STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2012-0001

In the Matter of
Petitions for Reconsideration by
Thomas P. Hill, Steven L. Gomes and Millview County Water District
Regarding Order WR 2011-0016
Requiring Millview County Water District to Cease and Desist
the Threatened Unauthorized Diversion of Water Under
Claimed Pre-1914 Appropriative Right

Source: Russian River

County: Mendocino

ORDER DENYING RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

On October 18, 2011, the State Water Resources Control Board (State Water Board or Board) issued a Cease and Desist Order, Order WR 2011-0016 (Order), against the Millview County Water District (Millview) for its threatened unauthorized diversion of water under claim of pre-1914 appropriative right. Millview, which apparently owns the water right in question, and Thomas Hill and Steven Gomes (Messrs. Hill and Gomes), the parties that sold the property and the associated water right to Millview, petitioned the State Water Board to reconsider its decision under California Code of Regulations, title 23, section 768.

By this order, the State Water Board denies the petitions for reconsideration. For the reasons set forth below, we find that Order WR 2011-0016 was appropriate and proper, and therefore the petitions for reconsideration are denied.

2.0 LEGAL AND FACTUAL BACKGROUND

The California Water Code authorizes the State Water Board to take action to prevent the threatened unauthorized diversion and use of water, as set forth in section 1052 of the California Water Code.

On April 10, 2009, the Assistant Deputy Director for Water Rights issued a Notice of Proposed Cease and Desist Order to Millview and Messrs. Hill and Gomes. Both Millview and Messrs. Hill and Gomes submitted timely requests for a hearing, which was held on January 26, 2010. The hearing participants included State Water Board staff Prosecution Team, Millview, Messrs. Hill and Gomes, and Sonoma County Water Agency. Other interested persons presented non-evidentiary policy statements only.

On October 18, 2011, after having considered the evidence and legal and policy arguments presented during the hearing, the State Water Board adopted Order WR 2011-0016. The Order found that a threat of unauthorized diversion and use exists because Millview's diversion and use under claim of pre-1914 appropriative right has exceeded the parameters of any perfected and maintained right, and

likely has resulted in injury to other legal users of water. Our Order does not prohibit diversion and use of water by Millview, as long as the diversion is consistent with the requirements and limits in the Cease and Desist Order.

Millview and Messrs. Hill and Gomes filed petitions for reconsideration on Order WR 2011-0016, which the State Water Board received on November 16, 2011.

3.0 GROUNDS FOR RECONSIDERATION

California Code of Regulations, title 23, section 768 provides that any interested person may petition for reconsideration based on any of the following causes:

(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;

(b) The decision or order is not supported by substantial evidence;

(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;

(d) Error in law.

Following review of the petitions and other relevant material, the State Water Board may refuse to reconsider the decision or order if the petitions fail to raise substantial issues related to the causes for reconsideration in section 768. The State Water Board may also deny the petitions upon a finding that the decision was appropriate, set aside or modify the decision, or take other appropriate action. (Cal. Code Regs., tit. 23, § 770.)

4.0 PETITION OF MILLVIEW

4.1 Legislative Authority

Contention: Millview contends that the Legislature could not constitutionally confer authority on the State Water Board to adjudicate pre-1914 appropriative or riparian water rights. The Water Commission Act, which created the predecessor to the State Water Board, was subject to a referendum and did not take effect until voted upon and approved by the electorate. According to Millview's argument, the act established the limits of the Board's authority, and the Legislature does not have the authority to amend or supplement the act as approved by the voters. As such, the Legislature could not expand the authority derived from the Water Commission Act of 1913 (Stats. 1914, ch. 586), and the expansion of authority by the Legislature when it adopted the State Water Board's Cease and Desist Order authority, Water Code section 1831, was impermissible.

Response: This argument lacks merit. Millview cites no authority for the proposition that an agency's authority, jurisdiction, and ability to carry out its administrative functions are forever frozen if the statute creating the agency, or its predecessor, is approved by referendum. While the California Constitution prohibits the Legislature from amending initiative statutes, except with voter approval or as authorized in the initiative itself, the California Constitution expressly authorizes the Legislature to amend or repeal referendum statutes. (Cal Const., art. II, § 10, subd. (c).).

