

1 CARTER & MOMSEN, LLP
2 Jared G. Carter, Esq. SBN 36310
3 Brian C. Carter, Esq. SBN 139456
4 Matisse M. Knight, Esq. SBN 258039
5 444 North State Street
6 P.O. Box 1709
7 Ukiah, CA, 95482
8 (707) 462-6694
9 (707) 462-7839 fax

6 Attorneys for Respondents THOMAS P.
7 HILL, STEVEN L. GOMES

8 **BEFORE THE CALIFORNIA**
9 **STATE WATER RESOURCES CONTROL BOARD**

10
11 In the Matter of Draft Cease) Ref. No. 363:JO:262.0(23-03-06)
12 and Desist Order No.)
13 2009-00XX-DWR against Thomas) DECLARATION OF STEVEN L. GOMES
14 Hill, Steven Gomes and)
15 Millview County Water)
16 District.)
17) Hearing: January 26, 2010
18) Time: 9:00 a.m.
19) Location: Coastal Hearing Room,
20) 1001 I Street, Second Floor,
21) Sacramento

17 I, Steven L. Gomes, declare:

18 1. I am a respondent in this case. I was at the relevant
19 times, along with Mr. Thomas P. Hill ("**Hill**"), the owner of the
20 water right referred to in this matter as the "Waldteufel
21 Right". Hill and I have sold the Waldteufel Right to Millview
22 County Water District ("**Millview**", also a respondent herein),
23 the sale/purchase price for which depends upon the volume of
24 water right. I have been a licensed building contractor for
25 over 30 years, and I have been a licensed real estate broker
26 for more than nine years. The following is based upon my
27 personal knowledge. If called as a witness herein, I could and
28 would testify as follows.

1 2. In early January 1998, Hill and I purchased Waldteufel
2 Right from Mr. Robert Wood. I understand that the Waldteufel
3 Right is memorialized or embodied in the recorded document a
4 copy of which is attached hereto as Exhibit C, which was
5 recorded in the office of the Recorder of Mendocino County on
6 March 14, 1914, at Book 3 of Deeds, Page 17.

7
8 3. At the same time, Hill and I also purchased from Robert
9 Wood the real property ("**Wood Property**") that we were told had
10 been irrigated for many years with water appropriated under the
11 Waldteufel Right.

12
13 4. Prior to purchasing the Wood Property and the
14 Waldteufel Right from Mr. Wood, I conducted some due diligence
15 regarding the Waldteufel Right. Having reviewed some of the
16 information available about the Waldteufel Right and water
17 rights in general, I called the California State Water
18 Resources Control Board to inquire about it. I ended up
19 speaking to Mr. Andy Chu at the Division of Water Rights.

20
21 5. I explained to Mr. Chu that I was contemplating the
22 purchase of the Waldteufel Right and the Wood Property, and I
23 asked Mr. Chu about the current status of the Waldteufel Right.
24 My questions to Mr. Chu specifically included whether the
25 Waldteufel Right was fully valid and recognized by the State of
26 California to its full extent. Mr. Chu told me that "Yes", the
27 water right was valid and was recognized by the State to its
28 full extent, and he stated that there was nothing in the

1 Department's file to indicate that it was not. At no time did
2 Mr. Chu suggest the subject water right had been diminished or
3 forfeited in whole or in part.
4

5 6. Thereafter, and in partial reliance upon the above-
6 referenced statements made to me by Mr. Chu, Hill and I closed
7 our purchase of the Wood Property and the Waldteufel Right from
8 Mr. Wood. Later, Hill and I also sought and received advice
9 from Mr. Chu about how one would transfer the Waldteufel Right
10 to Millview. Mr. Chu was very diligent and knowledgeable, and
11 seemed to want to help; he was very helpful.
12

13 7. In 2001, Hill and I entered into an agreement with
14 Millview under which we agreed to license and assign to
15 Millview the right to fully utilize the Waldteufel Right,
16 including by changing the point of diversion and the place of
17 use if Millview decided to do so. That agreement included an
18 option for Millview to purchase the Waldteufel Right from Hill
19 and me. A second written agreement regarding the above
20 agreement is dated October 11, 2002, and is part of the
21 administrative record in the Superior Court lawsuit against
22 SWRCB referenced below (Millview v. CSWRCB). My recollection
23 of the agreement(s) with Millview was that its ability to
24 change the point of diversion (from the original point to
25 Millview's downstream, established point of diversion and
26 pumping station) was an important component of the agreement,
27 and that the State did subsequently review and knowingly
28 approve Millview's application to change the point of

1 diversion.

2

3 8. I have examined many times the real property and the
4 pumping facilities where the water is pumped from the Russian
5 River to the Wood Property pursuant to the Waldteufel Right.
6 Before Hill and I bought the Waldteufel Right, I visited the
7 pump-site with Mr. Wood and watched the pump run approximately
8 1,000 gallons per minute. Mr. Wood told me at the time that
9 the pump would pump 1,400 gallons per minute. Fourteen hundred
10 gallons per minute is approximately 2.5 cubic feet per second
11 (2.5 ft³/sec.).

12

13 9. I also, prior to my and Hill's purchase of the Wood
14 Property, was shown by Mr. Woods a well in the northwest corner
15 of the Wood Property. Mr. Woods told me that this well had
16 been and was still being used to pump water that was used to
17 irrigate crops on the Wood Property. Attached hereto as
18 Exhibit Z is a photograph, taken in August 2009, of the well
19 head of that well.

20

21 10. In approximately 1991, I discussed with the staff of
22 Mendocino County's Planning and Building Dept. whether I could
23 re-zone the Wood Property from "Ag" to medium density
24 residential if I purchased it. The short answer to a long
25 examination was "yes" because the land was so sandy (as shown
26 in relevant soil studies) that it did not hold water and was
27 not good agricultural land. Because it was so sandy, Mr. Wood
28 had to run his pump almost all the time to keep the crops

1 irrigated.

2

3 11. On or about April 17, 2008, SWRCB' Victoria Whitney
4 wrote a letter to my and Tom Hill's attorney (Jared Carter)
5 stating that the Lee Howard February 2006 complaint was being
6 closed without further action.

7

8 12. On or about April 24, 2008, per my and Hill's
9 instructions, Carter filed a petition for writ of mandate in
10 Mendocino County Superior Court (Millview v. CSWRCB (SCWL-CVPT
11 '08 51448)).

12

13 13. After having had the history of this matter explained
14 to him, on January 14, 2009, Judge Philip Schafer filed an
15 order in which he stated that the April 17, 2008, letter of Ms.
16 Whitney, and the "proposed inaction" therein, "would be an
17 abuse of discretion". A true and correct copy of Judge
18 Schafer's January 14, 2009, order is attached hereto as Exhibit
19 V.

20

21 14. On October 23, 2009, despite my attorneys' best
22 efforts, Judge Schafer filed an amended judgment in the above-
23 referenced Millview v. CSWRCB case, denying without prejudice
24 my and Hill's petition for writ of mandate and declining to

25

26 ///

27 ///

28 ///

1 retain jurisdiction while SWRCB proceeds with its handling of
2 this matter.

3
4 I declare under penalty of perjury under the laws of the
5 State of California that the foregoing is true and correct.
6 Executed on January 2, 2010, at Ukiah, California.

7
8 
9 Steven L. Gomes

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28