COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

MILLVIEW COUNTY WATER DISTRICT, THOMAS HILL, and STEVEN GOMES, Plaintiffs and Respondents, v. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, Defendant and Appellant. SONOMA COUNTY WATER AGENCY, and MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND WATER CONSERVATION IMPROVEMENT DISTRICT, Real Parties in Interest and Appellants.	No. A139481

Appeal from the Judgment of the Superior Court of the State of California, County of Mendocino (Case No. SCUK-CVPT-12-59715)

The Honorable Leslie C. Nichols, Assigned Judge

APPELLANT SONOMA COUNTY WATER AGENCY'S REPLY BRIEF

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INTRODUCTION

Respondents argue that, because the Millview County Water District ("Millview") holds a pre-1914 appropriative water right to divert and use water from the West Fork of the Russian River, the California State Water Resources Control Board ("State Board" or "Water Board") acted in excess of its jurisdiction and abused its direction when it adopted Order WR 2011-0016 (the "CDO"), a cease and desist order requiring Millview to limit its further diversions under this alleged right to 15 acre feet per year ("af/yr") at a rate that does not exceed 1.1 cubic-feet per second ("cfs"). However, respondents base their arguments on a faulty premise – that Millview has the pre-1914 appropriative right that it claims.

Undisputed evidence in the administrative record shows that the alleged Waldteufel right was never validly established. Undisputed evidence also shows that any right that Waldteufel may have perfected was for far less than Millview claims, and that decades of non-use reduced the right to 15 af/yr.

There is no dispute that the State Legislature has empowered the State Board to take "vigorous action" in administrative proceedings to prevent illegal diversions of water, regardless of the claimed basis for the diversion. (See Water Code, §§ 1052, 1825, 1831; *Cal. Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 429; *Young v. State Water Resources Control Bd.* (2013) 219 Cal.App.4th 397, 406.) Because the undisputed evidence in the administrative record shows that Millview's diversions and use of water were not authorized by the alleged Waldteufel right, the State Board did not abuse its discretion when it adopted the CDO, and respondents' arguments to the contrary are without merit.

ARGUMENT

I. THE COURT OF APPEAL APPLIES THE LAW TO UNDISPUTED FACTS USING DE NOVO REVIEW, AND RESPONDENTS' ARGUMENTS TO THE CONTRARY ARE INCORRECT

Under subdivision (b) of Code of Civil Procedure section 1094.5, the trial court's review of the State Board's CDO extended to: (i) whether the State Board proceeded without or in excess of jurisdiction; (ii) whether there was a fair trial; and (iii) whether there was any prejudicial abuse of discretion. Because the trial court was required to exercise its independent judgment on the evidence in the administrative record, an abuse of discretion is established if the State Board's findings are not supported by the weight of the evidence. (Code Civ. Proc., § 1094.5, subd. (b); Water Code, § 1126, subd. (c).)

All parties agree that for purely legal questions, including questions involving the State Board's jurisdiction, the appellate courts apply de novo review. (See State Board's Brief, p. 20; SCWA's Brief, p. 18; Respondents' Brief, p. 21.)

In the underlying administrative proceeding, the State Board made detailed findings to support the CDO. (See 2AR617-648.) As discussed in the opening briefs submitted by the State Board and SCWA and in this reply brief, the State Board based its findings on undisputed evidence in the administrative record. Because applying the law to undisputed facts presents a question of law, the appellate court does not defer to the trial court's findings, and the appellate court applies de novo review to determine whether the State Board's findings are supported by the weight of the evidence. (See *David Kikkert & Assocs. v. Shine* (1970) 6 Cal.App.3d 112, 116.)

Appellants appear to agree that the appellate courts apply the law to undisputed facts using de novo review, but they disagree that the State Board based its CDO on undisputed evidence. (See Respondents' Brief, pp. 22-23.) However, as discussed in section II of this brief, undisputed evidence in the administrative record supports the State Board's findings, and respondents have not cited any evidence to the contrary.

Respondents argue that the State Board and SCWA are attempting to evade substantial evidence review and the presumption that the trial court made all factual findings necessary to support the judgment. (See Respondents' Brief, pp. 23-24.) However, this argument is incorrect because the evidence in the administrative record was undisputed. Therefore, the trial court could not apply its independent judgment to "weigh" the evidence, and the trial court's application of law to the undisputed facts is subject to de novo review. (See *David Kikkert & Assocs.*, *supra*, 6 Cal.App.3d at p. 116.)

Respondents also attempt to distinguish *Gillis v. Dental Bd. of Cal.* (2012) 206 Cal.App.4th 311 and *James v. Bd. of Dental Examiners* (1985) 172 Cal.App.3d 1096, which are cited in SCWA's opening brief. (See Respondents' Brief, p. 23.) These decisions held that, when the trial court is required to exercise independent judgment review, but the trial court does not make any findings of fact, the appellate court must "look necessarily" at the administrative agency's findings to guide its analysis. (See *James*, *supra*, 172 Cal.App.3d at 1107.) They do not change the appellate court's standard of review of the trial court's findings, either de novo or substantial evidence, but simply prescribe that the appellate court's analysis must be guided by the challenged agency order. (*Ibid.*)

II. UNDISPUTED EVIDENCE IN THE ADMINISTRATIVE RECORD SHOWS THAT MILLVIEW DOES NOT HAVE THE ALLEGED WATER RIGHT IT CLAIMS, AND RESPONDENTS' BRIEF HAS NOT CITED ANY EVIDENCE IN THE RECORD TO THE CONTRARY

Under *Young v. State Water Resources Control Bd.* (2013) 219 Cal.App.4th 397, 404, the State Board may determine initially in a cease and desist order proceeding whether a water diverter has either the riparian or pre-1914 appropriative right it claims. As discussed in the sections below, the State Board did not abuse its discretion under subdivision (b) of Code of Civil Procedure section 1094.5 when it made an initial determination that, based on undisputed evidence in the administrative record, Millview does not have the alleged pre-1914 appropriative right it claims. Nothing in respondents' brief cites any contrary evidence in the record.

