related to the property purchased by Messrs. Hill and Gomes regardless of the fact that the minutes for the March 10, 2003 meeting of the Flood Control District, on face value, suggests otherwise. The documents provided by Mr. Neary contain no reference to any action by either the County of Mendocino or Mr. Wood that would indicate that the pre-1914 appropriative claim of right was abandoned at the time the West Fork subdivision was approved by the County of Mendocino. If the County had truly required such an action as part of the approval process, at least one of these documents should have contained such information.

Ms. Spazek was provided a copy of Mr. Neary's letter as well as the documents he submitted via a letter dated May 18, 2007. She was asked to contact Complaint Unit staff by the close of business on May 25, 2007 if she could provide any additional evidence that would have a bearing on the matter. She did not contact Complaint Unit staff. Consequently, convincing evidence that Mr. Wood abandoned the water right is not currently available and staff assume that no such abandonment has occurred.

### CONCLUSIONS

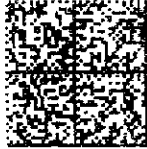
1. Evidence is not currently available to suggest that the portion of the property formerly owned by Messrs. Waldteufel and Wood and currently owned by Messrs. Hill and Gomes (i.e., the ≈100-ft wide buffer strip adjacent to the West Fork Russian River) is not riparian to the West Fork Russian River. The property on which CreekBridge Homes constructed 125 homes has been physically severed from the West Fork Russian River. Unless evidence exists that the riparian status of this land was somehow reserved at the time the title transaction resulted in physical severance, these parcels no longer possess a riparian claim of right.
2. The pre-1914 appropriative claim of right originated by Mr. Waldteufel in December 1914 and transferred over time to the Woods, Messrs. Hill and Gomes, and Millview has a valid basis. However, due to the forfeiture provisions of California water law, 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 gpm or 1.1 cfs; or possibly less if the maximum instantaneous rate of diversion since 2001 for a period of 5 consecutive years has been less than this rate.
3. The POD for this pre-1914 appropriative claim of right can be moved downstream to Millview's facilities. However, the maximum instantaneous rate of diversion under this right at this location cannot exceed the lesser of either 500 gpm (or a smaller rate if recent use has been less as discussed in conclusion #1 above) or the amount of water in the West Fork at USGS Gage # 11461000.
4. CreekBridge and Millview may have diverted water in excess of the amount authorized under the pre-1914 appropriative claim of right. At least a threat of unauthorized diversion exists unless Millview keeps close track of the basis of right for all water diverted at Millview's facilities.

**RECOMMENDATIONS**

1. That Millview be formally directed to reduce diversions pursuant to the claim of a pre-1914 appropriative right and develop a detailed accounting methodology to track water diverted under the following bases of right:
  - a) the claim of a pre-1914 appropriative right (unless Millview terminates the agreement with Messrs. Hill and Gomes and ceases all diversions under this base of right);
  - b) License 492 (Application A003601);
  - c) Permit 13936 (Application A017587); and
  - d) Contract with the Flood Control District pursuant to Permit 12947B (Application A012919B).
2. That the complaint filed by Lee Howard against Thomas Hill be closed. Closure of the complaint would not preclude enforcement action against Millview for a potential unauthorized diversion.



*Handwritten mark*



WATER RESOURCES CONTROL BD  
DIVISION OF WATER RIGHTS  
PO BOX 2000  
SACRAMENTO CA 95812-2000

0004217235 MAY 21 2007  
\$ 00.41<sup>0</sup>  
MAILED FROM ZIP CODE 95814

Mr. Tim Bradley, General Manager  
Millview County Water District  
3981 Nort State Street  
Ukiah, CA 95482

*Handwritten initials*

NIXIE 949 CE 1 30 05/24/07  
RETURN TO SENDER  
NO MAIL RECEIPTABLE  
UNABLE TO FORWARD  
BC: 9591203030 \*0541-00798-21-42

9591203030



# State Water Resources Control Board



## 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  
Fax: 916.341.5400 • [www.waterrights.ca.gov](http://www.waterrights.ca.gov)

Linda S. Adams  
Secretary for  
Environmental Protection

Arnold Schwarzenegger  
Governor

May 18, 2007

In Reply Refer to:  
363:CAR:262.0(23-03-06)

Ms. Barbara Spazek  
Executive Director  
Mendocino County Russian River Flood Control &  
Water Conservation Improvement District  
151 Laws Avenue, Suite D  
Ukiah, CA 95482

Dear Ms. Spazek:

### POTENTIAL ABANDONMENT OF WOOD WATER RIGHT ON THE WEST FORK OF THE RUSSIAN RIVER IN MENDOCINO COUNTY

I recently received a letter from Christopher Neary on behalf of the Millview County Water District. Copies of his letter and the materials included with this letter are enclosed for your reference.

Mr. Neary argues that the evidence currently available supports a conclusion that Mr. Wood did not abandon any water rights related to the property purchased by Messrs. Hill and Gomes regardless of the fact that the minutes for the March 10, 2003 meeting of your District suggests otherwise. I have reviewed the materials submitted by Mr. Neary. Based on the evidence currently available to me, I do not believe that Mr. Wood took sufficient action to abandon any portion of a pre-1914 appropriative claim or right or a riparian claim of right to the property he sold to Messrs. Hill and Gomes.

If you are aware of any additional evidence available in either your District's records or from the County of Mendocino that would have a bearing on this matter, please contact me via telephone or via e-mail as soon as possible. If I do not hear from you by the close of business on Friday, May 25, 2007, I will complete my Report of Investigation regarding Mr. Howard's complaint against Mr. Hill as soon as possible thereafter and transmit the report to the parties involved as well as interested parties such as yourself.

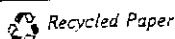
Sincerely,

Charles A. Rich, Chief  
Complaint Unit

Telephone: (916) 341-5377  
FAX: (916) 341-5400  
e-mail: [Crich@waterboards.ca.gov](mailto:Crich@waterboards.ca.gov)

Enclosure – 5/7/07 letter from Christopher Neary

*California Environmental Protection Agency*





# State Water Resources Control Board



## Division of Water Rights

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Governor

**Linda S. Adams**  
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### POTENTIAL ABANDONMENT OF WOOD WATER RIGHT ON THE WEST FORK OF THE RUSSIAN RIVER IN MENDOCINO COUNTY

I recently received a letter from Christopher Neary on behalf of the Millview County Water District. Copies of his letter and the materials included with this letter are enclosed for your reference.

Mr. Neary argues that the evidence currently available supports a conclusion that Mr. Wood did not abandon any water rights related to the property purchased by Messrs. Hill and Gomes regardless of the fact that the minutes for the March 10, 2003 meeting of your District suggests otherwise. I have reviewed the materials submitted by Mr. Neary. Based on the evidence currently available to me, I do not believe that Mr. Wood took sufficient action to abandon any portion of a pre-1914 appropriative claim or right or a riparian claim of right to the property he sold to Messrs. Hill and Gomes.

If you are aware of any additional evidence available in either your District's records or from the County of Mendocino that would have a bearing on this matter, please contact me via telephone or via e-mail as soon as possible. If I do not hear from you by the close of business on Friday, May 25, 2007, I will complete my Report of Investigation regarding Mr. Howard's complaint against Mr. Hill as soon as possible thereafter and transmit the report to the parties involved as well as interested parties such as yourself.

Sincerely,

ORIGINAL SIGNED BY:

Charles A. Rich, Chief  
Complaint Unit

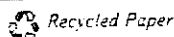
Telephone: (916) 341-5377  
FAX: (916) 341-5400  
e-mail: [Crich@waterboards.ca.gov](mailto:Crich@waterboards.ca.gov)

Enclosure – 5/7/07 letter from Christopher Neary

SURNAME  
DWR 540

California Environmental Protection Agency

CAR 5/18/07



TRANSMISSION VERIFICATION REPORT

TIME : 05/18/2007 15:25  
NAME :  
FAX :  
TEL :  
SER. # : BROK2J720013

DATE, TIME	05/18 15:22
FAX NO./NAME	917074625279
DURATION	00:03:25
PAGE(S)	13
RESULT	OK
MODE	STANDARD ECM

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

TELECOPY TRANSMISSION COVER SHEET

DATE: May 18, 2007

TO: Barbara Spazek, Executive Director  
Mendocino County Russian River Flood Control & Water Conservation  
Improvement District

FAX #: (707) 462-5279

FROM: CHARLES RICH

Desk #: (916) 341-5377

18 PAGES (INCLUDING COVER SHEET) TO BE TRANSMITTED

MATERIAL TRANSMITTED: Copy of 5/18/07 letter regarding potential  
abandonment of the Wood water right related to complaint 262.0(23-03-06)  
Howard v Hill/Gomes

Note: If you do not receive all of the pages, please call (916) 341-5377

CHRISTOPHER J. NEARY

ATTORNEY AT LAW

110 SOUTH MAIN STREET, SUITE C  
WILLITS, CALIFORNIA 95490

FAX (707) 459 - 3018  
cjneary@pacific.net

(707) 459 - 5551

CAR  
363.0 (23-03-06)

MAY 14 PM 12:1

CLERK OF COURTS  
SACRAMENTO

May 7, 2007

Charles A. Rich  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
1001 "P" Street, 14th Floor  
Sacramento, CA 95812-2000

Re: 363:CAR:262.0 (23-03-06)  
Reply to Letter dated April 30, 2007

Dear Mr. Rich:

Millview County Water District (the "District") has asked me to respond to your letter dated April 30, 2007.

Contemporaneously upon receiving a copy of your letter, the District received a copy of Barbara Spazek's letter.

The District has no way of determining whether the comments attributed to Mr. Wood at the March 10, 2003 meeting accurately reflect statements made by Mr. Wood, or if Mr. Wood even made any statements. A notable observation would be that the subject matter would be outside the jurisdiction of the Russian River Flood Control and Water Conservation Improvement District. It may be a case where the preparer of the minutes may have misunderstood Mr. Wood's comments.

I believe that to be the case as I personally spoke with Mr. Wood concerning the subject matter in the fall of 2001 in the presence of another Russian River Flood Control and Water Conservation Improvement District trustee, Tom Mon Pere, and on another occasion in a telephone conversation. He expressed completely different sentiments to me on both occasions.

Fortunately, we need not resort to third party sources to determine whether or not Mr. Wood "abandoned" a water right which he considered to be very valuable.

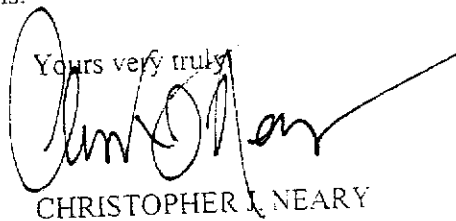
Charles A. Rich  
May 7, 2007  
Page 2

Contemporaneous with the grant of the real property in question, Mr. Wood executed an Assignment of Water Rights dated January 7, 1998 so there would be no question that he was assigning the rights in question. A copy of that assignment dated January 7, 1998 is attached, along with the Grant Deed recorded on January 8, 1998.

Furthermore, it is clear that the County of Mendocino did not enter into an agreement with Mr. Wood to abandon the Waldteufel claim. In connection with the subdivision, a negative declaration was issued, a copy of which is enclosed. There are no references either in the negative declaration nor in the notice of determination to an abandonment of any water right. To dispel any doubt as to the existence of such conditions, I am also enclosing the final conditions of approval for the subdivision which contain absolutely no reference to abandonment of these important water rights.

It is significantly in doubt that Mr. Wood made the statement attributed to him because the statement is not supported by the record and is inconsistent with a written conveyance of the water right by Mr. Wood to Millview's grantors.

Please call if you have any questions.

Yours very truly  
  
CHRISTOPHER J. NEARY

CJN:jen  
File: 3188


encs: 1. Assignment of Water Rights  
2. Grant Deed  
3. Negative Declaration  
4. Conditions of Approval  
5. Subdivision Map (hard copy only) - see pocket folder

cc: Millview County Water District Board of Directors (w/enc.)  
Tim Bradley  
Honorable Patricia Wiggins  
Tom Hill  
Steven Gomes

ASSIGNMENT OF WATER RIGHTS

Robert Wood, as Trustee of The Robert Wood Living Trust dated December 13, 1993, ASSIGNOR, hereby assigns all rights, title and interest that ASSIGNOR may have in and to any water rights or claims of title to water in adjacent to or in the vicinity of the lands described in Attached Exhibit "A"; unto Thomas P. Hill, a married man as his sole and separate property as to an undivided 1/2 interest; and Steven L. Gomes, an unmarried man, as to an undivided 1/2 interest, ASSIGNEES.

This Assignment includes rights acquired by use, grant, or other means and includes all riparain or other rights to the waters of the Russian River and also includes the rights created in the document recorded March 24, 1914 in Book 3 of Deeds, Page 17.



Robert Wood

Dated; Jan. 7, 1998

Order No.  
Escrow No. 203707 DN  
Loan No

WHEN RECORDED MAIL TO:

Thomas P. Hill  
Steven L. Gomes  
110 S. Highland Avenue  
Ukiah, CA 95482

00000386  
Recorded at the request of  
FIRST AMERICAN TITLE CO  
Book 2470 Page 699  
01/08/1998 02:49P  
Fee: \$16.00 No of Pages:4

	320.00
	PAID
X	PCO
	FILED
	Exempt

OFFICIAL RECORDS  
MENDOCINO COUNTY CALIF  
MARSHA A. YOUNG, RECORDER

DOCUMENTARY TRANSFER TAX \$ 1,047.75

SPACE ABOVE THIS LINE FOR RECORDER'S USE

X Computed on the consideration or value of property conveyed; OR  
Computed on the consideration or value less liens or encumbrances remaining at time of sale.

As declared by the undersigned Grantor  
Signature of Declarant or Agent determining tax - Firm Name

### GRANT DEED

169-130-17,  
173-210-01

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Robert Wood, as Trustee of The Robert Wood Living Trust dated December 13, 1993

hereby GRANT(S) to

Thomas P. Hill, a married man, as his sole and separate property, as to an undivided one-half interest; and  
Steven L. Gomes, an unmarried man, as to an undivided one-half interest

the real property County of Mendocino Unincorporated Area Mendocino State of California, described as

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Dated January 5, 1998

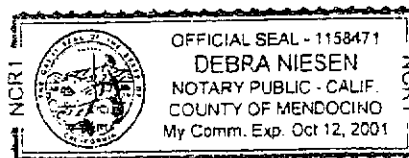
Robert Wood  
Robert Wood

STATE OF CALIFORNIA )  
COUNTY OF Mendocino )ss.

On Jan. 6, 1998 before me,  
Debra Niesen  
personally appeared Robert Wood

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature Debra Niesen  
DEBRA NIESEN



(This area for official notarial seal)

SAME AS ABOVE



*Legal*

Order No. 203707 DN

DESCRIPTION

The land referred to herein is situated in the State of California, County of Mendocino, and is described as follows:

Parcel One:

Commencing at the Northeast corner of Lot 82 of the Yokayo Rancho, where the third standard line crosses Russian River; thence running West along said standard line and the North line of said Lot 82, South 89° 50' West 16.80 chains to a stake from which a white oak tree 10 inches in diameter marked "XBT" bears West 36 links distant; thence North 0° 16' East along the East line of the land of W. P. Burk, 11.12 1/2 chains to the County road leading from Ukiah to Potter Valley; thence North 86° 46' East 2.73 chains to a stake from which a black oak tree 36 inches in diameter, marked "LR4BT" bears South 65 1/2° West 41 links distant; thence North 69° 30' East 11.82 chains; thence North 74° 2' East 1.63 chains; thence North 88° 50' East 12.05 chains to the center of the channel of the West branch of Russian River; thence down the center of said channel, South 6° 21' West 3.77 chains; thence South 26° 12' West 6.13 chains; thence South 34° 52' West 2.22 chains; thence South 50° 41' West 8.03 1/2 chains to the point of beginning.

Together with the following described parcel of land:

Beginning at a 6" x 6" CHC monument on the Southerly line of Lake Mendocino Drive (County Road 227B) at the easterly terminus of the course "North 70° 22' 03" East, 916.13 feet" as shown on a map filed in Map Case 2, Drawer 41, Page 92, Mendocino County Records; thence along the said Southerly line South 70° 22' 03" West, 301.95 feet; thence leaving the said southerly line South 16° 00' East 200.00 feet; thence North 74° 00' East, 429.32 feet; thence 213.95 feet to the said southerly line; thence along the said southerly line South 87° 31' 30" West, 85.69 feet; thence South 70° 22' 03" West, 103.85 feet to the point of beginning.

Excepting from the above described land any portion thereof lying North of the South line of the Ukiah Tahoe State Highway, (County Road #227-B)- Lake Mendocino Drive; as described in that Deed to the State of California, recorded July 6, 1921 in Book 160 of Deeds at page 76.

Also excepting therefrom that portion thereof conveyed in the Deed to the County of Mendocino, recorded July 28, 1986 in Book 1571 Official Records, Page 109, Mendocino County Records.

Also excepting therefrom an undivided one-half interest "in and to all oil, gas, petroleum, naphtha, other hydrocarbon substances and minerals of whatsoever kind and nature in, upon or beneath the property hereinabove described, together with the right of entry and all other rights, including all rights of way and easements, which may be necessary for the development, production and removal of all such substances and minerals and the full enjoyment of the Grantor's interest herein " as reserved in the Deed from The Federal Land Bank of Berkeley, a corporation, recorded February 19, 1947 in Book 210 Official Records, Page 137, Mendocino County Records.

Also excepting therefrom that parcel of land more particularly described as follows:

Commencing at a ½" iron pipe marked R.C.E. 15311 on the Southerly line of Lake Mendocino Drive (County Road 227B) at the Westerly terminus of the course "North 70°22'03" East, 916.13 feet" as shown on a map filed in Map Case 2, Drawer 41, page 92, Mendocino County Records; thence along said Southerly line North 70°22'51" East, 657.09 feet to the point of beginning of this description; thence continuing along said Southerly line North 70°23'20" East, 365.79 feet; thence South 89°18'47" East, 192.84 feet; thence South 85°16'55" East, 141.73 feet; thence from a tangent that bears South 8°31'50" East, through the arc of a curve to the right with a radius of 35.00 feet, a central angle of 13°14'55" and a length of 8.09 feet; thence leaving said Southerly line South 4°43'05" West, 76.98 feet; thence through the arc of a curve to the right with a radius of 35.00 feet, a central angle of 90°00'00" and a length of 54.98 feet; thence North 85°16'55" West, 91.05 feet; thence through the arc of a curve to the left with a radius of 352.00 feet; a central angle of 4°01'52" and a length of 24.77 feet; thence North 89°18'47" West, 91.74 feet; thence through the arc of a curve to left with a radius of 352.00 feet, a central angle of 20°18'13" and a length of 124.74 feet; thence South 70°22'59" West, 281.24 feet; thence North 19°37'01" West, 120.03 feet to the point of beginning and the end of this description.

N 169-130-17

Parcel Two:

All that portion of the land conveyed by A. E. Garaventa, et ux to C. MacKintosh by Deed dated October 4th, 1929 and recorded in Book 46, Official Records, page 311, Mendocino County Records, as follows:

Beginning at the Northwest corner of said MacKintosh land and running Easterly along the Northerly line thereof to the center of the channel of the East branch of the Russian River; thence Southwesterly along the center of the channel of the East branch of the Russian River to its intersection with the center of the channel of the West branch of the Russian River; thence Northerly along the center of said West branch to the point of beginning.

Parcel Three:

All that portion of the parcel of land designated as Parcel "A" on the map entitled River Wood Terrace Unit No. 2, which map was filed in the office of the Recorder of the County of Mendocino, State of California on November 22, 1967 in Map Case 2, Drawer 10, at page 20 that lies West of the following described line:

Beginning at a point in the center of the East branch of the Russian River, said point being on the South line of said Parcel "A" distant thereon 130 feet West of the West line of Lot 1 as designated on said map of Riverwood Terrace Unit No. 2; thence from said point of beginning along said centerline as follows:

Book: 2470 Page: 701

Order No. 203707 DN

North 50° 38' 55" East, 267.60 feet; North 34° 45' 16" East, 219.04 feet; North 57° 57' 20" East, 324.13 feet and North 20° 44' 52" East, 323.24 feet to a point on the North line of said parcel "A" distant thereon North 89° 47' West, 206.73 feet from the West line of Lot 9 as designated on said map of Riverwood Terrace Unit No. 2.

Excepting therefrom all that portion thereof described in Parcel Three hereinabove described.

A. P. No. 178-010-01

TOGETHER WITH all water rights and claims of title to water of the grantors in or adjacent to the above parcels 1,2 and 3.

Book: 2470  
Pages: 702

NEGATIVE DECLARATION

For Review by Interested Agencies and the Public in Accordance with Mendocino County Environmental Review Guidelines and the California Environmental Quality Act, an analysis has been made of possible environmental impacts of the following project by Staff:

Applicant: TOM HILL & STEVE GOMES  
110 S. HIGHLAND AVE  
UKIAH CA 95482

Case #: S 1-97


Project Title & Description: Major Subdivision to create, in four phases, 125 single family residential lots ranging in size from 6,000+- to 13,000+- square feet, as well as a 17,500+- square foot remainder parcel, and three other parcels which shall provide landscaped frontage along Lake Mendocino Drive, a riparian buffer along the West Fork of the Russian River, and a small park/open space area. Also, an exception to Division of Land Regulations regarding lot width.

Project Location: 1.5+- miles north of Ukiah, lying west of the West Fork of the Russian River, and south of Lake Mendocino Drive (CR# 227B), 1/4+- mile east of the intersection of Lake Mendocino Drive and North State Street (a.k.a., the Forks); AP# 169-130-14, 15.

Findings Which Support A Negative Declaration: After conducting an Initial Study, the Lead Agency has determined that the project will not have a significant, substantial adverse effect on the environment for the following reasons:

1. The project will not have impacts which have the potential to degrade the quality of the environment or curtail the range of the environment.
2. The project will not have impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definite period of time while long-term impacts will endure well into the future.
3. The project will not have impacts which are individually limited, but cumulatively considerable. A project may affect two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.
4. The environmental effects of a project will not cause substantial adverse effects on human beings, either directly or indirectly.

Attached hereto is a copy of the Initial Study documenting reasons to support the above findings. Also attached are any mitigation measures proposed to avoid potentially significant effects.

  
\_\_\_\_\_  
Reviewed and Considered by Lead Agency

9-24-97  
\_\_\_\_\_  
Date

FILING REQUESTED BY  
County of Mendocino  
Planning & Building Services Dept  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

FILED

9700085  
SEP 24 1997

MARSHA A. YOUNG  
MENDOCINO COUNTY CLERK  
By Eschatz Deputy

AND WHEN FILED MAIL TO  
County of Mendocino  
Planning & Building Services Dept  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

NOTICE OF DETERMINATION

SUBJECT: Filing of Notice of Determination in compliance with pertinent sections of the Public Resources Code.

Project Title & Description:

CASE#: S 1-97  
DATE FILED: April 29, 1997  
OWNER: ROBERT & LAURA WOOD  
APPLICANT: TOM HILL & STEVE GOMES  
AGENT: T.M. HERMAN & ASSOCIATES  
REQUEST: Major Subdivision to create, in four phases, 125 single family residential lots ranging in size from 6,000+- to 13,000+- square feet, as well as a 17,500+- square foot remainder parcel, and three other parcels which shall provide landscaped frontage along Lake Mendocino Drive, a riparian buffer along the West Fork of the Russian River, and a small park/open space area. Also, an exception to Division of Land Regulations regarding lot width.

State Clearinghouse Number (SCH)	Contact Person	Telephone Number
	Frank Lynch	707-463-4281

Project Location: 1.5+- miles north of Ukiah, lying west of the West Fork of the Russian River, and south of Lake Mendocino Drive (CR# 227B), 1/4+- mile east of the intersection of Lake Mendocino Drive and North State Street (a.k.a., the Forks); AP# 169-130-14, 15.

This is to advise that the Board of Supervisors (Lead Agency) has made the following determinations regarding the above described project:

1. The project has been approved (Date of Approval: 9/22/97).
2. The project will not have a significant effect on the environment.
3. An Environmental Impact Report was not prepared for this project.
4. A Negative Declaration was prepared for this project. A copy of the Negative Declaration may be examined and/or obtained at 501 Low Gap Road, Room 1440, Ukiah.
5. Mitigation measures, which were adopted by the Lead Agency to reduce adverse impacts of the project are attached hereto and are incorporated herein by reference.
6. A statement of Overriding Considerations was not adopted for this project.

Date of Filing \_\_\_\_\_

Alan Falleri  
Signature Alan Falleri, Chief Planner

POSTED FROM 29/24/97 TO 10/23/97

## FINAL CONDITIONS OF APPROVAL

### #S 1-97, WOOD

#### CONDITIONS OF APPROVAL:

1. Subdivision improvements shall include the extension of water, and public utility (gas, electricity, telephone, cable television) services to each parcel. Street lighting shall also be installed. All utilities within the subdivision shall be placed underground. Water or gas lines which will be installed across the fault trace identified on the tentative map shall include the installation of shut-off valves positioned such that no service laterals are located between the shut-off valve and the fault trace.
2. CC&R's shall be submitted for review and approval by the Department of Planning and Building Services, the Department of Real Estate, and County Counsel which shall include provisions for the following:
  - a. Disclose the presence of the earthquake fault that transverses the property including a description of its most accurately described location.
  - b. Disclose the proximity of the floodplain and those areas subject to inundation during a 100-year flood.
  - c. Prohibit wood stove and/or wood burning fireplaces (pellet stoves are allowed).
  - d. Disclose the need for interior noise mitigation measures as described in Section IV, B, 3 a-d of the report "Noise Impacts in Connection with the West Fork Subdivision, Mendocino County, California" by T.A. Barnebey dated November 2, 1994, as may be amended with approval of Planning and Building Services.
  - e. Provide for ongoing maintenance of approved landscaping consistent with the provisions of the Preliminary Landscape Documentation package prepared by Green Lion Landscape Services, under cover of February 19, 1995, as may be amended with approval of Planning and Building Services.
  - f. Provide for establishment and maintenance of the street tree program consistent with that described in the Preliminary landscape Documentation Package, prepared by Green Lion Landscape Services, under cover of February 19, 1995. However, the number of trees shall be 1.5 per parcel overall for each phase, with no lot having less than one tree.
  - g. Provide for the ongoing maintenance of the street lighting facilities to be established. Such facilities shall be installed to industry accepted standards to be determined by the Department of Public Works and Planning and Building Services.
  - h. Residential units shall be equipped with provisions for charging electric vehicles.
3. Surface drainage facilities appurtenant to the subdivision streets shall be designed and constructed in accordance with the following minimum standards:

- a. Culverts shall be designed to accommodate a "50 year" storm ("100-year" storm when failure will result in lot flooding) using all available head at the inlet;
- b. Minimum culvert size shall be 18 inch diameter (24 inch when failure will result in lot flooding), or an equivalent arch pipe;
- c. Curbs and gutters shall be designed to accommodate a "50-year" storm without encroaching onto the traffic lane;
- d. Drainage easements for culverts shall have a minimum width of 10 feet;
- e. Drainage easements for ditches shall have a minimum width of 20 feet;
- f. Minimum allowable ditch grade shall be 0.5 percent;
- g. Ditch lining or other acceptable measures may be required to control erosion where ditch grade exceeds 5 percent.

Drainage improvements shall include design features as needed to adequately conduct runoff from completed phases across future phases to satisfactory point of disposal.

4. Subdivision improvement plans shall include the storm drainage facility from Kennwood Drive, across Parcel B to the Russian River, to be completed (or the completion made the subject of a Subdivision Improvement agreement in conformance with Article VIII of the County Division of Land Regulations) prior to the filing of the final map for Phase I. The storm drainage facility shall include an energy dissipating outfall structure, located within appropriate drainage easement on Parcel B and/or Parcel C. Drainage plans shall be subject to review and approval by the Regional Water Quality Control Board. A General Construction Activity Storm Water Permit shall be secured.
5. Subdivision improvement plans shall include a perimeter surface drain or other design feature (to be constructed within appropriate easement) to capture surface water along the north boundary and conduct it to the subdivision storm drainage system.
6. Where public water and sewer systems are to be utilized, the subdivider must submit to the Division of Environmental Health, a letter from the districts indicating a willingness and ability to supply services to the proposed parcels.
7. Where land divisions lie either partially or wholly within 500 feet of a public water and sewer systems, the subdivider shall submit to the Division of Environmental Health a letter from the district stating that: (1) services (and main extensions, where required) have been installed to the satisfaction of the district or agency, to serve each lot in said subdivision and connected to the system providing the service; or (2) sufficient fees have been paid, to the satisfaction of the district, to cover the cost of the installation of services (and main extensions, where required) for each lot and the connection to the system providing the service.
8. Prior to performing any work within the Russian River floodplain, subdivider shall secure all applicable permits from the California Department of Fish and Game, the U.S. Army Corps of Engineers, as well as any other agencies which may have control or authority.

9. Subdivision improvement plans shall include bank slope protection along the full length of the leading edge of the fill along the Russian River, in conformance with the recommendations contained in the Fault Study and Preliminary Geotechnical Evaluation, dated September 16, 1994, prepared by John T. Phillips, Certified Engineering Geologist No. 1482. The plans shall be accompanied by a design report prepared by a certified engineering geologist or a geotechnical engineer establishing the design parameters. The bank slope protection shall be completed as the fill is placed for each phase of development. Upon completion of each segment of bank protection, a written statement by a Registered Civil Engineer shall be submitted to the Department of Public Works and Planning and Building Services demonstrating that the work has been completed in accordance with the approved design plans.
10. Pursuant to provisions in Section 17-43(D)(6) of the County Division of Land Regulations, all areas within the subdivision subject to inundation in the event of a "100-year" storm/flood shall be clearly identified on the final map. Data shown on the final map shall be supported and verified by a report prepared by a registered civil engineer and submitted to the Department of Public Works concurrently with final map check prints. The report shall take into account any grading to be utilized to raise the ground elevation above the base flood elevation. The report shall verify that the ground elevations of all lots or building pads are in compliance with Condition Number 12. Placement of fill shall be accomplished pursuant to a grading permit administered by the Department of Planning and Building Services, and in conformance with the recommendations contained in the Fault Study and Preliminary Geotechnical Evaluation, dated September 1994, prepared by John T. Phillips, Certified Engineering Geologist No. 1482.
11. Minimum elevations of building pads shall be one foot above the 100 year flood elevation. Building pads are defined as the area inside the building setback lines on each lot.
12. Prior to filing the final map for any phase of the subdivision, the subdivider shall make application to FEMA for a Conditional Letter of Map Revision for those areas being elevated above the base flood elevation.
13. A permanent six foot fence shall be constructed prior to recording the Final Map for any phase which shall run along the north, south, and west boundary of Parcels B and C as depicted on the tentative map. Fence design shall be reviewed and approved by the Department of Fish and Game and the Department of Planning and Building Services.
14. A noise barrier shall be constructed to the satisfaction of the Division of Environmental Health and the Department of Planning and Building Services. The portion of the noise barrier for each phase having frontage on Lake Mendocino Drive shall be constructed prior to filing the final map for that phase according to the design specifications described in Section IV, A, of the report "Noise Impacts in Connection with the West Fork Subdivision, Mendocino County, California", by T.A. Barnebey, dated November 2, 1994. If the barrier is bonded with the improvement plans, the barrier shall meet the same design specifications and may be constructed after filing the final map. The barrier shall be constructed of materials (or painted) with a natural earth-tone color. The barrier shall not be constructed with concrete or cement blocks.
15. A final landscape plan shall be submitted consistent with the conceptual landscape plan for the projects frontage along Lake Mendocino Drive. (This requirement shall also apply to the median strips indicated to be within West Fork Drive and Tamarisk Drive if allowed.) The plan shall further be consistent with the packet included with the letter submitted from Green Lion Landscape Services dated February 19, 1995. Such plan shall be reviewed and approved by Planning and Building Services and the Department of Public Works.



