

Law Offices of  
**JOHN E. SHARP**  
24 Professional Center Parkway, Suite 110  
San Rafael, CA 94903

John E. Sharp  
[john@johnsharplaw.com](mailto:john@johnsharplaw.com)

Telephone: (415) 479-1645

October 1, 2026

Chair Maureen Mulheren  
Mendocino County LAFCo  
200 S School Street  
Ukiah, CA 95482

VIA EMAIL: [eo@mendolafco.org](mailto:eo@mendolafco.org)

Re: Mendocino County LAFCo  
Regular Commission Meeting, October 5, 2026 Meeting; Agenda Item 5

Dear Chair Mulheren and Commissioners:

This office represents Lee Howard and James Ronco, residents of Mendocino County, with reference to Item 5 of your agenda for October 5, 2026, the application for annexation by Russian River Flood Control and Water Conservation Improvement District, (hereafter "the District").

I will appear via Zoom at the meeting. Please include this correspondence in the Administrative Record.

Understanding that LAFCo relies upon the purported environmental review conducted by the we enclose for your consideration, the following documents:

1. Letter from Messrs. Howard and Ronco to the District dated July 27, 2025.
2. Letter from the undersigned to the District dated July 6, 2026.
3. Order of the State of California State Water Resources Control Board dated June 21, 1979.
4. Petition for Writ of Mandate, brought by Messrs. Howard and Ronco, currently pending in the Mendocino County Superior Court, against the District, arising from its inadequate CEQA review.
5. **STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ORDER  
WR 2005 – 0013**

In summary, the attached documents address the following:

CEQA requires the preparation of an EIR in order to identify the significant environmental effects of a project, so that measures to mitigate or avoid those effects, or alternatives that avoid those effects, can be devised. (Pub. Resources Code §§ 21002.1(a), 21060.) Compliance with the procedural requirements of CEQA sets the stage for development of mitigation measures and alternatives. Without a proper procedural foundation, a local agency cannot comply with CEQA's mandate that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. (Pub. Resources Code § 21002.) Where a negative declaration is to be relied upon, the agency must show substantial evidence. Here, the District, in its environmental review, simply checked all boxes as "no impact" and used circular reasoning to effectively state that the project has no impacts because it has no impacts.

A CEQA review must provide public agencies and the public in general with detailed information about the effect a project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to such a project. (Pub. Resources Code § 21061.) California Code of Regulations, title 14 (CEQA Guidelines), section 15126.2, requires that the environmental review process identify the significant environmental impacts of the project, including direct and indirect impacts. CEQA Guidelines section 15126.4 requires that the Final EIR describe all feasible measures that can minimize significant adverse impacts of the project. CEQA does not allow an agency to defer analysis of impacts and mitigation measures. (CEQA Guidelines § 15126.4(a)(I)(B).)

CEQA's fundamental goals are to foster informed decision-making and to fully inform the public about the project and its impacts. (CEQA Guidelines § 15003.) In order for Environmental Review to meet these goals and fully inform decision-makers, it must establish an appropriate environmental baseline by which to determine whether the impacts of the project will be significant.

Respondents committed a prejudicial abuse of discretion and failed to proceed in a manner required by law by relying on Negative Declaration that fails to meet the requirements of CEQA for disclosure, analysis, and mitigation of significant project impacts. As discussed herein, the deficiencies in the Environmental Review and Negative Declaration include an inadequate environmental baseline, an inadequate analysis regarding the Project's environmental impacts, and an inadequate alternatives analysis.

**CEQA violations by Russian River Flood Control and Water Conservation Improvement District ("the District")**

The negative declaration is legally defective and fails to evaluate and mitigate the significant adverse impacts of the proposed annexation upon agricultural water users, agricultural production, and the potential loss of agricultural lands (due to potential water reductions in shortage periods) within the District. This is particularly troubling given the history of the failure of the County to adequately address these issues. See: *Masonite Corporation v. County of Mendocino* (July 25, 2013) 215 Cal.App.4th 230. This case ordered the County to have to "re-do" EIR because it failed to address the adverse impacts of a project on agricultural lands and production in the Ukiah Valley. Here the District does not hold any reliable surplus water supplies that are available for permanent allocation to permanent residential uses within Redwood Valley. The defective negative declaration has failed to identify both a redundant source of water or the massive growth inducing impacts (and the adverse impacts and mitigation requirements) that will result from the transfer of agricultural water from within the current boundaries of the District to future developments within Redwood Valley that will be facilitated by the conversion of agricultural water to permanent residential consumptive uses.

#### **Flawed Notice Requirements**

On October 7, 2025, MCRRFD&WCID filed with the State of California, Office of Planning and Research (State Clearing House) a Notice of Determination under Public Resources Code section 21152, identified as Document No. 2025061147. On October 10, 2025, a Notice of Determination was recorded and posted in the office of the Mendocino County Recorder, as document No. 2025E0089.

No portion of Redwood Valley has ever been annexed into the District. This deceptive and clearly erroneous representation in the District's **purported** notice invalidates the notice for CEQA purposes because it mis-characterizes the "project" to be considered by the District's board.

#### **Violation of State Water order**

Historically, the District requested of the State Water Resources Control Board the authority to distribute "surplus water" to Redwood Valley and the State Board only granted the District the authority to distribute "surplus water" per the SWRCB authorization. The negative declaration fails to identify which current RRFC agricultural contract would be reduced in order to "permanently serve" residential uses within the proposed Redwood Valley annexation area.

In its Order WR 79-15, the State Board references approval of the following condition:

“Water to be utilized in this additional place of use shall be available only until the same is necessary to supply water for any existing or future use of water within the Mendocino County Russian River Flood Control and Water Conservation Improvement District. Neither the Redwood Valley County Water District nor any user within that district will acquire a vested right to water available under Permit 12947B as a result of this change in place of beneficial use.”

As it stands, the District’s proposal violates State Water Order 79-15. If the District purports to revise the State’s ruling, via this annexation application, yet another basis for a full application process CEQA review arises.

Finally, for the Commission’s consideration, we enclose a copy of STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD **ORDER WR 2005 – 0013**, which adopts the State Board’s cease-and-desist order pertaining to similar violations between the District and Redwood Valley in 2005. This order clearly demonstrates a pattern of disregard of the law by the District.

### **Conclusion**

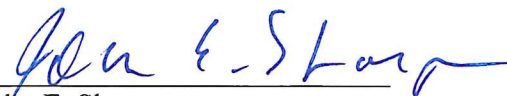
Russian River Flood Control and Water Conservation Improvement District, via its annexation application, and its violation of the State Board’s order, seeks to circumvent the law and, in so doing, seeks to implicate Mendocino LAFCo in its efforts. The pending application should be denied, and the negative declaration deemed inadequate.

On behalf of Mr. Howard and Mr. Ronco, we reserve the right to submit such further oral and written material as may be relevant prior to and/or at the hearing.

Thank you for your attention to these matters.