A. Respondents Are Incorrect That Waldteufel Could Have Established an Appropriative Right Because Undisputed Evidence Shows His Diversions and Uses, If Any, Were Authorized By a Riparian Right

As discussed in SCWA's opening brief, the State Board did not abuse its discretion when it concluded that riparian rights authorized all diversions and uses of water by Waldteufel, and therefore that he did not perfect any duplicative appropriative right. (See 2AR628-629, SCWA Opening Brief, pp. 27-29.) The State Board found, based on undisputed evidence in the administrative record, that the Waldteufel parcel bordered the West Fork of the Russian River and that Waldteufel's 1914 notice of appropriation claimed water solely for beneficial uses on Waldteufel's own parcel. (3AR1325-1327.) The State Board also found that there was no evidence in the record that Waldteufel diverted and used water for a purpose that his riparian rights would not have authorized. (2AR628.)

Respondents argue that SCWA was incorrect to "assert that riparian and appropriative rights cannot fall under the same ownership." (See Respondents' Brief, p. 66.) However, the issue is not whether such rights can be owned by the same person, but whether that person's exercise of a riparian right can perfect a duplicative appropriative right. (See SCWA's Brief, p. 27.) Under *Crane v. Stevinson* (1936) 5 Cal.2d 387, 398 and *Rindge v. The Crags Land Co.* (1922) 56 Cal.App. 247, 251-252, it cannot.

Respondents attempt to distinguish *Crane v. Stevinson* by stating that there was no evidence that the plaintiff in that case intended to divert water other than under a riparian right. (See Respondents' Brief, p. 66.) Respondents are incorrect. In *Crane v. Stevinson*, the plaintiff requested a court ruling that he possessed both riparian and appropriative rights. (See *Crane*, *supra*, 5 Cal.2d at 389, 393-394, 397-398.) The California Supreme Court held that, because the plaintiff had failed to show how much water "was taken as an appropriator and not in the exercise of his rights as a riparian owner[,]" he could not establish a duplicative appropriative right. (*Id.* at p. 398.) Similarly, in the other case respondents attempt to distinguish, *Rindge v. The Crags Land Co.*, the court held that an appropriative right may be established by the owner of riparian lands, but only to the extent that the water diverted and used was not authorized by a riparian right. (*Rindge*, *supra*, 56 Cal.App. at pp. 251-252.)

Respondents argue that Waldteufel perfected a pre-1914 appropriative right because he diverted and used water on non-riparian lands, the 165-acre parcel known as Lot 103, and he did not use water just on the 33.88-acre portion of Lot 103 that Waldteufel owned. (See Respondents' Brief, pp. 23, 55-56, 66.) However, as discussed in the following paragraphs, respondents' arguments are unsupported by any evidence in the record.

Respondents claim that, before the administrative hearing, the State Board's staff determined that Waldteufel diverted and used water under the alleged Waldteufel right to irrigate all of Lot 103 and not just his 33.88-acre portion. (See Respondents' Brief, pp. 23, 55-56.) However, this statement is not supported by the administrative record. In 2007, the State Board staff member who investigated the complaint against Millview prepared a summary report of his findings. (See 3AR1284-1300.) This staff report does not state that any evidence leads to the conclusion the alleged right was used on all of Lot 103. And while the State Board's pre-hearing notice stated that Waldteufel owned all of Lot 103, the State Board found this statement was unsupported by the record, because the only evidence presented at the hearing was that Waldteufel owned and used water just on his 33.88-acre portion of Lot 103. (See 3AR877-878.)

Respondents argue, without citation to the record, that in 1914, "alfalfa was being grown at that time on at least the 33 acres sold to Waldteufel and probably on the balance of Lot 103." (See Respondents' Brief, p. 55.) However, while there is evidence in the record that alfalfa was grown on Waldteufel's 33.88-acre portion of Lot 103 in 1914 (see 3AR1325), there is no evidence in the record that the "balance of Lot 103" also was used for alfalfa.

Respondents also argue that because one of the exhibits offered by SCWA in the administrative hearing, SCWA Exhibit 6, shows a place of use for the alleged Waldteufel right as all of Lot 103, there is substantial evidence in the record of this fact. (See Respondents' Brief, p. 56; see 4AR1860.) Respondents are incorrect. SCWA Exhibits 5 and 6 show the location of the "Pre-1914 Claim," which SCWA interpreted as the Lot 103 described in Waldteufel's 1914 notice of appropriation. (4AR1853-1854) However, the 1914 notice of appropriation states that Waldteufel intended to divert and use water only on his 33.88-acre portion of Lot 103, and these

SCWA exhibits are not evidence that the alleged Waldteufel right was used on all of Lot 103. (See *People v. Kynette* (1940) 15 Cal.2d 731, 755-756, overruled on other grounds in *People v. Horn* (1974) 12 Cal.3d 290, 301 fn. 8 (demonstrative evidence such as a map only admissible to illustrate facts established by other qualified evidence); see also 31 Cal.Jur.3d, Evidence § 437, p. 668 (when a diagram is admitted for illustration purposes only, its accuracy is not required because the diagram cannot be used as evidence).)

Despite respondents' arguments to the contrary, they conceded during the State Board proceedings that no evidence in the record supports the conclusion that Waldteufel used water on all of Lot 103. (See 2AR657-671, 3AR857-860.) After the State Board found that Waldteufel only used water on his 33.88-acre portion of Lot 103, respondents petitioned the State Board for reconsideration. (*Ibid.*) One of the alleged grounds for reconsideration was that respondents lacked notice that the State Board would take the position that Waldteufel only used water on the 33.88-acre portion of Lot 103 that he owned. (3AR859.) Respondents could have cited in their petition any relevant record or extra-record evidence in support of their argument that Waldteufel diverted and used water on all of Lot 103, but they did not. (See 23 Cal. Code Regs., § 768, subd. (c) (petition for reconsideration of State Board order may be based on relevant evidence that was not produced at the hearing).) Therefore, the State Board did not abuse its discretion when it found that there was no evidence that the alleged Waldteufel right was used on all of Lot 103. During the trial court proceedings, respondents could have sought to introduce evidence regarding the scope of the 1914 use under subdivision (e) of Code of Civil Procedure section 1094.5, which permits the trial court conducting independent judgment review to consider new evidence at the hearing on

the writ of mandate. But respondents did not seek to introduce any such additional evidence.

Moreover, even if Waldteufel did use water on parts of Lot 103 that he did not own, all of Lot 103 borders on the West Fork of the Russian River and is in the same watershed (see 4AR1859-1860), so all such use was authorized by riparian rights. (There is no requirement that the user of a riparian right own the riparian land.) Accordingly, even if such use occurred, it did not perfect any pre-1914 appropriative right.