Moreover, the California Supreme Court specifically found that the State Water Board has the authority to issue the order in question: "The SWRCB does have authority to prevent illegal diversions and to prevent waste or unreasonable use of water, regardless of the basis under which

the right is held." (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 429-30.)[1]

4.2 Due Process

4.2.1 Contention: Millview contends that it was not extended due process because the Order is internally inconsistent. According to Millview's petition, "The Order at page 2 states that a ruling as to whether the Waldteufel right was ever perfected 'appears to be outside of the issues fairly raised by the Hearing Notice and Proposed Cease and Desist Order.'" Despite this acknowledgement the Order at page 28 states "we find a right to divert more than approximately 243 afa, plus whatever amount may have been required to irrigate several acres of orchard, *was never perfected**."*** (Emphasis added by petitioner).

Response: This argument confuses two different issues: the first issue is whether any right was ever perfected: the second issue is, assuming the existence of some perfected right, what was the extent or amount that was, in fact, perfected? The Order at page two states that the first question, the basic existence of the Waldteufel right, was not raised by the Hearing Notice, and thus would not be resolved by the Order. On page 28 the Order determines the extent of the right that may have been perfected: "approximately 243 afa, plus whatever amount may have been required to irrigate several acres of orchard." These statements are not in any way inconsistent. The extent of the Waldteufel right was the central question of the hearing. The only way to determine the extent of the claim is to determine the amount of water that had been used historically, and therefore "perfected," by the original owner of the right. The language in the Order does not amount to an inconsistency, let alone a constitutional violation. This contention does not raise a significant issue that merits reconsideration.

4.2.2 Contention: Millview contends that the Order confuses "perfection" with forfeiture, resulting in a due process violation.

Response: The Order is clear; it first analyzes the amount of the water right that may have been perfected, and then analyzes whether and to what extent forfeiture has occurred, assuming the existence of a perfected pre-1914 claim. Compare Order section 5.2.2 (perfection - pages 25-28) with section 5.2.3 (forfeiture - pages 28-37). Millview claims that the Order confuses the concepts, but does not explain the alleged confusion or how such confusion has led to any problem with the Order. The Order devotes a full twelve pages to the two separate concepts, three to perfection of the Waldteufel right, and nine pages to forfeiture, assuming that a right had been perfected. We find that there was no confusion of the concepts, and certainly no constitutional violation that merits reconsideration of the Order.

4.3 Factual Inconsistency

Contention: Millview contends that the draft order, which the hearing officer adopted as the factual basis for the hearing, stated that J.A. Waldteufel owned 165 acres instead of 33.88. As such, Millview claims that the Order could not rely upon the record, which indicated that Waldteufel owned only 33.88 acres. Millview claims that it was not put on notice that the amount of acreage held by Waldteufel was in question.

Response: The findings of the Order must be based upon evidence in the record. The only evidence in the record was that Waldteufel owned a 33.88 acre parcel that was a portion of Lot #103, not the entirety of Lot #103.

[1] Millview argues that the State Water Board rested its authority to adjudicate the water right in question upon Water Code section 1241. The State Water Board issued Order WR 2011-0016 under its cease and desist order authority, as authorized by Water Code section 1831 et seq., not under Water Code section 1241.

> Both the prosecution team and Millview appear to have assumed that J.A. Waldteufel owned all of Lot #103, and therefore the entire 165-acre lot was the intended place of use for the Waldteufel claim of right. The prosecution team and Millview may have based this assumption on the notice of appropriation, but the language of the notice is ambiguous. The notice claimed the right to use water "upon the lands owned by me," and provided that the intended place of use was "on Lot #103." This language can be interpreted to mean that the intended place of use was on all of Lot #103, as the prosecution team and Millview assumed, or just on that portion of Lot #103 that was owned by J.A. Waldteufel. On cross-examination, the witness for the prosecution team admitted that he had no information to support his assumption that J.A. Waldteufel owned all of Lot #103. (R.T. at p. 121.) Given this lack of evidence, the better interpretation of the notice is that the intended place of use was the 33.88-acre parcel that J.A. Waldteufel owned.