Very truly yours,

LAW OFFICES OF JOHN E SHARP

  
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John E. Sharp

27 July 2025

## Objection to Proposed Negative Declaration (CEQA) for the annexation of the Redwood Valley County Water District into the MCRRFCWCD

TO: Board Members of the MCRRFCWCD:

By this letter, we hereby object to the proposed negative declaration that has been promulgated by your agency for the purposes of "fast-tracking" the annexation of the Redwood Valley County Water District (RVCWD) into the Mendocino Russian River Flood Control and Water Conservation District. This is a major project as defined by CEQA and necessitated a full Environmental Impact Report before the district is allowed to proceed with the consideration of this proposal.

The proposed negative declaration fails to acknowledge, or even recognize, the very significant and unmitigated adverse environmental impacts (as defined by the CEQA guidelines) that the proposed project will cause. The California Environmental Quality Act (CEQA) requires the preparation of a full and complete Environmental Impact Report both to identify the myriad of adverse impacts and to identify and quantify the magnitude and the actual costs of the necessary mitigation measures for this project, and who will bear the significant financial burdens of mitigations for this project.

The following are some of the major issues that the negative declaration has failed to identify and for which major (and expensive) mitigation are required by CEQA:

1. The negative declaration is legally defective and fails to evaluate and mitigate the significant adverse impacts of the proposed annexation upon agricultural water users, agricultural production, and the potential loss of agricultural lands (due to potential water reductions in shortage periods) within the Russian River WCID. This is particularly troubling given the history of the failure of the County to adequately address these issues. SEE: Masonite Corporation v. County of Mendocino (July 25, 2013) 215 Cal.App.4th 230. This case ordered the County to have to "re-do" an EIR because it failed to address the adverse impacts of a project on agricultural lands and production in the Ukiah Valley.
2. Contrary to the defective notice of the negative declaration, no portion of Redwood Valley has ever been annexed into the MCRRFCWCD. This deceptive and clearly erroneous representation in the notice invalidates the notice for CEQA purposes inasmuch as it mis-characterizes the "project" to be considered by your board.
3. MCRRFCWCD requested the authority to distribute "surplus water" to Redwood Valley and the State Water Resources Control Board only granted MCRRFCWCD the authority to distribute "surplus water" per the SWRCB authorization. The negative declaration fails to identify which current MCRRFCWCD agricultural contract will be reduced in order to "permanently serve" residential uses within the proposed Redwood Valley annexation area.

4. MCRRFCWCID does not hold any reliable surplus water supplies that are available for permanent allocation to permanent residential uses within Redwood Valley. The defective negative declaration has failed to identify both a redundant source of water or the massive growth inducing impacts (and the adverse impacts and mitigation requirements) that will result from the transfer of agricultural water from within the current boundaries of the MCRRFC to future developments within Redwood Valley that will be facilitated by the conversion of ag water to permanent residential consumptive uses.

These major defects in the negative declaration virtually guarantee that a legal challenge to the negative declaration will be sustained by the Superior Court.

We strongly propose that the idea of the negative declaration be abandoned, and a full and complete EIR (paid for by the Redwood Valley board and the developers therein, the sole beneficiaries of this proposed project) be required to be completed and subject to CEQA mandated public hearings BEFORE this project is allowed to proceed. Failure to do so will expose the MCRRFCWCID to litigation that will be of no benefit to your district.

Most Respectfully,

James John Rocco  
Apri Kane  
A.A.

Gold  
Lee Howard  
3900 Patucci Rd  
 Ukiah Ca 95482

Law Offices of  
**JOHN E. SHARP**  
24 Professional Center Parkway, Suite 110  
San Rafael, CA 94903

John E. Sharp  
[john@johnsharpplaw.com](mailto:john@johnsharpplaw.com)

Telephone: (415) 479-1645

July 6, 2026

Chair Christopher Watt and Members of the Board of Trustees of Mendocino County Russian River Flood Control & Water Conservation Improvement District  
P.O. Box 2104  
Ukiah, CA 95482

VIA EMAIL: [DistrictManager@rrfc.net](mailto:DistrictManager@rrfc.net)

Re: ***Board of Trustees Meeting of Monday, July 6, 2026 at 5:30PM***  
***Agenda Item 10: Redwood Valley Annexation***

Dear Chair Watt and Board of Trustees:

This office represents Lee Howard and Jim Ronco, residents and interested parties in the proposed annexation and tax sharing agreement, identified as Agenda item 10 for your meeting of July 6, 2026.

Please include this letter in the administrative record of proceedings for July 6, 2026 and any future proceedings related to the annexation and/or tax sharing agreement.

For reasons set forth below, our clients oppose the approval of Resolution #26-04.

**Procedural posture of the annexation application:**

Currently, the District's (hereinafter "RRFC" or "the District") application to annex the Redwood Valley County Water District's boundaries "not already within RRFC's boundaries" is **incomplete**, due to our legal challenge of your environmental review. The substance of the legal challenge is that no portion of Redwood Valley has ever been annexed into the District, and CEQA has not been followed, insofar as the District's negative declaration is defective.

Historically, RRFC requested of the State Water Resources Control Board the authority to distribute "surplus water" to Redwood Valley and the State Board only granted RRFC the authority to distribute "surplus water" per the SWRCB authorization. The negative declaration fails to

C.Watt/Dist Board

July 6.2026

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identify which current RRFC agricultural contract will be reduced in order to "permanently serve" residential uses within the proposed Redwood Valley annexation area.

The proposed negative declaration fails to acknowledge, or even recognize, the significant and unmitigated adverse environmental impacts (as defined by the CEQA guidelines) that the proposed project will cause. The California Environmental Quality Act (CEQA) requires the preparation of a full and complete Environmental Impact Report both to identify the myriad of adverse impacts and to identify and quantify the magnitude and the actual costs of the necessary mitigation measures for this project, and who will bear the significant financial burdens of mitigations for this project. This is to be accomplished before the application can be considered on its full merits, and to enter a tax share agreement while environmental review has not occurred stands the CEQA process on its head.

The negative declaration is legally defective and fails to evaluate and mitigate the significant adverse impacts of the proposed annexation upon agricultural water users, agricultural production, and the potential loss of agricultural lands (due to potential water reductions in shortage periods) within the RRFC boundaries. This is particularly troubling given the history of the failure of the County to adequately address these issues. See: *Masonite Corporation v. County of Mendocino* (July 25, 2013) 215 Cal.App.4th 230. This case ordered the County to have to "re-do" the EIR because it failed to address the adverse impacts of a project on agricultural lands and production in the Ukiah Valley.

RRFC does not hold any reliable surplus water supplies that are available for permanent allocation to permanent residential uses within Redwood Valley. The defective negative declaration has failed to identify both a redundant source of water or the massive growth inducing impacts (and the adverse impacts and mitigation requirements) that will result from the transfer of agricultural water from within the current boundaries of the RRFC to future developments within Redwood Valley that will be facilitated by the conversion of ag water to permanent residential consumptive uses.