Respondents argue SCWA waived this riparian rights argument on appeal by failing to raise it at the trial court. (Respondents' Brief, p. 65.) Respondents are incorrect. SCWA made this argument in its trial brief. (11CT2441-2442.)

For these reasons, the State Board properly concluded, based on undisputed evidence in the administrative record, that any diversions and use of water by Waldteufel and his immediate successors were authorized by riparian rights, and therefore that any such diversions and use did not perfect any pre-1914 appropriative right. Respondents have not cited any law or evidence in the record that would lead to the opposite conclusion. Because of limitations in the State Board's hearing notice, the State Board exercised its discretion not to base its CDO on this conclusion. (2AR629.) However, because undisputed facts support the State Board's determination that the Waldteufel right never was validly perfected, this Court may decide this issue and, if it does, should rule that the State Board did not abuse its discretion when it made this conclusion in the CDO.

B. Respondents Incorrectly Argue That Evidence in the Administrative Record Established a Right to Divert Water Continuously, All Year Long, at 2 Cubic-Feet Per Second

Assuming that Waldteufel perfected the alleged Waldteufel right for some amount, respondents argue that, because Waldteufel's 1914 notice of appropriation claimed a right to divert water at 2 cfs, and because there is some evidence that diversion works were constructed and diversions occurred at this rate on at least some days, Millview now has the right to divert water continuously, all year long, at this rate. (See Respondents' Brief, p. 40.) However, the measure of an appropriative right is the amount of water actually applied to beneficial use by the diverter, and not the amount listed in a notice of appropriation or the capacity of the appropriator's diversion works. (Water Code, § 1240; *Crane v. Stevinson* (1936) 5 Cal.2d 387, 398; *Haight v. Costanich* (1920) 184 Cal. 426, 431.) Therefore, the State Board did not abuse its discretion when it determined, based on undisputed evidence in the record, that the alleged Waldteufel right was only perfected for 243 af/yr, the maximum amount of water that could have been put to beneficial use each year for irrigation of Waldteufel's parcel. (See 2AR629-632.)

There is undisputed evidence in the record that Waldteufel could not have put water to beneficial use on his 33.88-acre parcel at a continuous rate of 2 cfs all year long. Run continuously, 2 cfs is equivalent to approximately 1,450 af/yr.[1] This is enough water to apply approximately

[1] 100 miner's inches is approximately 2 cfs, which would divert approximately 1,450 af of water if run continuously for one year. (See 2AR629.) Respondents' brief in this Court does not mention that Millview seeks to divert approximately 1,450 af/yr, but Respondents repeatedly asserted the right to divert 1,450 af/yr under the alleged Waldteufel right during the administrative proceedings. (See 1AR178, 180; 3AR1302-1309; 3AR1349; 3AR1369.)

42 af of water to every acre of Waldteufel's property, that is, to flood the entire parcel to a depth of 42 feet. (11CT2449:15-21.) Yet the undisputed testimony of Millview's expert witness stated that Waldteufel could have beneficially used, at most, about 8 af/yr per acre of land irrigated for growing alfalfa in 1914. (3AR1349.) Accordingly, the State Board's determination that the alleged Waldteufel right was perfected for that amount, 243 af/yr (equal to 8.1 af/yr per acre for 30 acres of Waldteufel's 33.88-acre parcel) (2AR631-632), was not an abuse of discretion.

Respondents argue that the 2-cfs rate of diversion in Waldteufel's notice determines the extent of the alleged right, and that the alleged right is not limited to the amount of water Waldteufel and his immediate successors applied to beneficial use on his property: "Whether Waldteufel and his successors used the water on 33 acres, 160 acres, or something in between or greater, does not control the validity or extent of the Waldteufel right." (See Respondents' Brief, p. 55.) Respondents are incorrect. In 1913, the Court of Appeal rejected this argument when the defendant made it in *Trimble v. Hellar* (1913) 23 Cal.App. 436. Like respondents, the defendant in *Trimble* sought to exercise a pre-1914 appropriative right to the full extent stated in a notice of appropriation posted under the Civil Code section 1415 statutory appropriation method. (*Id.* at pp. 443, 446.) The trial court ruled that the defendant's right, however, was perfected for significantly less than the 144 miner's inches of water stated in the notice, because the defendant and his predecessors had not put that amount of water to beneficial use. (*Id.* at p. 440.) On appeal, the appellate court agreed that the defendant did not have a perfected right to divert and use the full amount stated in the notice:

> Much of the criticism of the [trial court's] instructions rests, we think, upon a misconception of defendant's right to wit: that the capacity of his ditch determines the extent of his right

> to the water. [¶] It is true that defendant's ditch was first in time as was the use of the waters of Sam's Creek by means of this ditch. It is true also that the ditch had a capacity of one hundred and forty-four miner's inches of water. But priority in the use of these waters and the capacity of the ditch do not necessarily establish a right to one hundred and forty-four miner's inches of the water. The size of the ditch is a factor in aid of the intention of the party making the appropriation of the water. It is not, however, conclusive. *The true test is the amount of water actually used for beneficial purpose.* [. . .] *If the capacity of the ditch is greater than is necessary to irrigate the lands of the appropriator he will be restricted to the quantity of water needed for the purposes of irrigation, water-stock, and domestic purposes.*

(*Trimble*, *supra*, 23 Cal.App. at pp. 443-444 (italics added).) The appellate court held that, when determining the amount of water put to beneficial use, the court should consider the acts and conduct of the first appropriator at the time of the appropriation, the purpose of the appropriation, the quantity of land capable of irrigation, and the necessity for irrigation together with the appropriator's actual diversion and use of water. (*Id.* at p. 444.)

Like the *Trimble* defendants, respondents conflate the 2-cfs capacity of Waldteufel's diversion works with the amount of water that may be diverted under the alleged right during each year. However, under *Trimble* and other cases cited in SCWA's opening brief (see SCWA Opening Brief, pp. 30-33), the State Board properly considered all evidence in the record, including the size of Waldteufel's property and his maximum possible application use of water to irrigate alfalfa, and did not abuse its discretion when it concluded the alleged Waldteufel right was limited to the maximum amount of water that could have been diverted and used on Waldteufel's property during each year. (See 2AR629-632.)