16. Prior to recording the final map for any phase, approved landscaping shall be established with provisions for future maintenance in place. Should landscaping improvements be bonded, a detailed landscaping plan including irrigation plans, based on the preliminary Landscape Documentation package, prepared by Green Lion Landscaping, shall be submitted for review and approval of Planning and Building Services.
17. Prior to filing the final map for any phase, the applicant shall file a Certificate of Substantial Completion for the Landscape Documentation Package on file in Planning and Building Services. Should landscaping improvements be bonded for sufficient information shall be provided in the landscape and irrigation plans required as part of Condition Number 17 to insure compliance with the Water Efficient Landscape Ordinance.
18. Prior to site development, a complete inventory of all major vegetation (e.g., trees or shrubs with a diameter of twelve (12) inches or a circumference of thirty-eight (38) inches or more measured at four and one half (4 1/2) inches vertically above the ground) shall be submitted to Planning and Building Services. The subdivider shall develop final improvement plans which shall endeavor to preserve as much natural, existing vegetation as possible. Some minor changes to subdivision design shall be allowed to preserve existing vegetative features.
19. In the event that archaeological resources are encountered during construction on the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
20. From the lands to be subdivided, subdivider shall dedicate sufficient right-of-way along the southerly side of Lake Mendocino Drive, CR# 227B, to establish a 40 foot one-half width right of way measured from the existing corridor centerline.
21. Direct access onto Lake Mendocino Drive (CR# 227B) from the subdivision lots shall be restricted by dedication of access rights on the final map.
22. West Fork Drive and Tamarisk Drive shall be designed and constructed in accordance with procedures prescribed in the County Division of Land Regulations, and the following design standards:

Minimum Right of Way Width	60 feet
Minimum Street Width (Curb to Curb)	40 feet
Minimum Radius of Curb Return	35 feet
Maximum Grade	10 percent
Minimum Grade	0.3 percent
Minimum Traffic Index	5.0
Minimum Thickness of Asphalt Concrete Surfacing	2 inches

Street improvements shall include concrete curb and gutter (step type) and 4 foot wide concrete sidewalk on both sides. In all areas where road alignments are underlain by natural soils, the design shall include over-excavation to 1 foot below regular subgrade elevation. Such areas shall be brought to subgrade elevation by the placement of suitable fill material with a minimum R value of 50, compacted to 95 percent relative compaction. Subdivision street improvements shall be completed by phase, as indicated on the tentative map.

23. The design of the road approaches for West Fork Drive and Tamarisk Drive onto Lake Mendocino Drive (CR# 227B) shall include a clearing as necessary to provide sufficient

stopping sight distance to accommodate a design speed of 40 miles per hour on Lake Mendocino Drive.

24. Kennwood Drive, Briarwood Drive, Vintage Drive, and Twin Rivers Drive shall be designed and constructed in accordance with procedures prescribed in the County Division of Land Regulations, and the following design standards:

Minimum Right of Way Width	52 feet
Minimum Street Width (Curb to Curb)	36 feet
Minimum Radius of Right of Way at Bulb	50 feet
Minimum Radius of Curb at Bulb	38 feet
Minimum Radius of Curb Return at Bulb	100 feet
Minimum Radius of Curb Return at Intersection	30 feet
Maximum Grade	10 percent
Minimum Grade	0.3 percent
Minimum Horizontal Curve Radius	250 feet
Design Speed	25 miles/hour
Minimum Traffic Index	4.5
Minimum Thickness of Asphalt Concrete Surfacing	2 inches

Street improvements shall include concrete curb and gutter (step type) and 4 foot wide concrete sidewalks on both sides. In all areas where road alignments are underlain by natural soils, the design shall include over-excavation to 1 foot below regular subgrade elevation. Such areas shall be brought to subgrade elevation by the placement of suitable fill material with a minimum R value of 50, compacted to 95 percent relative compaction. The minimum horizontal curve radius requirement shall not apply to the corners of Kennwood Drive located adjacent to Lot 44, Lot 66, and Lot 102. Subdivision street improvements shall be completed by phase, as indicated on the tentative map.

25. Subdivision road plans shall include cross sections with templates at a maximum interval of 50 feet.
26. An encroachment permit issued by the Department of Public Works will be required for any work within the County Road right of way.
27. Damage to the County Maintained Road System attributable to hauling of material and equipment in connection with subdivision grading and construction of subdivision improvements shall be repaired by the subdivider to the satisfaction of the Director of Public Works.
28. The subdivider shall create an entity such as a home owners association acceptable to the County of Mendocino to accept fee title for the ownership of, and to provide for a mechanism for the development and maintenance of a neighborhood park within Parcel B, as identified on the Tentative Map. Design and development within the park shall be approved by the homeowners association with consultation with the Department of Fish and Game. The park shall be developed to the satisfaction of Planning and Building Services prior to the recordation of the final map for Phase IV. Park design should include, at a minimum, provisions for protection and enhancement of existing riparian habitat. Further, landscaping and park amenities should be designed to serve neighborhood recreational needs. All lawn areas shall be created with proper soil preparation and seed mix to create an appropriate surface for passive outdoor recreation. Handicapped accessibility shall be provided to park facilities in conformance with State law. The entity or association created shall also provide for the long term maintenance of landscaping

along Lake Mendocino Drive frontage, median strips at the entrance, and the street tree program as otherwise approved under Conditions 2e and 2f. Further, at the subdividers expense, a lighting district or other entity shall be created to maintain street lighting installed per Condition Number 1.

29. Fire hydrants shall be installed per the Uniform Fire Code and to the satisfaction of the Ukiah Valley Fire District.
30. A note shall be provided on the final map that provides notification that the following building standards shall apply to the project development.
  - a. A grading plan and inspections will be required by the Building Department for all site work, including, but not limited to the sound wall, compaction, pad cuts or fills, rip rap placement and accessibility features in the common areas.
  - b. House foundations must be designed by a soils engineer based on the geotechnical report and must be approved by the geotechnical engineer.
  - c. The geotechnical engineer shall categorize the soil profile per Uniform Building Code Section 2333(f)3D and UBC Table Number 1 23-J.
31. The 4+- acre buffer parcel, labeled as Parcel C on the tentative map, shall be designated "Open Space/Riparian Corridor" on the Final Maps for any phase of the subdivision.
32. That a bus stop(s) be developed for the project to the satisfaction of the Ukiah Unified School District (UUSD), the Mendocino Transit Authority (MTA), and the California Highway Patrol. If no bus stop is required by the UUSD and/or MTA, letters shall be provided to Planning and Building Services notifying of their decision not to require same.
33. Prior to recording the final map for any phase, the subdivider shall create an organization capable, in the opinion of County Counsel, of maintaining all storm drainage facilities located outside of street rights of way accepted into the County Maintained Road System, as well as any filtration devices installed within rights of way. Any maintenance within said rights of way shall be performed pursuant to encroachment permit procedures administered by the Department of Public Works. The encroachment permit fees shall be waived.
34. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until a fee of \$25.00 is submitted to the Department of Planning and Building Services to cover the cost of filing the Notice of Determination with the County Clerk. The fee must be submitted to the Department of Planning and Building Services by September 26, 1997.
35. The subdivider shall enter into an agreement for fire protection services to the satisfaction of the Ukiah Valley Fire District. Written clearance of this condition from that agency shall be provided to Planning and Building Services.
36. The subdivider shall establish a vegetation barrier along the southerly borders of lots 14 through 17 as deemed necessary by the Ag Commissioner.



# State Water Resources Control Board

## 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  
Fax: 916 341 5400 • www.waterrights.ca.gov

262.0(23-03-06)



Linda S. Adams  
Secretary for  
Environmental Protection

Arnold Schwarzenegger  
Governor

In Reply Refer to:  
363:CAR:262.0(23-03-06)

APR 30 2007

Thomas P. Hill  
110 South Highland Avenue  
Ukiah, CA 95482

Dear Mr. Hill:

### WATER RIGHT COMPLAINT AFFECTING THE MILLVIEW WATER DISTRICT IN MENDOCINO COUNTY

I just received a letter dated April 19, 2007 from Barbara Spazek, Executive Director of the Mendocino County Russian River Flood Control and Water Conservation Improvement District. According to this letter, you were also sent a copy. Ms. Spazek states on page 2 of her letter:

*"... the property associated with this Pre-1914 water right was sold to Mr. Hill by Robert Wood, a former member of the Board of the MCRRFCD. Mr. Wood, on several occasions, mentioned during meetings that he had abandoned this water right at the time of approval of the West Fork Subdivision. One of these occasions was recorded in our Minutes dated, March 10, 2003."*

According to an attachment to Ms. Spazek's letter, the referenced portion of these minutes state:

*"B. Reports from directors attending other agency meetings.*

*It was reported that at the past Millview County Water District meeting they discussed purchasing Masonite. Bob Wood mentioned the fact that he heard Millview was using the Pre-1914 water right he allegedly sold to Steve Gomes and Tim Hill when they purchased his property along the West Fork. He indicated that he had abandoned that water right when the West Fork Subdivision was approved. That was part of the agreement when the Board of Supervisors approved West Fork."*

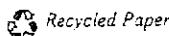
If the statement by Mr. Wood documented in these minutes is correct, there would be no water right to sell to Millview County Water District. As Mr. Wood is no longer alive, I cannot ask him directly. Consequently, I would like to review the following documents to determine if evidence is available to document whether or not Mendocino County entered into an agreement with Mr. Wood to abandon either the pre-1914 appropriative and/or riparian claim of right for the property you and Mr. Gomes purchased from Mr. Wood:

- all documents associated with the sale of the property by Mr. Wood to you and Mr. Gomes including any title deed, grant, contract of sale, option for sale, etc.
- the subdivision map and any associated documents.

SURNAME

CAR  
4/29/07

California Environmental Protection Agency



Thomas Hill

- 2 -

- a conditional use permit or other document issued by Mendocino County regarding the development of the West Fork Subdivision by CreekBridge Homes,
- all documents utilized to comply with the California Environmental Quality Act (CEQA) regarding the development of the West Fork Subdivision by CreekBridge Homes,
- any other documents that might have a bearing on the situation.

If you have copies of any of these documents, I would appreciate receiving copies via mail at the P.O. Box listed on the letterhead, via FAX at (916) 341-5400, or as an Adobe Acrobat document attached to an e-mail sent to: [Crich@waterboards.ca.gov](mailto:Crich@waterboards.ca.gov). Until such time as sufficient evidence becomes available to either prove or discount Mr. Wood's allegation as documented in the March 10, 2003 Minutes of the Mendocino County Russian River Flood Control and Water Conservation Improvement District, I cannot complete my investigation of the complaint filed by Lee Howard against you. If you do not have copies of the pertinent documents, please identify them to the best of your ability and indicate where I might be able to obtain copies or review the documents. If need be, I will travel to Ukiah to review the pertinent documents.

If there are any questions, I can be reached at (916) 341-5377.

Sincerely,

ORIGINAL SIGNED BY

Charles A. Rich, Chief  
Complaint Unit

cc: The Honorable Patricia Wiggins  
200 South School Street  
P.O. Box 785  
Ukiah, CA 95482

Millview County Water District  
3981 North State Street  
Ukiah, CA 95482

Ms. Barbara Spazek  
Executive Director  
Mendocino County Russian River Flood Control &  
Water Conservation Improvement District  
151 Laws Avenue, Suite D  
Ukiah, CA 95482

Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

Crich:crich 4.29.07  
U:\COMDRV\Crich\Wood Abandonment.doc

10120

CAR

Mendocino County

**Russian River Flood Control &  
Water Conservation Improvement District**

151 Laws Avenue, Suite D  
Ukiah, CA 95482  
Phone (707) 462-5278  
FAX (707) 462-5279

FAXed 4/20/07

April 19, 2007

2007 APR 21 AM 11:45  
COMMUNICATIONS

Mr. Charles Rich, Chief  
Complaint Unit  
Division of Water Rights  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

Re: WATER RIGHT COMPLAINT AFFECTING THE MILLVIEW COUNTY WATER DISTRICT IN MENDOCINO COUNTY

Dear Mr. Rich:

The Mendocino County Russian River Flood Control and Water Conservation Improvement District (MCRRFCD) would like to respond to your letter to the Honorable Patricia Wiggins regarding the subject complaint.

As mentioned in your letter, this Pre-1914 water right could have enormous impacts on the MCRRFCD and its contracted water users. The original Pre-1914 water right had a diversion point on the west fork of the Russian River. Millview County Water District (Millview) arbitrarily moved the point of diversion to the east fork of the Russian River. In a dry year, or even in a normal year with a dry spring, stored water belonging to the MCRRFCD is released from Lake Mendocino into the east fork of the Russian River. Historically, there are some months that the only water in the Russian River in Mendocino County is MCRRFCD's stored water in Lake Mendocino and stored water for the Anadromous fish that are listed under the Endangered Species Act.

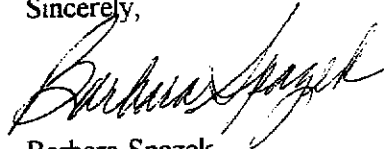
Millview has indicated to you that they have used this water during the months of May through November. If you look at historical records retrieved from the U.S.G.S. files (Exhibit A), you will note that there has been very little water in the west fork during those low seasons. These gage readings are extrapolations from a full report which I am sending via regular mail. Any additional water in the east fork Russian River would have come from storage in Lake Mendocino.

Mr. Charles Rich  
April 19, 2007  
Page 2

Finally, the property associated with this Pre-1914 water right was sold to Mr. Hill by Robert Wood, a former member of the Board of the MCRRFCD. Mr. Wood, on several occasions, mentioned during meetings that he had abandoned this water right at the time of approval of the West Fork Subdivision. One of these occasions was recorded in our Minutes dated, March 10, 2003. For your information I am attaching a copy of these minutes (Exhibit B).

Thank you for allowing us the opportunity to comment on this issue and if you have any questions, please do not hesitate to contact us.

Sincerely,



Barbara Spazek  
Executive Director

/bs  
encl.

Cc: The Honorable Patricia Wiggins  
200 South School Street  
P.O. Box 785  
Ukiah, CA 95482

Millview County Water District  
3981 North State Street  
Ukiah, CA 95482

Thomas P. Hill  
110 South Highland Avenue  
Ukiah, CA 95482

Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

*President*  
Judy Hatch

*Vice President*  
Tom Ashurst

*Treasurer*  
Bill Townsend

*Trustee*  
Mike Lucchetti

*Trustee*  
Richard Shoemaker

EXHIBIT A

USGS Gage Readings  
West Fork Russian River

US Geological Survey, Water Resources Data					
This file contains USGS Surface-Water Monthly Statistics				2607	1500 AFA-20106
# This file includes the following columns:					
Sites in this file include:					
USGS 11461000 RUSSIAN R NR UKIAH CA					
Agency	Site No.	Year	Month	cfs	
USGS	11461000	1911	10	0.039	
USGS	11461000	1911	11	0.303	
USGS	11461000	1911	12	3.5	
USGS	11461000	1912	1	213.6	
USGS	11461000	1912	2	107.9	
USGS	11461000	1912	3	368.2	
USGS	11461000	1912	4	81.3	
USGS	11461000	1912	5	134.9	
USGS	11461000	1912	6	5	
USGS	11461000	1912	7	2.5	
USGS	11461000	1912	8	0.9	
USGS	11461000	1912	9	1.6	
USGS	11461000	1912	10	2	
USGS	11461000	1912	11	443.4	
USGS	11461000	1912	12	291.2	
USGS	11461000	1913	1	761.2	
USGS	11461000	1913	2	69.4	
USGS	11461000	1913	3	74.4	
USGS	11461000	1913	4	109.2	
USGS	11461000	1913	5	16.3	
USGS	11461000	1913	6	7.27	
USGS	11461000	1913	7	2.03	
USGS	11461000	1913	8	0.5	
USGS	11461000	1913	9	0.2	
USGS	11461000	1952	10	0	
USGS	11461000	1952	11	0.147	
USGS	11461000	1952	12	771.8	
USGS	11461000	1953	1	1,306	
USGS	11461000	1953	2	77	
USGS	11461000	1953	3	257.6	
USGS	11461000	1953	4	107.1	
USGS	11461000	1953	5	75.7	
USGS	11461000	1953	6	34.6	
USGS	11461000	1953	7	5.84	
USGS	11461000	1953	8	1.89	
USGS	11461000	1953	9	1.27	



USGS Gage Readings  
West Fork Russian River

USGS	11461000	1953	10	2.12
USGS	11461000	1953	11	69
USGS	11461000	1953	12	119.7
USGS	11461000	1954	1	718.3
USGS	11461000	1954	2	455.6
USGS	11461000	1954	3	338.7
USGS	11461000	1954	4	306.7
USGS	11461000	1954	5	30.4
USGS	11461000	1954	6	13.5
USGS	11461000	1954	7	2.58
USGS	11461000	1954	8	0.968
USGS	11461000	1954	9	1.11
USGS	11461000	1954	10	1.32
USGS	11461000	1954	11	25.7
USGS	11461000	1954	12	235
USGS	11461000	1955	1	285.9
USGS	11461000	1955	2	73.1
USGS	11461000	1955	3	58.8
USGS	11461000	1955	4	134.5
USGS	11461000	1955	5	42.3
USGS	11461000	1955	6	5.71
USGS	11461000	1955	7	1.11
USGS	11461000	1955	8	0.2
USGS	11461000	1955	9	0.1
USGS	11461000	1955	10	0.1
USGS	11461000	1955	11	27.5
USGS	11461000	1955	12	1,639
USGS	11461000	1962	1	124.6
USGS	11461000	1962	2	675.6
USGS	11461000	1962	3	442.9
USGS	11461000	1962	4	51.9
USGS	11461000	1962	5	17
USGS	11461000	1962	6	4.65
USGS	11461000	1962	7	0.632
USGS	11461000	1962	8	0.1
USGS	11461000	1962	9	0.123
USGS	11461000	1962	10	146.8
USGS	11461000	1962	11	58.9
USGS	11461000	1962	12	283.6
USGS	11461000	1963	1	223.9
USGS	11461000	1963	2	328.8
USGS	11461000	1963	3	294.2
USGS	11461000	1963	4	770.4
USGS	11461000	1963	5	100.8
USGS	11461000	1963	6	13.8
USGS	11461000	1963	7	5.66
USGS	11461000	1963	8	1.29

USGS Gage Readings  
West Fork Russian River

USGS	11461000	1963	9	0.427
USGS	11461000	1963	10	3.28
USGS	11461000	1963	11	261.7
USGS	11461000	1963	12	64.7
USGS	11461000	1964	1	486.7
USGS	11461000	1964	2	73.5
USGS	11461000	1964	3	74.5
USGS	11461000	1964	4	27.2
USGS	11461000	1964	5	13.8
USGS	11461000	1964	6	7.33
USGS	11461000	1964	7	0.645
USGS	11461000	1964	8	0.181
USGS	11461000	1964	9	0.05
USGS	11461000	1964	10	0.052
USGS	11461000	1964	11	228.6
USGS	11461000	1964	12	1,663
USGS	11461000	1975	1	215.1
USGS	11461000	1975	2	1,196
USGS	11461000	1975	3	1,201
USGS	11461000	1975	4	132.4
USGS	11461000	1975	5	37.9
USGS	11461000	1975	6	6.43
USGS	11461000	1975	7	0.571
USGS	11461000	1975	8	0.027
USGS	11461000	1975	9	0.056
USGS	11461000	1975	10	6.21
USGS	11461000	1975	11	34.7
USGS	11461000	1975	12	78.6
USGS	11461000	1976	1	21.9
USGS	11461000	1976	2	280.1
USGS	11461000	1976	3	115.2
USGS	11461000	1976	4	111.8
USGS	11461000	1976	5	11.4
USGS	11461000	1976	6	2.27
USGS	11461000	1976	7	0.067
USGS	11461000	1976	8	0.16
USGS	11461000	1976	9	0.056
USGS	11461000	1976	10	0.015
USGS	11461000	1976	11	2.29
USGS	11461000	1976	12	2.54
USGS	11461000	1977	1	9.24
USGS	11461000	1977	2	14.3
USGS	11461000	1977	3	33.4
USGS	11461000	1977	4	4.33
USGS	11461000	1977	5	3.15
USGS	11461000	1977	6	0.219
USGS	11461000	1977	7	0

USGS Gage Readings  
West Fork Russian River

USGS	11461000	1977	8	0
USGS	11461000	1977	9	0
USGS	11461000	1977	10	0
USGS	11461000	1977	11	43.2
USGS	11461000	1977	12	431.8
USGS	11461000	1989	1	175.8
USGS	11461000	1989	2	32
USGS	11461000	1989	3	789.6
USGS	11461000	1989	4	123.4
USGS	11461000	1989	5	21.2
USGS	11461000	1989	6	8
USGS	11461000	1989	7	1.99
USGS	11461000	1989	8	0.613
USGS	11461000	1989	9	1.73
USGS	11461000	1989	10	9.46
USGS	11461000	1989	11	10.4
USGS	11461000	1989	12	5.75
USGS	11461000	1990	1	236.3
USGS	11461000	1990	2	216.2
USGS	11461000	1990	3	112.6
USGS	11461000	1990	4	18
USGS	11461000	1990	5	115.8
USGS	11461000	1990	6	40.6
USGS	11461000	1990	7	2.7
USGS	11461000	1990	8	0.315
USGS	11461000	1990	9	0.589
USGS	11461000	1990	10	0.729
USGS	11461000	1990	11	1.72
USGS	11461000	1990	12	3.15
USGS	11461000	1991	1	3.82
USGS	11461000	1991	2	15.3
USGS	11461000	1991	3	508.7
USGS	11461000	1991	4	31.6
USGS	11461000	1991	5	7.56
USGS	11461000	1991	6	3.21
USGS	11461000	1991	7	0.235
USGS	11461000	1991	8	0.246
USGS	11461000	1991	9	0.183
USGS	11461000	1991	10	0.544
USGS	11461000	1991	11	5.8
USGS	11461000	1991	12	37.3
USGS	11461000	1992	1	95.4
USGS	11461000	1992	2	644.7
USGS	11461000	1992	3	269.7
USGS	11461000	1992	4	52
USGS	11461000	1992	5	6.36
USGS	11461000	1992	6	2.43

USGS Gage Readings  
West Fork Russian River

USGS	11461000	1992	7	0.966
USGS	11461000	1992	8	0.016
USGS	11461000	1992	9	0.567
USGS	11461000	1992	10	3.23
USGS	11461000	1992	11	10.3
USGS	11461000	1992	12	504.6
USGS	11461000	2001	1	112.9
USGS	11461000	2001	2	409.4
USGS	11461000	2001	3	216.7
USGS	11461000	2001	4	24.2
USGS	11461000	2001	5	10.1
USGS	11461000	2001	6	3.15
USGS	11461000	2001	7	0.98
USGS	11461000	2001	8	0
USGS	11461000	2001	9	0.179
USGS	11461000	2001	10	0.999
USGS	11461000	2001	11	174.6
USGS	11461000	2001	12	701.1
USGS	11461000	2002	1	417.5
USGS	11461000	2002	2	227.5
USGS	11461000	2002	3	169.3
USGS	11461000	2002	4	42.5
USGS	11461000	2002	5	16.9
USGS	11461000	2002	6	5.78
USGS	11461000	2002	7	0.755
USGS	11461000	2002	8	0.031
USGS	11461000	2002	9	0.036
USGS	11461000	2002	10	0.568
USGS	11461000	2002	11	6.17
USGS	11461000	2002	12	1.093
USGS	11461000	2003	1	514.5
USGS	11461000	2003	2	144.1
USGS	11461000	2003	3	255.9
USGS	11461000	2003	4	660.2
USGS	11461000	2003	5	215.5
USGS	11461000	2003	6	13.4
USGS	11461000	2003	7	4.96
USGS	11461000	2003	8	0.963
USGS	11461000	2003	9	1.01
USGS	11461000	2003	10	1.43
USGS	11461000	2003	11	1.08
USGS	11461000	2003	12	746.8

**Russian River Flood Control &  
Water Conservation Improvement District**

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151 Laws Avenue, Suite D  
Ukiah, CA 95482  
Phone (707) 462-5278  
FAX (707) 462-5279

MINUTES

March 10, 2003  
Monday  
Regular Meeting

President Judy Hatch called the Special Meeting for March 10, 2003 to order at 5:00 p.m., in the Willow County Water, 151 Laws Ave. Suite B, Ukiah, CA.

The secretary called the following role

Present:

President Judy Hatch  
Vice President Tom Ashurst  
Treasurer Bill Townsend  
Trustee Bob Wood

Trustee Tom Mon Pere

**CLOSED SESSION UNDER GOVERNMENT CODE SECTION 5496.9. (1 CASES)  
ATTORNEY WILL BE PRESENT VIA TELEPHONES CONFERENCE.**

The Board entered into closed session at 5:00 p.m. and re-entered into open session at 5:15 p.m. It was reported by Judy Hatch that there was no action taken by the Board in closed session.

**PUBLIC EXPRESSION**

There was no Public Expression.

**APPROVAL AND CORRECTION OF MINUTES FOR FEBRUARY 10, 2003 AND  
FEBRUARY 18, 2003.**

Bob Wood made a motion to approve the minutes for February 10<sup>th</sup> and 18<sup>th</sup>, 2003.

Bill Townsend made a second to the motion.

The motion was passed with a unanimous vote.

Barbara Spazek reported on a conversation she had with Tony Shaw requesting that the District's funds passthrough and he said per policy they will. She will draft a letter to confirm the phone conversation.

**F. Report on Inland Water and Power Commission - Report on Mendocino County Water Agency's Workshop regarding IWPC**

1. Memorandum of Understanding Creating the Russian River Watershed Association.

Tom Mon Pere reported that the workshop held discussed the role that the County would play in regards to the water agencies. Would this be a leadership role and how would it affect the groups involved?

Barbara Spazek reported on the letter she wrote pointing out the errors in the County's resolution. Betty Campbell from the County remarked she did not want to sign something with errors. The County has corrected parts of it, but they continue to specifically list Redwood Valley.

**LETTER TO SONOMA COUNTY WATER AGENCY REQUESTING ENCROACHMENT INTO THE FLOOD POOL.**

Staff was directed to send letter.

**LETTER FROM SWRCB TO ROSALIND PETERSON REGARDING WATER RIGHTS COMPLAINT AGAINST CALPELLA COUNTY WATER DISTRICT. LETTER FROM ROSALIND PETERSON REQUESTING BOARD'S POSITION ON WATER USE OUTSIDE OF DISTRICT BOUNDARIES.**

Staff was directed to send the Board's policy on water outside the District's place of use with a cover letter.

**STATE COMPENSATION INSURANCE FUND: NOTICE OF RENEWAL DATE AND 25% INCREASE ON WORKER'S STATE COMPENSATION. BOARD TO DISCUSS POSSIBLE ACTION.**

No action was taken.

**LAFCO: CHANGED FORMULA FOR COMPUTING SPECIAL DISTRICTS APPORTIONMENT. BOARD TO DISCUSS POSSIBLE ACTION.**

No action was taken.

**CORRESPONDENCES**

Correspondences were reviewed.

**TIMED ITEM-5:30 PM- GUEST BRUCE BURTON FROM THE STATE HEALTH SERVICES DEPARTMENT, DIVISION OF DRINKING WATER, TO MEET WITH BOARD.**

There was a discussion between the Board, members of the audience and Bruce Burton about the direction of The District regarding water use and the Division of Drinking water. No action was taken.

**NEWS RELEASE**

A news release was read by Consultant Barbara Spazek. Staff was directed to send the release to all newspapers and radio stations in the area.

**ADJOURNMENT**

Meeting adjourned at 6:30 P.M.

