

# Testimony of Tim Bradley

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## **Testimony of Tim Bradley**

### **Background of District**

I have been the General Manager of Millview County Water District for approximately ten years.

Millview County Water District operates a community water system which supplies domestic water service to approximately 1500 water service connections within its service area comprising the unincorporated areas North of the City of Ukiah in Mendocino County. Millview also supplies water to the Calpella County Water District in accord with a 1992 agreement.

Millview County Water District is governed by a five member board of directors.

### **Millview Water Rights**

Millview holds de minimus summertime water rights, together with a contract with the Russian River Flood Control and Water Conservation Improvement District ("RRFCWCID").

On May 31, 2001 the Department of Public Health imposed upon Millview a moratorium for additional water service connections by Order 02-03-01CO-002 . The Moratorium Order was based upon the fact that for the prior five year period the existing service demand exceeded Millview's total source capacity.

It is noteworthy that by Decision D 1110 dated February 21, 1963 the predecessor to this board denied Millview's application 17857 for 3.0 cfs for summertime supply by stating:

"Millview lie[s] within the Mendocino District [RRFCWCID] which through its participation in the financing of the Coyote Project, has a commitment for use of 8000 ac/ft per annum of project water within its boundaries [referring to Permit 12947-B]. The Mendocino District [RRFCWCID] is willing to sell water to [Millview] which would allow it to firm up its water supply during the months when water was not otherwise available [the summer months]

### **Millview Efforts to Resolve its Summertime Source Deficiency**

Unfortunately the expectation that Millview could rely upon the RRFCWCID for a dependable supply of water has not been realized. Although Millview currently holds a water supply contract with RRFCWCID it is revocable at the sole discretion of RRFCWCID and is limited to a term which soon expires. For example the RRFCWCID has not responded to Millview's formal request more than a year ago to discuss Millview's summertime water need.

Although the RRFCWCID contract did augment Millview's water supply the Department of Health declined to recognize this augmentation because the supply was subject to RRFCWCID unilateral revocation and is limited to a defined term.

In recognition of its lack of dependable summertime supply the Board of Directors began searching for additional water supply.

Millview entered negotiations with Masonite Corporation in 2002 for the purchase of Licenses 5118 and 5763 for approximately 4000 ac/ft/yr. because the Masonite industrial facility was closed in 2002. Millview acquired the right to purchase the rights subject to approval by the SWRCB of Millview's petition for change of use and place of use. These petitions were protested by the complainant in this matter which protest has not been resolved. The protestant in this matter also now serves as the President of the RRFCWCID.

In 2002 the Department of Public Health authorized Millview to connect a 125 home subdivision to its water system. The subdivision was located on lands previously owned by J. A. Waldteufel who originally claimed the water right which is the subject of this proceeding. The Department of Public Health recognized the assignment of a portion of the Waldteufel Water Right to exempt the connection from the then and still existing moratorium of service connections

In partial reliance upon the Department of Health's recognition of the Waldteufel Water Right in presumptive consultation with the Division of Water Rights, and in an effort to solve its Summertime Source Supply Deficiency to serve its existing customers Millview entered into a lease/option agreement of the Waldteufel Water Right with Tom Hill and Steve Gomes in October 2002. (See Exhibit Mil-015).

The option remained in effect until August 2009 when Millview faced with expiration of the option and loss of its investment in the right exercised it and purchased the entire right, which it now

holds. It also acquired most of the amount reserved by Mssrs. Hill and Gomes to serve the 125 home subdivision so as to guarantee its legal ability to provide service to the subdivision.

During the time that Millview leased the right Mr. Hill and Mr. Gomes encouraged Millview to use as much of the right as possible.

In 2005 Millview endeavored to attribute as much of its summertime use as possible to the Waldteufel Right due to the owner's encouragement for use of the right and Millview's continuing concern that the contract right with RRFCWCID right could not be relied upon in the long run. Through a miscalculation of the amount of the total right and the calculation of the amount of the portion of the right reserved for the 125 acre subdivision Millview used just under 1200 ac/ ft during the summer months although its intention was to utilize the entire right which is now calculated to be 1447 ac/ft/yr less the portion of the reserved right for the 125 acre subdivision not purchased by Millview.

The Waldteufel Right diversion point was claimed at a point just north of the convergence of the East Fork of the Russian River with the Main Stem of the Russian River which is referenced as the "West Fork" in the Draft Cease and Desist Order. Millview's water plant is located approximately several hundred yards south of this convergence. Millview intends to divert under the subject water right from the Main Stem of the Russian River (also referred to as the "West Fork" by the Division) when this Draft CDO is resolved, rather than from its water plant location.

## The Complaint

In 2006 a complaint was filed by Lee Howard, (Exhibit Mil-011) Mr. Howard had previously been a director of RRFCWCID until he was soundly defeated in a contested election. He has since been appointed to fill a vacancy and now serves as President of the Board of Directors of RRFCWCID. So far as is known, Mr. Howard neither presently asserts any rights to use of water from the Russian River, nor has ever asserted any such rights.

Mr. Howard's complaint asserted that a Mr. Wood, who also served upon the Board of Directors of RRFCWCID, and who was then deceased had publicly stated that he had abandoned the right during the time that he owned the Waldteufel Right. This allegation is not supported by the documentary record. (see Exhibit Mil-016)

Mr. Howard also complained that the point of diversion was moved several hundred yards upstream to the Millview Water Plant. Although Mr. Howard was not then a director of the RRFCWCID it is believed that he was in essence attempting to assert the rights of RRFCWCID. However, seven years have now passed since Millview first diverted under the Waldteufel Right and RRFCWCID has not brought any legal action to enjoin the change of place of diversion and to show that it has been harmed by such diversion. In any event Millview has supplied RRFCWCID with notice of its intention to make the necessary expenditures when this matter is resolved to provide a permanent

diversion point on the Main Stem of the Russian River where RRFCWCID has no known claims or rights.

It should be noted that the point of diversion of the Waldteufel Water Right and its original claimed place of use is entirely within the boundaries of Millview County Water District and has been since the Millview's creation.

Mr. Howard also asserted in essence that the right has been forfeited because Millview has no "basis of proof that this water has been used in like amounts and in like manner, since 1914." It is this last contention which appears to be the Division's basis for its Draft Cease and Desist Order.

After the Complaint was filed Millview has endeavored to utilize as little as possible of the Walteufel Water Right as is possible until this matter is resolved. This endeavor was complicated in 2009 by RRFCWCID's request that Millview impose reductions of 50% of its contractual amount. Although Millview probably reduced its summertime use in 2009 more than any other public entity in the Russian River Watershed in 2009 in response to drought conditions, it still had to rely in 2009 upon the Waldteufel Right to supply even sharply reduced summertime demand.