#### **Recent District meetings:**

In the last several weeks, various board members and General Manager Salomone have met with customers of the District at private locations, and have discussed various aspects of water use and distribution inside and outside of District boundaries. The lack of transparency arising from these impromptu meetings, arising from the inability to discern their purpose, when considered against the backdrop of the annexation application being procedurally defective due to the issues described above creates both an appearance of impropriety and a question regarding potential communications between the District and private customers, about with the public has the right to know. While the Brown Act not have technically been violated, the spirit of public transparency has not been met, and should be required before any further steps toward annexation, including the tax share agreement, go forward.

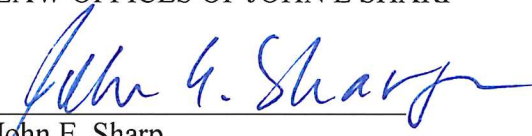
Please provide any and all future notices, agendas, minutes and other public documents, pertaining to the annexation application, CEQA process and/or tax share agreement to the undersigned.

Thank you for your attention to these matters.

C.Watt/Dist Board  
July 6.2026  
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Very truly yours,

LAW OFFICES OF JOHN E SHARP

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John E. Sharp

cc. clients, Mendocino County Board of Supervisors, Uma Hinman-LAFCo, Lilliana Selke,  
Redwood Valley Water District

Attachment 3

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

|                                      |   |                       |
|--------------------------------------|---|-----------------------|
| In the Matter of Permit 12947B,      | ) |                       |
| Issued on Application 12919A,        | ) |                       |
| MENDOCINO COUNTY RUSSIAN RIVER       | ) | ORDER: MR 79-15       |
| FLOOD CONTROL AND WATER CONSERVATION | ) | COUNTY: Mendocino     |
| IMPROVEMENT DISTRICT,                | ) | SOURCE: Russian River |
| Permittee,                           | ) |                       |
| SONOMA COUNTY WATER AGENCY, ET AL.,  | ) |                       |
| Protestants.                         | ) |                       |

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ORDER APPROVING CHANGE IN PLACE OF USE

BY BOARD MEMBER MITCHELL:

Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino District) having petitioned the State Water Resources Control Board for a change in place of use under Permit 12947B; protests having been received; a public hearing having been held before the Board on February 26, 1979, permittee and Protestant Sonoma County Water Agency (Sonoma Agency) having appeared and presented evidence; the evidence received at the hearing having been considered, the Board finds as follow:

PAST PROCEEDINGS

1. Permit 12947B is a water right entitlement held by the Mendocino District. An understanding of certain background factors is necessary to dispose of the change petition. The nature of the entitlement will appear as this background is developed.

2. Permit 12947B has its origin in Application 12919 and 12920 filed on January 28, 1949, by the State of California,

pursuant to Water Code Section 10500. Like all so-called "state filings" the purpose of these applications was to use California's water right system of priority by date of application to guide water resources development in a manner consistent with a coordinated statewide plan. A portion of each of these applications (which portions were eventually designated 12919A and 12920A) underwent assignment and reassignment, pursuant to the law governing state filings. The applications were amended and completed in 1958 and held jointly by the predecessor of the Sonoma Agency and by the Mendocino District.

3. The applications, as finally amended and completed, both proposed appropriation of 335 cubic feet per second (cfs) by direct diversion from various points on the Russian River system and 122,500 acre-feet per annum (afa) by storage-at Coyote Dam (Lake Mendocino) on East Fork Russian River. One application was for municipal, industrial, **domestic**, and recreational uses. The other was for irrigation and domestic uses. Both applications covered the same water; their only significant difference was in the uses proposed.

4. The completed applications, together with other applications to appropriate from the Russian River system, were considered at a consolidated hearing, which led to Decision 1030 adopted August 17, 1961. Decision 1030 approved-the applications and ordered issuance of permits (Permits 12947 and 12948), subject to certain conditions.

5. By its Order **WR 74-30**, adopted October 17, 1974, the Board took the following actions relevant here:

(a) Since Permits 12947 and 12948 covered the same project and the same water, the Board in effect consolidated all permitted uses into Permit 12947, and revoked Permit 12948;

(b) The Board then split Permit 12947 into "A" and "B" permits to reflect the separate entitlements of the Sonoma Agency (Permit 12947A) and the Mendocino District (Permit 12947B).

6. Relevant permit details are the following:

(a) The existing place of use specified in the Mendocino District's "B" permit, which is the subject of the instant petition, is within the District's boundaries. All of the area is within Mendocino County. The permit allows direct diversion of 53 cfs and shared storage of 122,500 afa; however, combined direct diversion and rediversion of stored water is limited to 8,000 afa,

(b) Protestant Sonoma Agency, holder of the "A" permit, is authorized direct diversion of 92 cfs and shared storage of 122,500.afa, The Sonoma Agency's permit contemplates and authorizes use of project water both within the Russian River Valley in Sonoma County and -- unlike the Mendocino District's permit -- export of water from that Valley. However, Sonoma Agency's right to export is subject to 8,000 afa depletion by consumptive use within the Mendocino District, under that District's "B" permit, for uses initiated after January 28, 1949.

#### OBJECTIVE OF THE PETITION

7, The Mendocino District seeks to change its presently authorized place of use by adding the area within the Redwood

Valley County Water District (Redwood Valley District). The Redwood Valley District lies generally north of the Mendocino District. A small portion of the 'southernmost lands of the Redwood Valley District is within the boundaries of the Mendocino District; most of such lands are outside the Mendocino District's boundaries.

8. Lands of the Redwood Valley District are within the drainage of West Fork Russian River, and within Mendocino County. West Fork and East Fork Russian River have their confluence within Mendocino County a few miles south of the Redwood Valley District's southern boundary.

9. Lands of the Mendocino District are within the drainage of East Fork Russian River and of the Russian River system below the 'confluence of the West Fork and the East Fork. The main stem of the Russian River flows in a generally southerly direction below that confluence, crosses the Mendocino County-Sonoma County line near Preston, turns westerly below Healdsburg, and flows to the Ocean near Jenner.

10. The Mendocino District thus encompasses most of the Russian River drainage lying within Mendocino County. However, as we have seen, its boundaries do not include the West Fork drainage.

11. The Mendocino District's petition does not involve annexation of the Redwood Valley District's lands, that is, lands within the West Fork drainage. It proposes to supply water to the Redwood Valley District by contract. Under the terms of the contract, the Redwood Valley District would be supplied up to 4,000 afa of permit water, to the extent such water is surplus to the needs of the Mendocino District. (Mendocino District

Exhibit 4.) In other words, the Mendocino District proposes to divert the unused portion of its 8,000 afa depletion allowance to the Redwood Valley District, whose lands are drained by the West Fork Russian River, until such time as it is needed within the original Mendocino District place of use. Average use by the Mendocino District during a normal year has been about 4,000 afa, leaving a like quantity available for Redwood.

12. The purpose of the proposed change and uses that would be made of the water are as follows:

(a) The purpose of the change is to provide a firm interim supply for the Redwood Valley District, That district has recently been issued a permit on Application 24955, which allows direct diversion and storage of water from Lake Mendocino when the Corps of Engineers is making flood control releases, usually January through April, Alternate surface supplies have been explored and found unfeasible. The groundwater supply is also inadequate. The Redwood Valley District has entered into an agreement with the Mendocino District concerning a pooling agreement for the Warm Springs Project for the long-term firm supply.