Respectfully Submitted,

Katie Higgins  
Secretary to the Board

*President*  
Judy Hatch

*Vice President*  
Tom Ashurst

*Treasurer*  
Bill Townsend

*Trustee*  
Tom Mon Pere

*Trustee*  
Bob Wood

US Geological Survey, Water Resources Data				
This file contains USGS Surface-Water Monthly Statistics				
# This file includes the following columns:				
#				
#				
# agency_cd	agency code			
# site_no	USGS site number			
# parameter_cd				
# dd_nu				
# year_nu	Water year for value			
# month_nu	Month for value			
# mean_va	monthly-mean value.			
Sites in this file include:				
USGS 11461000 RUSSIAN R NR UKIAH CA				
Agency	Site No.	Year	Month	cfs
USGS	11461000	1911	10	0.039
USGS	11461000	1911	11	0.303
USGS	11461000	1911	12	3.5
USGS	11461000	1912	1	213.6
USGS	11461000	1912	2	107.9
USGS	11461000	1912	3	368.2
USGS	11461000	1912	4	81.3
USGS	11461000	1912	5	134.9
USGS	11461000	1912	6	5
USGS	11461000	1912	7	2.5
USGS	11461000	1912	8	0.9
USGS	11461000	1912	9	1.6
USGS	11461000	1912	10	2
USGS	11461000	1912	11	443.4
USGS	11461000	1912	12	291.2
USGS	11461000	1913	1	761.2
USGS	11461000	1913	2	69.4
USGS	11461000	1913	3	74.4
USGS	11461000	1913	4	109.2
USGS	11461000	1913	5	16.3
USGS	11461000	1913	6	7.27
USGS	11461000	1913	7	2.03
USGS	11461000	1913	8	0.5
USGS	11461000	1913	9	0.2
USGS	11461000	1952	10	0
USGS	11461000	1952	11	0.147
USGS	11461000	1952	12	771.8

1500 AFA = 207  
CFS



USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1953	1	1.306
USGS	11461000	1953	2	77
USGS	11461000	1953	3	257.6
USGS	11461000	1953	4	107.1
USGS	11461000	1953	5	75.7
USGS	11461000	1953	6	34.6
USGS	11461000	1953	7	5.84
USGS	11461000	1953	8	1.89
USGS	11461000	1953	9	1.27
USGS	11461000	1953	10	2.12
USGS	11461000	1953	11	69
USGS	11461000	1953	12	119.7
USGS	11461000	1954	1	718.3
USGS	11461000	1954	2	455.6
USGS	11461000	1954	3	338.7
USGS	11461000	1954	4	306.7
USGS	11461000	1954	5	30.4
USGS	11461000	1954	6	13.5
USGS	11461000	1954	7	2.58
USGS	11461000	1954	8	0.968
USGS	11461000	1954	9	1.11
USGS	11461000	1954	10	1.32
USGS	11461000	1954	11	25.7
USGS	11461000	1954	12	235
USGS	11461000	1955	1	285.9
USGS	11461000	1955	2	73.1
USGS	11461000	1955	3	58.8
USGS	11461000	1955	4	134.5
USGS	11461000	1955	5	42.3
USGS	11461000	1955	6	5.71
USGS	11461000	1955	7	1.11
USGS	11461000	1955	8	0.2
USGS	11461000	1955	9	0.1
USGS	11461000	1955	10	0.1
USGS	11461000	1955	11	27.5
USGS	11461000	1955	12	1,639
USGS	11461000	1956	1	1,571
USGS	11461000	1956	2	882.3
USGS	11461000	1956	3	182.8
USGS	11461000	1956	4	40.6
USGS	11461000	1956	5	24.3
USGS	11461000	1956	6	6.96
USGS	11461000	1956	7	1.85
USGS	11461000	1956	8	0.81
USGS	11461000	1956	9	0.477
USGS	11461000	1956	10	13.7
USGS	11461000	1956	11	11.2

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1956	12	8.55
USGS	11461000	1957	1	287.9
USGS	11461000	1957	2	562.9
USGS	11461000	1957	3	499.5
USGS	11461000	1957	4	81.8
USGS	11461000	1957	5	127.9
USGS	11461000	1957	6	17.8
USGS	11461000	1957	7	2.76
USGS	11461000	1957	8	0.545
USGS	11461000	1957	9	2.55
USGS	11461000	1957	10	143.4
USGS	11461000	1957	11	150.5
USGS	11461000	1957	12	303.4
USGS	11461000	1958	1	552.3
USGS	11461000	1958	2	1,975
USGS	11461000	1958	3	457.5
USGS	11461000	1958	4	656.4
USGS	11461000	1958	5	40.8
USGS	11461000	1958	6	19.9
USGS	11461000	1958	7	5.2
USGS	11461000	1958	8	0.813
USGS	11461000	1958	9	0.38
USGS	11461000	1958	10	0.674
USGS	11461000	1958	11	11.5
USGS	11461000	1958	12	39.6
USGS	11461000	1959	1	521
USGS	11461000	1959	2	563.4
USGS	11461000	1959	3	86.4
USGS	11461000	1959	4	45.9
USGS	11461000	1959	5	11.2
USGS	11461000	1959	6	4.32
USGS	11461000	1959	7	0.794
USGS	11461000	1959	8	0.323
USGS	11461000	1959	9	0.21
USGS	11461000	1959	10	0.187
USGS	11461000	1959	11	0.78
USGS	11461000	1959	12	1.77
USGS	11461000	1960	1	109.2
USGS	11461000	1960	2	984.6
USGS	11461000	1960	3	576.5
USGS	11461000	1960	4	76
USGS	11461000	1960	5	42.3
USGS	11461000	1960	6	13.4
USGS	11461000	1960	7	2.41
USGS	11461000	1960	8	0.384
USGS	11461000	1960	9	0.1
USGS	11461000	1960	10	0.258

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1960	11	55
USGS	11461000	1960	12	419.9
USGS	11461000	1961	1	136.4
USGS	11461000	1961	2	639.9
USGS	11461000	1961	3	517.8
USGS	11461000	1961	4	123.3
USGS	11461000	1961	5	61.5
USGS	11461000	1961	6	12.5
USGS	11461000	1961	7	2.58
USGS	11461000	1961	8	0.268
USGS	11461000	1961	9	0.183
USGS	11461000	1961	10	0.09
USGS	11461000	1961	11	60.9
USGS	11461000	1961	12	187.1
USGS	11461000	1962	1	124.6
USGS	11461000	1962	2	675.6
USGS	11461000	1962	3	442.9
USGS	11461000	1962	4	51.9
USGS	11461000	1962	5	17
USGS	11461000	1962	6	4.65
USGS	11461000	1962	7	0.632
USGS	11461000	1962	8	0.1
USGS	11461000	1962	9	0.123
USGS	11461000	1962	10	146.8
USGS	11461000	1962	11	58.9
USGS	11461000	1962	12	283.6
USGS	11461000	1963	1	223.9
USGS	11461000	1963	2	328.8
USGS	11461000	1963	3	294.2
USGS	11461000	1963	4	770.4
USGS	11461000	1963	5	100.8
USGS	11461000	1963	6	13.8
USGS	11461000	1963	7	5.66
USGS	11461000	1963	8	1.29
USGS	11461000	1963	9	0.427
USGS	11461000	1963	10	3.28
USGS	11461000	1963	11	261.7
USGS	11461000	1963	12	64.7
USGS	11461000	1964	1	486.7
USGS	11461000	1964	2	73.5
USGS	11461000	1964	3	74.5
USGS	11461000	1964	4	27.2
USGS	11461000	1964	5	13.8
USGS	11461000	1964	6	7.33
USGS	11461000	1964	7	0.645
USGS	11461000	1964	8	0.181
USGS	11461000	1964	9	0.05

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1964	10	0.052
USGS	11461000	1964	11	228.6
USGS	11461000	1964	12	1.663
USGS	11461000	1965	1	872.8
USGS	11461000	1965	2	144.8
USGS	11461000	1965	3	66.2
USGS	11461000	1965	4	311
USGS	11461000	1965	5	34
USGS	11461000	1965	6	11.7
USGS	11461000	1965	7	2.3
USGS	11461000	1965	8	1.01
USGS	11461000	1965	9	0.507
USGS	11461000	1965	10	0.935
USGS	11461000	1965	11	165.1
USGS	11461000	1965	12	171.1
USGS	11461000	1966	1	651.9
USGS	11461000	1966	2	340.4
USGS	11461000	1966	3	195.2
USGS	11461000	1966	4	75.7
USGS	11461000	1966	5	15.9
USGS	11461000	1966	6	5.04
USGS	11461000	1966	7	0.981
USGS	11461000	1966	8	0.168
USGS	11461000	1966	9	0.197
USGS	11461000	1966	10	0.11
USGS	11461000	1966	11	135.9
USGS	11461000	1966	12	371.8
USGS	11461000	1967	1	713.6
USGS	11461000	1967	2	155.7
USGS	11461000	1967	3	383.1
USGS	11461000	1967	4	387.7
USGS	11461000	1967	5	64.5
USGS	11461000	1967	6	22.3
USGS	11461000	1967	7	2.73
USGS	11461000	1967	8	0.929
USGS	11461000	1967	9	0.27
USGS	11461000	1967	10	1.44
USGS	11461000	1967	11	3.74
USGS	11461000	1967	12	88.4
USGS	11461000	1968	1	422
USGS	11461000	1968	2	427.3
USGS	11461000	1968	3	211.1
USGS	11461000	1968	4	40.2
USGS	11461000	1968	5	13.4
USGS	11461000	1968	6	3.86
USGS	11461000	1968	7	0.135
USGS	11461000	1968	8	0.299

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1968	9	0.055
USGS	11461000	1968	10	0.436
USGS	11461000	1968	11	11.4
USGS	11461000	1968	12	926.8
USGS	11461000	1969	1	1,202
USGS	11461000	1969	2	1,017
USGS	11461000	1969	3	291
USGS	11461000	1969	4	71.4
USGS	11461000	1969	5	23.1
USGS	11461000	1969	6	6.92
USGS	11461000	1969	7	1.24
USGS	11461000	1969	8	0.153
USGS	11461000	1969	9	0.154
USGS	11461000	1969	10	1.35
USGS	11461000	1969	11	3.75
USGS	11461000	1969	12	367.3
USGS	11461000	1970	1	1,765
USGS	11461000	1970	2	350.7
USGS	11461000	1970	3	145.5
USGS	11461000	1970	4	31.9
USGS	11461000	1970	5	13.2
USGS	11461000	1970	6	4.93
USGS	11461000	1970	7	1.11
USGS	11461000	1970	8	0.052
USGS	11461000	1970	9	0
USGS	11461000	1970	10	2.06
USGS	11461000	1970	11	209.1
USGS	11461000	1970	12	864.8
USGS	11461000	1971	1	716.7
USGS	11461000	1971	2	58.9
USGS	11461000	1971	3	465.1
USGS	11461000	1971	4	99.6
USGS	11461000	1971	5	27.9
USGS	11461000	1971	6	10.8
USGS	11461000	1971	7	2.03
USGS	11461000	1971	8	0.136
USGS	11461000	1971	9	0.249
USGS	11461000	1971	10	0.215
USGS	11461000	1971	11	11.9
USGS	11461000	1971	12	177.2
USGS	11461000	1972	1	256
USGS	11461000	1972	2	256
USGS	11461000	1972	3	201.6
USGS	11461000	1972	4	102.8
USGS	11461000	1972	5	19.2
USGS	11461000	1972	6	6.11
USGS	11461000	1972	7	1.43

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1972	8	0.005
USGS	11461000	1972	9	0.049
USGS	11461000	1972	10	3.25
USGS	11461000	1972	11	109.2
USGS	11461000	1972	12	377.2
USGS	11461000	1973	1	964
USGS	11461000	1973	2	592.3
USGS	11461000	1973	3	384.1
USGS	11461000	1973	4	95.6
USGS	11461000	1973	5	18.1
USGS	11461000	1973	6	4.8
USGS	11461000	1973	7	0.296
USGS	11461000	1973	8	0.04
USGS	11461000	1973	9	0.083
USGS	11461000	1973	10	7.2
USGS	11461000	1973	11	682.4
USGS	11461000	1973	12	658.4
USGS	11461000	1974	1	956.7
USGS	11461000	1974	2	445.5
USGS	11461000	1974	3	872.9
USGS	11461000	1974	4	442.3
USGS	11461000	1974	5	36.6
USGS	11461000	1974	6	9.28
USGS	11461000	1974	7	3.68
USGS	11461000	1974	8	0.465
USGS	11461000	1974	9	0.243
USGS	11461000	1974	10	1.12
USGS	11461000	1974	11	4.84
USGS	11461000	1974	12	65.6
USGS	11461000	1975	1	215.1
USGS	11461000	1975	2	1,196
USGS	11461000	1975	3	1,201
USGS	11461000	1975	4	132.4
USGS	11461000	1975	5	37.9
USGS	11461000	1975	6	6.43
USGS	11461000	1975	7	0.571
USGS	11461000	1975	8	0.027
USGS	11461000	1975	9	0.056
USGS	11461000	1975	10	6.21
USGS	11461000	1975	11	34.7
USGS	11461000	1975	12	78.6
USGS	11461000	1976	1	21.9
USGS	11461000	1976	2	280.1
USGS	11461000	1976	3	115.2
USGS	11461000	1976	4	111.8
USGS	11461000	1976	5	11.4
USGS	11461000	1976	6	2.27

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1976	7	0.067
USGS	11461000	1976	8	0.16
USGS	11461000	1976	9	0.056
USGS	11461000	1976	10	0.015
USGS	11461000	1976	11	2.29
USGS	11461000	1976	12	2.54
USGS	11461000	1977	1	9.24
USGS	11461000	1977	2	14.3
USGS	11461000	1977	3	33.4
USGS	11461000	1977	4	4.33
USGS	11461000	1977	5	3.15
USGS	11461000	1977	6	0.219
USGS	11461000	1977	7	0
USGS	11461000	1977	8	0
USGS	11461000	1977	9	0
USGS	11461000	1977	10	0
USGS	11461000	1977	11	43.2
USGS	11461000	1977	12	431.8
USGS	11461000	1978	1	1,178
USGS	11461000	1978	2	739.4
USGS	11461000	1978	3	449.6
USGS	11461000	1978	4	258.5
USGS	11461000	1978	5	30.1
USGS	11461000	1978	6	7.45
USGS	11461000	1978	7	1.82
USGS	11461000	1978	8	0
USGS	11461000	1978	9	0.735
USGS	11461000	1978	10	0.283
USGS	11461000	1978	11	2.24
USGS	11461000	1978	12	3.48
USGS	11461000	1979	1	278.7
USGS	11461000	1979	2	606.6
USGS	11461000	1979	3	252.1
USGS	11461000	1979	4	54.3
USGS	11461000	1979	5	55.3
USGS	11461000	1979	6	4.97
USGS	11461000	1979	7	0.804
USGS	11461000	1979	8	0
USGS	11461000	1979	9	0
USGS	11461000	1979	10	16.8
USGS	11461000	1979	11	308.9
USGS	11461000	1979	12	297
USGS	11461000	1980	1	818
USGS	11461000	1980	2	646.4
USGS	11461000	1980	3	280.8
USGS	11461000	1980	4	112.1
USGS	11461000	1980	5	27.7

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1980	6	8.87
USGS	11461000	1980	7	2.01
USGS	11461000	1980	8	0.213
USGS	11461000	1980	9	0.275
USGS	11461000	1980	10	0.167
USGS	11461000	1980	11	1.5
USGS	11461000	1980	12	71.7
USGS	11461000	1981	1	385.2
USGS	11461000	1981	2	220.1
USGS	11461000	1981	3	243.4
USGS	11461000	1981	4	50.6
USGS	11461000	1981	5	11.8
USGS	11461000	1981	6	1.58
USGS	11461000	1981	7	0.059
USGS	11461000	1981	8	0
USGS	11461000	1981	9	0.056
USGS	11461000	1981	10	15.6
USGS	11461000	1981	11	534
USGS	11461000	1981	12	916.4
USGS	11461000	1982	1	579.1
USGS	11461000	1982	2	641.1
USGS	11461000	1982	3	439.5
USGS	11461000	1982	4	623.3
USGS	11461000	1982	5	42.8
USGS	11461000	1982	6	12.7
USGS	11461000	1982	7	4.23
USGS	11461000	1982	8	0.576
USGS	11461000	1982	9	1.14
USGS	11461000	1982	10	9.62
USGS	11461000	1982	11	354.2
USGS	11461000	1982	12	671.4
USGS	11461000	1983	1	653.3
USGS	11461000	1983	2	1.185
USGS	11461000	1983	3	1.436
USGS	11461000	1983	4	586.5
USGS	11461000	1983	5	148.6
USGS	11461000	1983	6	26.3
USGS	11461000	1983	7	10.8
USGS	11461000	1983	8	2.52
USGS	11461000	1983	9	2.7
USGS	11461000	1983	10	3.44
USGS	11461000	1983	11	666.6
USGS	11461000	1983	12	1.111
USGS	11461000	1984	1	150.9
USGS	11461000	1984	2	273.3
USGS	11461000	1984	3	175.6
USGS	11461000	1984	4	107.4



USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1984	5	30.7
USGS	11461000	1984	6	9.13
USGS	11461000	1984	7	1.68
USGS	11461000	1984	8	0.684
USGS	11461000	1984	9	0.336
USGS	11461000	1984	10	5.18
USGS	11461000	1984	11	442.5
USGS	11461000	1984	12	162.9
USGS	11461000	1985	1	43.3
USGS	11461000	1985	2	255.4
USGS	11461000	1985	3	211.1
USGS	11461000	1985	4	60.3
USGS	11461000	1985	5	12
USGS	11461000	1985	6	3.41
USGS	11461000	1985	7	0.974
USGS	11461000	1985	8	0.1
USGS	11461000	1985	9	1.29
USGS	11461000	1985	10	1.32
USGS	11461000	1985	11	40.1
USGS	11461000	1985	12	139.8
USGS	11461000	1986	1	438.1
USGS	11461000	1986	2	1.609
USGS	11461000	1986	3	600.8
USGS	11461000	1986	4	48
USGS	11461000	1986	5	19.1
USGS	11461000	1986	6	4.66
USGS	11461000	1986	7	2.49
USGS	11461000	1986	8	1.57
USGS	11461000	1986	9	1.1
USGS	11461000	1986	10	1.91
USGS	11461000	1986	11	4.15
USGS	11461000	1986	12	11.1
USGS	11461000	1987	1	163.4
USGS	11461000	1987	2	281.7
USGS	11461000	1987	3	389.5
USGS	11461000	1987	4	35.8
USGS	11461000	1987	5	9.59
USGS	11461000	1987	6	2.64
USGS	11461000	1987	7	0.269
USGS	11461000	1987	8	0
USGS	11461000	1987	9	0.3
USGS	11461000	1987	10	1.44
USGS	11461000	1987	11	9.5
USGS	11461000	1987	12	449.8
USGS	11461000	1988	1	573.2
USGS	11461000	1988	2	63.3
USGS	11461000	1988	3	20

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1988	4	14.7
USGS	11461000	1988	5	9.99
USGS	11461000	1988	6	3.33
USGS	11461000	1988	7	0.546
USGS	11461000	1988	8	0.219
USGS	11461000	1988	9	0.025
USGS	11461000	1988	10	0.45
USGS	11461000	1988	11	158.7
USGS	11461000	1988	12	163.9
USGS	11461000	1989	1	175.8
USGS	11461000	1989	2	32
USGS	11461000	1989	3	789.6
USGS	11461000	1989	4	123.4
USGS	11461000	1989	5	21.2
USGS	11461000	1989	6	8
USGS	11461000	1989	7	1.99
USGS	11461000	1989	8	0.613
USGS	11461000	1989	9	1.73
USGS	11461000	1989	10	9.46
USGS	11461000	1989	11	10.4
USGS	11461000	1989	12	5.75
USGS	11461000	1990	1	236.3
USGS	11461000	1990	2	216.2
USGS	11461000	1990	3	112.6
USGS	11461000	1990	4	18
USGS	11461000	1990	5	115.8
USGS	11461000	1990	6	40.6
USGS	11461000	1990	7	2.7
USGS	11461000	1990	8	0.315
USGS	11461000	1990	9	0.589
USGS	11461000	1990	10	0.729
USGS	11461000	1990	11	1.72
USGS	11461000	1990	12	3.15
USGS	11461000	1991	1	3.82
USGS	11461000	1991	2	15.3
USGS	11461000	1991	3	508.7
USGS	11461000	1991	4	31.6
USGS	11461000	1991	5	7.56
USGS	11461000	1991	6	3.21
USGS	11461000	1991	7	0.235
USGS	11461000	1991	8	0.246
USGS	11461000	1991	9	0.183
USGS	11461000	1991	10	0.544
USGS	11461000	1991	11	5.8
USGS	11461000	1991	12	37.3
USGS	11461000	1992	1	95.4
USGS	11461000	1992	2	644.7

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1992	3	269.7
USGS	11461000	1992	4	52
USGS	11461000	1992	5	6.36
USGS	11461000	1992	6	2.43
USGS	11461000	1992	7	0.966
USGS	11461000	1992	8	0.016
USGS	11461000	1992	9	0.587
USGS	11461000	1992	10	3.23
USGS	11461000	1992	11	10.3
USGS	11461000	1992	12	504.6
USGS	11461000	1993	1	944.3
USGS	11461000	1993	2	490.7
USGS	11461000	1993	3	198.4
USGS	11461000	1993	4	120
USGS	11461000	1993	5	61.1
USGS	11461000	1993	6	57.4
USGS	11461000	1993	7	6.58
USGS	11461000	1993	8	1.73
USGS	11461000	1993	9	1.48
USGS	11461000	1993	10	1.56
USGS	11461000	1993	11	4.99
USGS	11461000	1993	12	67.8
USGS	11461000	1994	1	149
USGS	11461000	1994	2	376.4
USGS	11461000	1994	3	49.7
USGS	11461000	1994	4	31.1
USGS	11461000	1994	5	16.9
USGS	11461000	1994	6	3.2
USGS	11461000	1994	7	0.217
USGS	11461000	1994	8	0.14
USGS	11461000	1994	9	0.154
USGS	11461000	1994	10	0.653
USGS	11461000	1994	11	25.3
USGS	11461000	1994	12	137.5
USGS	11461000	1995	1	1,986
USGS	11461000	1995	2	221.2
USGS	11461000	1995	3	1,218
USGS	11461000	1995	4	232.5
USGS	11461000	1995	5	201.3
USGS	11461000	1995	6	24
USGS	11461000	1995	7	7.43
USGS	11461000	1995	8	2.14
USGS	11461000	1995	9	1.19
USGS	11461000	1995	10	1.18
USGS	11461000	1995	11	2.66
USGS	11461000	1995	12	280.1
USGS	11461000	1996	1	856.8

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	1996	2	671.2
USGS	11461000	1996	3	321.3
USGS	11461000	1996	4	146.2
USGS	11461000	1996	5	86.8
USGS	11461000	1996	6	17.1
USGS	11461000	1996	7	3.44
USGS	11461000	1996	8	1.05
USGS	11461000	1996	9	1.29
USGS	11461000	1996	10	1.34
USGS	11461000	1996	11	25.6
USGS	11461000	1996	12	899.7
USGS	11461000	1997	1	1.021
USGS	11461000	1997	2	176.4
USGS	11461000	1997	3	11.7
USGS	11461000	1997	4	45.7
USGS	11461000	1997	5	18.6
USGS	11461000	1997	6	8.6
USGS	11461000	1997	7	1.7
USGS	11461000	1997	8	0.962
USGS	11461000	1997	9	1.49
USGS	11461000	1997	10	4.73
USGS	11461000	1997	11	114.3
USGS	11461000	1997	12	204.3
USGS	11461000	1998	1	1,342
USGS	11461000	1998	2	1,781
USGS	11461000	1998	3	364.4
USGS	11461000	1998	4	249.9
USGS	11461000	1998	5	109
USGS	11461000	1998	6	52.6
USGS	11461000	1998	7	9.68
USGS	11461000	1998	8	3.75
USGS	11461000	1998	9	2.17
USGS	11461000	1998	10	2.96
USGS	11461000	1998	11	87.5
USGS	11461000	1998	12	179.1
USGS	11461000	1999	1	222.1
USGS	11461000	1999	2	1.052
USGS	11461000	1999	3	519.4
USGS	11461000	1999	4	198.3
USGS	11461000	1999	5	36.1
USGS	11461000	1999	6	11.1
USGS	11461000	1999	7	2.92
USGS	11461000	1999	8	1.48
USGS	11461000	1999	9	1.02
USGS	11461000	1999	10	1.22
USGS	11461000	1999	11	23
USGS	11461000	1999	12	39.6

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	2000	1	277.8
USGS	11461000	2000	2	772.5
USGS	11461000	2000	3	257.7
USGS	11461000	2000	4	56.4
USGS	11461000	2000	5	26
USGS	11461000	2000	6	6.4
USGS	11461000	2000	7	2.3
USGS	11461000	2000	8	1.04
USGS	11461000	2000	9	0.829
USGS	11461000	2000	10	3.34
USGS	11461000	2000	11	6.14
USGS	11461000	2000	12	20.5
USGS	11461000	2001	1	112.9
USGS	11461000	2001	2	409.4
USGS	11461000	2001	3	216.7
USGS	11461000	2001	4	24.2
USGS	11461000	2001	5	10.1
USGS	11461000	2001	6	3.15
USGS	11461000	2001	7	0.98
USGS	11461000	2001	8	0
USGS	11461000	2001	9	0.179
USGS	11461000	2001	10	0.999
USGS	11461000	2001	11	174.6
USGS	11461000	2001	12	701.1
USGS	11461000	2002	1	417.5
USGS	11461000	2002	2	227.5
USGS	11461000	2002	3	169.3
USGS	11461000	2002	4	42.5
USGS	11461000	2002	5	16.9
USGS	11461000	2002	6	5.78
USGS	11461000	2002	7	0.755
USGS	11461000	2002	8	0.031
USGS	11461000	2002	9	0.036
USGS	11461000	2002	10	0.568
USGS	11461000	2002	11	6.17
USGS	11461000	2002	12	1,093
USGS	11461000	2003	1	514.5
USGS	11461000	2003	2	144.1
USGS	11461000	2003	3	255.9
USGS	11461000	2003	4	660.2
USGS	11461000	2003	5	215.5
USGS	11461000	2003	6	13.4
USGS	11461000	2003	7	4.96
USGS	11461000	2003	8	0.963
USGS	11461000	2003	9	1.01
USGS	11461000	2003	10	1.43
USGS	11461000	2003	11	1.08
USGS	11461000	2003	12	746.8

USGS Gage Readings  
West Fork Russian River

Full Listing

USGS	11461000	2004	1	458.8
USGS	11461000	2004	2	1189
USGS	11461000	2004	3	169.5
USGS	11461000	2004	4	40.1
USGS	11461000	2004	5	14.6
USGS	11461000	2004	6	5.27
USGS	11461000	2004	7	1.68
USGS	11461000	2004	8	0.899
USGS	11461000	2004	9	1.38
USGS	11461000	2004	10	5.57
USGS	11461000	2004	11	6.57
USGS	11461000	2004	12	356
USGS	11461000	2005	1	427.7
USGS	11461000	2005	2	161
USGS	11461000	2005	3	460.9
USGS	11461000	2005	4	261.4
USGS	11461000	2005	5	242.8
USGS	11461000	2005	6	56
USGS	11461000	2005	7	10.6
USGS	11461000	2005	8	2.24
USGS	11461000	2005	9	0.864
USGS	11461000	2005	10	1.91
USGS	11461000	2005	11	34.8
USGS	11461000	2005	12	1,531
USGS	11461000	2006	1	824.3
USGS	11461000	2006	2	423.7
USGS	11461000	2006	3	833.4
USGS	11461000	2006	4	736
USGS	11461000	2006	5	53.8
USGS	11461000	2006	6	16.7
USGS	11461000	2006	7	5.99
USGS	11461000	2006	8	1.68
USGS	11461000	2006	9	0.469

TRANSMISSION VERIFICATION REPORT

TIME : 04/16/2007 10:05  
NAME :  
FAX :  
TEL :  
SER.# : BROK2J720013

DATE, TIME	04/16 10:05
FAX NO./NAME	917074526944
DURATION	00:00:29
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

TELECOPY TRANSMISSION COVER SHEET

DATE: April 16, 2007  
TO: Lee Howard  
FAX #: (707) 462-6944  
FROM: CHARLES RICH  
Desk #: (916) 341-5377

3 PAGES (INCLUDING COVER SHEET) TO BE TRANSMITTED

**MATERIAL TRANSMITTED:** Copy of 3/6/07 letter from State Senator Wiggins regarding water right complaint 262.0(23-03-06) Howard v Hill/Gomes per your request.

**Note:** If you do not receive all of the pages, please call (916) 341-5377



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

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  
FAX: 916 341 5400 • www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

APR 10 2007

In Reply Refer to:  
363:CAR:262.0(23-03-06)

The Honorable Patricia Wiggins  
State Senate  
State Capitol, Room 5035  
Sacramento, CA 95814

Dear Senator Wiggins:

## WATER RIGHT COMPLAINT AFFECTING THE MILLVIEW WATER DISTRICT IN MENDOCINO COUNTY

Thank you for your letter of March 6, 2007. The subject complaint was filed by Mr. Lee Howard against Mr. Thomas Hill. Mr. Hill purchased a 31-acre parcel of land adjacent to the West Fork Russian River several years ago. Mr. Hill has since transferred a substantial portion of the parcel to a home builder who constructed and sold 125 homes. The domestic water supply for these homes is provided by the Millview County Water District (Millview). Since October 2002, Mr. Hill has been leasing water rights that he believes were associated with the original parcel to Millview. This claim of right has been used by Millview to justify diversion of water during the months of May through November.

Mr. Howard alleges via his complaint that any pre-1914 appropriative water right that might have accrued to the parcel owned by Mr. Hill was forfeited long ago due to nonuse by a prior owner. Mr. Hill and Millview contend that an appropriative right was initiated in March 1914 and maintained thereafter in a sufficient fashion to justify a diversion of approximately 1,500 acre-feet per annum from the West Fork Russian River. Millview has moved the point of diversion for the claimed right downstream below the confluence with the East Fork of the Russian River where releases of water from Lake Mendocino provide the majority of flow for diversion at Millview's facilities during the summer, low-flow season.

One of the issues involved in this complaint is whether or not the diversions that occurred between 1914 and 2002 were made under a riparian claim of right or under a pre-1914 appropriative claim of right. A riparian claim of right is a potentially more powerful basis of right that allows for diversions to be stopped and started without the loss of the right. However, such a claim of right cannot be separated from the original parcel for use by Millview. A pre-1914 appropriative claim of right is a more versatile basis of right for which the point of diversion, purpose of use, and place of use can be changed as long as others are not injured by such change, but can also be lost in full or part due to 5 years of nonuse.

Determining which basis of right applies is a complex legal question for which there is no ready legal precedent. The ramifications of this issue are substantial because other diverters with valid bases of right, including large vineyard operations and municipal providers (e.g., Mendocino County Russian River Flood Control and Water Conservation Improvement District, City of Ukiah, Willow County Water District, and Sonoma County Water Agency), could be

SURNAME	CRK 4/3/07 50 4/3/07	AT:pps California Environmental Protection Agency Recycled Paper 1/15/07 4/16/07	Regd Kassel for Whitney 4/16/07
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APR 10 2007

impacted should Millview divert an additional 1,500 acre-feet from the Russian River during the low-flow period. The delay in completing the investigation into this complaint has been a result of the need to research this question.

Because Millview stated in its response to the complaint that this right was not utilized during the winter season, Division of Water Rights (Division) staff assumed that some delay in processing the complaint would not be detrimental to Millview. Complaint Unit staff are expediting the resolution of this complaint and hope to have the report of investigation completed by May 1.

If you or your staff have any questions about this complaint, Charles Rich, Chief of the Division's Complaint Unit, can be reached at (916) 341-5377.

Sincerely,

ORIGINAL SIGNED BY

JWF  
foV  
Victoria A. Whitney  
Division Chief

cc: The Honorable Patricia Wiggins  
200 South School Street  
P.O. Box 785  
Ukiah, CA 95482

Millview County Water District  
3981 North State Street  
Ukiah, CA 95482

Thomas P. Hill  
110 South Highland Avenue  
Ukiah, CA 95482

Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

Division Control #: D-07-15  
CRich\lfischer 4.2.2007;jmtipps 04.05.07  
U:\Comdrv\CRich\Sen. Wiggins Response.doc

bcc: Thomas Howard, Chief Deputy Director, SWRCB  
Rob Egel, Office of Legislative Affairs, SWRCB  
Patty Zwartz, Assistant Secretary for Legislation, CalEPA

10147a

**From:** Andy Sawyer  
**To:** Chuck Rich  
**Date:** 3/28/2007 2:34:30 PM  
**Subject:** Re: Fwd: LEGAL ISSUE

I'm forwarding two messages from Barbara Leidigh on this.

It looks like, assuming they are not using any more than their pre-1914 right, and unless and until the riparian property owners make use of their now dormant riparian rights, there is no injury. If the riparian right is later exercised, the transferee of the pre-1914 right would have to reduce its use to the extent necessary to prevent injury. This may raise concerns about the reliability of the pre-1914 right.

Depending on what the nature of the complaint is, it may be worth spelling out the problem with the transferred right.

=====  
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=====

>>> Barbara Leidigh 3/21/2007 9:05 AM >>>

Andy,

This may look like a lot of water to take based on one parcel, but the pre-1914 right really is a different right than a riparian right based on the ownership of the parcel, and is not tied inextricably to the parcel. In other words, it is not impossible for an owner of one parcel to have both a riparian right and a pre-1914 right. Assuming the pre-1914 right is in fact a valid pre-1914 right under the laws that existed at the time, and is not an illegal appropriation (it's not clear to me that the appropriation was initiated before the Water Commission Act took effect), some of the right probably was lost due to non-use, meaning that the pre-1914 appropriative right, if there is a right, is somewhere around 15 afa. It would not be strictly illegal for the owner of the parcel to transfer the pre-1914 right and use the riparian right instead, but there could be injury to other legal users of the water due to the transfer of the pre-14 appropriative right if, because of the transfer, the riparian then increased the riparian diversion. If there were injury due to the transfer, which is prohibited by section 1706, the injured parties could ask the court to enjoin the transfer. Alternatively, the Board could take an enforcement action under section 1052 on the basis that the water is being used in violation of the no-injury provision in section 1706. (Reviving a previously dormant riparian right cannot itself cause legal injury, but I think there's a legal issue as to whether there can be injury due to a transfer of an appropriative right if a riparian right is then revived solely in response to the transfer of the appropriative right. Whether we want to test this by taking an enforcement action is ultimately up to the Board. Here, the facts probably don't involve much water, so bad facts could make law that we don't seek.)

The riparian right, since it is part and parcel of the land, would of course continue, and the riparian right holder could use a correlative share of the water from the source so long as the riparian use was reasonable and beneficial.

If the seller of the pre-1914 right really wants to sell the right and get paid, the seller could choose to sever the riparian right (extinguish it) or limit its quantity by amending the deed, thereby avoiding injury to other legal users as a result of the transfer of the pre-1914 right.

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>>> Andy Sawyer 3/20/2007 5:51 PM >>>

Any thoughts?

=====  
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=====

>>> Chuck Rich 3/20/2007 5:29 PM >>>  
Andy,

I have a complaint filed by a private individual who used to be on the Board of Directors of the Mendocino County Russian River Flood Control and Water Conservation Improvement District against a private developer who is attempting to sell a pre-14 appropriative right to the Millview Water District. The Division recently received a letter from State Senator Patricia Wiggins (copy attached) requesting that the processing of this complaint be expedited.

I completed a field inspection for the complaint last fall. Upon returning to the office I sent an e-mail to you raising a question regarding which type of right; i.e., 1) a riparian; or 2) a pre-1914 appropriative right would cover diversion and use of water that was initiated before 1914 on a riparian parcel and utilized in a continuous manner thereafter. In this particular case, a notice was filed with the County Recorder on 3/24/14 identifying the proposed diversion rate as being 100 miners inches or 2 cfs throughout the irrigation season. Use over the last few decades has been made at a rate of 500 gpm (1.11 cfs) a few times each summer with total annual use amounting to only about 15 afa +/- .