Accepting respondents' arguments would improperly divorce pre-1914 appropriative rights from the long-standing rule that an appropriative right is determined by and limited to the amount of water put to beneficial

use during the perfection period. Applying respondents' arguments, a pre-1914 appropriative right to continuously divert and use any amount of water could have been perfected merely by constructing appropriately-sized diversion works and diverting water through those works for at least one day, regardless of the amount of water that actually was applied to beneficial use during any entire year. Respondents' arguments are incorrect in light of the state's long-standing requirement of beneficial use for appropriative rights. (See Cal. Const., art. X, § 2 ("The right to water or to the use or flow of water in or from any natural stream or water course in this State is and *shall be limited to such water as shall be reasonably required for the beneficial use to be served* … ."); Water Code, § 1240 (formerly Civ. Code, § 1411.)

C. Respondents Incorrectly Argue that the State Board Applied the Wrong Law to the Undisputed Facts When the State Board Concluded That the Alleged Waldteufel Right Was Partially Forfeited by Decades of Non-Use

Based on undisputed evidence in the record, the State Board concluded that, assuming the alleged Waldteufel right was perfected for some amount, the right was partially forfeited by non-use between 1967 and 1987. (2AR632-639.)

Respondents argue that the State Board applied the wrong law when it determined the alleged Waldteufel right was subject to partial forfeiture. (See Respondents' Brief, pp. 48-50.) They argue the State Board should have applied *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 560 ("*North Kern*"). (*Ibid.*) However, as discussed in the SCWA's opening brief, respondents rely on points in *North Kern* that the appellate court incorporated by reference from an earlier, unpublished decision. Because these points already were law of the case when the Court of Appeal issued its published decision, the court did not

decide them in the published *North Kern* decision, so they are not precedent in this litigation. (See SCWA's Opening Brief, pp. 38-39.)

Respondents argue that even if *North Kern* is not precedent in this litigation, the authorities that *North Kern* relied on support respondents' case. (See Respondents' Brief, pp. 51-52.) Respondents are incorrect, because all of these authorities are distinguishable from this case.

Respondents cite *Pabst v. Finmand* (1922) 190 Cal. 124, 129 and *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742, 784-785 in support of their "clash of rights" argument. (See Respondents' Brief, p. 51.) But *Pabst* involved a claim of prescriptive rights between two riparian owners, and nothing in that case suggests the required hostile use in a claim for prescriptive water rights will apply to partial forfeiture of pre-1914 appropriative water rights. (See *Pabst*, *supra*, 190 Cal. at 128-129.) The portion of *Pleasant Valley Canal Co.* that respondents cite is distinguishable for the same reason. (See *Pleasant Valley Canal Co.*, *supra*, 61 Cal.App.4th at 784 (setting forth the elements required for a prescriptive rights claim).)

Respondents cite *Smith v. Hawkins* (1898) 120 Cal. 86, 88 in support of their argument that the applicable forfeiture period must be the five years immediately preceding when the forfeiture claim is determined. (See Respondents' Brief, p. 51.) However, *Smith v. Hawkins* does not stand for that proposition. An earlier decision, *Smith v. Hawkins* (1895) 110 Cal. 122, 126-128, explained that mere non-use of a water right for five continuous years will effect a forfeiture based on the beneficial use requirements in former Civil Code section 1411. Although the facts in *Smith* involved a forfeiture period of five years immediately preceding the litigation, nothing in the decision states this is a required element of a forfeiture claim, and cases that follow *Smith v. Hawkins* have not interpreted it as imposing this requirement. In *Lindblom v. Round Valley*

Water Co. (1918) 178 Cal. 450, 455-457, the Supreme Court followed *Smith v. Hawkins* to find a partial forfeiture based on forty years' of non-use of a water right. Nothing in *Lindblom v. Round Valley Water Co.* states the relevant forfeiture period was limited to the five years immediately preceding the litigation. Similarly, in another case that respondents cite, *Hufford v. Dye* (1912) 162 Cal. 147, 154, the Supreme Court followed *Smith v. Hawkins* to rule that a partial forfeiture had occurred, based on the appropriator's failure to put an appropriative right to beneficial use for thirty years. And in *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358, 1371-1372, the Court of Appeal considered in a case brought in 2000 whether a water right was partially forfeited for non-use occurring in the 1970's and 1980's. The Court of Appeal did not mention or otherwise hold that the forfeiture claim was barred because the claimed forfeiture did not occur within the five years immediately preceding the lawsuit.

Respondents argue that various facts show the alleged Waldteufel right was not forfeited by non-use (see Respondents' Brief, pp. 55-58), and that prior owners of the alleged Waldteufel right used it "continuously" since 1914 (see Respondents' Brief, p. 55). Respondents argue that the testimony by Millview witnesses McEdwards and Putnam compels this conclusion. (Respondents' Brief, p. 56.) However, nothing in those witnesses' testimony supports this argument. Rather, the undisputed evidence in the record shows that respondents' predecessor only used the alleged Waldteufel right intermittently between 1967 and 1987 and for less than 15 af/yr. (See 3AR1259-1264.)

Respondents contend that aerial photos of the Waldteufel property from the 1952 and 1964 show all of Lot 103 in cultivation, and that the property could have only been irrigated by use of the alleged Waldteufel right. (See Respondents' Brief, p. 55.) However, this contention is not supported by the record. No witness interpreted the aerial photographs that

respondents introduced at the hearing, and it is not readily apparent from the photographs where Lot 103 was located or what crops were in cultivation. (See 3AR1110:4-13, 3AR1330-1331.) And there is no evidence in the record regarding the alleged lack of any other source of water through which Lot 103 could have be irrigated during the 1950's and early 1960's. There is evidence in the record that a groundwater well existed on the Waldteufel property, which suggests Lot 103 could have been irrigated by pumped groundwater and not by diversions under the alleged Waldteufel right. (See 4AR1822.) Finally, these photographs from 1952 and 1964 do not contradict the undisputed evidence in the record shows that less than 15 af/yr was diverted and used under the alleged right from 1967 to 1987. (See 3AR1259-1264.)

Respondents argue that the State Board abused its discretion when it relied on the statements of water diversion filed by respondents' predecessors in interest with the State Board during the 1967 to 1987 period. (See Respondents' Brief, p. 58.) Respondents are incorrect because the statements covered a twenty-year period and constituted substantial evidence that, during that period, no more than 15 af/yr was diverted and used under the alleged right. Respondents have not cited any evidence in the record to the contrary.