At the hearing, all parties were aware that the only evidence in the record indicated that the Waldteufel property was a 33.88-acre parcel located in Lot #103, and nothing in the hearing testimony brought the issue into question. Both parties were given the opportunity to present rebuttal evidence (*see* Reporter's Transcript page 244, line 8) and after conferring with counsel for Messrs. Hill and Gomes, Millview declined to put on any rebuttal evidence. (*See* Reporter's Transcript page 257, lines 10-11.) The issue of the extent of any water right was central to the hearing notice in this case, and the size of the Waldteufel parcel, and the history of water use on that parcel, was the central point of the hearing. If Millview had evidence that demonstrated that Waldteufel owned more than 33.88 acres in Lot #103, it had ample opportunity to present the evidence. Notably, Millview does not now claim that such evidence is available, it simply argues that it lacked notice.

Finally, Millview cannot claim lack of notice. In the hearing notice, the Board did state that the Waldteufel property consisted of 165 acres. However, two sentences later the Notice stated:

> The portion of the original Waldteufel property located on the south side of Lake Mendocino Drive involved in this action currently includes Mendocino County Assessor Parcel No. 169-130-68, consisting of about 5 acres and 125 residential lots with separate parcel numbers within the CreekBridge Home Subdivision, totaling about 28.5 acres.

(page 2, para. 2 of the Draft Cease and Desist Order attached to the Hearing Notice dated September 3, 2009) The acreage thus listed equals 33.5, which is very close to the 33.88 acres supported by the record from the hearing. No substantial issue regarding the acreage merits reconsideration.

5.0 PETITION OF MESSRS. HILL AND GOMES

5.1 Constitutional Prohibition Against Waste and Unreasonable Use

Contention: Messrs. Hill & Gomes contend that article X, section 2 of the California Constitution precludes the State Water Board from adjudicating the existence or extent of a pre-1914 appropriative water right.

Response: This argument is flawed because it begs the question of whether such a right exists in the first place.

Article X, section 2 – which prohibits the waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of water – provides in part that "nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled."

One must first determine whether a lawful right exists before one can determine whether someone is being deprived of a right to which he or she is lawfully entitled. If the claimed diversion is not authorized by a valid riparian or appropriative right, the diversion is unauthorized, and it is therefore subject to the Board's enforcement authority.

In this case we are dealing with unauthorized, and therefore unlawful, diversions. The State Water Board's action is consistent with article X, section 2, because it determined that Millview's water right lawfully cannot exceed 15 acre feet per year, as specified. The Order does not deprive Millview's use of its lawful water right; it precludes diversion that would otherwise be unlawful.

In addition, the language in article X, section 2 relied on by Messrs. Hill and Gomes applies to all appropriators, not just pre-1914 appropriators. As such, it does not provide a basis for treating unauthorized diversions based on claim of riparian or pre-1914 right any differently from diversions that are unauthorized because they violate the terms of the water right permit or license. And the State Water Board's water right enforcement authority is in furtherance of article X, section 2. (See Wat. Code, § 1050.)

5.2 Statutory Authority to Adjudicate Riparian or Pre-1914 Appropriative Rights

Contention: Messrs. Hill & Gomes contend that the Water Code does not provide the authority to the Board to adjudicate the validity, the extent, or the forfeiture of riparian or pre-1914 appropriative rights. They contend that the State Water Board had no such authority before adoption of Water Code section 1831, and that section 1831 exempts "water not otherwise subject to regulation under this part."

Response: This argument ignores the fact that unappropriated water subject to the permitting system under part 2 of division 2 of the Water Code includes water claimed under a validly initiated pre-1914 right, if the right was not perfected by putting the water to beneficial use with due diligence or, if the water was once used under pre-1914 right but the use has ceased. (Wat. Code, § 1202, subd. (b).) The Board's authority to issue water right permits has long included the authority to determine, through administrative adjudication, the availability of unappropriated water. (See *Temescal Water Co. v. Department of Public Works* (1955) 44 Cal.2d 90, 102-06.)