You assigned the question to Dan Frink for answer. After some initial thought, he spoke with me in my office and stated that he thought the diversion would be covered by a valid pre-14 appropriative right that could be severed from the riparian parcel and used somewhere else.

I asked him how he would justify such a diversion if the original right holder decided to reinstate diversion on the riparian parcel under a riparian claim of right after the pre-14 right was sold. Dan admitted that this put a new perspective on the original question and that he would speak to you about it.

Some time thereafter Dan returned to my office. He stated that he and you disagreed about whether a pre-14 right would have accrued that could be sold or transferred. Dan felt that Section 1706 of the Water Code provides sufficient protection to other uses of water should a pre-14 right on a riparian parcel be

transferred. This Water Code section states:

1706. The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

I understand that Dan believes if the diversion is reinitiated on the riparian parcel under a claim of right, the act of changing the point of diversion, place of use, or purpose of use could result in injury to others. If that were to occur, either the pre-14 right would need to be modified and/or discontinued or the new diversion pursuant to a riparian claim of right would need to be modified and/or discontinued. Presumably, the decision regarding which diversion and use of water to modify would be based on the contractual arrangement between the seller of the right (i.e., the owner of the riparian parcel) and the purchaser of the pre-14 right. I'm concerned that once the right is sold or transferred informally, the ability to track who is using water and, more importantly, who is responsible for injury to other uses should the riparian diversion be reinitiated, will be difficult - if not impossible - to discern.

I'm not aware of any prior Board or court decisions or discussion in legal texts (e.g., Wells Hutchins' Calif. Law of Water Rights) that speak directly to the question of whether a pre-14 right accrues to a riparian parcel if the diversion was initiated prior to 1914 and maintained in a diligent fashion thereafter or whether the diversions are deemed to have been made pursuant to a valid riparian claim of right which cannot be severed from the property. As a side note, I discovered that D-496 states on pages 4-5:

Lake Hemet Water Company and Fairview Land and Water Company in a joint protest against the approval of Applications 9437 and 9465 claim the right to the use of the waters of Strawberry Creek and its tributaries based upon riparian ownership and use commenced prior to the effective date of the Water Commission Act.

I understand that these companies have been succeeded in interest by the Lake Hemet Municipal Water District. This District filed Statement of Water Diversion and Use # S000511 in 1967. The maximum use is listed as 20 cfs with a year of first use of 1886. Because a governmental entity cannot provide water under riparian claim of right to a parcel that the governmental entity does not own, being able to claim a pre-14 appropriative right on riparian land will be of utmost importance to this District. I believe that the question that has arisen as result of the pending complaint will have statewide significance. I cannot complete my investigation and report until I receive an answer to this question. In view of Ms. Wiggins letter, I need an answer sooner than later.

Any assistance you or your staff can provide in this matter would be GREATLY appreciated!

Charles Rich, Chief  
Complaint Unit  
(916) 341-5377  
[CRich@waterboards.ca.gov](mailto:CRich@waterboards.ca.gov)

**From:** Barbara Leidigh  
**To:** Sawyer, Andy  
**Date:** 3/27/2007 8:50:36 AM  
**Subject:** Fwd: Re: legal issue re complaint

It appears that the developer and the water purveyor have a decent argument that the pre-1914 right has been used since 2002 to supply water to the new homes on the parcel, and that the right was not lost by nonuse after the sale in 1998, since less than five years passed before the lease. Assuming the pre-1914 right has been preserved since 1914 through use and the quantity is appropriate, I think the developer can assign the right to the water purveyor. Regarding injury, if the developer or the homeowners decide to use the riparian right in the future, and transfer the pre-1914 appropriative right to another place of use, I think they will cause injury because of the change of place of use at that time. I do not see any current injury under the facts that Chuck provided.

It does not look like there is a plan to change the place of use at this time, so the only potential for near-term injury is if the riparian right will be used for irrigation of the strip near the river and this use causes the amount of water used on the overall tract to exceed the amount that reasonably could have been used there before development for housing.

>>> Andy Sawyer 3/26/2007 5:48 PM >>>

fyi

=====  
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=====

>>> Chuck Rich 3/26/2007 5:47 PM >>>  
The property was sold by the last owner / water user to the developers in January 1998. Some use of water was probably made on the property up until the date of transfer. Whether any beneficial use was made on the property thereafter is hard to say. I have no documented evidence of such use. However, the developer entered into a lease agreement with the water purveyor in December 2002 (i.e., within 5 years of purchase) and the purveyor has claimed to be using the right ever since that time.

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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

>>> Andy Sawyer 3/26/2007 5:40 PM >>>  
It sounds like they aren't using the pre-1914 right. How long ago was the property developed?

=====  
Andrew H. Sawyer  
Assistant Chief Counsel  
California State Water Resources Control Board

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=====

>>> Chuck Rich 3/26/2007 5:34 PM >>>

Most of the original riparian parcel has been sold and developed with new residential housing. The water supply for these houses comes from the local water purveyor who is trying to buy the pre-14 appropriative claim of right. The title deeds for each house contain a provision indicating that an effort has been made to reserve riparian status for these parcels even though they no longer touch the stream.

The individuals who are trying to sell the water right still own the land along the stream. They haven't made any commitment regarding what they will or will not do on this parcel. The county will not let them build homes due to the potential for flooding. However, I wouldn't be surprised if they tried to grow a crop or use water in some other fashion in the future as they are entrepreneurs and making money from property they have purchased is their job.

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XX

>>> Andy Sawyer 3/26/2007 5:26 PM >>>

Your earlier e-mail isn't clear on one issue. What is the seller saying with respect to exercise of the riparian right? Specifically, is he or she saying that use on the riparian parcel will continue, that it will be discontinued, or is he or she saying nothing at all?

=====

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=====

From: Chuck Rich  
To: Sawyer, Andy  
Date: 3/20/2007 5:29:54 PM  
Subject: LEGAL ISSUE

Andy,

I have a complaint filed by a private individual who used to be on the Board of Directors of the Mendocino County Russian River Flood Control and Water Conservation Improvement District against a private developer who is attempting to sell a pre-14 appropriative right to the Millview Water District. The Division recently received a letter from State Senator Patricia Wiggins (copy attached) requesting that the processing of this complaint be expedited.

I completed a field inspection for the complaint last fall. Upon returning to the office I sent an e-mail to you raising a question regarding which type of right; i.e., 1) a riparian; or 2) a pre-1914 appropriative right would cover diversion and use of water that was initiated before 1914 on a riparian parcel and utilized in a continuous manner thereafter. In this particular case, a notice was filed with the County Recorder on 3/24/14 identifying the proposed diversion rate as being 100 miners inches or 2 cfs throughout the irrigation season. Use over the last few decades has been made at a rate of 500 gpm (1.11 cfs) a few times each summer with total annual use amounting to only about 15 afa +/-.

You assigned the question to Dan Frink for answer. After some initial thought, he spoke with me in my office and stated that he thought the diversion would be covered by a valid pre-14 appropriative right that could be severed from the riparian parcel and used somewhere else.

I asked him how he would justify such a diversion if the original right holder decided to reinstate diversion on the riparian parcel under a riparian claim of right after the pre-14 right was sold. Dan admitted that this put a new perspective on the original question and that he would speak to you about it.

Some time thereafter Dan returned to my office. He stated that he and you disagreed about whether a pre-14 right would have accrued that could be sold or transferred. Dan felt that Section 1706 of the Water Code provides sufficient protection to other uses of water should a pre-14 right on a riparian parcel be transferred. This Water Code section states:

1706. The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

I understand that Dan believes if the diversion is reinstated on the riparian parcel under a claim of right, the act of changing the point of diversion, place of use, or purpose of use could result in injury to others. If that were to occur, either the pre-14 right would need to be modified and/or discontinued or the new diversion pursuant to a riparian claim of right would need to be modified and/or discontinued. Presumably, the decision regarding which diversion and use of water to modify would be based on the contractual arrangement between the seller of the right (i.e., the owner of the riparian parcel) and the purchaser of the pre-14 right. I'm concerned that once the right is sold or transferred informally, the ability to track who is using water and, more importantly, who is responsible for injury to other uses should the riparian diversion be reinstated, will be difficult - if not impossible - to discern.

I'm not aware of any prior Board or court decisions or discussion in legal texts (e.g., Wells Hutchins' Calif. Law of Water Rights) that speak directly to the question of whether a pre-14 right accrues to a riparian parcel if the diversion was initiated prior to 1914 and maintained in a diligent fashion thereafter or whether the diversions are deemed to have been made pursuant to a valid riparian claim of right which cannot be severed from the property. As a side note, I discovered that D-496 states on pages 4-5:

Lake Hemet Water Company and Fairview Land and Water Company in a joint protest against the

approval of Applications 9437 and 9465 claim the right to the use of the waters of Strawberry Creek and its tributaries based upon riparian ownership and use commenced prior to the effective date of the Water Commission Act.

I understand that these companies have been succeeded in interest by the Lake Hemet Municipal Water District. This District filed Statement of Water Diversion and Use # S000511 in 1967. The maximum use is listed as 20 cfs with a year of first use of 1886. Because a governmental entity cannot provide water under riparian claim of right to a parcel that the governmental entity does not own, being able to claim a pre-14 appropriative right on riparian land will be of utmost importance to this District. I believe that the question that has arisen as result of the pending complaint will have statewide significance. I cannot complete my investigation and report until I receive an answer to this question. In view of Ms. Wiggins letter, I need an answer sooner than later.

Any assistance you or your staff can provide in this matter would be GREATLY appreciated!

Charles Rich, Chief  
Complaint Unit  
(916) 341-5377  
CRich@waterboards.ca.gov

CC: O'Hagan, John



**STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS**

**TELECOPY TRANSMISSION COVER SHEET**

**DATE:** April 16, 2007  
**TO:** Lee Howard  
**FAX #:** (707) 462-6944  
**FROM:** CHARLES RICH  
**Desk #:** (916) 341-5377

**3 PAGES (INCLUDING COVER SHEET) TO BE TRANSMITTED**

**MATERIAL TRANSMITTED:** Copy of 3/6/07 letter from State Senator Wiggins regarding water right complaint 262.0(23-03-06) Howard v Hill/Gomes per your request.

**Note:** If you do not receive all of the pages, please call (916) 341-5377

**FAX NUMBER FOR THE DIVISION OF WATER RIGHTS:** (916) 341-5400

20  
2620 (23-03-06)

# California State Senate

STATE CAPITOL  
SACRAMENTO, CA 95814  
916 651-4002

SENATOR  
**PATRICIA WIGGINS**  
SECOND SENATE DISTRICT



Div Control  
due 3/30/07  
0.07.15

March 6, 2007

Victoria Whitney, Division Chief  
Enforcement & Compliance Division  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

Re: Complaint regarding water right 363: CAR: 262.0 (23-03-06)

Dear Ms. Whitney:

The Millview County Water District, which is located within Senate District 2, has contracted to purchase a water right claimed by J. A. Waldteufel. However, prior to completing the agreement to purchase the water right a complaint was filed in February 2006.

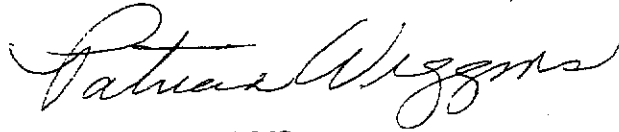
It is my understanding that after receiving the complaint the Division of Water Rights promptly conducted field work and solicited information from Millview County Water District. Preliminary representations were made that the complaint could be resolved by the end of 2006. Unfortunately, in January 2007 Division of Water Rights staff indicated that priorities had shifted and that the complaint might not be resolved for the indefinite future.

The purpose of this letter is to request that this complaint be placed on a higher priority for resolution. The complaint is against a public entity which is providing direct service to the public. In addition, the delays in resolution of the complaint have caused Millview County Water District to incur unnecessary expenses of public dollars in order to provide extensions for its contractual obligations with the holder of the water right in question.

Furthermore the Department of Health Services has indicated that Millview has a supply deficiency for its current connections and the resolution of this complaint will assist Millview in augmenting its water supply to alleviate this supply deficiency.

I am requesting that the Division of Water Rights place a higher priority on the resolution of this complaint as the purchase of Waldteufel water right cannot be completed until the complaint is resolved. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Wiggins". The signature is written in dark ink and is positioned above the printed name.

PATRICIA WIGGINS  
Senator, 2nd District

September 5, 2006

Dear Mr. Howard:

Enclosed is a copy of the sworn statement of Floyd Lawrence that Mr. Neary provided to me. If you have any comments or would like to respond with sworn statements by yourself or others, please let me know as soon as possible.

Charles Rich  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Phone: (916) 341-5377

FAX: (916) 341-5300

e-mail: [Crich@waterboards.ca.gov](mailto:Crich@waterboards.ca.gov)

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SWORN STATEMENT OF FLOYD LAWRENCE

By Christopher J. Neary  
Attorney at Law

Wednesday, August 2, 2006  
10:00 a.m.

3650 East Side Calpella Road  
Ukiah, California

Reported by:

LUEL J. SIMSON, CSR No. 4720

---

SIMSON REPORTING  
Certified Shorthand Reporters  
2200 Range Avenue, Suite 102  
Santa Rosa, California 95403  
(707) 578-7530

1 MR. NEARY: My name is Christopher Neary, I'm  
2 general counsel for Millview County Water District, and  
3 also present are Floyd Lawrence and....

4 JOAN NELSON: Joan Nelson.

5 MR. NEARY: Joan Nelson. And it's about  
6 10:00 a.m., and we're at Floyd Lawrence's home at  
7 3650....

8 JOAN NELSON: East Side Calpella Road.

9 MR. NEARY: East Side Calpella Road.

10 Now, Floyd, what I'm going to do is I'm going  
11 to -- would you swear him.

12

13 FLOYD LAWRENCE,  
14 having been first duly sworn, was  
15 examined and testified as follows:

16

17 EXAMINATION

18 BY MR. NEARY:

19 Q. Floyd, as I pointed out, I'm the attorney for  
20 Millview, and we are -- we understand that you might --  
21 that you've lived in this location for quite awhile.

22 A. All my life.

23 Q. And where were you born?

24 A. Here.

25 Q. In this house?

1 A. No. Down, just when you cross the bridge.  
2 When you cross the bridge, there on the left. That's  
3 where I was born and raised.

4 Q. And what year were you born?

5 A. 1914.

6 Q. What day?

7 A. November 30th.

8 Q. And you were born, actually, in the house --

9 A. That's right.

10 Q. Right there off of -- just past the bridge?

11 A. Correct.

12 Q. Who owns that property now?

13 A. My....

14 JOAN NELSON: Niece.

15 FLOYD LAWRENCE: I've got to think for a  
16 second.

17 JOAN NELSON: She's your niece.

18 FLOYD LAWRENCE: The Hills own the property  
19 right now, but she's my brother's daughter.

20 BY MR. NEARY:

21 Q. Okay. And that house is still standing, the  
22 house that you were born in?

23 A. No, no. I tore it down and bought my mother a  
24 mobile home.

25 Q. Okay. And how long had your mother and father

1 lived here prior to your birth?

2 A. Let me think a minute. My father came here in  
3 1887.

4 Q. And he settled in this area --

5 A. Yeah; he settled in that area there, bought  
6 that property.

7 Q. Right there off the Russian River. Do you  
8 know who he bought it from?

9 A. I don't remember. It was 160 acres.

10 Q. And was he -- did he farm that property?

11 A. He farmed it, yes.

12 Q. And did he irrigate from the Russian River?

13 A. He didn't irrigate very much. I think the  
14 first pump that was put in there to irrigate with I put  
15 in, and that would have been about probably thirty --  
16 1933, I think.

17 Q. So you were born in the house near the Russian  
18 River.

19 A. Yes.

20 Q. And you've lived here all your life. Have you  
21 ever left the area?

22 A. I worked in other areas, but this was always  
23 home.

24 Q. Right. And what was the longest time you were  
25 ever away?



1 A. Probably in World War II.

2 Q. About four years?

3 A. Three -- three years and three months.

4 Q. So this has always been your voting

5 address and --

6 A. Yes.

7 Q. And this property that we're located now, when  
8 did you acquire that?

9 A. This property where I am now?

10 Q. Yes.

11 A. I acquired it from my father in 1947.

12 Q. Was that part of the 160 acres?

13 A. That was part of the 160 acres.

14 Q. Okay.

15 A. I, over a period of time, bought -- well, my  
16 father sold 32 acres, I think it was, in 1931. And  
17 then, over the years, I bought the rest of the  
18 property, except the two and a half acres where the  
19 house is.

20 Q. I see. So you own most of the original 160  
21 acres now?

22 A. I did, over time, yes.

23 Q. And you still own it now?

24 A. No; I sold it off, and that's where all of  
25 these houses are scattered.

1 Q. What profession were you engaged in?  
2 A. I was a carpenter, construction man.  
3 Q. Okay. So you're familiar with the property.  
4 Did you ever know of a gentleman by the name of  
5 Waldteufel, W-a-l-d-t-e-u-f-e-l?  
6 A. "Waldteufel."  
7 Q. "Waldteufel."  
8 A. Waldteufel was his name, yeah.  
9 Q. Okay.  
10 A. I knew of him, but -- as a kid. I never knew  
11 him as an adult, after I was an adult.  
12 Q. Okay. And what do you remember about him, if  
13 anything?  
14 A. The only thing I can remember about him was  
15 that he owned some property here in the area, in the  
16 valley, and he owned the property that we're referring  
17 to, and Mr. Dowling bought it from Mr. Waldteufel.  
18 Q. Do you know when Mr. Dowling bought it?  
19 A. No, I don't remember for sure.  
20 Q. Can you take a guess? Just an approximate,  
21 what decade?  
22 A. Approximate would be probably 1900.  
23 Q. Okay. 1900?  
24 A. 1910.  
25 Q. 1910?

1 A. Probably 1910.

2 Q. Let's see. I think have a copy of....

3 JOAN NELSON: There must be titles and stuff,  
4 grant deeds.

5 MR. NEARY: Yeah, I've got the deed here.

6 Q. I'm looking at a deed that was recorded on  
7 March 20th, 1998 [sic], from -- to a J.L. Dowling.

8 A. Okay. I first said 1900.

9 Q. And then we know that Mr. Waldteufel -- how do  
10 you say it?

11 A. "Waldteufel."

12 Q. "Waldteufel." Owned it in 1914. But it  
13 appears -- I also have a deed here that, in 1917, he  
14 sold it to a gentleman by the name of T.G. Roberts.

15 Do you recognize that name?

16 A. Mr. Waldteufel sold it? Or Mr. Dowling?

17 Q. Mr. Waldteufel sold it to Mr. Roberts in 1917;  
18 and then Mr. Roberts, the following year, sold it to  
19 Mr. Dowling?

20 A. Oh, okay. It was in 1918, then when  
21 Mr. Dowling bought it.

22 Q. Right. Do you remember Mr. Dowling?

23 A. Oh, yes. Yes. And his son Carl.

24 Q. Do you know what business Mr. Waldteufel was  
25 engaged in?

1 A. Not for sure, I don't. Not for sure.

2 Q. Did you ever see him in the vicinity of your  
3 home? Was he -- did he live on the property?

4 A. No.

5 Q. Okay.

6 A. I don't think so. No, I never did -- I don't  
7 remember ever seeing him.

8 Q. Okay. Do you know where he lived?

9 A. I thought he lived in Ukiah.

10 Q. Okay. But you don't have any idea what  
11 business he was engaged in or...?

12 A. I don't, at this point, no, not for sure. All  
13 I knew about him, really, is what my father told me.

14 Q. Do you remember what your dad had told you  
15 about him?

16 A. I don't remember what business he told me he  
17 was in.

18 Q. Do you remember anything else about him?

19 A. Well, it seemed like he was -- it seemed like  
20 I can remember that he was a businessman, and I'm not  
21 sure whether he was a farmer or not. But I think he  
22 was a businessman.

23 Q. Okay.

24 A. But I don't know what business.

25 Q. Okay. What about Mr. Dowling; you knew

1 Mr. Dowling?

2 A. I knew Mr. Dowling. He was the farmer on that  
3 piece of property.

4 Q. We're talking -- I've brought some maps here,  
5 or aerial photographs, also.

6 If we could mark this Exhibit A.

7 (Exhibit A was marked.)

8 BY MR. NEARY:

9 Q. I'm showing you Exhibit A, which is an aerial  
10 photograph of the vicinity of where we are now. It was  
11 taken in 1993, so it's probably a little bit out of  
12 date.

13 But what I'm going to do is I'm going to show  
14 it to you and see if you can orient yourself.

15 A. This is 1993?

16 Q. Right. For starters, do you see where your  
17 house is on this, the approximate area?

18 JOAN NELSON: I'm looking for the five houses  
19 in a row.

20 FLOYD LAWRENCE: I haven't located it very  
21 well yet. I'm looking for the....

22 JOAN NELSON: Is this the bridge?

23 FLOYD LAWRENCE: For the Lake Mendocino Drive  
24 road.

25 MR. NEARY: Right. I think that this is the

1 bridge across the river.

2 JOAN NELSON: Right there. Isn't that the  
3 bridge right there, Dad?

4 FLOYD LAWRENCE: Well, I've been looking at  
5 that but this looks too crooked.

6 JOAN NELSON: This looks like your old  
7 vineyard right here. Because there's the river. So  
8 your house would have to....

9 FLOYD LAWRENCE: I'm looking at the bridge  
10 here.

11 MR. NEARY: Right.

12 JOAN NELSON: Wouldn't that be your old  
13 vineyard?

14 FLOYD LAWRENCE: And this would be the river.

15 MR. NEARY: Right.

16 FLOYD LAWRENCE: Okay. Then that begins to  
17 make a little bit of sense.

18 JOAN NELSON: Okay. Maybe over here, then.  
19 Because that wouldn't be the vineyard.

20 FLOYD LAWRENCE: If this were the case, then  
21 this would be the property, the Dowling property, then.  
22 In here.

23 MR. NEARY: The Dowling property would be in  
24 here?

25 JOAN NELSON: In here?

1 FLOYD LAWRENCE: No.

2 JOAN NELSON: If that's the bridge.

3 FLOYD LAWRENCE: If that's the bridge, it  
4 would be like this. The river, over here to the west,  
5 come down over here. And the Dowling property, then,  
6 would be on this side of the river over here.

7 JOAN NELSON: Yeah, that looks right to me.

8 MR. NEARY: Okay.

9 FLOYD LAWRENCE: That would be the Dowling  
10 property. That's where all of the houses are now, is  
11 over here.

12 JOAN NELSON: Isn't that right? If you turn  
13 it like this, facing you. If you turn it like this,  
14 this is the bridge.

15 MR. NEARY: Right.

16 JOAN NELSON: You would be going on Lake  
17 Mendocino Drive, this would be Lake Mendocino Drive.  
18 This would be the Dowling property.

19 MR. NEARY: Isn't this where all of the houses  
20 are?

21 JOAN NELSON: No. They're over here.

22 MR. NEARY: Okay.

23 JOAN NELSON: I'm sure it's right here. If  
24 that's the bridge.

25 MR. NEARY: Okay.

1 JOAN NELSON: Do you have any other maps?

2 MR. NEARY: Well....

3 JOAN NELSON: You think it's this, you think  
4 it's reversed? You think it's over here?

5 MR. NEARY: Yeah.

6 (Exhibit B was marked.)

7 MR. NEARY: This is Exhibit B. I'm showing  
8 you Exhibit B, which has the property that was owned by  
9 Mr. Waldteufel outlined. Of course, you've lived here  
10 all your life. I....

11 JOAN NELSON: That looks more like this piece  
12 here.

13 MR. NEARY: I've just driven by here.

14 FLOYD LAWRENCE: I'm just having a little bit  
15 of trouble with this. The river is definitely on the  
16 west of where we are.

17 JOAN NELSON: Okay, Dad. If you put the map  
18 like this, upside down, and the river and the bridge is  
19 there, then that would make this area Waldteufel's.  
20 Which looks more like this. Because here's all of  
21 the -- here's old Carter's property.

22 MR. NEARY: First of all, Mr. Dowling's  
23 property, that was previously owned by Mr. Waldteufel,  
24 is located on the west side of the Russian River.

25 JOAN NELSON: Right.



1 FLOYD LAWRENCE: It's on the west, right.

2 BY MR. NEARY:

3 Q. And you live on the east side.

4 A. Right.

5 Q. So the -- if you look at the bridge here,  
6 this -- the bridge would show -- to the left would be  
7 west.

8 A. Okay. Now, which way have you got it turned  
9 now?

10 Q. Just like this. I think this would be the way  
11 that makes the most sense, with this being north.

12 Here's Highway 101 over here, going  
13 north/south. The railroad is -- excuse me. That's the  
14 railroad and here's Highway 101.

15 A. This would be the river.

16 Q. Right.

17 A. It's north and south.

18 Q. Right. Generally.

19 A. Yeah, the river runs almost true north and  
20 south.

21 Q. Okay. So --

22 A. Outside the little turns, you know.

23 Q. Okay. So the west side of -- if this is north  
24 and south, the west side would be to the -- to your  
25 left, and you live on the east side, up in here

1 someplace.

2 A. You're saying this is north?

3 Q. Yes.

4 A. That would be -- if that were the case, this  
5 being the river north and south, this being the bridge,  
6 then the Dowling property would have to be right in  
7 here.

8 Q. Okay.

9 A. Which would be south of Lake Mendocino Drive  
10 and west of the river.

11 Q. Okay.

12 A. If this was the bridge, then this would be  
13 Lake Mendocino Drive.

14 Q. Right.

15 A. And south of the river would be -- I mean,  
16 south of Lake Mendocino Drive would be over here and  
17 west of the river would be....

18 JOAN NELSON: South of Lake Mendocino Drive?

19 FLOYD LAWRENCE: What?

20 MR. NEARY: Let's go off the record for a  
21 moment.

22 (Off the record.)

23 MR. NEARY: Back on the record.

24 Q. Would you take -- with this pen, just draw an  
25 arrow to where you were born.

1           A.    I need to double-check again to make sure  
2 because this is a permanent situation. This is north  
3 and south, this is the river, this would be the bridge.  
4 And, in that case, I would have been born right in  
5 here.

6           Q.    Why don't you put a big circle around it.

7           A.    A circle?

8           Q.    Yeah. A big circle so we....

9           A.    Is that big enough?

10          Q.    Let's see. It's got to be able to stand out.

11                Okay. That's good enough.

12                And the Dowling property was across the river,  
13 on the other side of the bridge, from your property.

14          A.    Right. And south of the road. Which, at that  
15 time, was Highway 20.

16          Q.    Okay. Now I'm showing you Exhibit B, which is  
17 the same -- has the same orientation as Exhibit A. The  
18 top of the -- where it says "Northwestern" shows where  
19 the railroad goes, and it shows Highway 101 going down  
20 from -- you know, from the top to the bottom.

21          A.    So this is -- wait. Is this the forks of the  
22 road? This is the forks. I was referring to the forks  
23 over there.

24          Q.    Right. Well, who knows what --

25          A.    So I'm just wondering what they mean here by

1 "The Forks."

2 Q. That's probably just what somebody wrote on  
3 the map. But here's the Russian River as it goes by the  
4 Dowlings'?

5 A. So this is the forks of the river.

6 Q. Right.

7 A. Here's the east branch and this would be  
8 the....

9 Q. West branch.

10 A. The west branch. Kind of lose it here.

11 Q. If you look on the aerial photograph, you'll  
12 see where the two rivers come together?

13 A. Yeah. But when you look at it here, it  
14 doesn't make sense if this is the....

15 Q. You're turning it again. You've got to keep  
16 it north to south to keep the same orientation.

17 A. Okay. Then this right here would be the west  
18 branch, then.

19 Q. Right. You can see it comes around here. And  
20 that shows the general outline of the Waldteufel/Dowling  
21 property.

22 A. Let's see now. This is not the same as --  
23 this was north on that map.

24 Q. Right.

25 A. But it would be south on this map.

1 Q. Okay.

2 A. Correct?

3 Q. No. The freeway is always off to the west.

4 See, here's the freeway, and here's the railroad, and --

5 A. This is south.

6 Q. You're not seeing the entire photograph in  
7 this map, but the river comes around like this.

8 A. Yeah. This goes up into -- it used to go  
9 right through the middle of where the lake is now.

10 Q. Okay.

11 A. So it drains the lake out -- this is the east  
12 fork. So then this would be west fork here.

13 Q. Right.

14 A. I don't know what that's supposed to be. That  
15 looks -- they're showing that as being a part of this,  
16 like a part of that river.

17 Q. Well, this is Lake Mendocino Drive.

18 A. Oh.

19 Q. And you'll see the bridge is there and the  
20 bridge is there.

21 A. This is Lake Mendocino Drive?

22 JOAN NELSON: Here.

23 BY MR. NEARY:

24 Q. Okay. So all -- I'm just trying to orient you

25 to --

1 A. This map is disorienting me.

2 Q. Oh, really?

3 A. Yeah. Because, if this is the highway....

4 Q. Right.

5 JOAN NELSON: 101.

6 FLOYD LAWRENCE: Yeah. 101. So then you have  
7 to go this way to get over here to the east fork of the  
8 river so you've got to have -- if this is what is now  
9 Lake Mendocino Drive, if that's what this represents.

10 BY MR. NEARY:

11 Q. Right.

12 A. Is that what you think it is?

13 Q. Right.

14 A. Okay. Then you have to have a bridge that  
15 crosses the river.

16 Q. Yeah, there's no bridge shown on there, but it  
17 obviously crosses the river right there. The west fork.  
18 When Lake Mendocino Drive crosses the Russian River, it  
19 crosses the west fork of the Russian River.

20 A. That's right. That's right. It crosses the  
21 west fork, but they don't show that here.

22 Q. Well, it's hard to see, but if you follow this  
23 line here, this is the river, the west fork, and it's  
24 going around like that. You almost can't see --

25 A. You can't see it.

1 Q. But the west fork follows the eastern boundary  
2 of the Waldteufel property. So this is -- you know, the  
3 "Lot 103" that is shown on that map, the eastern  
4 boundary of that property is the contour of the river.

5 A. Right.

6 Q. As you can see from here.

7 A. This would....

8 MR. NEARY: Let's go off the record.

9 (Off the record.)

10 MR. NEARY: So back on the record.

11 Q. I've shown you Exhibit A and Exhibit B to --  
12 Exhibit A being an aerial photograph of the vicinity  
13 that we're in right now and Exhibit B is a map depicting  
14 the same -- generally the same property that's covered  
15 by the aerial photograph.

16 Now, we've identified the Waldteufel property.  
17 Do you remember there being a pump on the  
18 Waldteufel/Dowling property?

19 A. Oh, definitely.

20 Q. Okay.

21 A. Definitely.

22 Q. Can you draw a circle on --

23 A. Where the pump would have been?

24 Q. Yeah; I'm going to have you put it on  
25 Exhibit C, which is a....

(Exhibit C was marked.)

1

2 FLOYD LAWRENCE: Let me get myself oriented  
3 again.

4 MR. NEARY: North is at the top.

5 JOAN NELSON: Here's where you would have been  
6 born.

7 FLOYD LAWRENCE: Okay. This is the river.  
8 And this being the bridge here. I would say I'll be  
9 close.

10 BY MR. NEARY:

11 Q. Okay. Just put a big circle in the general  
12 area.

13 A. It would be right in here. Is that okay? Can  
14 you see that all right?

15 Q. Why don't you just draw a line from the middle  
16 of the circle out to the margin, just so we can call  
17 attention to it.