Respondents also argue the State Board could not rely on their predecessor's statements because a former statute, Water Code section 5108, provided that such statements of water diversion are for informational purposes only and errors in a statement shall not have any legal consequences. (See Respondents' Brief, pp. 58-59.) However, there is no indication that the Legislature intended to prohibit the State Board from relying on statements of water diversion as evidence in an administrative proceeding when it adopted Section 5108. In fact, a related statute in the same act, subdivision (c) of Water Code section 5106,

expressly permitted the State Board to rely on statements of water diversion as "evidence of the facts stated therein" in administrative proceedings to determine whether to approve a permit to appropriate water. Conversely, in a neighboring statute dealing with statements of groundwater extraction that are filed with the State Board, the Legislature expressly provided that such statements "shall not be evidence of any fact stated therein" in administrative proceedings involving groundwater rights. (See Water Code, § 5007.) Because the Legislature knew how to expressly make the contents of statements filed with the State Board inadmissible in administrative proceedings, as it did when it adopted Section 5007, and because the Legislature did not do this when it adopted statutes for the statements of diversion and use, respondents' arguments are incorrect. The State Board therefore did not abuse its discretion when it relied on the statements filed by respondents' predecessor. (See *Cal. Fed. Savings & Loan v. City of L.A.* (1995) 11 Cal.4th 342, 349 (courts must assume the Legislature knows how to create statutory exceptions when it wishes to do so).)

Respondents also argue that the State Board abused its discretion because no evidence in the record established whether respondents' predecessor's lack of water use between 1967 to 1987 was due to the unavailability of water in the West Fork of the Russian River. (See Respondents' Brief, p. 57.) However, as discussed in the opening briefs submitted by SCWA and the State Board, evidence in the record established that surface flow in the West Fork was sufficient for respondents' predecessor to have diverted substantially more water during the irrigation season than the 7.5 to 15 af/yr that he reported diverting. (See 4AR1652-1653; SCWA's Opening Brief, p. 37; State Board's Opening Brief, p. 43.) Therefore, the State Board did not abuse its discretion when it

found that Waldteufel's predecessor's failure to use more than 15 af/yr between 1967 and 1987 was not due to unavailability of water.

Respondents also contend that Floyd Lawrence's statement said that Waldteufel diverted water from a deep hole in the West Fork of the Russian River. (See Respondents' Brief, p. 57.) This fact does not demonstrate that no water in the West Fork of the Russian River was water available for diversion by Waldteufel's successor from 1967 to 1987.[2] To the contrary, it indicates that water was available. Finally, respondents state, without citation to the record, that Lawrence stated there were years after 1914 when the West Fork of the Russian River was dry. (See Respondents' Brief, p. 57.) However, Lawrence actually stated was that he could not recall the West Fork ever having run dry after the 1930's. (See 3AR1232:6-1233:20.) Therefore, this statement does not contradict the facts that the State Board relied on to find that Waldteufel's predecessor's nonuse of the alleged Waldteufel right was not due to unavailability of water.

Respondents argue that the State Board abused its discretion when it concluded the alleged Waldteufel right was subject to partial forfeiture because Millview "established that for substantial periods in the 5 years before Mr. Howard filed his complaint, it fully utilized the Waldteufel right." (See Respondents' Brief, pp. 58-59.) As discussed above, the State Board concluded the alleged Waldteufel right was subject to partial forfeiture because of nonuse between 1967 and 1987, so Millview's later unauthorized use of the alleged right is not relevant to the State Board's forfeiture analysis.

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[2] This statement is also inadmissible because Floyd Lawrence's statement is hearsay and it does not supplement any other evidence in the record that Waldteufel pumped water from a deep hole in the streambed. (See Gov't Code, § 11513, subd. (d); 23 Cal. Code Regs., § 648.5.1.)

D. Respondents Are Incorrect That the State Board Abused Its Discretion When It Concluded that Millview's Change in Point of Diversion, Place of Use, and Purpose of Use Have Greatly Expanded the Right and Injured SCWA

Respondents argue that the issue of whether Millview's changes to the alleged Waldteufel right's point of diversion, place of use, and purpose of use violated Water Code section 1706 by injuring SCWA and appellant Mendocino County Russian River Flood Control District ("MCRRFCD") was irrelevant to the State Board's proceeding. (See Respondents' Brief, p. 77.) Respondents are incorrect. Water Code sections 1052 and 1831 grant the State Board express authority to issue a CDO to enjoin the "diversion and use of water … other than as authorized *in this division* … ." (Water Code, § 1052 (italics added); see Water Code, § 1831, subd. (d)(1).) Water Code sections 1052, 1706, and 1831 are all found in Division 2 of the Water Code. Accordingly, the issue of whether Millview's actions violated Water Code section 1706, and therefore were subject to a CDO under Water Code sections 1052 and 1831, was properly part of the State Board's CDO proceeding.

Respondents also argue that there is no evidence in the record that Millview's changes to the alleged Waldteufel right injured SCWA or MCRRFCD. (See Respondents' Brief, pp. 19 fn. 9, 25, 46, 48, 62, 75-76.) In the CDO, the State Board made detailed findings that Millview's changes in use of the alleged Waldteufel right were likely to result in injury to SCWA and MCRRFCD, and therefore that they were unauthorized under Water Code section 1706. (See 2AR644-645; see also SCWA's Brief, pp. 41-43.) The State Board's finding that Millview's diversions would likely cause injury to SCWA was based largely on the testimony of SCWA's Deputy Chief Engineer Pamela Jeane. Jeane testified that Millview's diversions under the alleged Waldteufel right would impact SCWA's supplies of stored water in Lake Mendocino, because SCWA would have to

release additional stored water from Lake Mendocino to compensate for Millview's diversions. (3AR1147:16-1149:22.) Millview has not cited any evidence in the record to rebut this testimony, and the State Board did not abuse its discretion when it relied on this undisputed evidence to find that Millview's changes in point of diversion, place of use and purpose use under the alleged Waldteufel right injured SCWA.