(RT 46, Mendocino Exhibits 3 and 4.)

(b) The water will be used for domestic and irrigation purposes. Domestic use is estimated to be approximately 600 afa and irrigation would use the remainder, Irrigation water would be available to some 2,000 acres initially and 3,500 acres ultimately. The prevalent crop is grapes which, for the most part, have been dry farmed in the past, Development for full use of the water is estimated to be seven years, when the conduit system is completed and the whole 3,500 acres could be served,

## THE PROTESTS

13. Five protests were accepted against the petition for change; three were resolved prior to the hearing.

(a) The three resolved protests were from users within the Mendocino District, namely, Millview County Water District, Parducci Winery and Hugo and Beatrice Oswald. They all expressed concern that they would not be able to purchase additional portions of the 8,000 afa reservation in the future. They also protested on grounds that the change would be contrary to law, be Adverse to the public interest and have adverse environmental impacts. These protests were withdrawn through stipulations whereby the Mendocino District agreed to the inclusion in any order approving the change in the following condition:

"Water to be utilized in this additional place of use shall be available only until the same is necessary to supply water for any existing or future use of water within the Mendocino County Russian River Flood Control and Water Conservation Improvement District. Neither the Redwood Valley County Water District nor any user within that district will acquire a vested right to water available under Permit 12947B as a result of this change in place of beneficial use."

(b) An unresolved protest was submitted by Sonoma County Tomorrow. The basis of its protest was that the change would have adverse environmental effects and would not be in the public interest. Sonoma County Tomorrow did not appear at the hearing nor did it make a showing of good cause within the five-day period following the hearing. In accordance with Section 731, Title 23, California Administrative Code, protestant's failure to appear, or to show good cause for its nonappearance, is interpreted as an abandonment of interest in the subject matter of the petition.

14. The remaining unresolved protest was submitted by the Sonoma Agency, holder of Permit 129478. The Sonoma Agency also holds several other filings on the Russian River, including two permits authorizing export diversion from the Russian River Valley.

#### THE ISSUE

15. Protestant Sonoma Agency concedes that the proposed interim use of water in the Redwood Valley District under Permit 12947B is in the public interest (RT 48); and the record amply supports the finding that such use is in the public interest.

16. The Sonoma Agency's protest is best summarized by the condition on approval of the petition proposed by protestant at hearing.

(a) The proposed condition is that, first, any use within the Redwood Valley District be subordinated to uses under Permit 12947B within the Mendocino District. This part of the proposed condition has been agreed to by petitioner by stipulation with other protestants. (See Finding 13, above.)

(b) The second part of the condition is that any use within the Redwood Valley District be further subordinated to the Sonoma Agency's appropriation under Permit 12947A. It is this proposal which presents the issue which must be decided.

17. Water Code Section 1702 provides the statutory standard for Board action on the proposed change. Under that section, the Board must find that such change will not operate to the injury of any legal user of the water involved. Past Board decisions have concluded that "any legal user" includes junior as well as senior rightful users. Accordingly, the relative priorities of Petitioner and Protestant are not in issue. The question is whether approval of the proposed change -- without the condition proposed -- would operate to the injury of the Sonoma Agency, a lawful user of the water involved.

18. Protestant Sonoma Agency draws our attention to the fact that the 8,000 afa and 10,000 afa reserved by Decision 1030 for future use in Mendocino and Sonoma Counties, respectively, were for uses within the Russian River Valley and that Decision 1030 specially defined "Russian River Valley" in a manner that would exclude West Fork Russian River, in the drainage of which lie most of the lands of the Redwood Valley District. (Decision 1030, p. 9.) Therefore, according to the protestant, the Mendocino District's **petition** proposes an export of water from the Russian River Valley, as that term is defined. Thus, reasons the protestant, water service by the Mendocino District to the Redwood Valley District should be junior to use under the appropriation authorized by the Sonoma Agency's Permit 12947A. In support of this conclusion, the Sonoma **Agency**, while recognizing that the two permits are of the same priority, suggests application by analogy of the "first in time, first in right" principle. The Sonoma Agency's position is reflected

in the second part of its proposed dismissal term (see Finding 16(b) above), subordinating water use in Redwood Valley under Permit 12947B to protestant's use under Permit 12947A.

19. We do not find it necessary to condition our approval of the requested change in the manner proposed by the Sonoma Agency. The West Fork Russian River drainage is hydrologically a part of the Russian River basin; and its confluence with the East Fork is above the County line. Therefore, from the Sonoma Agency's perspective, it should make no difference whether water available under Mendocino's 8,000 afa reservation is used wholly within the Russian River Valley (as specifically defined) in Mendocino County or is used partially within the Russian River Valley and partially within Redwood Valley in the West Fork drainage in Mendocino County -- so long as total use within Mendocino County does not exceed the permitted 8,000 afa depletion.

20. We recognize that approval of the proposed change, given the contractual relationships between the Mendocino District and the Redwood Valley District, will encourage full use of the 8,000 afa reservation for Mendocino County under Permit 12947B faster than if the change were not approved. However, so long as Mendocino's use, including use in Redwood Valley, does not exceed the permitted 8,000 afa depletion, we conclude that reaching full authorized use ahead of the time at which full use would otherwise occur does not, in and of itself, operate to the injury of other users of the water involved, within the meaning of Water Code Section 1702.

21. The change in place of use proposed by the Mendocino, District's petition is found not to be a substantial project change, within the meaning of Water Code Section 10504.5.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

22. The Redwood Valley District has prepared a final environmental impact report in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the State Guidelines.

23. The project as approved by the Redwood Valley District will have the following significant effect on the environment:

- (a) Reduction of vegetation and wildlife habitat;
- (b) Changes in water quality;
- (c) Changes in land use and population growth.

24. The following economic, social or other conditions make it infeasible to mitigate or avoid one or more significant effects of a project on the environment:

(a) Significant impacts relating to removal of vegetation will be partially mitigated by replanting areas disturbed by pipeline construction. About 10 acres of grassland type vegetation will be lost to the storage reservoir, treatment plant and corporation yard and an unknown amount of vegetation will be converted to intensive agriculture and urban. No mitigation measures are available for vegetation lost to development. There will probably be some enhancement of riparian vegetation along the Russian River and tributary streams because of increased agricultural return flow.

(b) Water quality in the Russian River may be degraded by increased agricultural return water; however, there is a

trade-off between obtaining extra flow and potential degradation. No mitigation measures are available.