18 A. Put "Pump" out there?

19 JOAN NELSON: Out to the margin.

20 FLOYD LAWRENCE: It wasn't a very good circle  
21 because I can't even find it. Write "Pump" there?

22 BY MR. NEARY:

23 Q. Right.

24 A. Okay.

25 Q. When was the first time you saw that pump?



1           A.   Probably when I was about three years old. We  
2   used to swim down there right where the pump was.

3           Q.   Was that the best place to swim along the  
4   river?

5           A.   Yeah. It was one of the few places where  
6   there was a nice big hole. It was a big hole in there.

7           Q.   And what do you --

8           A.   The water was about eight feet deep.

9           Q.   What do you remember about the pump?

10          A.   It was -- I remember the pump was an old-style  
11   pump with a gasoline engine. And, as I can recall, the  
12   pipe that left that pump was -- it was either eight or  
13   ten inches in diameter. And it went out into the west  
14   side of his house and he irrigated that by flood  
15   irrigation.

16          Q.   So Mr. Dowling actually lived on the property?

17          A.   Yes. Yes, he lived there.

18          Q.   So, just for purposes of simplicity, we'll  
19   refer to the property as "the Dowling property" from now  
20   on.

21          A.   Okay.

22          Q.   Did you ever see the pump running?

23          A.   Yes. I heard it running many, many times.

24          Q.   Okay.

25          A.   Because it was an old gasoline, noisy engine.

1 Q. How big was the pump?

2 A. I think it -- I think it was a six-inch  
3 diameter pump.

4 Q. Okay.

5 A. Six-inch suction line. Either six or eight.

6 Q. Do you know the make of the pump, by any  
7 chance?

8 A. No. No, I wouldn't know that.

9 Q. Do you know whether the -- how long the pump  
10 was there? Or do you know when it was taken -- when the  
11 pump was taken away?

12 A. There was a pump there. And when that one  
13 left, there was another pump put right in its place.  
14 There was a pump there for -- oh, at least 50 years in  
15 that area.

16 Q. Okay. Now, did you know Chet Wood?

17 A. Yes.

18 Q. And did he use a pump to pump water?

19 A. He pumped water with that same pump.

20 Q. Okay. Now, did -- let's just talk a little  
21 bit about the Russian River.

22 You've lived on this river essentially all of  
23 your life. Did the east fork and the west fork always  
24 come together at the place that's depicted on Exhibit A?

25 A. On the same place, yes. It always came

1 together at the same place. The same place that they  
2 do now.

3 Q. Okay. And have you ever -- before the Coyote  
4 Dam was put in, did the east fork ever go dry, to your  
5 knowledge?

6 A. Not totally dry, but it got down real low.

7 Q. Do you remember what year that would have  
8 been?

9 A. Well, the time I was a kid. I can't remember  
10 for sure when they built the dam up in Potter Valley.  
11 When they built the dam up there and brought the water  
12 through the mountain, then they had more water that  
13 came down that east branch. I can recall that, when --  
14 the way they used to let the water in, it didn't flow  
15 the same all of the -- every 24 hours.

16 Q. I see.

17 A. They let the water through to generate  
18 electricity, and into the Potter Valley area. And then  
19 the water would flow heavier when it came through.

20 But there was -- prior to that and even during  
21 that part of the day, the water would get down quite  
22 low on the east branch. The west branch at that time  
23 actually had more water in it than the east branch.

24 Q. Really?

25 A. Yeah.

1 Q. Before the Potter Valley --  
2 A. Before water came in from the Pillsbury Dam.  
3 Q. Really? Do you ever recall the west fork  
4 going dry?  
5 A. No, but I saw it get pretty low.  
6 Q. Do you remember when was the point when -- you  
7 know, the year, the approximate year, of the lowest  
8 point of the west fork?  
9 A. No. I really don't. I don't have anything to  
10 tie it to at this point.  
11 Q. Okay. You don't remember when there was any  
12 droughts in this area?  
13 A. I don't remember the years. I can remember  
14 when it got down real low, but I can't tell you --  
15 Q. What do you recall about that? How low did it  
16 get? Anything to peg it to?  
17 A. It got down to where the water was in the  
18 holes and running from hole to hole in the gravel.  
19 Q. I see.  
20 A. There would be spots where you could walk  
21 across and have dry feet.  
22 Q. I see. And in terms of -- can you --  
23 sometimes it's hard to peg things in terms of time, but  
24 would this point have been in the last 30 years or last  
25 50 years? Was it back when you were a young man or was

1 it when you were middle aged?

2 A. When I was a kid. So it definitely was not in  
3 the last 40 years.

4 Q. So after you were, you know, over 21, it  
5 didn't ever run dry.

6 A. I don't think it ever got that dry after that,  
7 after I was 21.

8 Q. So it was in your adolescence --

9 A. Right.

10 Q. -- that this occurred. So that would have  
11 been back in the '30s. And I believe there was a  
12 drought cycle in the '30s.

13 A. In the '30s, had to be in the '30s.

14 Q. Okay. And then in 1976 and 1977, there was  
15 another substantial drought in this area. Do you  
16 remember that?

17 A. I don't remember -- I really don't remember  
18 anything about the river because, as we're sitting  
19 here, I don't remember what I was doing at that  
20 particular time.

21 Q. Okay. When did you retire?

22 A. 24 years ago.

23 Q. And so how old are you today? I could  
24 probably do the math, but....

25 A. I'm -- I'll be 92 on the 30th of November.

1 Q. Wow! So you retired in your late 60s?

2 A. Yes. Late what?

3 Q. Late 60s.

4 A. No. It wouldn't be then, because I've been  
5 retired 24 years. You take -- it would have to be in  
6 the '80s.

7 Q. Well -- in the 1980's.

8 A. Yes.

9 Q. Yeah, that would be about 20 years ago, 23  
10 years ago. So the --

11 A. I think it was '87, I think.

12 Q. Okay. When Mr. -- when was the first -- your  
13 first memory of there being any agricultural activity on  
14 the Waldteufel/Dowling property?

15 A. As far back as I can remember, that area west  
16 of the house was in alfalfa. And he used to -- he  
17 would cut the alfalfa -- you know, cut several crops,  
18 three or four crops, of alfalfa. Of course, everything  
19 was done with horses in those days.

20 Q. What was the earliest -- so the earliest that  
21 you remember there being alfalfa was as far back as you  
22 can remember?

23 A. As far back as I can remember, it was in  
24 alfalfa.

25 Q. Okay. So if Mr. Dowling bought it in 1913,

1 you would have been about four years old, so do you --  
2 but you think that you might have seen that pump on the  
3 river as early as before Mr. Dowling bought it, when you  
4 were about three?

5 A. No, probably -- I was probably five or six  
6 years old when I saw that pump.

7 Q. Okay. All right.

8 A. That I can remember back.

9 Q. Do you think that, your first memories as a  
10 child, that there was agricultural activity on the  
11 Dowling property?

12 A. Yes, definitely.

13 Q. And does your memory go back prior to five or  
14 six?

15 A. I can't -- I couldn't conscientiously tell you  
16 that.

17 Q. Okay. So --

18 A. I don't have anything to tie it to.

19 Q. Sure. Have you ever been on the Dowling  
20 property?

21 A. Yes.

22 Q. How did that come to be?

23 A. I even shocked hay on the Dowling property.

24 Q. So you worked for Mr. Dowling?

25 A. I worked for him as a kid. I can't tell you

1 at what age. Probably 12 or 14, or something like  
2 that. A couple of times, I remember shocking hay for  
3 him.

4 Q. And what does "shocking hay" mean?

5 A. Well, that means it's been raked in one row  
6 and you go in with a pitchfork and put it in little  
7 stacks where it cures. That's what they call shocking.

8 Q. I see.

9 A. It's like about what you could pick up with  
10 one big forkful.

11 Q. I see. So did Mr. Dowling, to your  
12 knowledge -- do you know how long Mr. Dowling owned the  
13 property?

14 A. No, I don't. I really don't. I can't think  
15 of who he sold it to for sure.

16 Q. Do you know whether Mr. Dowling is still  
17 alive, or any of his children?

18 A. Oh, no. No, he's not alive.

19 Q. Any of his children still in the area?

20 A. No. Not to my knowledge.

21 Q. Okay.

22 A. None of his relations are still in the area.

23 Q. I see. Did there come a time where you ever  
24 saw any agricultural crops other than alfalfa being  
25 grown on the property?



1           A.    Yes.  On the -- there was a narrow strip east  
2 of the house, between the house and the river, there  
3 was a narrow strip in there that had pear trees in it.  
4 There was a pear orchard in there.  I can't -- I've  
5 been trying to think whether that orchard was there  
6 when I first remembered it, you know, when I first  
7 remembered the Dowling property, but that part was not  
8 in alfalfa.  It was in a pear orchard.

9           Q.    Okay.  And can you give me an estimate of how  
10 many trees?  A hundred trees?  300 trees?

11          A.    I would think, just estimating, it was  
12 probably between three and four acres.

13          Q.    Okay.

14          A.    Was in pears.

15          Q.    Now, there's obviously no pear trees there  
16 now.  Do you know when the pear trees were removed?

17          A.    I can see -- I can see when they were removed,  
18 but I don't have anything to tie it to as to the years.

19          Q.    Okay.  So you worked there when you were a  
20 child --

21          A.    Yeah.

22          Q.    -- on the Dowling property.  You worked  
23 directly for Mr. Dowling?

24          A.    Yes.

25          Q.    And is there any other times you've been on

1 the property other than when you worked for Mr. Dowling  
2 when you were a kid?

3 A. I picked pears on it, too.

4 Q. Again, for Mr. Dowling?

5 A. No, I think it was for the party that he sold  
6 the property to.

7 Q. And you don't remember his name?

8 A. I don't remember the name, no.

9 Q. But we'll just refer to him as "Mr. Dowling's  
10 buyer." Do you have a -- can you approximate when  
11 Mr. Dowling sold the property?

12 A. I really and truly can't.

13 Q. Okay. Did Mr. Dowling ever have any crops  
14 other than alfalfa, as far as you know? And pears on  
15 the property.

16 A. Yes. There was a strip of land between the  
17 pear orchard and the river, and he used to raise oat  
18 hay in there.

19 Q. I see. About how many acres, would you say?

20 A. It was about the same area where the -- the  
21 oat hay was about the same size as the pear orchard.

22 Q. Okay. Any other crops besides oat hay, pears  
23 and alfalfa during --

24 A. Not that I remember.

25 Q. Okay. When Mr. Dowling's buyer bought the

1 property, did he change the use of the property in any  
2 way?

3 A. It later got put into -- the area that was in  
4 alfalfa got put into vineyard.

5 Q. Okay.

6 A. But I can't -- it was not Mr. Dowling that put  
7 it in, it was somebody else. And I've been trying to  
8 think of the name, and I haven't been able to think of  
9 it.

10 Q. I might have it here.

11 JOAN NELSON: Roberts, didn't you say? Did  
12 you say Roberts?

13 MR. NEARY: Roberts is the one who bought it  
14 from Waldteufel.

15 JOAN NELSON: Oh.

16 FLOYD LAWRENCE: It wasn't Roberts.

17 JOAN NELSON: It wasn't Wood.

18 MR. NEARY: Let's just go off the record for a  
19 minute.

20 (Off the record.)

21 MR. NEARY: Back on the record.

22 Q. Does the name Miller refresh your  
23 recollection?

24 A. Miller had the property north of the highway.

25 Q. North of the highway.

1 A. Yeah.

2 Q. North of what highway?

3 A. North of Lake Mendocino Drive.

4 Q. Okay.

5 A. That hill property and the area next to the  
6 river. That was the Miller property.

7 Q. Okay. Were you aware that Mr. Dowling had  
8 sold some of his property to Mr. Miller?

9 A. No.

10 Q. Okay.

11 A. I don't remember that.

12 Q. Okay. And you knew Robert Wood?

13 A. Yes.

14 Q. Do you know approximately when he bought this  
15 property? Mr. Wood bought the property that we've been  
16 referring to as "the Dowling property." Is that right?

17 A. He bought the Dowling property, yes. But I'm  
18 trying to think who he bought it from. He bought it  
19 from the party that used to raise string beans on it.

20 Q. Okay. What I'm trying to figure out is all of  
21 the crops that you remember being grown on that  
22 property, on the Dowling property.

23 A. It goes back to alfalfa, Bartlett pears, oat  
24 hay, and then it was in vineyard, and --

25 She watches my weeping nose. Another thing

1 you have when you get older. They call it the golden  
2 years, but that's the wrong name for it.

3 I mentioned the grapes.

4 Q. Right.

5 A. And the string beans. And they sold the  
6 string beans to a cannery over in Upper Lake.

7 Q. Okay.

8 A. I remember that. The one that used the most  
9 water, however, was the alfalfa, because he flood  
10 irrigated it.

11 Q. And do you know where he sold the alfalfa?

12 A. Oh, he sold -- everything around here at that  
13 time was -- if you had cattle, why they bought it for  
14 hay for the cattle. Or it got -- the hay got baled and  
15 sometimes shipped out. But when I say "shipped out,"  
16 it would be trucked out, like, to Lake County or south  
17 of Ukiah, various places.

18 Q. Okay.

19 A. But it never went very far.

20 Q. So the string beans, approximately how much of  
21 the Dowling property was in string beans?

22 A. I'm just making a guess on that now, and I  
23 would say between six and eight acres.

24 Q. And while string beans were being grown on the  
25 property, were there any other agricultural products

1 being grown on the property?

2 A. Yes; they still were growing hay on the  
3 property.

4 Q. And what about the vineyards? Were some of  
5 the vineyards still there?

6 A. No, I think all of the vineyards was gone at  
7 that time.

8 Q. I see. So it went to vineyards and then it  
9 went back to alfalfa at some point.

10 A. Well, not necessarily alfalfa. It could have  
11 been oat hay.

12 Q. I see.

13 A. Oat didn't take so much water.

14 Q. Okay. Do you -- when the vineyards were in,  
15 do you know what kind of irrigation practices were used  
16 on the Dowling property?

17 A. It was -- I didn't have -- they hadn't come  
18 out with the sprinklers yet at that point, so they  
19 watered it in a row, row watering.

20 Q. I see.

21 A. Surface watering.

22 Q. And so now, besides string beans, vineyards,  
23 Bartlett pears, oat hay and alfalfa, any other  
24 agricultural products?

25 A. None other that I can think of.

1 Q. Okay. And you, obviously, saw the housing  
2 development being put in --

3 A. Oh, yeah.

4 Q. -- over there. At the time the housing  
5 development was put in, was the property still in  
6 agricultural production?

7 A. Prior to that, yes. It had been just prior to  
8 that.

9 Q. So it was, until the houses -- you know, the  
10 housing construction started, it was all agricultural.

11 A. Agriculture, yeah.

12 Q. You know, just a long shot, but do you have  
13 any pictures of the area?

14 A. No. Didn't take many pictures in those days.

15 Q. Did you know Mr. Wood?

16 A. Yes.

17 Q. How well did you know him?

18 A. Oh, I knew him fairly well. Not real well.

19 Q. Do you have any recollection when he came into  
20 the area?

21 A. When he came?

22 Q. Right. I mean bought the Dowling property.

23 A. I don't have any recollection of the time, no.

24 You know, that property, used to get pretty well

25 flooded.

1 Q. In the wintertime?

2 A. Yes.

3 Q. From --

4 A. From high water.

5 Q. From the high water.

6 A. Yeah.

7 Q. When was the last time that you've seen that  
8 property flooded?

9 A. Well, let me think of the last name -- I'm  
10 trying to think the year now. Since I lived here. But  
11 the property just south, just borders that property to  
12 the south -- I can't think of the man's name right now  
13 that owned that. He had a dairy down there, and we'd  
14 had real high water, and he had to get his cows out of  
15 there.

16 JOAN NELSON: D.G. Thompson?

17 FLOYD LAWRENCE: No.

18 And he took his cows up to Thompson's property  
19 up on the hill to get them out of the water. And about  
20 two weeks later, we had another high water, and I went  
21 down to see if I could help him get his cows out. And  
22 he said, "No, Floyd." He said, "I can get the cows out  
23 alone, but I sure would like somebody to" -- he said,  
24 "I just got a big truckload of hay yesterday and they  
25 just put it down on the floor of the barn, on the dirt



1 floor." And when the water got up high and it came up  
2 through there, why it would get two feet or more deep  
3 and go right into his barn.

4 And he said, "I'd appreciate it if you could  
5 get that hay up in the loft of the barn." And I  
6 remember him saying, "There's an older man there that  
7 could help you."

8 So I went to work starting to get the hay up,  
9 and I remember, when I drove down there, I decided I  
10 don't want my car down here because it's going to get  
11 under water, so I drove it back up to the railroad --  
12 what is that bar up there?

13 JOAN NELSON: Pappy and Sid's Club?

14 FLOYD LAWRENCE: Yeah. I took my car up there  
15 and parked and walked back down to get the hay up. And  
16 by the time I got the hay up, the water was already  
17 coming through the field. It was coming down through  
18 the Dowling property. And there was kind of a little  
19 slough that went through there, and that was the first  
20 place the water run. And then, later, it covered the  
21 whole thing.

22 BY MR. NEARY:

23 Q. Is it possible that the west fork could flood  
24 again into where that housing development is?

25 A. They raised that. They raised the area where

1 the houses are.

2 Q. Uh-huh.

3 A. They raised that, I think, three feet.

4 Q. I see.

5 A. Somewhere between two and three feet. And, of  
6 course, the river, over the years, has cut down deeper.

7 Q. I see.

8 A. And which helps. But then putting in the  
9 dam --

10 Q. Right.

11 A. -- held the east fork back, so that gave the  
12 west fork a lot more area to flood into.

13 Q. I see. I see.

14 A. Because where the two came together, it  
15 started backing up.

16 Q. Right.

17 A. It backed up clear beyond -- right down below  
18 here.

19 Q. Now, do you know of any -- have you ever seen  
20 the gauging stations on the river, you know --

21 A. No.

22 Q. -- in the vicinity of the Dowling --

23 A. No, I haven't.

24 Q. The United States Geological Survey has had --  
25 maintained several gauging stations.

1           A.    I've not seen them on this river.  I've seen  
2 them in other creeks over the years, but I've never  
3 seen any on this river.  I was just going to tell you  
4 one more little thing that --

5           Q.    Sure.

6           A.    -- I can remember.  I'll never forget that.  
7 By the time I got the hay all up and started to get out  
8 of there, I started to walk back up the road, and I  
9 only went a little ways until I was in water.  And,  
10 finally, when I hit the -- where this water was deeper,  
11 it knocked me down, and I had to start swimming toward  
12 the railroad tracks to get out of the water.  And I  
13 ended up getting out of the water on the adjoining  
14 property to the south.

15          Q.    Wow!

16          A.    It took me downstream quite a ways.  And I was  
17 sure happy to get back on the railroad track.

18          Q.    So the Dowling property would flood, also,  
19 from time to time?

20          A.    Yes.  It flooded that time.  It flooded both  
21 of those times.  And I'd seen it flooded several times  
22 before.

23          Q.    Now, I want to just go back a little bit to  
24 the pump.  Do you remember what color it was?  The  
25 original pump you saw?

1 A. The original -- the original pump was just a  
2 metal collar, it was a big metal pump.

3 Q. Was it --

4 A. Belt-driven pump.

5 Q. Belt-driven pump.

6 A. The first one was. And, later on, then they  
7 had electricity there and they had an electric motor  
8 pump.

9 Q. Now, I'm trying to get an idea of the size of  
10 this pump. You know, say this dining room table is  
11 about four feet by two feet. Was it as big as this  
12 table?

13 A. The pump could have been longer than this  
14 width, which is four feet, but -- and it's set up about  
15 that high.

16 Q. So you're indicating about 36, 40 inches.

17 A. Something like that.

18 Q. Okay.

19 A. And it-- the amount of water that it pumped  
20 out where he had the irrigation on the west side, he  
21 had eight-inch -- eight-inch, what you call, slip joint  
22 pipe, which carried the water out into the field.

23 (Off the record due to interruption  
24 by the court reporter.)

24

25 //

1 BY MR. NEARY:

2 Q. So we're talking about the original pump on  
3 the Dowling property.

4 A. The pipe that went into the river was a  
5 six-inch cast-iron pipe, big heavy pipe that went down  
6 into the river, with a foot valve on it.

7 Q. And do you know -- do you remember when that  
8 pump was taken out and replaced with an electric pump?

9 A. No, I really don't. When we got electricity  
10 in the area. Let me think a minute. Let's see if I  
11 can remember my age when we got electricity. I imagine  
12 it happened at the same time.

13 I must have been at least 12 years old when we  
14 got electricity.

15 Q. Okay.

16 A. Up until then, our lights were kerosene lamps.  
17 I had to be at least 12 years old at that point.

18 Q. Okay. And did you -- did your father irrigate  
19 from the river at all at any time?

20 A. We had a -- irrigated the garden from the  
21 river.

22 Q. I see.

23 A. But it was probably something you've never  
24 seen, was a pump where you put a horse on it and they  
25 went around in a circle and had a big wheel about so

1 big that it had cogs on it. And as it went around,  
2 those cogs, the cog wheel drove a piston up and down.  
3 And we used to hook a horse to that and they'd go  
4 around and around. I can remember, I wasn't very big  
5 when I first sat down there and drove that horse  
6 around.

7 Q. Getting back to the pump. Is the electric --  
8 the gasoline pump, you said, made a lot of noise and you  
9 could hear it. Was the electric pump quieter?

10 A. Oh, yes. Yes. You didn't hear the electric  
11 pump.

12 Q. Okay. So did you ever see anyone working on  
13 the pump?

14 A. Not that I remember.

15 Q. I'm interested in -- anything you can remember  
16 about that pump might give me a clue of other places to  
17 look to find information about that pump.

18 A. I don't remember the name of it at all. I  
19 have a -- somewhat of a picture of the pump. And as I  
20 said, it had the cast-iron pipe that went into the  
21 river.

22 Q. How was the gasoline stored at the site?

23 A. How was what?

24 Q. Gasoline stored at the pump site? Or was it?

25 A. That, I don't remember.

1 Q. Okay. Do you remember seeing a gas tank there  
2 or...?

3 A. I don't recall.

4 Q. Now, is there anyone else in this vicinity  
5 that is as old as you that's been around?

6 A. They're all gone.

7 Q. They're all gone, you outlived everybody.

8 A. Yeah.

9 Q. When did you build this house that we're in  
10 right now?

11 A. '47.

12 Q. So that's when you came back from the War.

13 A. Yeah after I came back, yeah. I got married  
14 in '48, lived here ever since.

15 I was -- the wife and I was -- knew we were  
16 going to get married when I built the house because I  
17 drew -- I remember drawing the plans and showing them  
18 to her to see if she was happy with it. And I remember  
19 one of the things she said, that she wanted lots of  
20 windows. So this house has more windows than normal.

21 Q. Did you build it, yourself?

22 A. Oh, yeah, yeah.

23 Q. So the -- what about the development in the  
24 area here. When you were born, were there many other  
25 houses out in this area?

1 A. No, there wasn't.

2 Q. What was the closest house to your parents'  
3 house?

4 A. Well, actually, in footage, probably the  
5 Dowling house was about the closest one. The next one  
6 would have been my grandfather, who lived on the --  
7 when you came up my road there, there's a road to the  
8 left.

9 Q. Right.

10 A. That went up to where my grandfather lived.  
11 And -- no, the Dowling house would actually have been  
12 closer than my grandfather's house.

13 Q. And it was your grandfather who came here in  
14 1967?

15 A. Oh, he was here before that. Let's see. No.  
16 He came after my father did. He came after my father.  
17 He came out here in a covered wagon from Iowa.

18 Q. And where did he settle, what area of  
19 California?

20 A. Right here.

21 Q. Oh, okay.

22 A. Right here. He owned this area in through  
23 here, north of where my father's property was. And it  
24 went back, he had -- I think he had 80 acres, I think.

25 Q. So there was -- was there any development at



1 all, commercial activity, at the forks when you were a  
2 kid?

3 A. There was just a little store there.

4 Q. Okay. And do you remember when the Lake  
5 Mendocino bridge was built? The Lake Mendocino Drive  
6 bridge?

7 A. Oh, yes.

8 Q. And when was that built?

9 A. You asked me if I remembered when it was  
10 built; but remembering the year that was is something  
11 else.

12 I was about -- let's see. It was before --  
13 quite a little while before the dam was built. The  
14 dam, I think, is -- the lake is 40 years old, I think.  
15 So....

16 Q. So it was built about the same time?

17 A. Prior.

18 Q. Was it replacing an earlier bridge that was  
19 there?

20 A. Yeah. The earlier bridge was a wooden bridge.

21 Q. I just want to turn your attention -- I'm  
22 almost done here.

23 I want to turn your attention back to  
24 Exhibit B. If this -- if we establish that this is the  
25 Dowling property, would this have been your house that

1 you were born in that's just across the river?  
2 A. Let's see now. Again, this was south.  
3 Q. Right.  
4 A. This is the river.  
5 Q. This is Lake Mendocino Drive.  
6 A. Okay. And this -- the bridge would had to  
7 have been....  
8 Q. Probably right about here.  
9 A. It doesn't show the river, but right in here.  
10 So right about in here it would have been.  
11 Q. Okay. Would you draw a circle around where  
12 you think the house was that you were born in.  
13 A. (Witness complies.)  
14 Q. And so that's almost immediately across the  
15 river from --  
16 A. Right.  
17 Q. -- where the pump was.  
18 A. Right. Well, no. The pump was downstream.  
19 Q. About how far?  
20 A. Oh, three -- probably 400 yards down there.  
21 Q. Okay.  
22 A. It would be 1200 feet downstream.  
23 Q. Okay.  
24 A. Excuse me a minute. I've got to run to the  
25 bathroom.

1 Q. Sure. Off the record.

2 (Off the record.)

3 BY MR. NEARY:

4 Q. Okay. Now, I'm just going to give you a  
5 chance to -- I'm just going to ask sort of a global  
6 question. Is there anything else that you remember  
7 about the Dowling property that might be of use to us  
8 that I haven't asked?

9 A. No.

10 Q. Okay.

11 A. I can't think of anything.

12 Q. The one thing that you've told me here today  
13 that surprised me, and maybe I can ask you just a little  
14 bit more about this, is that the west fork had more  
15 water in it, typically, than the east fork when -- prior  
16 to the construction of the Potter Valley Dam.

17 A. Prior to the construction of the --

18 Q. The Pillsbury Dam.

19 A. -- Potter Valley -- Pillsbury Dam, when the  
20 water came through a tunnel and came down through  
21 Potter Valley.

22 Q. So the -- is there a way you can quantify  
23 that? I mean, is it just, you know a little bit more  
24 or -- did the east fork ever go dry, for example?

25 A. I never saw it totally dry, but I saw it down

1 real low.

2 Q. Lower than the west fork?

3 A. At the time -- there were times when it would  
4 be lower than the west fork.

5 Q. Do you remember when the worst flooding was in  
6 this vicinity, approximately what year it would be?

7 A. I'm trying to think here. I used to have this  
8 flat down there in permanent pasture, and a neighbor  
9 across the river had cattle in there. One year, one  
10 winter we had a lot of rain, and I remember asking  
11 him -- calling him and asking him if he didn't think  
12 maybe he should get his cattle out of there before that  
13 day, because there was a big storm predicted ahead.

14 And he said that he -- the river is too high  
15 to try to bring them across the river, they'll drown.  
16 And so, the next morning, there was just a little  
17 island, it was a slough that came closer to this bank,  
18 so that the ground was higher in the middle of the  
19 field and there was an island in there.

20 And it was probably -- it wasn't probably over  
21 half an acre that wasn't flooded.

22 Q. Wow!

23 A. And so I remember borrowing a horse from the  
24 neighbor, because I didn't have horses then, I borrowed  
25 a horse from the neighbor to go in and go across this

1 slough, over to that island to see if I could get those  
2 cattle out. Because I had a corral down there where  
3 you first started up the hill, where the mailboxes are.

4 Q. Right.

5 A. Just over the bank, I had a corral in there.  
6 And if I could get them in there, I could put them in  
7 that corral. And I remember getting wet clear up to  
8 here before the horse raised up and swam.

9 Q. You're indicating up to your breast?

10 A. Yeah, yeah. This horse just kept raising its  
11 head up and wading. And, finally, when it decided to  
12 swim, right then the water went back down clear down to  
13 here. I was sitting on the horse, of course.

14 And -- let's see. That -- I can't tell you  
15 the exact year, but that would have had to have been  
16 about 40 years ago.

17 Q. Okay. Well, I really appreciate your taking  
18 the time to talk to me today. I want to make sure we  
19 get all of these exhibits.

20 A. I hope I helped you.

21 Q. You did. I've learned a lot.

22 (Sworn Statement of FLOYD  
23 LAWRENCE concluded at 11:20 a.m.)  
24  
25

1 REPORTER'S CERTIFICATE

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State of California )  
County of Sonoma ) ss.

I, LUEL J. SIMSON, CSR No. 4720, a Certified Shorthand Reporter of the State of California, hereby certify:

That I was present at the above-mentioned proceedings; that I took down in shorthand notes all proceedings had; that I thereafter transcribed said shorthand notes into typewriting; that the foregoing is a full, complete and accurate transcription of all proceedings had.

Dated: August 24, 2006.

\_\_\_\_\_  
LUEL J. SIMSON  
Certified Shorthand Reporter  
State of California

TRANSMISSION VERIFICATION REPORT

TIME : 05/23/2006 10:30  
NAME :  
FAX :  
TEL :  
SER.# : BROK2J720013

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

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OK  
STANDARD  
ECM

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
TELECOPY TRANSMISSION COVER SHEET

DATE: May 23, 2006  
TO: Lee Howard  
FAX #: (707) 462-6944  
FROM: CHARLES RICH  
Desk #: (916) 341-5377

6 PAGES (INCLUDING COVER SHEET) TO BE TRANSMITTED

MATERIAL TRANSMITTED: Copy of April 24, 2006 letter from Millview County Water District with enclosures responding to complaint by Lee Howard against Thomas Hill.

Note: If you do not receive all of the pages, please call (916) 341-5377

**STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS**

**TELECOPY TRANSMISSION COVER SHEET**

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**Note:** If you do not receive all of the pages, please call (916) 341-5377

**FAX NUMBER FOR THE DIVISION OF WATER RIGHTS:** (916) 341-5400



CAR

S0002

**Millview County Water District**  
3081 North State Street  
Ukiah, California 95482  
Phone (707) 462-7229  
Fax 462 8327  
E-mail [millview@saber.net](mailto:millview@saber.net)

24 April 2006

Mr. Charles A. Rich  
State Water Resources Control Board  
Division of Water Rights  
Complaint Unit  
PO Box 2000  
Sacramento, California 95812-2000

Subject: Reply 363:CAR:262.0(23-03-06)

Dear Mr. Rich,

In response to your recent letter regarding a complaint of Water use under pre 1914 statement # S000272 the following will address each of your questions sequentially.

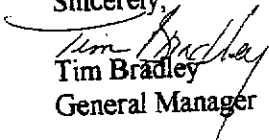
- A) To the best of our knowledge Mr. Hill and Mr. Gomes firmly believe they are the legal owners of the pre 1914 water right S000272 as described and originally filed with the Mendocino County Recorder by J.A. Waldeufel, March 24, 1914.
- B) Water is diverted from the Russian River under S000272 in the amount indicated on the Supplemental Statement of Water Diversion and Use dated June 10, 2005 during the months of May through November. The point of diversion is located North 556,508 feet and East 1,660,210 feet of the California coordinate system Zone 2 being within the NE 1/4 of the SE 1/4 of projected Section 5 T15N, R12W MDB& M.  
The water diverted is used upon lands as described in the original statement filed with the county recorder March 24, 1914 by J. A. Waldeufel, for domestic use, supplying 125 single family homes constructed by Mr. Gomes and Creek Bridge Homes. Map attached as Exhibit A.

