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CLERK OF MENDOCINO COUNTY SUPERIOR COURT OF CALIFORNIA

LESLIE SNYDER

SUPERIOR COURT OF CALIFORNIA COUNTY OF MENDOCINO

MILLVIEW COUNTY WATER DISTRICT) a Public Agency; THOMAS HILL and) STEVEN L. GOMES)

Plaintiffs,)

Vs.)

CALIFORNIA STATE WATER) RESOURCES CONTROL BOARD) A Public Agency, et al)

Defendants.)

SCWL CVG 08 51448) SCWL CVG 08 51450)

MINUTE ORDER)

Date: November 6, 2008) Time: 9:00 a.m.) Dept: B)

This matter came on regularly for hearing on November 6, 2008 in Department B of the above-entitled Court, Judge Philip Schafer presiding. Counsel Christopher Neary present on behalf of Millview County Water District. Counsel Jared Carter present on behalf of Thomas Hill and Steven Gomes. Deputy Attorney General William Jenkins and Counsel Marc Del Piero present on behalf of California Water Resources Control Board. Counsel Alan B. Lilly and Stephen Siproth present on behalf of Sonoma County Water Agency. Counsel Michael R. Woods present on behalf of Mendocino County Russian River Flood Control and Water Conservation Improvement District. The matter was argued and submitted.

Re: Case No. SCWL CVG 08-51450

- 1) The motion of Sonoma County Water Agency (SCWA) joined in by California State Water Resources Control Board (SWRCB) and Mendocino County Russian River Flood Control and Water Conservation Improvement District to compel joinder of necessary parties is denied.
2) The Demurrer of SWRCB to the declaratory relief claim of the second cause of action is granted without leave to amend. An answer is to be filed within 30 days.

Minute Order

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3) Plaintiff's Demurrer to the Answer of SCWA is denied

Re: Case No. SCWL CVPT 08 51448

- 1) The application of Petitioners for an Alternative Writ of Mandamus and a Stay of Administrative Decision is denied. It is denied because the SWRCB has not made a final determination for the court to stay or review.
- 2) The application for a Writ of Mandamus (traditional) is denied without prejudice.

Charles A Rich who is the Chief, Complaint Unit, Division of Water Rights of SWRCB filed an investigative report which had been conducted in response to a citizen complaint by Lee Howard. The investigator expressed the opinion that the Plaintiff-Petitioners' water rights were substantially less than claimed because of forfeiture principles. While this was simply the opinion of a staff member and not a Board decision, it received the imprimatur of the Division Chief. The report and her letter endorsing the seemingly authoritative opinion were published to interested agencies and the person who filed the complaint. The agency then simply retired the matter without bringing the issue to an administrative conclusion.

Such a posture by the SWRCB effectively clouded the quantitative level of Plaintiff-Petitioners' water rights, frustrated their ability to conclude a business transaction and left them without recourse or resolution other than to defy the SWRCB and risk expensive consequences. These facts lead to the conclusion that the proposed inaction would be an abuse of discretion. The SWRCB should either disavow the conclusion of forfeiture or pursue a due process course to reviewable finality. Such were the conditions when these legal actions were filed. However, perhaps prodded by these suits, The SWRCB has attempted to go forward with an administrative process which should result in a reviewable administrative decision. It would be an abuse of discretion for this Court to presume they will not continue to the finish unless ordered to do so.

Counsel for SWRCB is requested to prepare a formal order and circulate it among all participating counsel for approval as conforming with this Ruling.

Dated: January 14, 2009


 PHILIP SCHAFFER
 JUDGE OF THE SUPERIOR COURT,
 ASSIGNED

DECLARATION OF SERVICE BY MAIL
CCP Section 1013(a), 2015.5

I declare that I am employed in the County of Mendocino, State of California; I am over the age of eighteen years and not a party to the within action. My business address is Courthouse, Ukiah, California 95482.

I am familiar with the County of Mendocino's practice whereby each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in the U.S. mailbox at or before the close of each day's business.

On the Date of this Declaration, I served the attached on the party(s) listed below by mailing a true copy thereof, with postage fully prepaid, deposited in the United States mail to:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed at Ukiah, California.

Dated: January 14, 2009


Deputy Superior Court Clerk