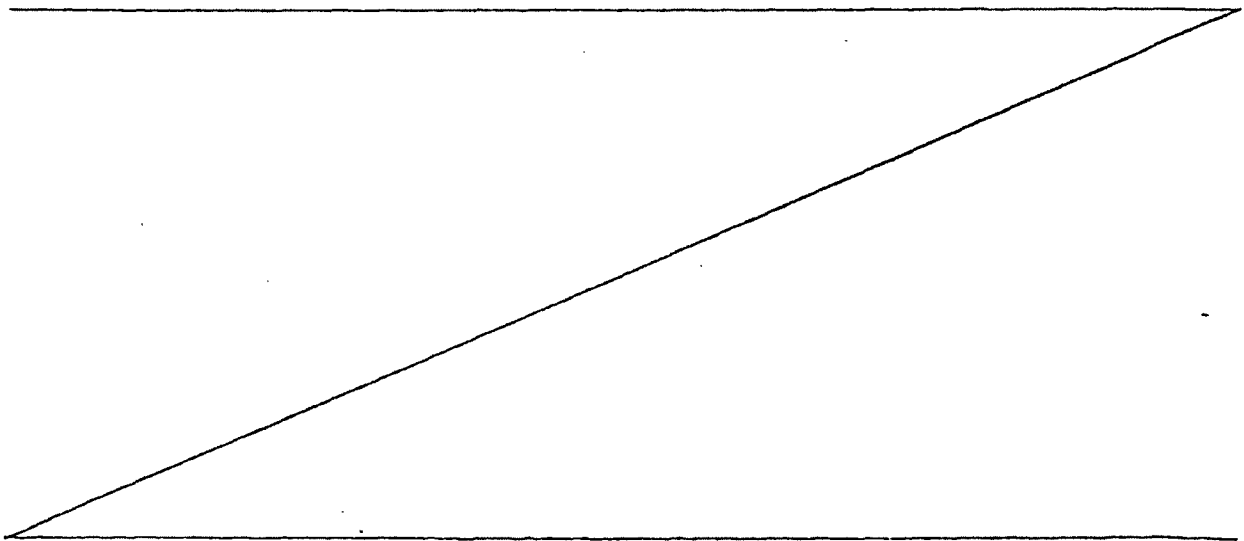
(c) Improving the water supply will result in increased urban and industrial growth which **will result** in secondary impacts at some later date when the growth is realized. Water quality degradation, increased vehicular traffic, air pollution, and solid waste disposal will result with increased growth. At the present time, these impacts are problematical and mitigation can only be accomplished when specific projects are proposed.

25. The State Board has reviewed and considered the information contained in the EIR prior to the approval of the project.

#### DETERMINATION OF ISSUES

26. The proposed change is in the public interest.

27. The proposed change will not operate to the injury of any legal user of the water involved.



ORDER

IT IS HEREBY ORDERED that:

1. The protest of Sonoma County Tomorrow is dismissed.
2. The change proposed by the Mendocino District is approved.
3. Approval is conditioned upon the stipulated condition set forth in Finding 13.

Dated: **JUNE 21, 1979**

/S/ L. L. MITCHELL  
L. L. Mitchell, Member

/S/ W. DON MAUGHAN  
W. Don Maughan, Chairman

/S/ WILLIAM J. MILLER  
William J. Miller, Member

/S/ CARLA M. BARD  
Carla M. Bard, Member

1 John E. Sharp, Esq. (SBN 085615)  
2 LAW OFFICES OF JOHN E. SHARP  
3 24 Professional Center Parkway, Suite 110  
4 San Rafael, CA 94903  
5 Telephone: (415) 479-1645

By:  
Ashley Hodson  
Deputy Clerk

6 Attorneys for Petitioners  
7 Lee Howard and Jim Ronco

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF MENDOCINO

10  
11  
12 LEE HOWARD AND JAMES JOHN  
13 RONCO

Case No. 25CV02914

14 Petitioners,

15 vs.

16 MENDOCINO COUNTY RUSSIAN RIVER  
17 FLOOD CONTROL ANNEXATION OF  
18 REDWOOD VALLEY COUNTY WATER  
19 DISTRICT AND DOES 1 through 100  
20 inclusive,

Respondents.

**VERIFIED PETITION FOR WRIT OF  
MANDATE; NOTICE TO PRODUCE  
ADMINISTRATIVE RECORD AND  
REQUEST FOR HEARING**

21 Petitioners LEE HOWARD AND JAMES JOHN RONCO ("Petitioners") allege:

- 22
- 23 1. By this action, Petitioners challenge Respondent MENDOCINO COUNTY RUSSIAN  
24 RIVER FLOOD CONTROL ANNEXATION OF REDWOOD VALLEY COUNTY  
25 WATER DISTRICT's ("MCRRFD & WCID", or "RRFC") Notice of Determination  
26 ("NOD"), State Clearinghouse #2025061147, for its Filing of an Application with the  
27 Mendocino County Local Agency Formation Commission ("LAFCO") to Annex the  
28 Redwood Valley County Water District ("RVCWD") into the RRFC, as more particularly

- 1 described in the Initial Study for the Project.
- 2 2. Petitioners hereby request that Respondent prepare, file and serve the Administrative
- 3 Record of proceedings for the project known as the **Proposed Annexation of the Redwood**
- 4 **Valley County Water District Complete Service Area.**
- 5 3. Petitioners seek a determination from this Court that MCRRFD & WCID's Notice of
- 6 Determination approval of the Project is invalid and void and that the Negative
- 7 Declaration prepared for the Project fails to satisfy the requirements of CEQA, and the
- 8 CEQA Guidelines, Title 14, California Code of Regulations, section 15000 *et seq.*

9 **PARTIES**

- 10 4. Petitioners LEE HOWARD AND JAMES JOHN RONCO ("Petitioners") are individuals
- 11 residing in the County of Mendocino. Petitioners have a particular interest in the protection
- 12 of the environment of the Russian River, Eel River and lands within the Russian River
- 13 Flood Control District, and the Redwood Valley County Water District, ("RVCWD"),
- 14 and are increasingly concerned about worsening environmental and land use conditions
- 15 that detrimentally affect their well-being and that of other residents and visitors of the
- 16 environment described above. Petitioners exhausted their administrative remedies in person
- 17 and in writing during the public hearing process at RRFC. Petitioners live, work, travel and
- 18 enjoy recreational activities in the referenced areas. Petitioners are composed of persons
- 19 whose economic, personal, aesthetic, and property interests will be severely injured if the
- 20 subject annexation is not set aside pending full compliance with CEQA and all other
- 21 environmental laws. Petitioners bring this petition on behalf of all others similarly
- 22 situated who are too numerous to be named and brought before this court as petitioners. As
- 23 a group composed of residents and property owners within the Russian River area,
- 24 Petitioners are within the class of persons beneficially interested in, and aggrieved by, the
- 25 acts of Respondent as alleged below. Petitioners have a direct and substantial beneficial
- 26 interest in ensuring that Respondent complies with laws relating to environmental
- 27 protection. Petitioners are adversely affected by Respondent's failure to comply with
- 28 CEQA in approving the NOD and the Project. Petitioners participated in the administrative

1 processes herein, and exhausted their remedies. Accordingly, the Petitioners have  
2 standing to sue.