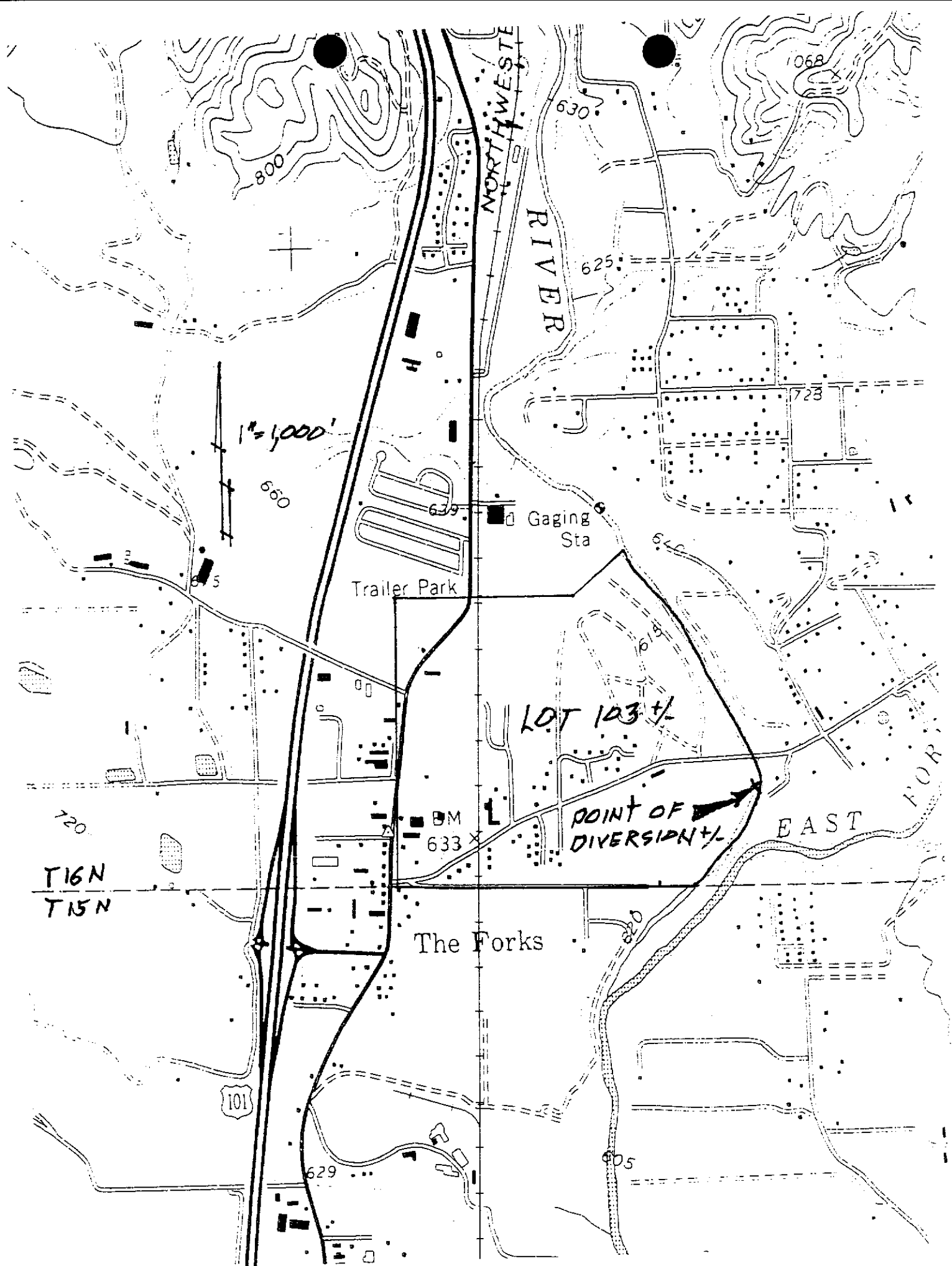
- C) In the lease agreement attached to your letter, Mr. Hill and Mr. Gomes granted, conveyed and assigned all right, title, and interest to the water right S000272 to the District. Excepting a collective reservation of 125,000 gallon per day for use by Mr. Hill and Mr. Gomes or their assignees.  
It is our understanding the reservation was divided and one share deeded to each home constructed by Creek Bridge.
- D) The District has no knowledge of Mr. Hill and Mr. Gomes having sold any portion of the claimed right.
- E) Creek Bridge homes diverted water under the claimed right we believe from July of 2001 through September of 2002. The District did not receive a copy of the Statement submitted by Creek Bridge and does not know where the point of diversion was listed. However the current diversion point is approximately 400 feet south of Lake Mendocino Drive.
- F) The 51 homes listed are situated on the parcels identified as APN 169-130-01 through 169-130-51. There are an additional 74 homes that are being served within the same subdivision. The water use reported for 2002-2004 included these additional parcels.
- G) The District supplies water to the places of use identified in both statements, which is fully encompassed within the Districts boundaries. The amounts of water reported for the months of May through November on the Supplemental Statement of Diversion reflect the Districts 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 Russian River Flood Control and Water Conservation Improvement District.

As for Mr. Howard's contention that the Pre- 1914 water right no longer exists, based on what he claims are statements made by Mr. Wood, publicly denouncing the validity of the water right, remains open to question.  
The District's Legal Counsel met with and interviewed Mr. Woods prior to his passing regarding the historical water use under the Pre-1914 water right. The information gathered from that interview conflicts with the claims made by Mr. Howard in his complaint.

I hope the above information is helpful in making your determination regarding this issue. If I may be of further assistance or provide additional information, you may contact me at the District's Administration Office at (707) 462-7229.

Sincerely,

  
Tim Bradley  
General Manager



William Doonan 3  
 and 3  
 S. L. Hastings 3  
 David H. Foreman 3

Dec  
 Dated July 16<sup>th</sup> 1870  
 Consideration \$700.

2 W  
 Stamp  
 9/02  
 W- D  
 16/1  
 1/1

This Indenture made the 13<sup>th</sup> day of July in the year of our Lord One thousand eight hundred and seventy.

Between Wm Doonan and S. Clinton Hastings parties of the first part and David H. Foreman of Mendocino County, State of California the party of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of Seven Hundred Dollars gold coin of the United States of America to them in hand paid by the said party of the second part the receipt of which is here by acknowledged has granted, bargained, sold and conveyed and by these presents do grant bargain sell and convey unto the said party of the second part and to his heirs and assigns forever all the real estate situated lying and being in Mendocino County State of California, and bounded and described as follows.

Beginning at the North East corner of Lot No 80 Healey's Survey and Map of Healey's ranch, and at the point where the true standard North crosses Russian River running thence West along the town ship line and the North line of said lot 82 West forty chains and seventy eight hundredths to a point marked W. 3; thence North 38.32 chains thence East ninety two (92) chains thence North 48 1/2 East 8.14 chains to Russian River thence down the center of the channel of Russian River to the place of beginning. Contain in all one hundred and sixty acres more or less being part of No 103 of Healey's survey and map of Healey's ranch.

Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions and remainders and reserves rents issues and profits thereof And also all the estate right title interest property possession claims and demands whatsoever asserted in law or in equity of the said party of the first part or in or to the said premises and every part and parcel thereof with the appurtenances.

To have and to hold all and any urban the said premises together with the appurtenances unto the said party of the second part his heirs and assigns forever.

TO MENDOCINO  
18 MI.

Calpella

RUSSIAN

MENDOCINO  
LAKE

MENDOCINO CO.  
M. D. B. & M.

30 29 28 26  
31 32 33 COYOTE DAM 35

R.12W. R.11W.  
T.16N.  
T.15N.

EAST

6 5 4 3 2

MILLVIEW COUNTY

DIVERSION POINT  
S 000272

N 556,508' E 1,660,210'

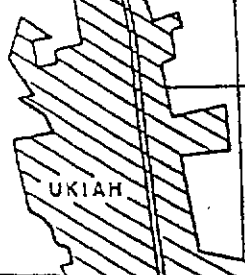
CALIFORNIA SYSTEM  
ZONE 2

WITHIN THE NE 1/4 OF SE 1/4  
OF SECTION 5

T. 15N R. 12W MDB & M

7 8 9 10

18 17 16 15



UKIAH

RIVER

21 22 29 28 27

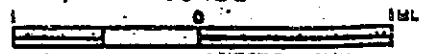
32 33 34

101

TO HOPLAND  
11 MI.

MILLVIEW COUNTY WATER  
DISTRICT

SCALE



REFERENCE: Ukiah 15' Quad.

DATE: DRAWN CHECKED NO.



# State Water Resources Control Board

262.003-0306  
SURNAME FILES

Alan C. Lloyd, Ph.D.  
Agency Secretary

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  
FAX 916.341.5400 • www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

MAR 29 2006

In Reply Refer to:  
363:CAR:262.0(23-03-06)

Messrs. Thomas Hill and Steve Gomes  
110 South Highland Avenue  
Ukiah, CA 95482

Millview County Water District  
3981 North State Street  
Ukiah, CA 95482

CreekBridge Homes L.P.  
2093 Landings Drive  
Mountain View, CA 94043

Ladies and Gentlemen:

## COMPLAINT BY LEE HOWARD REGARDING DIVERSION FROM THE EAST FORK RUSSIAN RIVER IN MENDOCINO COUNTY

The Division of Water Rights (Division) has received a complaint from Lee Howard regarding the diversion of water from the East Fork Russian River (copy enclosed). Based on information contained in the complaint and/or available in the Division's files, the following appears to have occurred:

- a) J.A. Waldteufel filed a Notice of Appropriation with the County of Mendocino on March 24, 1914. The notice indicates that Mr. Waldteufel claimed *"the water flowing in the West Fork of Russian River in Mendocino County, California, at the point where this notice is posted to the extent of One Hundred (100) inches measured under a four inch pressure that the purpose for which I claim it is for domestic and culinary purposes upon the lands owned by me, hereinafter described, contiguous to said river and for the irrigation of said lands; that the place of intended use in on Lot #103 of Healey's Survey and Map of Yokayo Rancho and that I intend to divert said water by means of an Electric Motor and a six inch centrifugal pump at said point of diversion."*
- b) Ownership of this claim of right appears to have passed with the place of use through a number of individuals and/or entities until it was obtained by Lester and Bertha Wood in April 1945. Lester Wood submitted Statement of Water Diversion and Use (Statement) #S000272 in February 1967. This Statement indicates that water had recently been diverted as follows:
  - Source: West Branch Russian River within the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 33, T16N, R12W, MDB&M
  - Maximum diversion rate: 175 gallons per minute (gpm) via a pump
  - Period of diversion: June and July
  - Purpose: Irrigation of 15 acres of walnuts and 15 acres of grapes

SURNAME  
DWR 540

OK  
3/27/06

California Environmental Protection Agency

File: 262.0(23-03-06)

- Maximum use in recent years: 15 acre-feet (ac-ft)
- Minimum use in recent years: 7.5 ac-ft
- Year of 1<sup>st</sup> Use: 1914

A supplemental statement for the years 1970-72 indicates that the point of diversion had been moved to an unspecified location on the East Branch of the Russian River. Use had been made during each of these years during only the months of May for frost protection and during July and September for irrigation. The maximum rate of diversion had been 500 gpm and the total amount diverted was 13.7 ac-ft.

Subsequent supplemental statements for the years 1979-81 and 1985-87 indicate that the period of use had expanded to the months of April through September each year for the irrigation of 30 acres of grapes and walnuts.

- c) By 1988 Robert Wood had apparently succeeded in interest to Lester and Bertha Wood. In June 1998, Robert Wood assigned Statement S000272 to Thomas Hill and Steve Gomes. Messrs. Hill and Gomes recently submitted a supplemental statement form for the years 2002-04 indicating that:
- The use of water extended from May through November of each year.
  - Maximum diversion during any one month had increased from 21.4 gpm in 2002 to 67.4 gpm in 2004. Annual use of water had increased from 7.6 ac-ft in 2002 to 22.1 ac-ft in 2004.
  - Purpose of Use: Domestic by 350 people

A separate sheet of paper included with the most recent supplemental statement form indicates that water had been used every month (i.e., on a year-round basis) since April 2001. The use during the May to November period each year matched that on the supplemental statement form. Annual use was 3.76 ac-ft in 2001 (April to December), 19.123 ac-ft in 2002, 40.122 ac-ft in 2003, and 58.949 ac-ft in 2004.

- d) CreekBridge Homes L.P. (CreekBridge) submitted Statement S015625 on July 12, 2001. According to the information contained in the file for this statement, CreekBridge purchased property located just south of Lake Mendocino Drive and west of the West Fork of the Russian River (APN #169-130-17)<sup>1</sup> *"along with the reservation of the proportional water right for this property which was established and recorded prior to December of 1914."*

<sup>1</sup> - This parcel number no longer exists. However, a 51-parcel subdivision is located in the same general location as shown on the map attached to S015625, which identified parcel number 169-130-17 as the point of diversion and place of use.

The statement form provided the following information:

- Source: West Fork Russian River
- Point of Diversion: on land owned by Thomas P. Hill (APN #169-130-17)
- Capacity of Diversion Works: 800 gpm pump with a 12,000 gallon storage tank
- Year of 1<sup>st</sup> Use: 1914
- Purpose of Use: 10.5 +/- acres of land for fruit tree irrigation, construction, dust control and domestic water for a 51-unit subdivision located ¼ mile east of North State Street on Lake Mendocino Drive next to the West Fork of the Russian River
- Recent use: 0.33 million gallons in June, July and August of 2001 thence 1.53 million gallons per month (estimated) from September 2001 through December 2002

No further information has been submitted pursuant to this statement.

- e) According to a document submitted by Mr. Howard with his complaint, Thomas P. Hill, Steven Gomes, and the Millview County Water District (District) executed a document on October 11, 2002 that provided for the use of water by the District under Messrs. Hill and Gomes' pre-1914 claim of right. The document appears to be a lease agreement beginning on October 15, 2002 and ending on October 14, 2006. A provision for the District to exercise an option to purchase the pre-1914 claim of right is also included in this document.

In view of the above information, I have several questions to which I would appreciate answers from any or all of the addressees of this letter:

- a) Do Messrs. Hill and Gomes still believe they own the pre-1914 claim of right to the full 100 miners inches as originally filed with the County Recorder by J.A. Waldteufel on March 24, 1914?
- b) Are diversions still occurring from the West Fork of the Russian River pursuant to Statement S000272? If so, 1) how much water is being diverted; 2) where is the current point of diversion located; 3) what use is made of the water diverted; and 4) on what specific parcels of land is the use made?
- c) Has a portion of this claim of right been transferred to either CreekBridge or the District on either a temporary or permanent basis?
- d) If so, what portion of the claim of right was sold and were any restrictions put on the use of the transferred claim of right?



File: 262.0(23-03-06)

- e) Is CreekBridge still diverting water from the West Fork Russian River pursuant to Statement S015625? If so, is the point of diversion still located a few hundred feet south of Lake Mendocino Drive as shown on the original statement?
- f) Are the 51 homes mentioned in the original filing for Statement S015625 located on APN's 169-130-01 through 169-130-51? Do these parcels constitute the entire place of use for supplemental Statement S000272, which identifies the use of water during 2002-04 as "Domestic 350" or are other houses being served with water?
- g) Is the District providing water to any of the place of use identified under either Statement S000272 or S015625? If so, what is the basis of right upon which the District is relying to supply water to these places of use? Is a basis of right based on the pre-1914 claim of right initiated by J.A. Waldteufel on March 24, 1914; License 492 (Application 3601) and Permit 13936 (Application 17587); or the Uniform Water Supply Agreement with the Mendocino County Russian River Flood Control and Water Conservation Improvement District?

I would appreciate answers to these questions within 30 days from the date of this letter in order to determine what action, if any, should be taken by the Complaint Unit with respect to Mr. Howard's complaint. If there are any questions, I can be reached at (916) 341-5377.

Sincerely,

ORIGINAL SIGNED BY

Charles A. Rich, Chief  
Complaint Unit

Enclosures

cc: Mr. Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

Mendocino County Russian River Flood Control &  
Water Conservation Improvement District  
c/o Ms. Barbara Spazek  
151 Laws Avenue, Suite D  
Ukiah, CA 95482

Millview County Water District  
c/o Ms. Paula J. Whealen  
Wagner & Bonsignore Consulting Engineers  
444 North Third Street, Suite 325  
Sacramento, CA 95814-0228

bcc: MLS  
CRich\lfischer 3.27.2006  
U:\Comdrv\CRich\Howard Complaint  
Control Tag 19049

LEE O. HOWARD

3900 Parducci Road  
Ukiah, CA 95482  
(707) 462-6944

~~CHUCK S/100~~  
BK  
5000272  
2006 MAR -6 P 2:05

February 27, 2006

Ms. Victoria Whitney  
Division Chief  
State Water Resources Control Board  
Division of Water Rights  
1001-I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Re: Statement No. 000272  
Thomas Hill

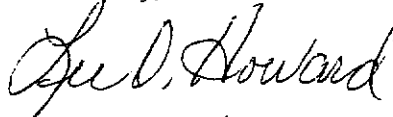
Dear Ms. Whitney:

I would like to file a formal complaint against the subject statement of use. This statement indicates that it is a Pre-1914 Water Right. The individual from whom this alleged water right was purchased, Robert Wood, had always contended publicly that there was no longer any water right. He is the individual who sold the property to Messrs. Gomes and Hill and his basis of fact was that he had not used the water continuously since 1914. In addition, Mr. Wood indicated the water had been used for irrigation and had been used on riparian lands only. Also, it had not been used by him for more than five years prior to selling the property.

This Pre-1914 statement also indicates the diversion point was relocated 400' to the south. The original point of diversion was on the West Fork of the Russian River as stated in the description of water rights recorded in the Mendocino County Records of Water Rights, Volume 3, Page 17, on March 24, 1914 (see attached). The point of diversion is now shown on the East Fork Russian River.

In addition to the above, the water from this alleged Pre-1914 right is presently being used to supply water to a Subdivision with 350 homes and sold to these individuals by the Millview County Water District. It is my contention that the Pre-1914 no longer exists and the individuals, as well as the Millview County Water District, have no basis of proof that this water has been used in like amounts, and in like manner, since 1914.

Sincerely,

  
Lee O. Howard

cc: Mr. John O'Hagan, Chief  
Enforcement and Compliance Division

50



S000272%\$%2004

2002; 2003; 2004

**SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE**

If the information below is inaccurate, please line it out in red and provide current information. Notify this office if ownership or address changes occur during the coming year.

Please Complete and Return This Form by **JULY 1, 2005.**

If the mail recipient's name, address or phone No. is wrong or missing, please correct.  
 Owner of Record: THOMAS HILL; STEVE GOMES;

2005-07-06 8:20:05  
 2005-07-06 10:00:00

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:  
**THOMAS HILL**  
 110 SOUTH HIGHLAND AVE  
 UKIAH, CA 95482

STATEMENT NO.: S000272  
 CONTACT PHONE NO.: (707)462-3719

Source Name: EAST FORK RUSSIAN RIVER  
 Tributary To: RUSSIAN RIVER  
 County: Mendocino  
 Diversion Within: SW 1/4 of SE 1/4 Section 33, T16N, R12W, MB&M

Year of First Use: 1914  
 Parcel Number:

A. Water is Used Under: Riparian claim \_\_\_\_\_ Pre-1914 right  Other (explain): \_\_\_\_\_

B. Year of First Use: (Please provide if missing above) 1914

C. Amount of Use: Enter the amount (or the approximate amount) of water used each month, using the table below

Year	Gallons			Million Gallons (MG)				Acre-feet (AF)			Other		Total Annual	
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec		
2002					.576	.771	.957	1.723	.675	.773	.447			4.922
2003					1.25	1.38	1.34	2.39	1.53	1.604	.843			10.34
2004					2.110	1.915	3.010	2.628	2.497	1.469	.716			14.29

D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation \_\_\_\_\_ acres; Stockwatering \_\_\_\_\_; Domestic 350  
 Other (specify) \_\_\_\_\_

E. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed.

(New pump, enlarged diversion dam, location of diversion, etc.)  
DIVERSION POINT RELOCATED 400' SOUTH

F. Please answer only those questions below which are applicable to your project.

1. Conservation of water

a. Are you now employing water conservation efforts? YES \_\_\_ NO   
 Describe any water conservation efforts you have initiated: \_\_\_\_\_

b. If you are claiming credit for water conservation under section 1011 of the Water Code for your claimed pre-1914 appropriative right, please show the amount of water conserved:

Reduction in Diversions:  
 Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

Reduction in consumptive use:  
 Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

I have data to support the above surface water use reductions due to conservation efforts. YES \_\_\_ NO \_\_\_

2. Water quality and wastewater reclamation

- a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES \_\_\_\_\_ NO
- b. If you are claiming credit due to the substitution of reclaimed water, desalinated water or polluted water in lieu of a claimed pre-1914 appropriative right under section 1010 of the Water Code, please show amounts of reduced diversions and amounts of substitute water supply used:

Amount of reduced diversion:  
 Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

State the type of substitute water supply: \_\_\_\_\_

Amount of substitute water supply used:  
 Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

I have data to support the above surface water use reductions due to the use of a substitute water supply. YES \_\_\_\_\_ NO \_\_\_\_\_

3. Conjunctive use of surface water and groundwater

- a. Are you now using groundwater in lieu of surface water? YES \_\_\_\_\_ NO
- b. If you are claiming credit due to the substitution of groundwater for a claimed pre-1914 appropriative right under section 1011.5 of the Water Code, please show the amounts of groundwater used:

Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

I have data to support the above surface water use reductions due to the use of groundwater. YES \_\_\_\_\_ NO \_\_\_\_\_

I understand that it may be necessary to document the water savings claimed in "F" above if credit under Water Code sections 1010 and 1011 is sought in the future.

I declare that the information in this report is true to the best of my knowledge and belief.

DATE: 8/16/05, 2005 at UKIAH California

SIGNATURE: [Signature]

PRINTED NAME: STEVEN L GORMES  
 (first name) (middle initial) (last name)

COMPANY NAME: \_\_\_\_\_

If there is insufficient space for your answers, please use the space provided below

ITEM	CONTINUATION

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the sources of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or to divert water which originates in a different watershed, water previously stored by others, return flows from use of groundwater, or other "foreign" water to the natural stream system.

An appropriative right is required for use of water on non-riparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914, new appropriators have been required to obtain a permit and license from the State. Appropriative rights can be granted to waters "foreign" to the natural stream system.

Statements of Water Diversion and Use must be filed by riparian and pre-1914 appropriative water users as set forth in Water Code section 5100 with specific exceptions. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversions, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include: (1) Statements of Water Diversion and Use, (2) Information Pertaining to Water Rights in California, and (3) Appropriation of Water in California.

Statement of Water Diversion  
 Claimed Pre- 1914  
 Appropriative Right  
 Statement No. S000272

Year	Monthly Data												TOTAL Million Gallons Acre Feet
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	
2001	156,100	181,700	229,300	338,900	576,100	771,100	957,500	723,000	674,800	773,200	447,200	402,300	1,225,100 3.760
2002	156,100	181,700	229,300	338,900	576,100	771,100	957,500	723,000	674,800	773,200	447,200	402,300	6,231,200 19.123
2003	356,400	405,000	449,600	649,500	1,250,400	1,387,700	1,345,000	2,398,400	1,528,000	1,604,400	843,700	855,800	13,073,900 40.122
2004	661,300	574,000	1,238,100	1,553,300	2,110,200	1,915,900	3,010,600	2,628,600	2,497,700	1,409,200	716,000	893,600	19,208,500 58.949

**LICENSE AND ASSIGNMENT  
OF WATER RIGHTS**

This License and Assignment of Water Rights is made this 11<sup>th</sup> day of October, 2002, by and between THOMAS P. HILL, a married man dealing in his separate property, STEVEN GOMES, an unmarried man (hereinafter collectively referred to as "Licensor") and MILLVIEW COUNTY WATER DISTRICT, a governmental agency (hereinafter "Millview").

**RECITALS**

- A Licensor is the owner of those certain water rights established by the claim of J. A. Waldenfeld dated March 24, 1914, recorded in the Mendocino County Records of Water Rights, Volume 3, Page 17 on March 24, 1914, by which J. A. Waldenfeld claimed the water flowing in the West Fork of the Russian River at the point of pasting 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").
- B Licensor owns a parcel of land adjacent to the West Fork Subdivision and contiguous to the center line of the West Fork of the Russian River and depicted as "Open Space/Riparian Corridor", as numbered and designated upon the Final Map of Unit 1, filed for record on May 2, 2000, in Drawer 67 of Maps, Pages 35-39, Mendocino County Records (hereinafter "Riparian Corridor").
- C Licensor Hill reserves 57,000 gallons per day of Water Right. Licensor Gomes reserves 74,000 gallons per day of the Water Right for the benefit of Licensor, or their assignees, which reservation is hereinafter referred to as the "Reserved Right".

**IN RECOGNITION OF THE FOREGOING RECITALS, the parties hereto agree as follows**

- 1 Assignment. Licensor hereby irrevocably grants, conveys and assigns to Millview all of Licensor's right, title and interest to the Water Right, saving and excepting a share previously reserved for the term hereof.
- 2 Access. Licensor grants, conveys and assigns to Millview an irrevocable, non-exclusive license to access the Russian River through and over the Riparian Corridor and to use the Riparian Corridor, to the extent permitted by any governmental entity with jurisdiction in furtherance of the exercise of the Water Right assigned herein, all for the purpose of diverting, appropriating and using any and all water, less the Reserved Right, for the benefit of Millview. Nothing in this paragraph is designed to restrict or otherwise hinder Licensor's rights to access and use of any property retained by Licensor, consistent with this Agreement and

Licensor's interests in such property.

- 3 Consideration. In consideration for this agreement, Millview shall pay Licensor the sum of Fifteen Thousand Dollars (\$ 15,000), on or before October 14, 2002, Twenty Thousand Dollars (\$ 20,000) on or before October 14, 2003, Twenty Five Thousand Dollars (\$ 25,000) on or before October 14, 2004, and Thirty Thousand Dollars (\$ 30,000), on or before October 14, 2005. Which amounts shall not be applied to the purchase price.
- 4 Term. This Agreement shall commence on October 15, 2002, and shall terminate on October 14, 2006, unless extended in writing by all parties.
- 5 Appointment of Millview as Agent for Exercise of Riparian Rights. During the Term, Licensor appoints Millview as Licensor's agent for the preservation and exercise of any riparian rights held by Licensor with respect to the Riparian Corridor.
- 6 Options to Purchase. Licensor grants to Millview an option to purchase the Water Right as follows:
  - A The option term shall commence on October 15, 2002 and expire on October 14, 2006.
  - B Provided Millview is not in default hereunder, this Option may be exercised by Millview delivering to Licensor before the expiration of the Option Term written notice of the exercise ("Exercise Notice") which shall state that the Option is exercised without condition or qualification accompanied by Millview's warrant by way of earnest money deposit in the amount of Fifteen Thousand Dollars (\$ 15,000).
  - C Time is of the essence of the Option. If the Option is not exercised in the manner provided for herein, Millview shall have no interest in the Water Right and the Option may not be revived by any subsequent action by Millview.
  - D If this Agreement is terminated, Millview agrees, if requested by Licensor, to execute, acknowledge, and deliver a quitclaim deed to Licensor within ten (10) days after termination and to execute, acknowledge and deliver any other documents reasonably requested by any title company to remove any cloud upon title to any property held by Licensor.
  - E Millview has executed a Notice of Assignment in the appropriate

water right referred to herein on Form WR-29A in favor of Licensor, and has deposited the same with Licensor contemporaneously with the execution of the prior License and Agreement of water rights dated October 13, 2001. Millview does irrevocably appoint Licensor to file such assignment in the event that Millview does not exercise the option as provided herein.

*f.* The Option consideration shall be the greater of either: (1) an amount agreed upon by the parties prior to September 10, 2006, or (2) an amount determined by binding arbitration commenced no later than June 30, 2006 and completed no later than August 31, 2006. Said consideration shall be payable in cash through an escrow to be established.

Such binding arbitration for the purchase price of the Water Right pursuant to this Option may be invoked by either party by petitioning the presiding judge of the Superior Court for the appointment of an Arbitrator to conduct arbitration pursuant to Code of Civil Procedure II 1281, et seq for the purpose of determining the Fair Market Value of the Water Right, taking into account all relevant factors in determining the Fair Market Value of such Water Right. However, nothing in the Option Agreement shall compel Licensor to accept the Arbitrator's binding decision if the decision is an amount less than One Thousand Two Hundred Fifty Dollars per acre foot. In all respects, the Arbitrator's decision as to Fair Market Value shall be binding upon the parties.

*g.* At the request of either party, the other party shall cooperate in execution of a memorandum of this Option.

*h.* Upon exercise of the Option, Licensor warrants that Licensor is the owner of the Water Right and has marketable title to the Water Right clear of restrictions, leases, liens, and other encumbrances, except as otherwise permitted by this Agreement. If this Option is exercised by Millview, Licensor will convey title to the water deed by good and sufficient instrument. During the Option Term and until the property is conveyed to Millview, if the Option is exercised, Licensor will not encumber the Water Right in any way or grant any property or contract right relating to the Water Right without the prior written consent of Millview.

*7. No Assignment.* Millview may not assign or transfer this Agreement and the rights hereunder without Licensor's prior written consent. However, should this Agreement be transferred or assigned by either party, the terms of this Agreement shall be binding

upon and inure to the benefit of The parties' successors and assigns.

*8. Notices.* All notices, demands, requests, exercises and other communications under this Agreement by either party shall be in writing and, (a) sent by United States Certified Mail, Return Receipt Requested, in which case notices shall be deemed delivered three (3) business days after the deposit, postage prepaid, in the United States Mail, (b) sent by a nationally recognized overnight carrier, in which case, notice shall be deemed delivered one (1) business day after deposit with such carrier, or sent by telecopy or other similar means, with a copy of the notice also sent by United States Certified Mail, in which case notice shall be deemed delivered or transmitted by telecopy or other similar means, provided that a transmission report is generated that reflects actual transmission of the notice as provided in this paragraph. Notice shall be given to the parties as follows:

Licensor  
Thomas P. Hill  
110 S. Highland Avenue  
Oklah, CA 93482

Millview  
Steve Gomes  
P O Box 1418  
Oklah, CA 93482

Copy to  
Millview County Water District  
3081 North State Street  
Oklah, CA 93482

Christopher J. Neary,  
Attorney at Law  
110 South Main Street, Suite C  
Willits, CA 95490  
Facsimile 707-459-1018

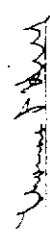
The foregoing addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt of such notice.

*9. No Waivers.* No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision of this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.

*10. Further Assurances.* Whenever requested by the other party, each party shall execute, acknowledge and deliver all further conveyances.


agreements, confirmations, satisfactions, releases, powers of attorney, instrument of further assurance, approvals, consents and all other further instruments and documents as may be necessary, expedient or proper to complete any conveyances, transfers, sales and agreements covered by this Agreement and do all other acts and to execute, acknowledge and deliver all requested documents to carry out the intent and purpose of this Agreement.

- 11 **No Third Party Rights** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.
- 12 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
- 13 **Amendment.** This Agreement may not be amended or altered except by written instrument executed by both parties.
- 14 **Partial Invalidity** If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms, conditions and covenants shall continue in full force and effect.
- 15 **Authority of the Parties.** All persons executing this Agreement on behalf of any party to this Agreement warrant that they have the authority to execute this Agreement on behalf of that party.
- 16 **Assignees.** Any assignee of either Licensor as referred to in Recital C shall be considered a third party beneficiary of this Agreement, irrespective of the time of assignment, whether before or after execution of this Agreement.
- 17 **Execution of Further Documents.** The parties hereto agree to execute such further documents as are necessary to carry out this Agreement, including, but not necessarily limited to, a Petition for Change of Point of Diversion.

