



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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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

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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
for

Victoria A. Whitney
Division Chief

cc: The Honorable Patricia Wiggins
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bcc: Thomas Howard, Chief Deputy Director, SWRCB
Rob Egel, Office of Legislative Affairs, SWRCB
Patty Zwarts, Assistant Secretary for Legislation, CalEPA

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