- 3 5. Respondent MCRRFD&WCID'S is a political subdivision of the State of California.  
4 MCRRFD&WCID is the principal agency with responsibility to manage and conserve the  
5 resources within its boundaries. As the lead agency for the Project, MCRRFD&WCID is  
6 responsible for preparation of an environmental document that describes the Project and its  
7 impacts, and, if necessary evaluates mitigation measures and/or alternatives to lessen or  
8 avoid any significant environmental impacts. As the lead agency, MCRRFD&WCID is  
9 responsible for implementing and complying with the provisions of CEQA and the CEQA  
10 Guidelines with respect to the Project.
- 11 6. Petitioners are unaware of the true names and capacities of Respondents identified as Does  
12 1-100. Petitioners are informed and believes, and on that basis alleges, that Respondents  
13 Does 1-100, inclusive, are individuals, entities or agencies with material interests affected  
14 by the Project with respect to the Project or by MCRRFD&WCID's actions with respect to  
15 the Project. When the true identities and capacities of these Respondents have been  
16 determined, Petitioners will, with leave of Court if necessary, amend this Petition to insert  
17 such identities and capacities.

18 **BACKGROUND FACTS**

- 19
- 20 7. On or about October 6, 2025, Respondent approved its application to LAFCO for **Proposed**  
21 **Annexation of the Redwood Valley County Water District Complete Service Area.**  
22 Said approval was based upon a Negative Declaration of the same date.  
23 No portion of Redwood Valley has ever been annexed into the MCRRFCWCID. This  
24 deceptive and clearly erroneous representation in the notice invalidates the notice for CEQA  
25 purposes inasmuch as it mis-characterizes the "project" to be considered by MCRR's board.
- 26 8. MCRRFCWCID requested the authority to distribute "surplus water" to Redwood Valley  
27 and the State water Resources Control Board only granted MCRRFCWCID the authority to  
28 distribute "surplus water" per the SWRCB authorization. The negative declaration fails to

- 1 identify which current MCRRFCWCID agricultural contract will be reduced in order to  
2 "permanently serve" residential uses within the proposed Redwood Valley annexation area.
- 3 9. The proposed negative declaration fails to acknowledge, or even recognize, the very  
4 significant and unmitigated adverse environmental impacts (as defined by the CEQA  
5 guidelines) that the proposed project will cause. The California Environmental Quality Act  
6 (CEQA) requires the preparation of a full and complete Environmental Impact Report both  
7 to identify the myriad of adverse impacts and to identify and quantify the magnitude and the  
8 actual costs of the necessary mitigation measures for this project, and who will bear the  
9 significant financial burdens of mitigations for this project.
- 10 10. The negative declaration is legally defective and fails to evaluate and mitigate the significant  
11 adverse impacts of the proposed annexation upon agricultural water users, agricultural  
12 production, and the potential loss of agricultural lands (due to potential water reductions in  
13 shortage periods) within the Russian River WCID. This is particularly troubling given the  
14 history of the failure of the County to adequately address these issues. SEE: *Masonite*  
15 *Corporation v. County of Mendocino* (July 25, 2013) 215 Cal.App.4th 230. This case  
16 ordered the County to have to "re-do" an EIR because it failed to address the adverse  
17 impacts of a project on agricultural lands and production in the Ukiah Valley.
- 18 MCRRFCWCID does not hold any reliable surplus water supplies that are available for  
19 permanent allocation to permanent residential uses within Redwood Valley. The defective  
20 negative declaration has failed to identify both a redundant source of water or the massive  
21 growth inducing impacts (and the adverse impacts and mitigation requirements) that will  
22 result from the transfer of agricultural water from within the current boundaries of the  
23 MCRRFC to future developments within Redwood Valley that will be facilitated by the  
24 conversion of ag water to permanent residential consumptive uses.
- 25 No portion of Redwood Valley has ever been annexed into the MCRRFCWCID. This  
26 deceptive and clearly erroneous representation in the notice invalidates the notice for CEQA  
27 purposes inasmuch as it mis-characterizes the "project" to be considered by MCRR's board.
- 28 11. On October 7, 2025, MCRRFD&WCID filed with the State of California, Office of

1 Planning and Research (State Clearing House) a Notice of Determination under Public  
2 Resources Code section 21152, identified as Document No. 2025061147. On October 10,  
3 2025, a Notice of Determination was recorded and posted in the office of the Mendocino  
4 County Recorder, as document No. 2025E0089.

5  
6 **JURISDICTION AND VENUE**

7 12. This action arises under CEQA and its implementing regulations, which are prescribed by  
8 the Secretary of the California Resources Agency to be followed by all state and local  
9 agencies when undertaking projects subject to CEQA. (Pub. Resources Code § 21000 *et*  
10 *seq.*; Cal. Code Regs., tit. 14, § 15000 *et seq.*) This Court has jurisdiction over the matters  
11 alleged in this Petition pursuant to Code of Civil Procedure section 1085, and Public  
12 Resources Code section 21168.5. In the alternative, this Court has jurisdiction pursuant to  
13 Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.

14 13. Pursuant to Code of Civil Procedure section 394(a), venue is proper in “the  
15 county in which the city or local agency is situated.” Venue is proper in this Court  
16 because MCRRFD&WCID is located in the County of Mendocino.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**  
18 **AND INADEQUACY OF REMEDY**

19 14. Petitioners have performed any and all conditions precedent to filing the instant action and  
20 has exhausted any and all available administrative remedies to the extent required by law.

21 15. Petitioners have complied with the requirements of Public Resources Code, section  
22 21167.5 by mailing written notice of this action to the Respondents. A copy of this  
23 written notice and proof of service are attached as Exhibit A to this Petition for Writ of  
24 Mandate.

25 16. Petitioners have complied with Public Resources Code section 21167.6 by  
26 concurrently filing notice, in this Petition, for Respondent to prepare the  
27 administrative record of administrative proceedings relating to this action.

28 17. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law  
unless this Court grants the requested writ of mandate to require respondent to set aside

1 its certification of the EIR. In the absence of such remedies, MCRRFD&WCID's  
2 approval will remain in effect in violation of State law.

3 18. This action has been brought within 30 days of MCRRFD&WCID filing of the  
4 Notice of Determination as required by Public Resources Code section 21167(c).

5 **FIRST CAUSE OF ACTION**  
6 **(Violation of the California Environmental Quality Act)**

7 19. Petitioners reallege and incorporate by reference Paragraphs 1 through 18,  
8 inclusive, of this Petition, as if fully set forth below.

9 20. CEQA requires the preparation of an EIR in order to identify the significant  
10 environmental effects of a project, so that measures to mitigate or avoid those effects, or  
11 alternatives that avoid those effects, can be devised. (Pub. Resources Code §§ 21002.1(a),  
12 21060.) Compliance with the procedural requirements of CEQA sets the stage for  
13 development of mitigation measures and alternatives. Without a proper procedural  
14 foundation, a local agency cannot comply with CEQA's mandate that public agencies  
15 should not approve projects as proposed if there are feasible alternatives or feasible  
16 mitigation measures available which would substantially lessen the significant  
17 environmental effects of such projects. (Pub. Resources Code § 21002.) Where a  
18 negative declaration is to be relied upon, the agency must show substantial evidence.  
19 Here, MCRR, in its environmental review, simply checked all boxes as "no impact" and  
20 used circular reasoning to effectively state that the project has no impacts because it has  
21 no impacts.