Respondents argue that the State Board improperly applied limitations to the alleged Waldteufel right that are not applicable to pre-1914 appropriative water rights, including limits on the season of diversion and the maximum instantaneous rate of diversion. (See Respondents' Brief, pp. 45-46.) Respondents argue the State Board has authority to apply such limitations to permits issued by the State Board, but it may not apply such limits to a pre-1914 right. Respondents are incorrect because they have misconstrued the State Board's CDO. The State Board ordered that respondents limit the season of diversion and maximum instantaneous rate because Millview's changes to the alleged right constituted an impermissible expansion of the right and injured other legal users of water, SCWA and MCRRFCD. (2AR644-645; see Water Code, § 1706.) As discussed above, the State Board had authority to make these orders and did not abuse its discretion in making them.

Respondents argue that Millview's diversion and use of the Waldteufel right cannot injure SCWA because Millview possesses a water right that is senior in priority to SCWA's rights. (See Respondents' Brief, p. 42.) However, as detailed in this brief and in SCWA's opening brief, Millview does not have the water right it claims. (See SCWA's Opening Brief, pp. 41-43.) Moreover, Water Code section 1706 prohibited Millview from changing the point of diversion, place of use and purpose of use under any such if such changes would injure another legal user of water, even if the other legal user of water has junior water rights. Here, SCWA, another

legal user of water, is being injured by the changes. Water Code section 1706 therefore prohibits Millview from making these changes, even if Millview has a right that is senior in priority to SCWA's rights.

Respondents also refer to SCWA's sale of water to public water suppliers in Marin County and suggest that these sales are improper or at least should not limit Millview's diversions and use of water. (See Respondents' Brief, pp. 42, 69, 76.) However, as detailed in Pamela Jeane's testimony to the State Board, SCWA operates its releases of water from Lake Mendocino to maintain required minimum instream flows, not to maintain sufficient flows in the lower Russian River for SCWA's diversions. (4AR1851-1852, 1857.) Moreover, SCWA's diversions of water from the Russian River, and SCWA's conveyance of this water through SCWA's transmission system to SCWA's water customers, which deliver the water for the benefit of 600,000 people in Sonoma and Marin Counties, are expressly authorized by SCWA's water right permits. (4AR1850.) In contrast, Millview's diversion and use of water under the alleged Waldteufel right is unauthorized and injures SCWA's legal use of water. Therefore, to the extent any equitable considerations are relevant to appellate review of the State Board's CDO, they do not support Millview's arguments.

III. RESPONDENTS ARE INCORRECT THAT THE STATE BOARD LACKS JURISDICTION TO ENJOIN THEIR UNAUTHORIZED DIVERSION OF WATER MADE UNDER AN ALLEGED PRE-1914 APPROPRIATIVE RIGHT

Respondents do not dispute that the State Board has jurisdiction to issue a CDO to enjoin illegal diversions of water pursuant to subdivision (d)(1) of Water Code section 1831. (See Respondents' Brief, p. 26.) They argue, however, that, in cases where the diverter has some valid pre-1914 appropriative right, the State Board lacks jurisdiction to issue an

administrative order under Section 1831 that quantifies the extent of the right. The problem with respondents' argument is that it begs the question as to whether the diverter actually has the entire pre-1914 appropriative right that it claims. Because respondents do not possess the pre-1914 appropriative right that they claim, the State Board acted within its jurisdiction when it adopted its CDO that enjoined Millview from enlarging diversions under the alleged Waldteufel right. (See Water Code, §§ 1052, 1825, 1831; *Cal. Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 429; *Young v. State Water Resources Control Bd.* (2013) 219 Cal.App.4th 397, 406.) As discussed below, respondents' arguments challenging the State Board's jurisdiction assume that Millview actually possesses the right it claims. Because undisputed evidence in the record shows that Millview does not possess such a right, respondents' arguments do not have merit.

A. The State Board's Exercise of Jurisdiction Was Consistent with *Young v. State Water Resources Control Bd.*, and Respondents' Attempts to Distinguish That Decision Are Incorrect

According to the Court of Appeal's recent opinion in *Young v. State Water Resources Control Bd.* (2013) 219 Cal.App.4th 397, 404 ("*Young*"), the question decided in that case was "whether the Water Code gives the Water Board jurisdiction in enforcement proceedings to determine initially whether a diverter has either the riparian or pre-1914 appropriative right it claims." The court in that case held that the State Board has such jurisdiction. Consistent with *Young*, the State Board in this case determined in an administrative proceeding that respondents do not have the pre-1914 appropriative right they claim. (See 2AR602-649.) Respondents claim the right to divert and use 2 cfs continuously, up to approximately 1,450 af/yr, under the alleged Waldteufel right. (See

Respondents' Brief, p. 2; 1AR178, 180; 3AR1302-1309; 3AR1349; 3AR1369.) Based on the undisputed evidence presented at the administrative hearing, the State Board made an initial determination that the Waldteufel right was never validly established, and even if it was, the State Board concluded that any such right was perfected for no more than 243 af/yr and was reduced to 15 af/yr at a maximum diversion rate of 1.1 cfs because of non-use of water at more than these rates during 1967-1987. (See 2AR605-607.) The State Board had jurisdiction to make this determination under *Young* and the statutory and case authority discussed in that opinion. (See SCWA's Brief, pp. 22-25.)

Respondents argue that, under *Young*, the State Board has jurisdiction to take enforcement action when a diverter has no pre-1914 appropriative right whatsoever, but the State Board is divested of jurisdiction in situations where the State Board and the diverter disagree about the scope of a pre-1914 appropriative right. (See Respondents' Brief, p. 26.) However, nothing in *Young* limits the State Board's authority to cases where the diverter has no water right whatsoever. In *Young*, the State Board determined that the respondents did hold riparian or pre-1914 appropriative rights, but that, based on all evidence presented in the administrative proceeding, those validly established rights only extended to the maximum diversion and use of 77.7 cfs of water. (*Young*, *supra*, 219 Cal.App.4th at 402.) Similarly, in this case, the State Board determined, based on all evidence presented at the administrative hearing, that respondents possess a right to diversion and use of 15 af/yr, but that the evidence does not support any right beyond that. Therefore, the State Board's actions in this case were consistent with *Young*.