Put simply, the State Water Board's authority to conduct administrative proceedings includes the authority to administratively determine those issues that are reasonably necessary to determine, in order to decide the issues before the Board in those administrative proceedings. To determine whether the diversion and use of water is unauthorized, it is reasonably necessary to determine whether diversion and use that is claimed to be authorized by riparian, pre-1914 or other right is in fact authorized. Even before the Legislature amended section 1831 of the Water Code to authorize issuance of a Cease and Desist Order for unauthorized diversion, the Legislature authorized the Board to administratively adjudicate whether a diversion or use is authorized for purposes of imposing administrative civil liability. (Wat. Code, §§ 1052, subd. (b), 1055.) Messrs. Hill & Gomes claim that provisions of the Water Code contemplate that the extent and validity of riparian and pre-1914 appropriative rights would be determined only through judicial proceedings, or through court references to the State Water Board. To the contrary, the reforms enacted through provisions for Administrative Civil Liability and Cease and Desist Orders are intended to improve water right administration by providing the Board with an administrative mechanism for taking enforcement against unauthorized diversions, without having to initiate an action in court.

Water Code section 1831, subdivision (e) specifies that the power to issue a Cease and Desist Order does not authorize the State Water Board to regulate the diversion or use of water not otherwise subject to regulation by the Board under specified provisions of part 2 (commencing with section 1200) of division 2 of the Water Code. But those provisions include the authority to regulate

the diversion and use of unappropriated water, including water claimed under pre-1914 right, but never perfected, and rights perfected under a pre-1914 right but lost through non-use. (Wat. Code, §§ 1201, 1202, subd. (b), 1225.) Because the State Water Board has regulatory authority over water subject to appropriation – including diversions claimed to be diverted under riparian, pre-1914 or other right but not in fact authorized under valid riparian, pre-1914, or other rights – section 1831, subdivision (e) is not a limitation on the Board's authority to issue a Cease and Desist Order under the circumstances presented here.[2]

5.3 Fair Hearing

5.3.1 Contention: The State Water Board had only three board members when it adopted the Order. It lacked two statutorily designated members - an attorney and a water supply and water rights engineer.[3] Messrs. Hill and Gomes contend that the State Water Board cannot take away a person's water right without an attorney on the Board.

Response: The cases cited by Messrs. Hill and Gomes do not support this novel argument. *Gordon v. Justice Court* (1974) 12 Cal. 3d 323 stands for the proposition that due process requires that before a person can stand trial for a criminal charge carrying the possibility of a jail sentence, the judge must be an attorney. Messrs. Hill and Gomes do not cite any authority for the proposition that an attorney is required for a civil water rights administrative adjudicatory determination. Nor does *Bayside Timber Co. v. Board of Forestry* (1971) 20 Cal. App. 3d 1 provide the authority for requiring an attorney board member or full complement of five board members. *Bayside Timber* involved the delegation of legislative authority to the Board of Forestry to create and implement forestry practice rules to protect the environment. The court reviewed the scheme in question, where timber operators had to agree to the imposition of rules before they became final. The Court ruled that the delegation of an important public protection scheme, to a group with a pecuniary interest in the outcome of the regulation, violated the state constitution's guarantee of due process. Messrs. Hill and Gomes do not allege any pecuniary interest in the board members who decided this case, nor does this case involve any of the factors cited by the *Bayside* court.

Other cases have focused on the issue of when an agency can award common law tort damages. (See *Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 262.) There