22 21. A CEQA review must provide public agencies and the public in general with detailed  
23 information about the effect a project is likely to have on the environment, to list ways in  
24 which the significant effects of a project might be minimized, and to indicate alternatives  
25 to such a project. (Pub. Resources Code § 21061.) California Code of Regulations, title  
26 14 (CEQA Guidelines), section 15126.2, requires that the environmental review process  
27 identify the significant environmental impacts of the project, including direct and indirect  
28 impacts. CEQA Guidelines section 15126.4 requires that the Final EIR describe all

feasible measures that can minimize significant adverse impacts of the project. CEQA does not allow an agency to defer analysis of impacts and mitigation measures. (CEQA Guidelines § 15126.4(a)(I)(B).)

22. CEQA's fundamental goals are to foster informed decision-making and to fully inform the public about the project and its impacts. (CEQA Guidelines § 15003.) In order for Environmental Review to meet these goals and fully inform decision-makers, it must establish an appropriate environmental baseline by which to determine whether the impacts of the project will be significant.

23. Respondents committed a prejudicial abuse of discretion and failed to proceed in a manner required by law by relying on Negative Declaration that fails to meet the requirements of CEQA for disclosure, analysis, and mitigation of significant project impacts. As discussed herein, the deficiencies in the Environmental Review and Negative Declaration include an inadequate environmental baseline, an inadequate analysis regarding the Project's environmental impacts, and an inadequate alternatives analysis.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF PROCEDURAL REQUIREMENTS AND AGENCY FINDINGS**

24. Prior to approving the Project, the Respondent failed to adequately consider some of the public comments submitted during the environmental review process.

25. The responses to comments in the initial study and staff reports contained in the administrative record fail to meet the requirements of CEQA in that they neither adequately identify or dispose of all the issues raised, nor provide specific rationale for rejecting suggested Project changes, mitigation measures, or alternatives. CEQA requires that the lead agency evaluate and respond to all environmental comments on the Draft EIR that it receives during the public review period. The response(s) must describe the disposition of the issue(s) raised and must specifically explain reasons for rejecting suggestions and for proceeding without incorporating the suggestions. The Negative Declaration responses to comments fail to meet this standard.

- 1 26. Where mitigation measures and alternatives to a project are not adopted, the CEQA  
2 findings must identify specific economic, legal, social and technological and other  
3 considerations that make infeasible the adoption of mitigation measures or alternatives.  
4 All CEQA findings must be supported by substantial evidence in the record and must  
5 disclose the analytical route by which approval of the project is justified. Here, this did not  
6 occur.
- 7 27. Respondent violated CEQA in that the Negative Declaration they adopted in support of  
8 the Application to LAFCO to annex RVCWD is legally inadequate and not supported by  
9 substantial evidence. Inadequate findings include, but are not limited to, findings  
10 regarding potential environmental impacts, Project-specific impacts, mitigation measures,  
11 and alternatives.
- 12 28. Respondent's findings violate the requirements of the CEQA Guidelines. The  
13 Findings fail to identify the changes or alterations that are required to avoid or  
14 substantially lessen the project's significant environmental effects (CEQA Guidelines §  
15 15091(a)(1); the Findings are not supported by substantial evidence (CEQA Guidelines, §  
16 15091(b)); and the Findings fail to adopt a mitigation monitoring program (CEQA  
17 Guidelines, § 15091(d)).
- 18 29. Based upon each of the foregoing reasons, the Negative Declaration is legally defective  
19 under CEQA. MCRRFD&WCID prejudicially abused its discretion in violation of CEQA  
20 in approving the Project. As such, the Court should issue a writ of mandate directing  
21 MCRRFD&WCID to set aside its Negative Declaration and approval of LAFCO  
22 application.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners pray for judgment as follows:

3 1. That this Court issue a peremptory writ of mandate ordering Respondent to:

4 (a) Vacate and set aside its Negative Declaration on the grounds that it  
5 violates the California Environmental Quality Act, Public Resources  
6 Code section 21000 *et seq.*

7 (b) Withdraw the Notice of Determination for the Project;

8 (c) Prepare, circulate and consider a new legally adequate, CEQA compliant  
9 environmental review for the Project;

10 (d) Suspend all pursuit of the annexation application to LAFCO and/or any other  
11 action that could result in any change or alteration to the physical  
12 environment until Respondent has taken such actions as may be necessary to  
13 bring their determination, findings or decision regarding the Project into  
14 compliance with CEQA;  
15

16 2. That the Court schedule a hearing on the merits and a briefing schedule;

17 3. For 's costs associated with this action;

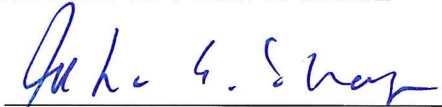
18 4. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure  
19 section 1021.5; and  
20

21 5. For such other and further relief as the Court may deem just and proper.  
22

23  
24 Dated: 11/6/25

LAW OFFICES OF JOHN E. SHARP

25  
26 By:

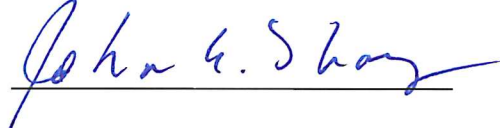
  
27 John E. Sharp  
28

**VERIFICATION**

I am the attorney for Petitioners for LEE HOWARD AND JIM RONCO, who are not located in Marin County, State of California, where I have my office. For that reason, I make this verification for and on their behalf pursuant to the California Code of Civil Procedure section 446. I have read the foregoing document entitled PETITION FOR WRIT OF MANDATE and know the contents thereof. I am informed and believe and on that ground allege that the matters therein stated are true.

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

Executed this 6th day of November, 2025 in San Rafael, California.

  
John E. Sharp

## EXHIBIT A

1 John E. Sharp, Esq. (SBN 085615)  
2 LAW OFFICES OF JOHN E. SHARP  
24 Professional Center Parkway, Suite 110  
San Rafael, CA 94903  
3 Telephone: (415) 479-1645

4 Attorneys for Petitioners  
5 Lee Howard and Jim Ronco

6  
7  
8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF MENDOCINO  
10

11 LEE HOWARD AND JAMES JOHN  
12 RONCO

13 Petitioners,

14 vs.

