



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

October 3, 2011



VIA EMAIL ONLY

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Townsend:

COMMENT LETTER – 10/18/11 BOARD MEETING: MILLVIEW/HILL & GOMES DRAFT
CEASE AND DESIST ORDER

The Division of Water Rights (Division) Prosecution Team supports the State Water Resources Control Board's (State Water Board) Draft Cease and Desist Order (Draft Order) and urges the State Water Board to promptly adopt the Draft Order with several modifications.

First of all, it is not clear why the Ordering paragraphs of the Draft Order are directed only to Millview and not also to Messrs. Hill and Gomes. The Draft Order comments that the record is unclear whether the 2002 "License and Assignment of Water Rights Agreement" between Millview and Messrs. Hill and Gomes was extended and whether Millview is in fact now the owner of the Waldteufel claim of right. (Draft Order, p. 43, note 16.) The Draft Order adds that "Regardless of the term of that agreement, to the extent that Messrs. Hill and Gomes maintain any interest in the Waldteufel claim of right, our analysis finding that the Waldteufel right is limited applies equally to their claim under the Waldteufel right, and would apply to any diversions thereunder." (*Ibid.*) It is therefore unclear why the Ordering paragraphs of the Draft Order are directed at Millview alone. Based on the logic of the Draft Order, the Ordering paragraphs should be directed also to Messrs. Hill and Gomes, as the notice of proposed cease and desist order was, to the extent that they may divert water pursuant to the claimed right in the future.

In addition, based on the discussions in the Draft Order, the last sentence above the Ordering paragraph should read "This order should not be interpreted to confirm or validate that any pre-1914 right exists based on the Waldteufel claim of right, or that any particular parcels retained a riparian right upon severance, should those issues be raised in any later proceeding."

With these clarifying edits, the State Water Board should immediately adopt the Draft Order.



David Rose
Staff Counsel
DIVISION OF WATER RIGHTS PROSECUTION TEAM