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9 Attorneys for Defendant, MENDOCINO COUNTY  
10 RUSSIAN RIVER FLOOD CONTROL AND WATER  
CONSERVATION IMPROVEMENT DISTRICT

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF MENDOCINO

14 MILLVIEW COUNTY WATER DISTRICT, a  
15 Public Agency; THOMAS P. HILL; and  
STEVEN L. GOMES;

16 Petitioners/Plaintiffs,

17 vs.

18  
19 CALIFORNIA STATE WATER  
20 RESOURCES CONTROL BOARD, a Public  
Agency; and DOES 1 through 1000  
21 inclusive;

22 Respondents/Defendants.

} UNLIMITED  
} Case No. SCU-K-CVPT-1259715  
} DECLARATION OF SEAN WHITE IN  
} SUPPORT OF MOTION TO INTERVENE  
} AND IN OPPOSITION TO APPLICATION  
} FOR STAY  
} Date: April 6, 2012  
} Time: 9:30 a.m.  
} Dept.: E  
} Judge: Hon. Cindee Mayfield  
} Trial Date: N/A  
} Action Filed: February 9, 2012

[Exempt from Filing Fees – Government Code  
Section 6103]

Exhibit SCWA-6



1           6.       RRFCD has numerous municipal and large agricultural customers (as further  
2 described in paragraph 14, below) under contract for varying amounts of Project Water. All  
3 customers operate under the terms of a Uniform Water Supply Agreement" or UWSA.  
4 Customers that enter into a RRFCD USWA specify the amount of Project Water they desire  
5 per year. Availability of the desired amount is contingent upon the amount currently under  
6 contract, as well as compliance with regulations such as the terms of RRFCD's water rights  
7 permits and the California Environmental Quality Act (CEQA).

8           7.       Currently, Petitioner Millview County Water District ("Millview") has up to 970  
9 acre feet per year of year-round Project Water available under their current UWSA. In  
10 2010, Willow County Water District (another RRFCD customer) reduced the amount of  
11 water under their UWSA by 550 acre feet per year. In a letter dated June 3, 2010, RRFCD  
12 offered to reallocate this newly available supply to Millview pending environmental review  
13 under CEQA. Millview then hired a consultant to begin the CEQA process. The CEQA  
14 process for the reallocation of water was completed in 2011, when RRFCD, acting as the  
15 lead agency, filed a Notice of Determination on October 20th, 2011.

16           8.       RRFCD and Millview have completed all steps necessary should Millview  
17 desire to increase its supply of Project Water from 970 acre feet per year to 1520 acre feet  
18 per year. According to Department of Public Health documents on file at RRFCD,  
19 Millview's annual total water use is approximately 1,500 to 1,600 acre feet per year.  
20 Millview has access to non-RRFCD water during November to July of approximately 1,440  
21 acre feet at a rate of 3 CFS, and has access to some additional water under other rights  
22 during June and August. Millview's supply of 1,520 acre feet per year from RRFCD would  
23 exceed the amount of water Millview requires during that time of the year when their own  
24 water rights are inadequate.

25           9.       In a letter dated December 20th, 2011 Millview asked for their contract to be  
26 increased, but then verbally retracted their request due to this pending litigation and  
27 proposed modifications to RRFCD's UWSA.

1           10.     RRFCD has been working on updating the language of its UWSA in use for  
2 all its contractors since 2010. One of RRFCD's primary goals for the update has been to  
3 change the language in a way that satisfies the California Department of Health Service's  
4 (DHS) criteria as "a reliable supply". The reliability concerns of DHS have never been  
5 related to RRFCD's *availability* of water supply, but have instead been linked to specific  
6 clauses (e.g., right to termination) in RRFCD's UWSA. RRFCD spent over one year  
7 working with DHS to ensure that RRFCD's current proposed draft meets their criteria. In an  
8 email dated November 9th, 2011, DHS stated that the revised language of the current  
9 proposed draft meets their criteria.

10           11.     On January 11th, 2012 RRFCD held a public hearing to discuss the proposed  
11 modifications to the UWSA and to invite public comment. Millview and Willow were the only  
12 two parties that provided comment. Final approval of the revised UWSA is pending due to  
13 these comments, but is expected to take place prior to June, 2012.

14           12.     Water supply for all contractors may be curtailed during periods of drought.  
15 Curtailments are usually the result of mandates from SWRCB. In 2009, water levels in  
16 Lake Mendocino were at their lowest level since the drought of 1976-1977. In 2009,  
17 RRFCD was forced to reduce allocations because of SWRCB Order WR-2009-0034-EXEC.  
18 While 2012 currently falls under the critically-dry criteria as determined by SWRCB  
19 Decision 1610 (D1610), it will not affect available water supply. D1610 only determines  
20 minimum instream flows in the river; it does not mandate conservation levels. Despite low-  
21 rainfall, careful reservoir management and recent storms have resulted in normal water  
22 supplies stored in Lake Mendocino. There will be no need for conservation or curtailments  
23 in 2012.