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[2] Messrs. Hill and Gomes argue that section 1831, subdivision (e) must have been intended to exempt riparian and pre-1914 right holders from cease and desist orders. As explained in Order WR 2011-0016, however, the argument simply begs the question whether a diversion claimed to be authorized by a riparian or pre-1914 right is in fact authorized by a valid riparian or pre-1914 right. Interpreting subdivision (e) to exempt unauthorized diversion and use from enforcement, simply because the diverter claims the diversion is authorized, does not follow from either the language of subdivision (e) or the circumstances under which it was enacted. By its terms, subdivision (e) does not provide a shield against enforcement for anyone who claims to have a riparian or pre-1914 appropriative right. Instead, subdivision (e) serves to reinforce the principle that cease and desist orders can only be issued for the violations listed in subdivision (d), and are not a basis for expanding the State Water Board regulatory authority into areas where the Board has no other authority to regulate. (See also Wat. Code, § 1052, subd. (e) [providing authority to enforce the prohibition against unauthorized diversions administratively, even before section 1831 was amended to apply to unauthorized diversions].) Moreover, the claim that subdivision (e) is focused on claimants to riparian and pre-1914 rights is speculative. More likely, it was in response to concerns over the potential for expansion of the water right permit system as applied to groundwater. At the time subdivision (e) was enacted, some groundwater users were concerned that the Board would adopt an expansive interpretation of its permit authority over groundwater. (See Garner & Willis, *Right Back Where We Started From: The Last Twenty-Five Years of Groundwater Law in California* (2005) 36 McGeorge L. Rev.413, 433.) Those concerns ultimately proved unfounded. (See *North Gualala Water Company v. State Water Resources Control Board* (2006) 139 Cal. App. 4th 1577; see also *id.* at pp. 1605-06 [rejecting expansive interpretation of State Water Board's permitting authority over groundwater].) But given the concerns being raised at the time, they may help explain why some interests may have seen a need for clarification that the Board's expanded cease and desist order authority, as enacted in the 2002 amendments to section 1831, did not provide a basis for expanding the State Water Board's water right permitting authority.

[3] Contrary to the petition, board member Tam Doduc is a registered civil engineer who is qualified in the fields of water rights and water supply.

has never been any question that an administrative agency can make determinations of factual issues that are reasonably necessary to effectuate the agency's regulatory purposes, and impose an appropriate remedy, even though the courts would also have authority to decide these issues. And the remedy may include an award of damages in the nature of restitution. (See *id.* at p. 266.) There is no merit to an argument that a water right Cease and Desist Order, which serves to help implement the statutory water right program administered by the State Water Board and does not include an award of money damages, is not a proper administrative function or intrudes on the province of the judiciary. (See also Wat. Code, § 1126 [providing for judicial review of water right Cease and Desist Orders].)

5.3.2 Contention: Messrs. Hill and Gomes contend that the State Water Board staff violated the separation of functions requirement articulated in *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal. 4th 731.

Response: Petitioners allege no facts that would constitute a violation of the requirement that the Board staff maintain a separation of functions required by staff of the Water Boards. Messrs. Hill and Gomes cite to information that indicates that staff involved in the prosecution in this proceeding, in which they argued that the Board has jurisdiction to determine the validity and extent of riparian and pre-1914 appropriative rights, advised the Board in a separate rulemaking proceeding.[4] Simply stated, this does not indicate a violation of the separation of functions requirement.

In fact, the facts presented here are nearly identical to the facts presented to the court in *Morongo*. The facts indicate that staff members David Rose and John O'Hagan,[5] members of the prosecution team in this proceeding, were also members of the Board staff advising the Board on the adoption of regulations for use of water for frost protection. Messrs. Hill and Gomes cite to nothing more than statements by the two staff members, made publicly, that they believe that the Board has the ability to exercise authority to enforce the proposed regulations. This does not approach the kind of conduct that the Court indicated in Morongo that would cross the line into a constitutional violation.

> Unless they have a financial interest in the outcome (see *Haas v. County of San Bernardino, supra*, 27 Cal.4th at p. 1025, 119 Cal.Rptr.2d 341, 45 P.3d 280), adjudicators are presumed to be impartial (*Withrow v. Larkin, supra*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712). Here, the Morongo Band has presented no evidence that the Board, or any of its members, is actually prejudiced against it. Instead, it argues that when the agency attorney, who is prosecuting an administrative license revocation proceeding, has concurrently advised the adjudicator in a separate, albeit unrelated matter, the risk that the agency adjudicator will be biased in favor of the prosecuting agency attorney is of a magnitude sufficient to overcome the

[4] Messrs. Hill and Gomes requested the Board to take official notice of testimony and documents in the record of a recent rulemaking to adopt regulations for use of water for protection against frost. The State Water Board takes official notice of the hearing transcripts (Cal. Code. Regs., tit. 23 section 648.2, Evid. Code § 452) but only for purposes of indicating the actions taken by the Board, not for the truth of the matters stated by the persons whose statements are transcribed in the transcript. (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.). For purposes of deciding these petitions for reconsideration, the Board recognizes that the Board held a non-adjudicative hearing on the frost regulations, that the hearing was transcribed, that staff members David Rose and John O'Hagan advised the Board in that rulemaking proceeding, and that how those regulations could be enforced was an issue considered by the Board in those proceedings.