LICENSOR:  MILLVIEW COUNTY WATER DISTRICT

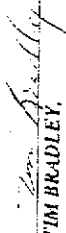
By: 

THOMAS P. HILL

  
KENNETH BUDROW  
President, Board of Directors

Attest

STEVEN GOMES

  
TIM BRADLEY,  
Secretary to the Board of Directors

In the event either Licensor is a married individual, the respective spouse(s) shall execute the following statement

The undersigned acknowledge that the undersigned has no right, title or interest, whether present or future, in the Water Right and further acknowledges that the undersigned understands this Agreement and consents to its execution and performance by the undersigned's spouse



Approved us to form

CHRISTOPHER J. NEARY  
Attorney for Millview County Water District



LAW OFFICES OF

**CARTER, VANNUCCI & MOMSEN, LLP**

444 North State Street  
POST OFFICE BOX 1709  
UKIAH, CALIFORNIA 95482

JARED G. CARTER  
BRIAN C. CARTER  
BRIAN S. MOMSEN  
PHILIP M. VANNUCCI

PHONE: (707) 462-6694  
FAX: (707) 462-7839  
EMAIL: jaredcarter@pacific.net

March 6, 2008

Victoria Whitney  
State Water Resources Control Board  
P.O. Box 2000  
1001 "Y" Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Re: 363:CAR:262.0 - Report of Investigation for Complaint filed by Lee Howard regarding diversion from the east fork of the Russian River.

Dear Ms. Whitney and Members of the Board:

We represent Messrs. Thomas P. Hill and Steven Gomes (represented by Carter, Vannucci & Momsen) and the Millview County Water District (represented by Christopher Neary) regarding the above entitled matter.

Please consider this letter a petition for reconsideration, pursuant to Water Code §1122, by the full Board of the above referenced Report.

We recognize there is some doubt whether the referenced Report is a "decision", much less a "final" decision, within the meaning of Water Code §§1120-1126.2. But, the Report has been broadly distributed; it is having profound negative impacts upon Petitioners by precluding completion of their pending business transactions and posing a threat to Millview if it exercises the water right involved; and Petitioners and the County of Mendocino have, in response to a cover letter accompanying distribution of the Report, provided extensive comments to the author of the Report pointing out its errors, inaccuracies, and the negative impacts it is causing in its present form. But, nothing has been done for over six months by the author of the Report or your agency to finalize, modify or reverse the Report, or to take action to have your Board formally endorse it or hold a hearing on it. We have in just the last couple of days obtained a complete copy of the Record of this investigation. In these circumstances we believe the Report and its recommendations and conclusions have now become "final" and subject to review by a

petition for reconsideration or a petition for writ of mandate. See *Hollon v. Pierce* (1967) 257 CA2d 468, 476; *California Correctional Peace Officers Ass'n v. State Personnel Board* (1995) 10 Cal.4th 1133, 1156; 1 California Administrative Mandamus §3.26 (CEB, 3<sup>rd</sup> ed.).

We also recognize that a reasonable argument, which we reserve the right to make, can be made that Water Code §§1120-1126.2 don't apply to these proceedings and Report because they are apparently conducted under §1051 (c) of the Water Code and involve a pre-1914 appropriative right, whereas sections 1120-1126.2 are arguably applicable only to water rights granted by the Board under authority of the 1914 Water Commission Act and its successors. Cf. *Meridian, Ltd. v. San Francisco* (1933) 13 C2d 424; *Fleming v. Bennett* (1941) 18 C2d 518. However, proceedings under section 275 are expressly within the actions covered by §1120 et. seq.; and that section's application to any "unreasonable use" of water could arguably reach Petitioners' use of any water in excess of the 15 acre feet per annum that the Report says they are now limited to as a result of "forfeiture" of the great bulk of their pre-1914 appropriative right to divert 2ft<sup>3</sup>/second. We are not forgoing the right to argue that neither the Board nor its designee can declare a pre-1914 appropriative right "forfeited", particularly under the facts of this case, as pointed out below. We believe that only a court, following a hearing meeting all the requirements of due process, can make such a decision. (See *Fleming v. Bennett, supra*, 18 C2d 518). But, it is imperative that our clients be able to escape the limbo into which they have been placed by this Report; and it is for that reason that this petition is being filed.

Our clients are being significantly harmed by this Report, even in its partially completed condition; and we seek either a prompt order from your Board setting the matter for rehearing or directing that the complaint underlying the Report be dismissed and the Report withdrawn or vacated. Alternatively, please issue an order to us denying this petition for rehearing, and we will then seek court review under CCP §1094.5. As matters now stand our clients can't complete the purchase and sale of the affected water right, and Millview is at risk if it uses the water right to its full extent to serve its customers, as it very much needs to do.

We are very confident we have the right to proceed under CCP §1085 and *Yuba River Power Co. v. Nevada Irr. Dist.* (1929) 207 Cal 521 to seek an order that the Board complete this

Victoria Whitney  
State Water Resources Control Board  
March 6, 2008  
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investigation and Report and exercise its final discretion. But, we had rather not engage in this effort if we don't have to, because it takes time and money; and our request is that the Board, without implicating a court, take prompt action to help us move this matter to conclusion.

A summary statement of the case and the bases for this petition are as follows:

On June 1, 2007 Mr. Charles A. Rich, Chief, Complaint Unit, Division of Water Rights, published a memorandum Report following his investigation of a complaint filed in February 2006 by Mr. Lee Howard of Ukiah to the effect that the Millview Water District was illegally diverting water from the Russian River because a pre-1914 appropriative water right owned by Messrs. Hill and Gomes, under contract to Millview Water District, had been forfeited or abandoned. Mr. Howard is, and was, not a user of, nor does he claim a right to divert and use, water from the Russian River. Mr. Rich's Report, some 17 pages long, found, among other things, that the original water right was validly obtained and transferred first to Hill and Gomes and then to Millview but that the right had been forfeited from 2ft.<sup>3</sup>/second to a maximum use of 15 acre feet per year. The Report also indicated that if Millview appropriated water in excess of 15 acre feet per year in reliance upon this water right it would be appropriating water without legal authority and subject to the penalties provided for in the Water Code.

Each Petitioner, in response to Mr. Rich's cover letter requesting comments, provided comments critical of the Report. The County of Mendocino also submitted comments to Mr. Rich. The essence of our comments were, and the grounds for rehearing are, (i) that Mr. Howard had no standing to make a complaint to justify an investigation pursuant to section 1051(c) of the Water Code, and the Board or its designee, Mr. Rich, otherwise had no jurisdiction to conduct an investigation and issue this Report; (ii) jurisdiction is also lacking because the facts alleged and the facts found do not constitute any ground for finding abandonment or forfeiture within the standards recently articulated in *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555, and therefore the complaint should be dismissed; (iii) the Report has deprived Petitioners of property without due process of law, as they have received no hearing; (iv) the findings of the Report are not supported by facts in the record and the conclusions are contrary to law - primarily because the

Victoria Whitney  
State Water Resources Control Board  
March 6, 2008  
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Report places the burden of proof on the holder of a pre-1914 right to establish the continued validity of his/her right and finds forfeiture where no other water user claims the right to use the water in question, whereas *North Kern, supra*, 147 Cal.App.4th 555 makes it clear that the burden of proof is on the person attacking the continued validity of a pre-1914 right or the forfeiture of any part thereof, and that a "clash of rights" to the water in question, in the relevant five year forfeiture period before the complaint is filed, must be involved before there can be a forfeiture. Other deficiencies and inaccuracies were pointed out. Copies of these comment letters are attached and incorporated herein for your easy reference along with a copy of Mr. Rich's Report and cover letter.

We have obtained, pursuant to a Public Record Act request, what we assume to be the complete record in this matter and will forward a copy if you so request. By copy of this letter we request Mr. Rich to forward you a copy if you need it to consider this petition.

As mentioned, Mr. Rich has taken no further action of any kind after June 1, 2007, so far as has been made known to us. Both of our clients are being severely injured; Hill and Gomes because they cannot complete their intended transaction with Millview Water District, and Millview Water District, not only because it cannot complete this transaction, but because it is fearful of being subject to severe penalties from using water pursuant to this pre-1914 right.

As we read Water Code §1126 we cannot bring an action for a writ of administrative mandate until your Board takes "final action" or its designee takes "final action." In the circumstances, it is not clear that "final action" has been taken; though, as indicated above, we think a court would agree that §1095.5 review is available in these circumstances.

This letter seeks your Board's reconsideration of the Report and the granting of a hearing meeting the requirements of due process of law for all of these Petitioners to avoid forcing them to bear the time and expense of litigating to obtain such a hearing. Most importantly, we want to obtain your Board's considered decision on the merits of this matter as not only we, but also a court, if that step is necessary, will benefit from such an opinion.

We are uncertain as to how your Board considers these matters and we seek to cooperate with you to get all the issues appropriately considered. Our clients cannot accept matters as they

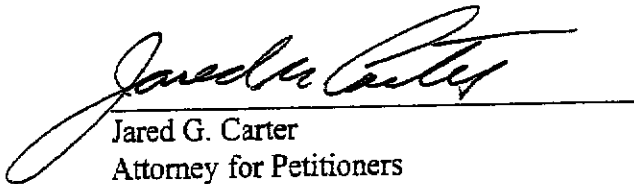
Victoria Whitney  
State Water Resources Control Board  
March 6, 2008  
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now stand and they must seek an appropriate remedy in court if they don't obtain a remedy from your Board.

Time is of the essence, so we request your prompt response. If we do not obtain any response from you within thirty days, we will consider that a denial of our request for a rehearing and take such actions as appear appropriate in the circumstances.

If there is any further information we can or should provide to you please inform us.

Sincerely,



Jared G. Carter  
Attorney for Petitioners  
Thomas Hill & Steven Gomes

---

Christopher J. Neary  
(707) 459-5551  
Attorney for Petitioner  
Millview County Water District

cc Michael Lauffer, Chief Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 "I" Street  
Sacramento, CA 95812-2000

Charles A. Rich, Chief  
Complaint Unit, Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
1001 "I" Street  
Sacramento, CA 95812-2000

Victoria Whitney  
State Water Resources Control Board  
March 6, 2008  
Page 5

now stand and they must seek an appropriate remedy in court if they don't obtain a remedy from your Board.

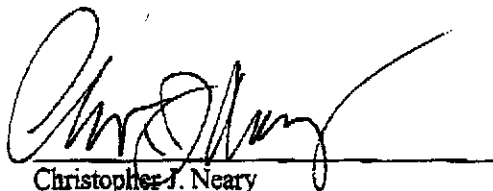
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If there is any further information we can or should provide to you please inform us.

Sincerely,

---

Jared G. Carter  
Attorney for Petitioners  
Thomas Hill & Steven Gomes



Christopher J. Neary  
Attorney for Petitioner  
Millview County Water District

cc Michael Lauffer, Chief Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 "I" Street  
Sacramento, CA 95812-2000

Charles A. Rich, Chief  
Complaint Unit, Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
1001 "I" Street  
Sacramento, CA 95812-2000

Victoria Whitney  
State Water Resources Control Board  
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Jim Kassel  
Chief, Hearings & Special Projects  
State Water Resources Control Board  
1001 "I" Street  
Sacramento, CA 95812-2000

Victoria Whitney  
State Water Resources Control Board  
March 6, 2008  
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Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



## Division of Water Rights

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P.O. Box 2000 • Sacramento, California 95812-2000  
Fax: 916 341 5400 • www.waterights.ca.gov

Arnold Schwarzenegger  
Governor

June 1, 2007

In Reply Refer to:  
363.CAR.262.0(23-03-06)

Mr. Thomas P. Hill  
54925 Rivieria  
La Quinta, CA 92253

Mr. Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

Dear Messrs. Hill and Howard:

### WATER RIGHT COMPLAINT BY LEE HOWARD AGAINST THOMAS HILL REGARDING DIVERSION OF WATER BY THE MILLVIEW COUNTY WATER DISTRICT IN MENDOCINO COUNTY

Enclosed is a copy of the staff Report of Investigation regarding Mr. Howard's complaint against Mr. Hill concerning the pre-1914 appropriative claim of right currently being exercised by the Millview County Water District. My conclusions are:

1. Evidence is not currently available to suggest that the portion of the property formerly owned by Messrs. Waldteufel and Wood and currently owned by Messrs. Hill and Gomes (i.e., the ≈100-ft wide buffer strip adjacent to the West Fork Russian River) is not riparian to the West Fork Russian River. The property on which CreekBridge Homes constructed 125 homes has been physically severed from the West Fork Russian River. Unless evidence exists that the riparian status of this land was somehow reserved at the time the title transaction resulted in physical severance, these parcels no longer possess a riparian claim of right.
2. The pre-1914 appropriative claim of right originated by Mr. Waldteufel in December 1914 and transferred over time to the Woods, Messrs. Hill and Gomes, and Millview has a valid basis. However, due to the forfeiture provisions of California water law, 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 gpm or 1.1 cfs; or possibly less if the maximum rate of diversion since 2001 for a period of 5 consecutive years has been less than this rate.
3. The point of diversion for this pre-1914 appropriative claim of right can be moved downstream to Millview's facilities. However, the maximum instantaneous rate of diversion under this right at this location cannot exceed the lesser of either 500 gpm (or a smaller rate if recent use has been less) or the amount of water in the West Fork at USGS Gage # 11461000.
4. CreekBridge and Millview may have diverted water in excess of the amount authorized under the pre-1914 appropriative claim of right. At least a threat of unauthorized diversion exists



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unless Millview keeps close track of the basis of right for all water diverted at Millview's facilities.

In view of these conclusions, I am prepared to make the following recommendations to management unless additional evidence justifying a different course of action is brought forth.

- a) That Millview be formally directed to reduce diversions pursuant to the claim of a pre-1914 appropriative right and develop a detailed accounting methodology to track water diverted under the following bases of right:
- the claim of a pre-1914 appropriative right (unless Millview terminates the agreement with Messrs. Hill and Gomes and ceases all diversions under this base of right);
  - License 492 (Application A003601);
  - Permit 13936 (Application A017587); and
  - Contract with the Flood Control District pursuant to Permit 12947B (Application A012919B).
- b) That the complaint filed by Lee Howard against Thomas Hill be closed. Closure of the complaint would not preclude enforcement action against Millview for a potential unauthorized diversion.

Unless additional evidence is provided to me within 30 days from the date of this letter that would result in different conclusions and/or recommendations, I will submit my recommendations to Division Management. If additional evidence is submitted, please submit copies to all the parties whose addresses are identified on this letter.

If there are any questions, I can be reached at the phone number or e-mail address listed below.

Sincerely,

Charles A. Rich, Chief  
Complaint Unit

Phone: (916) 341-5377  
FAX: (916) 341-5400

e-mail: [Crich@waterboards.ca.gov](mailto:Crich@waterboards.ca.gov)

Enclosure – Report of Investigation Howard v Hill Complaint

Messrs. Howard and Hill

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cc: (with enclosure)

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

Mr. Tim Bradley, General Manager  
Millview County Water District  
3981 North State Street  
Ukiah, CA 95482

Ms. Barbara Spazek  
Executive Director  
Mendocino County Russian River Flood Control &  
Water Conservation Improvement District  
151 Laws Avenue, Suite D  
Ukiah, CA 95482

Senator Wiggins Office  
P.O. Box 785  
Ukiah, CA 95482

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# State Water Resources Control Board

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Arnold Schwarzenegger  
Governor

## MEMORANDUM

TO: Files - 262.0(23-03-06)

FROM: Charles A. Rich  
Charles A. Rich, Chief  
Complaint Unit  
DIVISION OF WATER RIGHTS

DATE: June 1, 2007

SUBJECT: REPORT OF INVESTIGATION FOR A COMPLAINT FILED BY LEE HOWARD  
REGARDING DIVERSION FROM THE EAST FORK OF THE RUSSIAN RIVER

### BACKGROUND

In January 1998, Thomas Hill and Steven Gomes purchased 32 acres ± located immediately south of Lake Mendocino Drive and adjacent to the Russian River<sup>1</sup> near the City of Ukiah from the Robert Wood Living Trust. The Grant Deed covering this transaction indicates that all water rights and claims of title to water of the grantors associated with the land were included in the sale.

One of Mr. Wood's predecessors-in-interest, E.L. Waldteufel, recorded a water right notice on March 24, 1914. 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) from the West Fork of the Russian River for domestic, culinary, and irrigation purposes on Lot #103 of the Yokayo Rancho. The land purchased by Messrs. Hill and Gomes consists of the southeastern portion of Lot #103 and contains roughly 20% of the acreage originally contained in Lot #103.

Mr. Lester Wood, Robert Wood's father, originally filed Statement of Water Diversion and Use (Statement) S000272 in 1967 which reported the diversion and use of water on the Wood property. Supplemental statements for S000272 were also filed for the years 1970-72, 1979-81; 1985-87; and 2002-04<sup>2</sup>.

CreekBridge Homes L.P. (CreekBridge) bought a sizable portion of the property from Messrs. Hill and Gomes in 2001 and subsequently built 125 homes on the property. A buffer strip to provide an open space / riparian corridor approximately 100 feet wide between the West

<sup>1</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 report.

<sup>2</sup> - This supplemental statement was filed by Mr. Gomes. All of the others were filed by Lester Wood or his son, Robert Wood.

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Fork Russian River channel and the property purchased by CreekBridge was retained by Messrs. Hill and Gomes. 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." Only the original statement was filed. No supplemental statements have been received from CreekBridge Homes for Statement S015625.

Messrs. Hill and Gomes entered into an agreement with the Millview County Water District (Millview) in October 2002. This agreement provides for the lease and/or purchase by Millview of a pre-1914 claim of appropriative right allegedly held by Messrs. Hill and Gomes, use of which has been reported under Statement S000272. 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").*

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. Complaint Unit staff understand that the effective period of this agreement has been extended.

Lee Howard filed a complaint against Thomas Hill on March 6, 2006 regarding the diversion and use of water reported pursuant to Statement S000272. Mr. Howard's complaint contains the following allegations:

- While the basis of right pursuant to 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.
- All use prior to 2001 under this claim of right occurred on lands that have a valid riparian basis of right. (The implication being that any use that occurred was made under a riparian claim of right and a valid pre-1914 appropriative claim of right was never initiated or vested.)
- The point of diversion for 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.

By letter dated March 29, 2006, Messrs. Hill and Gomes, Millview, and CreekBridge Homes were asked to 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.

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- Water reported pursuant to a supplemental Statement dated June 10, 2005 for the months of May through November under 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. Woods.
- Millview understands that Messrs. Hill and Gomes via the lease agreement, "granted, conveyed, and assigned all right, title and interest to the water right 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 S015625.
- Millview currently supplies water to all of the place of use identified under 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 (Flood Control District).
- Based on conversations between Millview's legal counsel and Robert Woods 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.

### **FIELD INVESTIGATION**

On August 30, 2006, Division staff (Charles Rich and Chuck NeSmith) conducted a field investigation regarding the subject complaint. Staff met with Messrs. Hill and Gomes, Tim Bradley (Millview's General Manager), and Christopher Neary (Millview's legal counsel). Mr. Howard was not available for the inspection. However, Complaint Unit staff met with him immediately after the inspection and provided a brief outline of the activities that occurred during the inspection.

The property formerly owned by the Wood family was visited. An old wooden crib inlet channel was observed 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 appears 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 until the land was graded for houses in 2001.

Some flow was observed in the river channel. The U.S. Geological Survey (USGS) maintains a flow monitoring station (11461000) a short distance upstream of this location. According to

<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.

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records available on the internet at a later date, the flow at the time of our inspection was approximately 0.93 cfs.

After leaving the property formerly owned by Mr. Wood, we visited the District's point of diversion (POD) on the main stem Russian River. This point is located about 2,000 feet downstream of the Wood POD and about 600 feet below the confluence of the East and West Forks of the Russian River. Based on outflow measurements at Lake Mendocino contained in the database at the California Data Exchange Center (CDEC) and USGS data for Gage 11461000, flows in the Russian River in the vicinity of the District's POD were about 227 cfs during our visit (226 cfs outflow + 0.93 cfs at Gage 11461000).

A small pump was diverting water from the surface flow of the Russian River into Millview's recharge basin located about 150 feet east of the river. Water seeps from this basin into the ground and is recovered by a number of wells located within 75 to 150 feet on both the north and south sides of the recharge basin. The soils in the area appeared to be quite sandy and probably act as a rapid sand filter. The production wells on the north side of the recharge basin run in a generally east / west line that extends about 600 feet from the river. Millview's wells probably draw water coming from: 1) the recharge basin, and 2) the subterranean stream channel of the Russian River.

After visiting the District's facilities, all of the participants sat down together and I asked the following questions of Messrs. Hill and Gomes as well as the Millview representatives and received the answers indicated below:

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Question #1: Did the diversion pursuant to S015625 by CreekBridge Homes cease as of September 2002?

Answer #1: Yes. CreekBridge Homes no longer has any interest in water rights associated with the property formerly owned by the Woods.

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Question #2: Has any diversion of water been made from the West Fork Russian River to serve the 125 homes constructed by CreekBridge Homes?

Answer #2: No. All water supplied to the 125 homes located on the former Wood property has been provided by Millview using the POD's located below the confluence of the East and West Forks.

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Question #3: Do diversions to the 125 CreekBridge Homes made pursuant to the claim of right reported under S000272 occur only during the months of May to November (i.e., the historic irrigation season on the former Wood property)?

Answer #3: Yes. Diversions to serve the 125 CreekBridge Homes during the May to November period 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 with the Flood Control District.

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Question #4: Are any diversions reported under S000272 or claimed under the pre-1914 appropriative right originally associated with the former Wood property used to supply any place of use other than the 125 CreekBridge Homes?

Answer #4: No. All use reported under S000272 or made pursuant to a pre-1914 claim of right initiated by E.L. Waldteufel since 2001 has occurred at the 125 CreekBridge Homes.

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Question #5: Is there a way of measuring the amount of water used by the 125 CreekBridge Homes under the pre-1914 claim of right?

Answer #5: Yes. Each house has a separate water meter that is read on a periodic basis.

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Question #6: Is a deposition, declaration, or other written document available regarding testimony provided by Robert Wood or his predecessors in interest dealing with the use of water pursuant to the pre-1914 appropriative claim of right?

Answer #6: No. Such a document is not available.

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Question #7: Is any other testimony by a party with first-hand knowledge regarding use of water pursuant to the pre-1914 appropriative claim of right available?

Answer #7: Yes. A sworn statement of Floyd Lawrence, taken by Mr. Neary, was provided.<sup>4</sup>

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Question #8: The Millview response letter dated April 24, 2006 states that the Hill/Gomes reservation may have been deeded to the 125 CreekBridge homes @ 1,000 gpd each for a total of 125,000 gpd. Is this correct?

Answer #8: No. The 125,000 gpd allotment has been transferred to Millview pursuant to the lease agreement with Millview.

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<sup>4</sup> - A copy of this statement was sent to Mr. Howard via the U.S. mail on September 5, 2006.

**ANALYSIS**

In order to fully address Mr. Howard's complaint, the following issues must be analyzed:

1. Could diversions to the parcel of land owned by Messrs. Waldteufel, Woods, and Hill/Gomes as well as the diversions made to satisfy the 125 new homes been made under a valid riparian claim of right?
2. If the parcel in question does in fact qualify for a riparian claim of right, were the diversions that occurred between 1914 and 2001 made under a pre-1914 appropriative claim of right or a riparian claim of right?
3. If diversions were made pursuant to a pre-1914 appropriative claim of right, what is the current extent of this right (i.e., how much water can be diverted and during which season)?
4. Has the change in POD resulted in the diversion of more water pursuant to a pre-1914 appropriative claim of right than would have been available at the previous POD?
5. Did Mr. Wood abandon his basis of right at the time of the approval of the West Fork Subdivision?

**Issue #1 – Riparian Claim of Right**

Although the legislature has enacted few laws relating to riparian rights, several court decisions have resulted in the following general rules regarding the applicability of a riparian claim of right to a particular parcel of land:

- A property owner may have a riparian water right when a stream flows through the property or when the property borders a stream or lake.
- If such a parcel is subdivided such that one or more of the subdivided parcels no longer touches the stream, each parcel is deemed to have been "severed" and the riparian status of each parcel is terminated forever unless: 1) the riparian status is preserved via specific language in the conveyance document; or 2) clear evidence is available to demonstrate that a) use of water had been occurring on the severed parcel; and b) the new owner purchased the severed parcel with the intent of continuing use of water as if the parcel had not been severed.
- A riparian right will be lost forever if the right is legally "severed" from the parcel (i.e., if a riparian land owner via a grant, contract, title transaction, etc. either separates and abandons the riparian status or conveys the parcel to another party and specifically excludes the riparian right).
- Riparian water right holders may only divert a share of the natural flow of water in the stream. The natural streamflow is the flow that occurs in a watercourse due to accretions from rainfall, snowmelt, springs and rising groundwater. To the extent that flow in its natural state reaches or flows through their property, riparian water right holders have a



proportional right, based on need, to the use of the natural flow. In times of water shortage, riparian diverters must share the available natural flow.

- A riparian right does not allow diversion of water that is "foreign" to the stream source. Water imported to the watershed from a separate watershed, water that is seasonally stored in a reservoir and subsequently released later in time into the system, or irrigation runoff from percolating groundwater applied to upstream lands may not be diverted under a riparian claim of right.
- Water diverted under claim of riparian right may only be used on the parcel of land that abuts the stream (or on a "severed parcel" for which the riparian status has been retained as discussed above), and then only on that portion of the parcel that drains back into the stream (i.e., is within the watershed of the source stream).
- Riparian rights are not lost by nonuse of the water.
- Water may not be stored during one season for use in a later season. However, water may be retained for strictly "regulatory" purposes. "Regulation" of water means the direct diversion of water to a tank or reservoir in order that the water may be put to use shortly thereafter at a rate larger than the rate at which it could have been diverted continuously from its source.
- Water diverted pursuant to a riparian right is subject to the doctrine of reasonable use, which limits the use of water to that quantity reasonably required for beneficial purposes.

The parcel of land purchased by Messrs. Hill and Gomes touches the West Fork of the Russian River and the entire parcel drains back into this source. Complaint Unit staff are not aware of any "foreign" water in the West Fork<sup>5</sup> nor has any evidence come to light indicating that a prior owner "legally severed" or abandoned the riparian claim of right. Consequently, all of the available evidence supports a claim of riparian right for the original parcel purchased by Messrs. Hill and Gomes from Robert Wood in 1998.

The land that CreekBridge purchased to construct the 125 homes does not touch the West Fork Russian River. This land was thereby physically severed from the river. However, Complaint Unit staff have not reviewed the title transactions that led to this physical severance to determine what language might have been included to preserve the riparian status. The cover document that transmitted Statement S015625 states:

*"... Creekbridge Homes just recently purchased the property described on the attached form in Ukiah adjacent to the West Fork of the Russian River along with the reservation of the proportional water right for this property which was established and recorded prior to 1914." (underlining added)*

<sup>5</sup> - A large portion of the flows available at Millview's POD comes from the East Fork of the Russian River and are either "foreign in time" (i.e., releases from seasonal storage in Lake Mendocino) and/or "foreign in place" (i.e., imported from the Eel River watershed via the Potter Valley Project). Such flows are not available for diversion pursuant to a riparian claim of right.

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While this passage refers to a pre-1914 appropriative claim of right, a court might find that this language coupled with specific language in the conveyance document is adequate to have provided a reservation of the riparian status of the parcel(s) purchased by CreekBridge.

CreekBridge subdivided this parcel(s), constructed 125 homes, and sold the homes and parcels on which the homes were constructed to individuals. Complaint Unit staff have no knowledge of the details involved in these title transactions. If adequate language was not included in the title conveyance documents, these parcels probably are no longer riparian to the stream. While Millview has always provided water to the homes, Complaint Unit staff question whether Millview could serve water to the homes under a riparian claim of right held by individual home owners<sup>6</sup>. The answer to this question is probably unnecessary as Millview has maintained that such service was provided pursuant to a pre-1914 claim of appropriative right and not pursuant to a riparian claim of right.

#### **Issue #2 – Existence Of A Pre-1914 Appropriative Right On A Riparian Parcel**

This question is important because diversions of water made first by Mr. Waldteufel in 1914 and later on by the Wood family, could have been made pursuant to a riparian claim of right. Such a right cannot be separated from the parcel, except to permanently terminate the right. If the diversions were made under a riparian basis of right, a pre-1914 appropriative right (which can be separated from the parcel on which the right was originated) would not have accrued and there would be no right to transfer to Millview.

Wells Hutchins addresses this issue beginning on page 208 of his book, The California Law of Water Rights. Complaint Unit staff have also conferred with legal counsel from the State Water Resources Control Board's Office of Chief Counsel. Based on this research, Complaint Unit staff believe that a pre-1914 appropriative right can be initiated and perfected on a riparian parcel. Consequently, the October 2002 agreement appears to have conveyed or transferred a valid pre-1914 appropriative claim of right from Messrs. Hill and Gomes to Millview - - at least on a temporary basis.

According to Section 1706 of the Water Code:

*"The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code (i.e., a pre-1914 appropriative claim of right)*

<sup>6</sup> - A governmental entity such as a municipality or water district can possess a riparian claim of right. However, the governmental entity can only use the water under this basis of right on parcels of land that are owned by the entity and that are riparian to the source of supply (see page 207 of Wells Hutchins' California Law of Water Rights). Riparian right holders, by entering into a specific agreement, can make a water company their agent for the purpose of distributing the waters to which the riparian right holders are entitled (see page 255 of Wells Hutchins' California Law of Water Rights). Complaint Unit staff are not aware of a similar precedent that would enable a governmental entity, such as Millview, to serve in the same capacity as a water company; i.e., as an agent for the individual riparian right holders who merely delivers water to the parcel but holds no water rights

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may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made." (Underlining and bolding added)

Millview changed the POD to a location downstream of the confluence of the East and West Forks of the Russian River. Based on the information provided by Millview representatives during the field investigation, the place of use has remained the same. However, Millview could change the place of use as well.

The permissibility of changes such as these pursuant to California water law are all predicated on the condition that such changes do not result in injury to others. If diversions were resumed on the property formerly owned by Messrs. Waldteufel and Wood under a riparian claim of right<sup>7</sup>, the transfer of the right to Millview could result in injury to other downstream right holders such as the Flood Control District, City of Ukiah, Willow County Water District, Sonoma County Water Agency, etc. unless Millview were to reduce diversions by an equivalent amount. Any right holder (including post-1914 appropriative right holders) that is adversely impacted, could ask a court to require that Millview reduce or eliminate diversions under the pre-1914 appropriative claim of right until such time as the injury is alleviated.

Insuring that the use of water under a riparian claim on the property formerly owned by Messrs. Waldteufel and Wood does not begin again could be achieved by either terminating the riparian status of the property via a title transaction (i.e., "strip" the riparian status of the property) or via a contractual obligation with Millview whereby diversions under the riparian claim of right would have to be reduced or terminated in the event another right holder could demonstrate injury.

### Issue #3 – Extent Of The Pre-1914 Appropriative Right

Prior to 1914 appropriative water rights could be acquired by simply diverting and putting water to beneficial use pursuant to common law. These rights are often referred to as "common law" or "nonstatutory" pre-1914 appropriative rights. The priority of the right relates back to the date when the first substantial act toward putting the water to beneficial use was undertaken; provided the appropriation was completed with reasonable diligence. If the project was not commenced with reasonable diligence, the priority of the right did not attach until beneficial use commenced.

Between 1872 and 1914, a "statutory" appropriative right could also be initiated by complying with Civil Code Sections 1410 et seq. Under these procedures, a person wishing to initiate an appropriation of water could post a written notice at the point of intended diversion and record a

<sup>7</sup> - Mr. Gomes mentioned during the field investigation the possibility of using some water to control dust and/or maintain landscaping in the future on the strip of land still owned by Messrs. Hill and Gomes. If the 125 homes constructed by CreekBridge still possess a valid riparian claim of right, the owners could also divert water under such a claim. However, Millview could not exercise this right on their behalf. In view of the need for a treated water supply, there is little potential for these homeowners to divert water on their own.

copy of the notice with the County Recorders Office within 10 days. The notice was required to include information regarding the amount of water appropriated, the purpose for which the appropriated water would be used, the place of use, and the means by which the water would be diverted and conveyed to the place of use. Commencement of construction was also required within 60 days after the notice was posted and must have been prosecuted diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain. If these procedures were followed and the diversion and use of water was commenced with reasonable diligence, the priority of the right was the date that the notice was posted. Failure to do this meant that the priority of the right did not attach until beneficial use occurred. However, since the effective date of the Water Commission Act (i.e., December 19, 1914), the only method of initiating an appropriative right has been to file an application with the State Water Resources Control Board (State Water Board) or one of its predecessors in interest (Water Code Sections 1200 et seq.).