24           13.     By way of further background, RRFCD was created by a vote of the  
25 electorate as a special district within the Mendocino County Water Agency. The measure  
26 that created RRFCD also included a property tax assessment to raise \$650,000 to enable it  
27 to participate with Sonoma County Water Agency and the U.S. Army Corps of Engineers in  
28 the construction of Coyote Dam and Lake Mendocino, which was completed in 1959. The

1 Dam is operated by the Army Corps but the Sonoma County Water Agency has the  
2 delegated right, agreed to by RRFCD, to control releases from the water supply pool in  
3 Lake Mendocino. The project controls winter floods and stores 122,500 acre feet ("AF") of  
4 water with 48,000 AF designated for flood control, 70,000 AF as the conservation or water  
5 supply pool and 4,500 AF for sediment storage.

6 14. RRFCD is an autonomous public district with the same powers and  
7 authorities as the Mendocino County Water Agency and has five trustees elected at-large  
8 from within the district that serve four-year terms. RRFCD is the holder of Project Water  
9 (Mendocino County's 8,000 AF right to water stored in Lake Mendocino), pursuant to State  
10 Water Resources Control Board ("SWRCB") Permit 12947B granted in January, 1975.  
11 RRFCD water is beneficially used for domestic, municipal, irrigation, frost protection,  
12 industrial and recreational purposes within RRFCD's territorial boundaries from January 1  
13 to December 31 of each water year. During all or part of each year, each of the following  
14 potable water systems and utilities is dependent on RRFCD's 8,000 AF water right as a  
15 source of supply: Redwood Valley County Water District; Calpella County Water District;  
16 Millview County Water District; City of Ukiah; Rogina Water Company; Willow County  
17 Water District; and Hopland Public Utilities District, as are multiple small mutual water  
18 systems. Most residents of the Ukiah and Hopland Valleys rely annually upon the water  
19 rights and supplies of RRFCD for their domestic use. Additionally, RRFCD sells and  
20 delivers water for agricultural enterprises and irrigation to over 50 large farming entities with  
21 significant roles in Mendocino County agriculture and which employ thousands of workers.

22 15. The entire Russian River and its tributaries, including those in the Ukiah  
23 Valley, have been declared fully appropriated for the period of July through October of each  
24 year in Mendocino County. This final declaration of "full appropriation" by the SWRCB in  
25 the late 1990's was noticed, in advance of extensive public evidentiary hearings, to all  
26 individual land owners and water rights holders on the Russian River. The only  
27 unappropriated water that remains in the Russian River during this period of full  
28 appropriation is water that has been reserved by federal and state water and regulatory

1 agencies for the benefit of federally and state protected endangered salmonid species and  
2 for public trust resources protected under the provisions of the state Constitution and the  
3 California Fish and Game Code.

4 16. Millview's allocation of Project Water has essentially been fully used by  
5 Millview's current commitments during the peak summer period of July 1 through October  
6 30 of each year. Millview diverts that existing allocation from the main stem of the Russian  
7 River through its existing plant, located below the confluence of the East and West Forks of  
8 the river. There is no existing point of diversion for Millview to utilize in diverting water from  
9 the West Fork (to the extent any such water exists) under the alleged "Waldteufel Right".

10 17. In SWRCB's proceedings which led to Order WR 2011-0016 at issue herein,  
11 RRFCD filed a Policy Statement ("Statement") which I prepared and a copy of which is  
12 attached to this Declaration. As demonstrated in the Statement, Millview's exercise of the  
13 Waldteufel Water Right during several months of the year has a direct impact on the  
14 available supply of RRFCD's Project Water. As has been made clear by Millview's papers  
15 on file in this action, Millview diverts water under the Waldteufel Water Right not from the  
16 historic point of diversion for such right on the West Fork, but instead from Millview's  
17 existing plant below the confluence of the West Fork and the main stem. During many  
18 months, there is generally little or no water available for appropriation in the West Fork of  
19 the Russian River. At Millview's point of diversion, often the only water available for  
20 diversion would be water released from Lake Mendocino that belongs to RRFCD or SCWA,  
21 is required for fisheries or, subject to availability, is passed through to riparian water rights  
22 holders or belongs to other appropriative water rights holders on the main stem of the  
23 Russian River. To make use of the alleged full extent of the Waldteufel Water Right,  
24 Millview must of necessity divert RRFCD's Project Water during summer months. That fact  
25 represents the basic reason why RRFCD has determined that it is necessary for it to  
26 intervene in this action and thus protect its interests and those of its other customers.

27 I declare under penalty of perjury under the laws of the State of California that the  
28 foregoing is true and correct.

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DATED:

3/29/2012

  
Sean White