



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

Division of Water Rights  
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Arnold Schwarzenegger  
Governor

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

APR 17 2008

Mr. Lee Howard  
3900 Parducci Road  
Ukiah, CA 95482

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

Dear Messrs. Howard and Hill:

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

Staff of the Division of Water Rights (Division) sent you a copy of the Report of Investigation regarding the subject complaint via a letter dated June 1, 2007. This letter indicated that unless additional evidence was provided within 30 days justifying a different conclusion than reached by staff, a recommendation would be made to close the complaint without further notice. Closure of the complaint would not preclude enforcement action against the Millview County Water District (Millview) for a potential unauthorized diversion.

Three comment letters were received:

- Letter of July 24, 2007 from Jared Carter on behalf of Thomas Hill and Steve Gomes
- Letter of July 31, 2007 from Christopher Neary on behalf of Millview
- Letter of July 31, 2007 from Roland Sanford of the Mendocino County Water Agency

Division staff has reviewed the information contained in these letters and has found no additional evidence that would change the recommendation contained in the Report of Investigation. There is confusion by some, if not all, of the parties to this complaint regarding the constraints of a pre-1914 appropriative right (pre-14 right). In order to receive the benefit of a pre-14 claim of right, the right holder should be able to document the following:

1. that a pre-14 right was properly initiated before December 19, 1914 by either: a) filing a notice with the county recorder; or b) taking the first step(s) to divert and use water via the construction of diversion and delivery works or the application of water to a beneficial use;
2. that the current diversion for beneficial use of water is no greater than the maximum amount that was occurring on December 19, 1914, or shortly thereafter if complete beneficial use had not yet occurred and diligent development of the right was in process;
3. that there has not been a period of 5 years or more when water was available to fully satisfy the right but the water was not put to full beneficial use (in which case the right would be reduced to the maximum amount that was diverted and put to beneficial use during the 5-year period of minimum use since 1914); and
4. that the basis of right that was initiated prior to December 19, 1914 has been legally transferred from party to party until it rests with the current holder (i.e., that a clear chain-of-title from the initiator of the right to the current owner exists).

California Environmental Protection Agency

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Mr. Lee Howard  
Mr. Thomas P. Hill

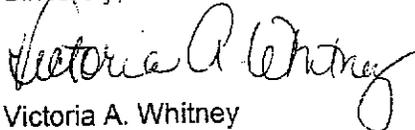
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While Messrs. Hill and Gomes were able to provide information to show that conditions 1, 2, and 4 above have probably been met, the evidence indicates that for more than 5 years, the maximum amount of water put to beneficial use by the Wood family was 15 acre-feet per annum or less. Consequently, staff asserted that the pre-14 claim of right held by Messrs. Hill and Gomes has been partially forfeited and the maximum diversion that can be justified under a pre-14 claim of right would be no more than 15 acre-feet per annum<sup>1</sup>. Any diversions pursuant to the Hill/Gomes claim of right in excess of this amount would be: a) unauthorized; b) a trespass against the State of California; and c) subject to appropriate enforcement action by the State Water Resources Control Board. In addition, diversions in excess of 15 acre-feet per annum<sup>2</sup> may impact other prior right holders including the Mendocino County Russian River Flood Control & Water Conservation Improvement District, Sonoma County Water Agency and more than 500 other diverters from the main stem Russian River below Lake Mendocino. Impacts would be more serious during the period of low flow that occurs almost every year.

At this time staff has no specific evidence that Millview has diverted water in excess of that authorized by permits or licenses currently held by Millview or via Millview's contract with the Mendocino County Russian River Flood Control & Water Conservation Improvement District. Consequently, no additional action with respect to Mr. Howard's complaint appears necessary at this time, and his complaint is considered closed. Should evidence become available to either document unauthorized diversions by Millview or suggest the likelihood thereof, an appropriate enforcement action could be initiated at that time.

If there are any questions, Mr. Charles Rich of the Division's Complaint Unit can be contacted at (916) 341-5377.

Sincerely,



Victoria A. Whitney  
Division Chief

cc: Mr. Jared Carter  
Carter, Vannucci & Momsen, LLP  
P.O. Box 1709  
Ukiah, CA 95482

Mr. Christopher Neary, Counsel  
Millview County Water District  
110 South Main Street, Suite C  
Willits, CA 95490

cc: (Continued next page.)

<sup>1</sup> The 15 acre-feet per annum could only be diverted downstream of the original point of diversion during periods when an equivalent amount of water is available at the original point of diversion. In other words, an increase in the available supply cannot be obtained by moving the point of diversion downstream.

<sup>2</sup> Division staff understands that Messrs. Hill and Gomes have asserted that the pre-14 claim of right would authorize diversions of up to 1,500 acre-feet per annum. Millview has apparently leased this right from Messrs. Hill and Gomes in the past and may be considering purchase of this right for use within the Ukiah area.

Mr. Lee Howard  
Mr. Thomas P. Hill

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cc: (Continuation page.)

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

The Hon. Pat Wiggins  
California State Senate  
P.O. Box 785  
Ukiah, CA 95482

Mr. Roland Sanford  
Mendocino County Water Agency  
890 North Bush Street, Room 20  
Ukiah, CA 95482

Mr. Randy Poole, General Manager  
Sonoma County Water Agency  
Po Box 11628  
Santa Rosa, CA 95406-1628

Mr. Tim Bradley, General Manager  
Millview County Water District  
3081 North State Street  
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