Once a pre-1914 appropriation has been perfected, the right can be maintained only by continuous beneficial use. Therefore, regardless of the amount claimed in the original notice of appropriation, or at the time diversion and use first began, the amount which can now be rightfully claimed under a pre-1914 appropriative right, has in general become fixed by actual beneficial use, as to both amount and season of diversion.

There are two methods by which a pre-1914 appropriative right may be lost, abandonment and nonuse. To constitute abandonment of an appropriative right, there must be concurrence of act and intent, the relinquishment of possession, and the intent not to resume it for a beneficial use, so that abandonment is always voluntary, and a question of fact. Nonuse is distinguished from abandonment. Nonuse (or forfeiture) means failure to put water to beneficial use for a sufficient period of time when the water was available. The courts have held that pre-1914 rights can be lost as the result of five years' nonuse.

Successful assertion of a pre-1914 appropriative right, where the validity of the right is disputed, requires evidence of both the initial appropriation and the subsequent maintenance of the right by continuous and diligent application of water to beneficial use. Frequently such evidence consists of oral testimony of persons who have actual knowledge of the relevant facts. As the years pass, such testimony, dependent upon the recollection of individuals, may become difficult or impossible to secure. At least a partial remedy for this situation may be found in the procedure for perpetuation of testimony set forth in Section 2035 of the Code of Civil Procedure. A record on water use under any pre-1914 appropriative right should be established and maintained by filing a Statement unless such a filing is exempted pursuant to the requirements of Section 5101 of the Water Code.

The notice recorded by E.L. Waldteufel in 1914 clearly demonstrates an intent to initiate diversion pursuant to a pre-1914 appropriative right. However, very little evidence exists to substantiate how much water was actually placed to beneficial use prior to December 14, 1914<sup>3</sup>

<sup>3</sup> - This is the effective date of the Water Commission Act. Initiation of appropriative rights after this date, including increasing diversions under rights already established, other than by filing an application with the State Water Board (or a predecessor in interest) is prohibited by California water law

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or shortly thereafter in a diligent fashion. Only two sources of information are currently available to Complaint Unit staff that provide evidence regarding diversion and use of water made on the property formerly owned by Messrs. Waldteufel and Wood between 1914 and 1998 when Messrs. Hill and Gomes purchased the property. The first source of information includes Statements filed by the Woods, CreekBridge Homes, and Mr. Gomes on behalf of Millview. The second source is a "Sworn Statement of Floyd Lawrence" taken on August 2, 2006 and provided by Millview's legal counsel.

Table 1, on the following page, provides a summary of the information reported pursuant to Statements S000272 and S015625. Diversion and use reported by the Woods did not exceed an instantaneous diversion rate of 500 gallons per minute (gpm) or 1.1 cfs with a total annual diversion of 15 acre-feet (ac-ft). Diversion and use reported by CreekBridge Homes did not exceed 36 gpm with a total annual diversion of about 22 ac-ft. Millview's reported diversion and use did not exceed 60 gpm with a total annual diversion pursuant to the pre-1914 appropriative claim of right of about 44 ac-ft.

Mr. Lawrence's sworn statement provides very little quantifiable information. He lived in the immediate vicinity of the Waldteufel/Wood/Hill/Gomes property for almost the entire period between 1914 and 2006 when his statement was taken. His earliest recollections would have been around 1920. He recalls that alfalfa, oat hay, pears, string beans, and vineyard crops were the only crops grown on the property but did not provide any evidence regarding the amount of water that might have been diverted to grow these crops. He estimated that the fruit tree orchard was no more than four acres in size. The Woods only reported diversion for vineyard and trees (either fruit or walnut) and made no mention of irrigation for alfalfa or oat hay in the statements they filed. While Mr. Lawrence's sworn statement does not provide much quantitative data, he does state that agricultural operations continued right up until CreekBridge Homes began construction of new homes on the property, or around 2001-02. This indicates that at least some amount of use continued in a fairly uninterrupted fashion from the early 1920's to today.

Members of the Wood family first purchased the property in April 1945 and owned the land until Messrs. Hill and Gomes purchased the property in January 1998, a period of more than 50 years. The original Statement and Supplemental Statements filed by the Wood family indicate that the maximum diversion rate did not exceed 1.1 cfs and the annual depletion from the stream was less than 15 ac-ft. Consequently, a logical conclusion based on the currently available evidence would be that considerably more than 5-years passed without diversions exceeding these amounts. Pursuant to California water law, the Woods would have forfeited that portion of the pre-1914 appropriative right to any diversions in excess of these amounts. The maximum diversion rate reported for the years 2001 through 2004 has been under 68 gpm or 0.15 cfs. Consequently, the maximum rate of diversion authorized pursuant to this right may have further degraded to this rate.

**TABLE 1**  
**WATER USE REPORTED UNDER STATEMENTS S000272 AND S015625**

Year	Party Diverting	Months water was diverted	Diversion Rate	Volume Diverted	Purpose
1966	Wood	JUL JUL	175 gpm " "	annual amount = <b>15 ac-ft</b>	irrigation of 15 acres of grapes & walnuts
1970 1971 1972	Wood " "	MAY JUL SEP of each year	500 gpm " "	2.3 ac-ft 9.2 ac-ft 2.2 ac-ft annual total = <b>13.7 ac-ft</b>	frost protection (May) irrigation (Jul) irrigation (Sep)
1979 1980 1981	Wood " "	APR thru SEP	not specified	not specified	irrigation of grapes and walnuts
1985 1986 1987	Wood " "	APR thru SEP	not specified	not specified	irrigation of 30 acres
2001	CreekBridge Homes	JUN JUL AUG SEP OCT NOV DEC	7.7 gpm 7.45 gpm 7.45 gpm 35.42 gpm 34.27 gpm 35.42 gpm 34.27 gpm	1.02 ac-ft 1.02 ac-ft 1.02 ac-ft 4.70 ac-ft 4.70 ac-ft 4.70 ac-ft annual total = <b>21.85 ac-ft</b>	irrigation on 10.5 acres of fruit trees, home construction, dust control & domestic use for 51 homes
2002	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	12.90 gpm 17.27 gpm 21.44 gpm 16.20 gpm 15.12 gpm 17.32 gpm 10.01 gpm	1.77 ac-ft 2.37 ac-ft 2.94 ac-ft 2.22 ac-ft 2.07 ac-ft 2.37 ac-ft 1.37 ac-ft annual total = <b>15.11 ac-ft</b>	Domestic use for 350 people
2003	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	28.00 gpm 30.91 gpm 30.02 gpm 53.54 gpm 34.27 gpm 35.93 gpm 18.88 gpm	3.84 ac-ft 4.24 ac-ft 4.11 ac-ft 7.34 ac-ft 4.70 ac-ft 4.92 ac-ft 2.59 ac-ft annual total = <b>31.73 ac-ft</b>	Domestic use for 350 people
2004	Millview County Water District	MAY JUN JUL AUG SEP OCT NOV	47.27 gpm 42.90 gpm 67.43 gpm 58.87 gpm 55.94 gpm 31.56 gpm 16.04 gpm	6.48 ac-ft 5.88 ac-ft 9.24 ac-ft 8.07 ac-ft 7.66 ac-ft 4.32 ac-ft 2.20 ac-ft annual total = <b>43.84 ac-ft</b>	Domestic use for 350 people

\* - Maximum annual use in recent years listed as 15 afa. Minimum annual use in recent years listed as 7.5 afa

#### Issue #4 – Impact of Moving the POD on the Pre-1914 Appropriative Claim of Right

Pursuant to California water law, the point of diversion under an appropriative right can be changed as long as the change will neither: a) in effect initiate a new right; nor b) injure any other legal user of water.

Initiation of a new right – If a diverter who holds a valid pre-1914 appropriative right moves the POD because the watershed above the POD is incapable of providing a fully adequate supply throughout the authorized season of diversion, the incremental increase in the water supply obtained constitutes the initiation of a new appropriation. Such an appropriation is subject to the requirements in effect at the time the new appropriation is initiated. If the initiation occurred after December 19, 1914, the new appropriation would have to be made in accordance with the requirements of the Water Commission Act as codified in the California Water Code or via acquisition of a permit from the State Water Board.

Injury to a legal user of water - Section 1706 of the California Water Code states:

*The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made. (underlining and bolding added)*

Flow records for the U.S. Geological Survey gage #11461000 on the West Fork of the Russian River<sup>3</sup> are available for water years 1912-13 and 1953-2006. Table 2 (below) provides a summary of flow exceedence for these records during the season of use for the pre-1914 appropriative claim of right.

**Table 2**

**USGS Gage #11461000 - Russian River near Ukiah, CA**

Month / Flow	Exceedence <sup>10</sup>		
	0.1 cfs	0.5 cfs	1.1 cfs
May	100%	100%	100%
June	99%	97%	95%
July	88%	75%	62%
August	73%	44%	23%
September	76%	39%	20%
October	86%	58%	40%
November	97%	90%	85%

<sup>3</sup> - As discussed previously the USGS refers to this water body as the Russian River near Ukiah, CA. However, locals often refer to this body of water as the West Fork Russian River

<sup>10</sup> - "Exceedence" means the amount of time the specified flow was exceeded during the historical record for that particular month

June 1, 2007

This table demonstrates that while obtaining 15 acre-feet of water per irrigation season from the West Fork is quite feasible, diverting at the maximum rate reported by the Woods of 500 gpm is problematic; especially during the months of July through October.

Millview has effectively moved the POD for the Waldteufel/Woods/Hill/Gomes pre-1914 appropriative claim of right downstream below the confluence of the East and West Forks of the Russian River. Floyd Lawrence's sworn statement indicates that, at times, the historical flows in the East Fork during the summer season prior to the construction of Coyote Dam that impounds Lake Mendocino were actually less than those in the West Fork.

Flows in the East Fork below Lake Mendocino are influenced by imports from the Eel River through the Snow Mountain Tunnel to Potter Valley and diversions to and releases from seasonal storage in Lake Mendocino. The Eel River imports are "foreign in place" whereas the releases from Lake Mendocino are "foreign in time". Both of these sources of supply currently augment the natural flows substantially; especially during the summer and fall seasons. Table 3 depicts the recent maximum, minimum, and average daily flows below Lake Mendocino by month.

**Table 3**

**Outflows (cfs) from Lake Mendocino  
For water years 1997-2006**

Month	Maximum	Minimum	Average
Oct	335	125	223
Nov	507	29	178
Dec	3,092	31	301
Jan	4,725	10	727
Feb	4,548	27	718
Mar	2,100	26	308
Apr	1,988	45	372
May	1,801	93	283
Jun	593	149	240
Jul	341	138	261
Aug	350	161	260
Sep	362	106	247

Water released from storage in Lake Mendocino belongs to either the Sonoma County Water Agency or the Mendocino County Russian River Flood Control and Water Conservation Improvement District and/or their contractors pursuant to Permits 12947 A & B (Applications A012919A & B).

Any imported water from the Eel River that reaches Lake Mendocino is deemed to be "abandoned" and is available for appropriation based on diverters who hold valid appropriative



rights for this water. However, while the Eel River imports had been occurring for about 6 years, E.L. Waldteufel did not anticipate making use of either of these sources of water when he filed his appropriation notice in December 1914 as he only identified a POD on the West Fork. Consequently, moving the POD for the pre-1914 appropriative claim of right downstream below the confluence of the East and West Forks will result in either the initiation of a new appropriation or injure others if the diversions made under this claim of right exceed the flows available in the West Fork at the old POD. Any diversion of water under this claim or right in excess of the flows available from the West Fork are unauthorized and constitute a trespass against the State of California and may harm the interests of other right holders.

Diversions made by either CreekBridge Homes or Millview under the pre-1914 appropriative claim of right during the period 2001 to 2004 did not exceed the rate of diversion authorized. However, the annual diversions exceeded 15 acre-feet in 3 of the 4 years with the maximum reported diversion in 2004 exceeding the authorized amounts by almost 300%.

#### **Issue #5 – Abandonment of pre-14 claim of appropriative right by Mr. Wood**

Ms. Barbara Spazek, Executive Director of the Flood Control District, submitted a letter to Complaint Unit staff on April 20, 2007. This letter contains the following passage:

*... the property associated with the Pre-1914 water right was sold to Mr. Hill by Robert Wood, a former member of the Board of the MCRRFCD. Mr. Wood, on several occasions, mentioned during meetings that he had abandoned this water right at the time of approval of the West Fork Subdivision. One of these occasions was recorded in our Minutes dated, March 10, 2003. For your information I am attaching a copy of these minutes (Exhibit B).*

Mr. Wood is no longer alive and cannot be consulted for more information than is contained in the minutes. A letter was sent to Mr. Hill, along with copies to other interested parties, on April 30, 2007. This letter transmitted a copy of Ms. Spazek's April 20<sup>th</sup> letter and asked for any information that might have a bearing on the abandonment issue including any information (e.g., maps, environmental review documents, conditional use permits, etc.) that might shed further light on the status of the pre-1914 appropriative claim of right. Mr. Neary, legal counsel for Millview, responded via a letter dated May 7, 2007. Copies of the following documents were included with this letter:

- a) "Assignment of Water Rights"
- b) Grant Deed between Robert Wood, as Trustee of The Robert Wood Living Trust, and Messrs. Hill and Gomes
- c) Negative Declaration for the West Fork Subdivision
- d) Final Conditions of Approval for Subdivision #S 1-97, Wood issued by the County of Mendocino
- e) Subdivision Maps for the West Fork Subdivision

June 1, 2007

Mr. Neary contends that the evidence currently available supports a conclusion that Mr. Wood did **not** abandon any water rights related to the property purchased by Messrs. Hill and Gomes regardless of the fact that the minutes for the March 10, 2003 meeting of the Flood Control District, on face value, suggests otherwise. The documents provided by Mr. Neary contain no reference to any action by either the County of Mendocino or Mr. Wood that would indicate that the pre-1914 appropriative claim of right was abandoned at the time the West Fork subdivision was approved by the County of Mendocino. If the County had truly required such an action as part of the approval process, at least one of these documents should have contained such information.

Ms. Spazek was provided a copy of Mr. Neary's letter as well as the documents he submitted via a letter dated May 18, 2007. She was asked to contact Complaint Unit staff by the close of business on May 25, 2007 if she could provide any additional evidence that would have a bearing on the matter. She did not contact Complaint Unit staff. Consequently, convincing evidence that Mr. Wood abandoned the water right is not currently available and staff assume that no such abandonment has occurred.

### CONCLUSIONS

1. Evidence is not currently available to suggest that the portion of the property formerly owned by Messrs. Waldteufel and Wood and currently owned by Messrs. Hill and Gomes (i.e., the ≈100-ft wide buffer strip adjacent to the West Fork Russian River) is not riparian to the West Fork Russian River. The property on which CreekBridge Homes constructed 125 homes has been physically severed from the West Fork Russian River. Unless evidence exists that the riparian status of this land was somehow reserved at the time the title transaction resulted in physical severance, these parcels no longer possess a riparian claim of right.
2. The pre-1914 appropriative claim of right originated by Mr. Waldteufel in December 1914 and transferred over time to the Woods, Messrs. Hill and Gomes, and Millview has a valid basis. However, due to the forfeiture provisions of California water law, 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 gpm or 1.1 cfs; or possibly less if the maximum instantaneous rate of diversion since 2001 for a period of 5 consecutive years has been less than this rate.
3. The POD for this pre-1914 appropriative claim of right can be moved downstream to Millview's facilities. However, the maximum instantaneous rate of diversion under this right at this location cannot exceed the **lesser** of either 500 gpm (or a smaller rate if recent use has been less as discussed in conclusion #1 above) or the amount of water in the West Fork at USGS Gage # 11461000.
4. CreekBridge and Millview may have diverted water in excess of the amount authorized under the pre-1914 appropriative claim of right. At least a threat of unauthorized diversion exists unless Millview keeps close track of the basis of right for all water diverted at Millview's facilities.

**RECOMMENDATIONS**

1. That Millview be formally directed to reduce diversions pursuant to the claim of a pre-1914 appropriative right and develop a detailed accounting methodology to track water diverted under the following bases of right:
  - a) the claim of a pre-1914 appropriative right (unless Millview terminates the agreement with Messrs. Hill and Gomes and ceases all diversions under this base of right);
  - b) License 492 (Application A003601);
  - c) Permit 13936 (Application A017587); and
  - d) Contract with the Flood Control District pursuant to Permit 12947B (Application A012919B).
2. That the complaint filed by Lee Howard against Thomas Hill be closed. Closure of the complaint would not preclude enforcement action against Millview for a potential unauthorized diversion.

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July 24, 2007

Charles A. Rich, Chief  
Complaint Unit, Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
1001 "T" Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Re: 363:CAR:262.0 (23-03-06)  
Water Right Complaint by Lee Howard Against Thomas Hill  
Re Diversion of Water by the Millview County Water District in Mendocino County

Dear Mr. Rich:

We represent Messrs. Thomas P. Hill and Steve Gomes; and this letter replies to your Preliminary Report of Investigation for the Complaint filed by Lee Howard regarding diversion from the Russian River ("Preliminary Report") on their behalf as owners and holders of the water right claimed by J.A. Waldteufel, recorded in Mendocino County Official Records on March 24, 1914 at Volume 3, Page 17.

Mr. Howard's Complaint dated February 27, 2006 asserted that the pre-1914 right "no longer exists and that individuals as well as Millview County Water District ("Millview"), have no basis of proof that this water has been used in like amounts and in like manner, since 1914."

When Messrs. Hill and Gomes purchased this water right in 1998 they checked with a member of the staff of the Water Resources Control Board and were assured the right was valid. They even received a printed memorandum from that agency stating, in part, "that pre-1914 rights can be lost as the result of five years' nonuse (*Smith v. Hawkins* 42 P. 454)." They understood that *Smith v. Hawkins* involved a situation where the first appropriator never put his appropriation to any beneficial use for five years and the water was claimed and used by a second appropriator who did. They relied upon these understandings.

Today, Messrs. Hill and Gomes generally agree with your findings that they "conveyed or transferred [by lease with an option to purchase] a valid pre-1914 appropriative claim of right" to Millview. Under the "no-injury" rule Millview has changed the purpose and place of

Charles Rich, DWR  
1 of 5  
7/24/2007

use. Msrs. Hill and Gomes also agree with your conclusion that while Mr. Waldteufel could have claimed or asserted a riparian right, he instead claimed a common law appropriative right which continues to be used to this date.

Before addressing conclusions in the Preliminary Report that are questioned, it is appropriate to address Question No. 4, quoted at page 5 of your Preliminary Report, as to whether or not "any diversions reported under S000272 have been used in any place other than the 125 Creekbridge Homes." While the use reported under S000272 includes use at the West Fork Subdivision, it is not correct to say that Millview has limited the place of use to the West Fork Subdivision since 2001. In actuality, Millview has leased the entire Waldteufel water right in response to a determination by the California Department of Health that Millview suffered from inadequate water supply source to supply its customers. Since 2001 Millview has utilized the claim initiated by E.L. Waldteufel in its entirety to supplement its source supply and had done so for some time prior to the date of Mr. Howard's Complaint; the water diverted pursuant to this right has been used in its entirety throughout the Millview service area. It was Msrs. Hill's and Gomes' intent that such use be made to protect the viability of their water right.

Turning to the Lee Howard Complaint, it should be noted that Mr. Howard has no standing to file the complaint he has filed as he makes no allegation of harm to a conflicting right of water use. Forfeiture of the right to appropriate water can be established only by one with a conflicting claim. Mr. Howard lacks standing to assert forfeiture of this valuable property right in the abstract; and his complaint should be dismissed without any adjudication.

Moreover, with respect, we believe your office should not pursue this issue on the basis of its authority independent from a justiciable claim by Mr. Howard. First, as outlined below, the bases for any forfeiture have not been established and will be extremely costly and time consuming to all concerned to pursue. Second, and perhaps more importantly, as a matter of discretion no private or public interest that is now apparent would be served if you could, after much time and costly effort, establish that some part of this water right has been forfeited. For at least the following reasons, your office's only appropriate action should be to dismiss Mr. Howard's Complaint.

a. Your office's efforts to establish forfeiture of this water right would create confusion and doubt about the total amount of water available for use in the Russian River watershed at a time when confusion is already great because flows from the Eel into the Russian are being curtailed. Projected economic activity within Millview's service area, in particular, and in the broader Ukiah Valley, where the 8,000 acre feet of water made available for this area from the Coyote Dam project are consumed, will be stymied. Forfeiture of some part of this water right will certainly not redound to the benefit of the holder of that 8,000 acre feet water right, which is to an entirely different source of water, and may well not redound to the benefit of any Mendocino County water rights holder. The questions of who would benefit, and where and how such rights could be applied, would take many dollars and years to answer - while uncertainty and confusion reigned.

b. The law respecting forfeiture of pre-1914 appropriative rights is not clear. *Smith v. Hawkins* is not controlling in the instant case; it applies only in a situation where the appropriator never perfected his right by putting it to use in a five year period. and there was a competing appropriator who had perfected his right. Up until the 90's, at least, your agency was publicly stating in a handout entitled "Information Pertaining to WATER RIGHTS in California," correctly we believe, that "nonuse [or forfeiture] means failure to put water to beneficial use for a period of years. The courts have held that pre-1914 rights can be lost as a result of five years' non-use," citing *Smith v. Hawkins*. The recent *North Kern v. Kern Delta* case, which did hold that perfected pre-1914 rights can be lost by nonuse, even if completely valid in all respects, which we question, established the great complexity involved in determining just how much of the right to appropriate water, and during what time periods, can be forfeited as a result of water availability and operations over the controlling five (5) year period. To impose upon Mssrs. Hill and Gomes and Millview the cost of litigating these issues with your agency, after your agency assured them this water right is valid and that pre-1914 appropriative rights are subject to forfeiture within the standards set by *Smith v. Hawkins*, would be unconscionable, as well, we believe, as unlawful.

c. If your office were successful in establishing that this water right is subject to forfeiture, and, indeed, that some portion of the right has been forfeited, the principles involved would apply to many other rights on this river - and other rivers and streams - where the rights have previously been considered valid and have been counted as such in determining that the River is "fully appropriated," thereby preventing further appropriations under post-1914 procedures. Water agencies, and individuals, relying upon the purchase of water rights they assumed to be valid to justify long term development plans would be subject to disruptive, and possibly fatal, forfeiture proceedings by 3<sup>rd</sup> parties, or at least your office. This would all be very inconsistent with the planning processes required for modern investment decisions and the CEQA process required by the Supreme Court in its recent *Vineyards* decision. It would also be inconsistent with at least the spirit of Article X, Section 2 of the Constitution, which strongly and clearly establishes state policy that water should be beneficially used to support the state's growing economy.

Turning to the merits of your report, Mssrs. Hill and Gomes dispute the Preliminary Report's conclusions that the maximum rate of diversion authorized pursuant to the claim of E.L. Waldteufel may have "degraded to the point where the maximum authorized diversion is 15 acre-feet per annum at a maximum instantaneous rate not to exceed 500 gpm or 1.1 cfs . . ." The purpose of this response is to convince you to change these preliminary conclusions and point to circumstances negating forfeiture or, at least, mandating dismissal of Mr. Howard's complaint.

#### 1. **The Law Abhors a Forfeiture.**

To suggest that the Waldteufel water right "has degraded" is to suggest that a portion of the right claimed by E.L. Waldteufel is forfeited. This is inconsistent with the findings of the Preliminary Report that the lease and option agreement to Millview "conveyed or transferred a valid pre-1914 appropriative claim of right." Also, it is axiomatic that the law abhors a

forfeiture and forfeiture is never presumed. The burden is on he who claims a forfeiture. To meet this burden requires establishment of the proper measurement period and actual proof – not inferences based on speculation – of use, as well as water available, during these periods, by a user with a conflicting claim. Mr. Howard did not advance any data in his complaint and, as such, provided an insufficient basis for the Division of Water Rights to make a finding of forfeiture; and your Preliminary Report does not fill the void.

Any conclusion of forfeiture deriving from the Preliminary Report would have to be drawn from the four corners of the Preliminary Report dated June 1, 2007. This data is lacking. It is not enough to say that evidence of continued use of the water right through the present is non-quantitative; it's not the water right holder's burden to prove non-forfeiture. Also, the Preliminary Report failed to recognize that Millview has held and used the right for the five years preceding the Howard Complaint.

We believe that the measurement periods of any asserted forfeiture are each day during the five years preceding the Howard Complaint and, for that measurement period, the right was held and controlled by Millview either directly or indirectly.

## **2. Water Usage Computations.**

The Preliminary Report extrapolates data from Lester Wood's reported usage on statements of water diversion and use. As pointed out above, the applicable measurement period is five years next preceding Mr. Howard's Complaint, not usage in the 1960s or 1970s. Nonetheless, Lester Wood's reported usage is ambiguous as it is unclear whether the diversions reported by him were each using 500 gallons per minute, or using 500 gallons per minutes in the aggregate as assumed in the Preliminary Report. Furthermore, the sworn statement of Floyd Lawrence references flood irrigation throughout the Waldteufel place of use. Mr. Wood's report is limited to usage upon property then owned by Lester Wood.

## **3. Flow Data Not Supportive of Forfeiture.**

It is also axiomatic that the inability to obtain water because of a natural shortage cannot be the basis of a forfeiture. All this would have to be accounted for in the assertion of forfeiture.

It is notable that the USGS gage, although near the point of diversion claimed by E.L. Waldteufel, is not necessarily reflective of the flow at the point of diversion. There is no reliable information about flow in the Russian River, including underflow, at the Millview point of diversion. In 1914, Mr. Waldteufel sited the point of diversion at the place where there was the greatest flow, so there is not necessarily a correlation between the flow at the USGS gage and the point of diversion claimed by Mr. Waldteufel. This is supported by Floyd Lawrence's sworn statement in which he noted that the point of diversion was also at the location of the best swimming hole on the West Fork. Mr. Waldteufel and his successors apparently diverted with a very large pump from a deep hole on or near the river.

Although the USGS gage measures surface flow, it is not reflective as to whether or not there is sufficient subterranean water available to supply the vested right in full. In fact, water used upon the lands of Waldteufel supplementing surface flow, previously thought to be percolating groundwater and not included in statement so diversion, is likely to have been surface water under the definition of "surface flow" as applied by the Division of Water Rights.

**4. Right Claimed Under Pre-1914 Authority.**

The J.A. Waldteufel water right was claimed under Civil Code Part 4, Title 8, Water Rights, and specifically the procedures set forth in Civil Code § 1415. It is part of the same statutory scheme as Civil Code § 1416 which recognizes that when a governmental agency such as the Millview county Water District acquires an appropriation in accordance with the provision of Civil Code § 1415, it shall not be necessary to commence work for development of more of the water so claimed than is actually necessary for the immediate needs of the agency to preclude forfeiture.

Millview County Water District is in the initial stages of environmental review for permanent acquisition of the J.A. Waldteufel water right leased by it since October 15, 2001. It is submitted that the statutory scheme under which the right is claimed qualifies Water Code § 1240. Water Code § 1241 is inapplicable to non-Water Commission Act appropriations.

Please reconsider your intended report and recommendations. They are not justified by the information relied upon and they will cause much, very costly mischief and not be of benefit to any identified person.

Sincerely,



Jared G. Carter

cc: Tim Bradley  
Thomas P. Hill  
Steven Gomes  
Lee Howard  
Barbara Spazek  
Senator Wiggins Office



CAR  
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").

Charles A. Rich, Chief  
July 31, 2007  
Page 2

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.

Charles A. Rich, Chief  
July 31, 2007  
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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.

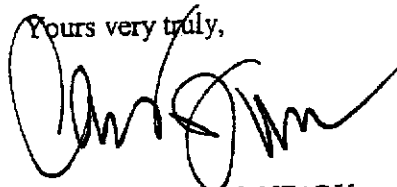
Charles A. Rich, Chief  
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Therefore, Millview believes that the analysis reviewing the statements of water diversion filed in the 1960s is irrelevant to the Howard Complaint. See *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4<sup>th</sup> 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

CJN:jen  
File: 3188-01

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.



CAR  
262.0(23-03-06)

**MENDOCINO COUNTY WATER AGENCY**

890 North Bush Street, Room 20  
Ukiah, California 95482  
(707) 463-4589 fax (707) 463-4643

July 31, 2007

Mr. Charles A. Rich, Chief  
Complaint Unit, Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
1001 "I" Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Re: 363:CAR:262.0 (23-03-06)

Water Right Complaint by Lee Howard Against Thomas Hill Regarding Diversion of Water by  
The Millview County Water District in Mendocino

Dear Mr. Rich:

Although not a party to the on going Millview County Water District (Millview) water right complaint investigation, the Mendocino County Water Agency is very interested in the results of the investigation, as they may have significant economic consequences for the Ukiah Valley. The Ukiah Valley's developed water supply is generally insufficient to meet existing water demands during extended drought periods and as a result, economic development of the Ukiah Valley has been stymied. Accordingly, the potential loss of any existing water right that may contribute to the valley's economic development, such as the pre-1914 water right obtained by Millview from Thomas Hill and Steve Gomes, is of concern.

The Water Agency staff is familiar with the technical and legal arguments made by the respective parties, but in the absence of additional information, is unable to advocate a position on this matter, other than the general plea to proceed cautiously and methodically through the investigation, given the potentially significant economic ramifications of the findings. In reviewing your June 1, 2007 preliminary report and the associated letter from the attorneys for Thomas Hill and Steve Gomes (Carter, Vannucci & Momsen, LLP), dated July 24, 2007, several questions have arisen, which Water Agency staff urge you to more fully address in your final report:

- 1) What is the State Water Resources Control Board's position regarding the forfeiture of appropriative or pre-1914 water rights – does forfeiture automatically occur after a five year period of non use, even if no other party has asserted a claim to the unused water?
- 2) Does the five-year period of non use immediately proceed the date of any asserted claim to the unused water, as argued by the attorneys for Thomas Hill and Steve Gomes?



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- 3) Can a diversion that began prior to 1914, from what was initially assumed to be a "percolating groundwater" source but is now identified as "underflow", now be considered a pre-1914 water right – assuming beneficial use is demonstrated?

Based on the available information, it appears that the answers to these three questions could not only play a pivotal role in the quantification of the pre-1914 water right obtained by Millview from Thomas Hill and Steve Gomes, but also the quantification of other appropriative and pre-1914 water rights currently asserted by other water right holders in the Ukiah Valley and surrounding region. Any information you could provide with respect to these three questions would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Roland A. Sanford".

Roland A. Sanford  
General Manager

Cc: Tim Bradley  
Thomas Hill  
Steve Gomes  
Lee Howard  
Barbara Spazek  
Senator Wiggins Office  
Jared Carter

**CARTER, VANNUCCI & MOMSEN, LLP**

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March 10, 2008

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Charles A. Rich, Chief  
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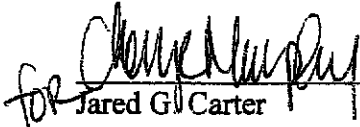
Jim Kassel  
Chief, Hearings & Special Projects  
State Water Resources Control Board  
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Sacramento, CA 95812-2000

Re: 363:CAR:262.0 - June 1, 2007 Report of Investigation for Complaint filed by Lee Howard regarding diversion from the east fork of the Russian River. Proof of Service re March 6, 2008 Petition for Reconsideration.

Ladies & Gentlemen:

Attached is a proof of service of our petition for reconsideration in the above referenced matter.

Sincerely,

  
\_\_\_\_\_  
Jared G. Carter  
Attorney for Petitioners  
Thomas Hill & Steven Gomes