[5] The Prosecution Team members do not have any special relation to the board members that would lead the Board to take their advice over the staff assigned to advise the Board in this proceeding. Mr. O'Hagan is a civil engineer; Mr. Rose is the most junior attorney assigned to water rights; and the Hearing Team advising the board members in this proceeding includes two senior attorneys and an assistant chief counsel who have served in the Office of Chief Counsel for fifteen, twenty-three and thirty-four years, respectively. The Chief Counsel is also advising the Board in this matter. In addition, the Board recognizes the difference between those assigned to advise the Board in an adjudicative proceeding and those who appear as advocates, and would not confuse the role of a prosecuting attorney with that of the attorney advisor, even if the prosecuting attorney were senior.

> presumption of impartiality. We disagree. As we explain, any tendency for the agency adjudicator to favor an agency attorney acting as prosecutor because of that attorney's concurrent advisory role in an unrelated matter is too slight and speculative to achieve constitutional significance.

(*Morongo Band of Mission Indians v. State Water Resources Control Bd*. (2009) 45 Cal.4th at p. 737.)[6] Likewise, Messrs. Hill & Gomes have cited no evidence that there were any improper motives or communications that indicate any actual bias or interest on the part of the prosecution team or board members.

> In the absence of financial or other personal interest, and when rules mandating an agency's internal separation of functions and prohibiting ex parte communications are observed, the presumption of impartiality can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias. Unless such evidence is produced, we remain confident that state administrative agency adjudicators will evaluate factual and legal arguments on their merits, applying the law to the evidence in the record to reach fair and reasonable decisions.

(*Id*. at 741-742.) Messrs. Hill and Gomes cite to no evidence indicating any bias at all. This contention fails to raise a significant issue that merits reconsideration.

5.4 Prejudicial Abuse of Discretion

Contention: Messrs. Hill and Gomes contend that the State Water Board should not have expressed disagreement with *North Kern Water Storage Dist. v. Kern Delta Water Dist. (2007) 147 Cal.App.4th 555, 577*.

Response: This issue was addressed at length in the Order at pages 30-34. Messrs. Hill & Gomes raise no new reasons why the 5-year requirement in *North Kern* should apply in this case. As such, this contention fails to raise a significant issue that merits reconsideration.

6.0 INCORPORATION BY REFERENCE

To the extent that either party attempted to incorporate into these requests for reconsideration, without further explanation, arguments that they made during other proceedings in this case, those issues were resolved.

7.0 DETERMINATION

Following review of the petitions, the State Water Board finds that they fail to raise substantial issues related to the causes for reconsideration enumerated in section 768. As a result the petitions are hereby denied.

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[6] The mere fact that enforceability was a relevant consideration – as it always should be when the State Water Board adopts regulations, permit terms, or other requirements – does not convert the rulemaking proceeding into a related matter. Enforceability was only one of many issues relevant to the frost protection regulations, and the enforcement issue was not the same as the issue presented here. The issue present here is whether a diverter who claims but does not have a valid riparian or pre-1914 right to the full extent of his or her diversions is nonetheless exempt from enforcement. (See Wat. Code, § 1831, subd. (d)(1).) The issue with respect to the frost protection regulations is whether one who in fact has a right to divert and use the water in question is subject to enforcement for exercising that right in a manner inconsistent with the public trust and reasonable use doctrines. (See *id.,* §§ 275, 1831, subd. (d)(3); *In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448, 472 n.16.)

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, Order WR 2011-0016 is affirmed and petitions for reconsideration are denied.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 10, 2012.

AYE:	Chairman Charles R. Hoppin Vice Chair Frances Spivy-Weber Board Member Tam M. Doduc
NAY:	None
ABSENT:	None
ABSTAIN:	None

Jeanine Townsend
Clerk to the Board