Respondents argue the State Board could not issue a CDO regarding the alleged Waldteufel right because the alleged right was "prima facie valid." (See Respondents' Brief, p. 28.) Respondents do not clearly

express what they mean by "prima facie valid," and the term does not appear in the relevant court decisions. They appear to be arguing that the alleged right was "prima facie valid" because the investigation by the State Board's 2007 staff report concluded that the alleged Waldteufel right had a valid basis. (See 3AR1299.) However, respondents ignore that, in the same report, the State Board's staff concluded that Millview's diversion and use of water under the alleged Waldteufel right was invalid because it far exceeded the current scope of the right. (*Ibid.*) Therefore, respondents' "prima facie validity" argument has no application here because, regardless of whether respondents' have some valid water right, the State Board had express authority to enjoin Millview's diversion and use of water in excess of that right.

Respondents argue the California Supreme Court's opinion in *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 933-934 prohibits the State Board's exercise of jurisdiction in this case. (See Respondents' Brief, pp. 12-13.) Respondents are incorrect, because that case has nothing to do with the State Board's exercise of jurisdiction in this case. *City of Pasadena v. City of Alhambra* involved competing prescriptive rights claims to groundwater and a reference to the State Board's predecessor agency. (*City of Pasadena*, *supra*, 33 Cal.2d at 916.) It did not involve the State Board's CDO jurisdiction over unauthorized surface water diversions and use. Furthermore, the portion of the opinion that respondents cite states that the three-year forfeiture period under former section 20a of the Water Commission Act, now re-codified as Water Code section 1241, does not apply to claims for prescriptive use of groundwater. (*Ibid.*)[3] Instead, the five-year period under common law prescriptive rights claims applies. (*Ibid.*) In this case, the State Board issued its order under the authority

[3] Water Code section 1241 currently specifies a five-year period for forfeiture of appropriative water rights.

provided it by Water Code section 1831, and not under Section 1241. (See 3AR877 fn. 1.) And the State Board applied a five-year period for forfeiture as required by *Smith v. Hawkins* (1895) 110 Cal. 122, 127. (2AR615-616.) Accordingly, *City of Pasadena v. City of Alhambra* has no application to this case.

Respondents also cite *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489 for the proposition that pre-1914 appropriative rights cannot be lost through nonuse. However, that decision held that riparian rights cannot be lost through mere nonuse. (*Id.* at pp. 530-531.) This decision was correct because the riparian parcel's contiguity to a natural watercourse establishes a riparian right. (See *People v. Shirokow* (1980) 26 Cal.3d 301, 307.) In contrast, diverting water and continuously putting the diverted water to reasonable and beneficial use establishes an appropriative right. (*Ibid.*; see Water Code, § 1240.) As discussed above and in SCWA's opening brief, pre-1914 appropriative rights have always been subject to forfeiture for nonuse. Nothing in *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* dealt with appropriative rights, and nothing in *Tulare* is contrary to *Young*.

Respondents argue that no one has explained the meaning of subdivision (e) of Water Code section 1831. (See Respondents' Brief, p. 35.) However, SCWA provided such an explanation in its opening brief. (See SCWA's Brief, p. 25.) As discussed there, subdivision (e) of section 1831 is reasonably construed as prohibiting the State Board from balancing the relative benefits of competing uses of water and from imposing conditions on pre-1914 appropriative rights to further the public interest (as Water Code section 1257 authorizes for post-1914 appropriative water right permits).

After SCWA submitted its opening brief in December 2013, the Legislature amended Water Code section 1831 to enhance the State Board's

CDO authority by permitting the State Board to enter into enforcement proceedings for violations of State Board regulations. (See Water Code, § 1831, as amended by Stats. 2014, ch. 3, § 12.) The Legislature did not amend or modify the portions of Water Code section 1831 that are relevant to this case, subdivisions (d)(1) and (e). (*Ibid.*) Because the Legislature made this amendment after *Young* became final, this Court should presume that the Legislature was aware of *Young* when it made these amendments. (*People v. Atkins* (2001) 25 Cal.4th 76, 90-91.) The Legislature's decision not to repeal *Young* through this change in Water Code section 1831 gives rise to an inference that the Legislature approved of the result in *Young*. (See *People v. Williams* (1991) 232 Cal.App.3d 1643, 1647 (failure to change statute in particular respect, when other changes are made to the same statute, indicates intention to leave prior statutory construction unchanged).)

B. Respondents' Constitutional Arguments Are Unsupported by the Plain Language of Article X, Section 2 and Court Decisions Interpreting that Section

Respondents' arguments of impairment of vested water rights and the protection of water rights set forth in California Constitution Article X, section 2 ("Article X, section 2") are inapplicable to this case because respondents do not have the water right they claim. Article X, section 2 declares the State's policy that all water must be put to reasonable and beneficial use, and it provides that nothing in Article X, section 2 should be construed to deprive an appropriator of water to which the appropriator is "lawfully entitled." Because respondents' diversion and use of water is unauthorized, they are not "lawfully entitled" to use the water right they claim.

Respondents also argue that Article X, section 2 prohibits the Legislature or the State Board from declaring a valid pre-1914

appropriative right to be partially forfeited by nonuse "unless the basis for such forfeiture is adjudicated by a court with the associated attributes of due process and, if appropriate, just compensation." (See Respondents' Brief, p. 35.) But nothing in the text of Article X, section 2 states that diversion and use of an alleged pre-1914 appropriative right may not be enjoined by the State Board, and none of the court decisions that respondents cite on pages 35 and 36 of their brief interpreted Article X, section 2 in this manner or even dealt with forfeitures of pre-1914 rights.

IV. RESPONDENTS' OTHER ARGUMENTS DO NOT HAVE MERIT

Respondents make several other arguments in their brief. SCWA responds to these arguments here.

At several points in their brief, respondents incorporate by reference lengthy portions of their trial court pleadings. (See pp. 2-4 (repeatedly incorporating respondents' sixty-page trial brief by reference).) It is well-settled that appellate courts do not permit incorporation of trial court pleadings by reference, even if the pleadings are properly part of the record on appeal, and the appellate court must disregard the purportedly incorporated matters. (See *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 294 fn. 20; *Colores v. Bd. of Trustees* (2003) 105 Cal.App.4th 1293, 1301 fn. 2.)

Respondents' brief contains many assertions of fact that are unsupported by any citations to the administrative record or the trial court record. The appellate court and the parties are confined to matters within the record, and respondents' unsupported arguments and assertions must be disregarded. (See Cal. Rules of Ct., rule 8.204, subd. (a)(1)(C); *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 267-268 (appellate court disregards portions of brief that fail to comply with the Rules of Court).)

Respondents state that prior to purchasing the alleged Waldteufel right, a State Board staff member, Andy Chu, assured them that the State Board recognized the alleged Waldteufel right was valid for diversion and use of 2 cfs. (See Respondents' Brief, pp. 1, 19 fn. 9, 41, and 62.) However, the evidence in the record states that all Chu did was confirm there were statements of diversion and use on file with the State Board for this alleged right. (3AR1122:24-1123:10.) He did not perform any investigation to determine whether the alleged right was properly perfected, the amount for which it was perfected, or whether it had been forfeited for non-use. (*Ibid.*) As discussed in SCWA's opening brief, and as Respondents conceded to the trial court, the State Board cannot be estopped by any of Chu's alleged representations because there is no evidence in the record that he had authority to make such representations on the State Board's behalf. (See SCWA's Opening Brief, p. 40; see also 10CT2369:22-23 (conceding Respondents cannot argue Chu's statement estops the State Board).) Similarly, because there is no evidence Chu was authorized to make any such representations on the State Board's behalf, Chu's alleged representations are inadmissible hearsay. (Evid. Code, §§ 1200, 1222; see 3AR1137:4-18 (objecting to Chu's alleged representations as hearsay).)

Respondents argue that the State Board denied them a fair hearing. (See Respondents' Brief, pp. 60-65.) Respondents raised these arguments in the trial court, and the trial court, after applying its independent judgment, did not agree that the State Board denied respondents a fair hearing. (See 12CT2710-2711.)[4] If this Court disagrees, then it should remand the case with instructions to the trial court to order the State Board to rehear the matter and provide appropriate hearing procedures. (See

[4] SCWA joins in the State Board's briefing on the fair hearing issues in the State Board's reply brief.

English v. Long Beach (1950) 35 Cal.2d 155, 158-160; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1174-1177.)

Respondents argue the State Board improperly denied them the opportunity to conduct discovery during the administrative proceedings. (See Respondents' Brief, p. 61.) However, as discussed in SCWA's opening brief, respondents were entitled to take deposition discovery under Water Code section 1100 without the State Board's prior approval. (1AR102; see SCWA's Opening Brief, pp. 45-46.) The fact that respondents chose not to exercise this right does not mean that the State Board denied respondents this right.

Respondents also cite, without analysis, an April 17, 2008 letter from Victoria Whitney to respondents and suggest it presents a dispute in the administrative record. (See Respondents' Brief, p. 23.) However, the letter is consistent with all of the other evidence discussed in SCWA's opening and reply briefs.

Respondents assert that the Board failed to discuss the fact that Hill and Gomes's immediate predecessor, Robert Wood, built a well on the Northwest corner of the Waldteufel property. (See Respondents' Brief, p. 59; see 4AR1822.) However, respondents do not discuss how this fact leads to the conclusion that the State Board abused its discretion. In fact, as previously discussed (see *ante,* page 15), the existence of this well supports the conclusion that respondents' predecessors may not have used the alleged Waldteufel right, and instead may have used this well, to irrigate their property.

Respondents argue that Millview was under order from the Department of Public Health to obtain additional water rights because its existing rights were inadequate. (See Respondents' Brief, pp. 2, 70.) However, the Department's order actually states that Millview has inadequate source capacity, not water rights. (See 10CT2151.)

Respondents misconstrue SCWA's argument in its opening brief that the trial court applied the wrong standard in ordering the State Board not to rehear the CDO proceeding against respondents. (See SCWA's Brief, pp. 44-47; Respondents' Brief, pp. 67-68.) The issue is not whether the trial court erred by failing to remand the action to the State Board for further proceedings. Rather, the issue is that the trial court's statement of decision cited overruled precedent when it ordered the State Board not to rehear the CDO proceeding against respondents. (See SCWA's Brief, pp. 44-47.) Because the trial court applied the wrong standard in making this determination, the State Board should not be prohibited from rehearing the CDO proceeding on remand, if this Court rules that a remand is necessary.

Finally, respondents argue the appellate court may not reverse the trial court's judgment because no miscarriage of justice has occurred in the trial court proceedings. (See Respondents' Brief, p. 69.) For all the reasons described in the briefs submitted by appellants, a miscarriage of justice would occur unless this Court reverses the trial court's judgment.

CONCLUSION

The State Board did not abuse its discretion when it concluded, based on undisputed facts in the record, that respondents' diversion and use of water under the alleged Waldteufel right was unauthorized by the alleged right. Accordingly, this Court should reverse the trial court's judgment and direct the trial court to issue a new judgment denying respondents' petition for a writ of mandate.

April 7, 2014

BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

/s/ Andrew J. Ramos
ALAN B. LILLY
ANDREW J. RAMOS

CERTIFICATION OF WORD COUNT

Under California Rules of Court, rule 8.204(c)(1), I certify this brief, including headings and footnotes, contains 8,809 words, as determined by the word count of the computer program used to prepare the brief.

April 7, 2014

BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

/s/ Andrew J. Ramos
ANDREW J. RAMOS

PROOF OF SERVICE

I, Andrew J. Ramos, declare:

I am over the age of eighteen and not a party to this action. I work in Sacramento County at 1011 Twenty-Second Street, Sacramento, California 95816. My address for electronic service is ajr@bkslawfirm.com. On April 7, 2014, following ordinary business practices, I placed **Sonoma County Water Agency's Appellant's Reply Brief** for collection and mailing via First Class U.S. Mail with the United States Postal Service, Sacramento, California 95816, in a sealed envelope, with postage prepaid, addressed to:

Court Clerk
Mendocino County Superior Court
100 North State Street
Ukiah, CA 95482-4416
Trial Court (Cal. Rules of Court, rule 8.212(c)(1)

The Honorable Leslie C. Nichols
Address Withheld
Trial Court (Courtesy Copy)

Marc Jeffrey Del Piero
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On April 7, 2014 at approximately 2:00 p.m., I electronically served the same document pursuant to California Rules of Court, rule 8.71 and the First District Court of Appeal Local Rules, rule 16(j), on the following attorneys who have consented to electronic service by registering with the Court's electronic filing system, at the following addresses in lieu of service by mail:

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I also satisfied the service requirement set forth in California Rules of Court, rule 8.212(c)(2) by submitting an electronic copy of Sonoma County Water Agency's Appellant's Reply Brief to the Court of Appeal.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 7, 2014, at Sacramento, California.

/s/ Andrew J. Ramos
ANDREW J. RAMOS