15 MENDOCINO COUNTY RUSSIAN RIVER  
16 FLOOD CONTROL ANNEXATION OF  
REDWOOD VALLEY COUNTY WATER  
17 DISTRICT AND DOES 1 through 100  
inclusive,

18 Respondents.  
19

20  
21 **NOTICE OF INTENT TO FILE CEQA PETITION**

22 TO: MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL ANNEXATION OF  
23 REDWOOD VALLEY COUNTY WATER DISTRICT

24 PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that Petitioners LEE  
25 HOWARD AND JAMES JOHN RONCO intend to file a Petition under the provisions of the  
26 California Environmental Quality Act against Respondent MENDOCINO COUNTY RUSSIAN  
27 RIVER FLOOD CONTROL ANNEXATION OF REDWOOD VALLEY COUNTY WATER  
28

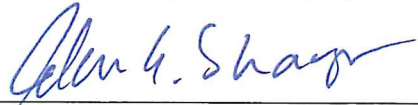
1 DISTRICT, challenging its Notice of Determination under CEQA for the proposed annexation  
2 of the Redwood Valley County Water District Complete Service Area and approval of a  
3 Negative Declaration.

4 The Petition will seek the following relief: Setting aside of the Negative Declaration prior to  
5 any further proceedings for the proposed annexation.  
6

7  
8 Dated: NOV. 6, 2025

LAW OFFICES OF JOHN E. SHARP

9  
10 By:

  
11 John E. Sharp  
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**PROOF OF SERVICE**

I declare that I am a resident of the State of California and employed in the County of Marin. I am over the age of 18 years and not a party to the within action. My business address is 24 Professional Center Parkway, Suite 110, San Rafael, California 94903. On the date set forth below, I served the within document(s):

**NOTICE OF INTENT TO FILE CEQA PETITION**

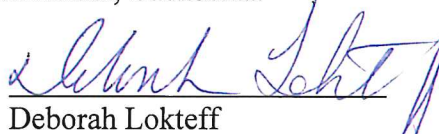
with Proof of Service attached, on the interested parties in this action by electronic service as follows:

Elizabeth Salomone, General Manager  
Mendocino County Russian River Flood Control  
& Water Conservation Improvement District  
PO Box 2104  
Ukiah, CA 95482

Email: [DistrictManager@rrfc.net](mailto:DistrictManager@rrfc.net)

- (X) **(BY U.S. MAIL)** By placing a true copy of the document(s) listed above in a sealed envelope, with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, to the address(es) shown above. I am readily familiar with the office's practice of collection and processing documents for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.
- ( ) **(BY CERTIFIED MAIL / RETURN RECEIPT REQUESTED)** I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Rafael, California.
- ( ) **(BY FAX)** I caused to be transmitted by facsimile copy machine a true copy thereof to the telephone (facsimile) number indicated above, known or represented to me to be the receiving telephone number for facsimile copy transmission of the party(ies)/person(s)/firm(s) listed above.
- (X) **(BY ELECTRONIC SERVICE)** I caused the documents to be sent to the persons at the electronic service addresses listed above.
- ( ) **(BY COURIER)** I caused such envelope(s) to be delivered by \_\_\_\_\_ to the party(ies)/person(s)/firm(s) listed above.
- ( ) **(BY PERSONAL DELIVERY)** I personally delivered such envelope(s) to the party(ies)/ person(s)/firm(s) listed above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 6, 2025 at San Rafael, California.

  
Deborah Lokteff

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2005 - 0013**

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In the Matter of  
Permit 17593 (Application 24955)  
Regarding Draft Cease and Desist Order No. 262.31-11  
**Redwood Valley County Water District**

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SOURCE: East Fork Russian River at Lake Mendocino

COUNTY: Mendocino County

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**ORDER ADOPTING CEASE AND DESIST ORDER**

BY THE BOARD:

**1.0 INTRODUCTION**

In this order, the State Water Resources Control Board (State Water Board) orders Redwood Valley County Water District (Redwood) to cease and desist its violations of water right Permit 17593 issued on water right Application 24955.

On February 9, 2005, the State Water Board conducted a hearing on draft Cease and Desist Order No. 262.31-11, issued by the Chief of the Division of Water Rights to Redwood on October 26, 2004. The hearing was an adjudicative hearing governed by certain provisions regarding administrative adjudication in the Administrative Procedure Act (Gov. Code, §§ 11400, et seq.), as specified in the State Water Board's regulations at title 23, California Code of Regulations, section 648. The State Water Board issued a Notice of Public Hearing for this proceeding on December 17, 2004, and issued a Re-Notice of Public Hearing on January 7, 2005.<sup>1</sup>

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<sup>1</sup> The December 17, 2004, notice included not only the cease and desist order against Redwood, but also draft Cease and Desist Order No. 262.31-12 against Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino). Mendocino, however, agreed to accept a revised cease and desist order and to waive its right to a hearing on the revised cease and desist order. Accordingly, the January 7, 2005, notice included only the issues regarding the cease and desist order against Redwood.

In this hearing, a staff Enforcement Team presented the case for adopting the draft Cease and Desist Order. The parties in the hearing were the Enforcement Team and Redwood, the respondent. Several other persons and entities also appeared as interested parties. The State Water Board has considered all of the evidence and arguments in the hearing record, and the findings and conclusions herein are based on the evidence in the hearing record.

## **2.0 BACKGROUND**

### **2.1 Authority to Issue a CDO**

The State Water Board is authorized to issue a cease and desist order (CDO) when it determines that any person is violating or threatening to violate any requirement described in Water Code section 1831, subdivision (d). Under subdivision (d), the State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- “(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.
- (2) Any term or condition of a permit, license, certification, or registration issued under this division.
- (3) Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.” (Wat. Code, § 1831(d).)

The State Water Board may issue a CDO only after notice and an opportunity for hearing. Such notice shall be by personal notice or certified mail, and shall inform the person allegedly engaged in the violation (respondent) that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. On October 26, 2004, in accordance with Water Code section 1834(a), the Division of Water Rights (Division) of the State Water Board issued notice to Redwood of the draft CDO for the violation and threatened violation of (1) terms and conditions of a water right permit, and (2) the prohibition against unauthorized diversion and use of water. By letter dated October 28, 2004, Redwood requested a hearing. As explained above, the State Water Board conducted the requested hearing on February 9, 2005.

If Redwood violates this CDO, the State Water Board may proceed pursuant to Water Code section 1845(a). Under Section 1845, the penalties for a violation of a CDO are injunctive relief issued by a superior court and liability for a sum not to exceed \$1000 for each day in which the violation occurs. Either the court or the State Water Board may impose civil liability against a violator of a CDO.

## **2.2 Physical Setting and Sources of Water for Redwood's Use**

Redwood's service area is located in Mendocino County north of Ukiah, between the East Fork Russian River and the West Fork Russian River, and northwest of Lake Mendocino. Redwood's service area is primarily within the drainage of the West Fork Russian River.

Redwood currently obtains water for users within its service area from the East Fork Russian River at Lake Mendocino under its Permit 17593 and pursuant to a Stipulated Judgment which serves as a water supply contract with Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino) for water supplies during periods when Permit 17593 does not authorize diversions of water from the river at Lake Mendocino.<sup>2</sup>

Redwood obtained Permit 17593 in 1979. Only a small portion of the southernmost part of Redwood's service area is within the service area of Mendocino. (WR 1-29.) In 1979, in Order WR 79-15, the State Water Board added Redwood's service area to Mendocino's place of use under Mendocino's water right permit 12947B to facilitate a water supply contract between Mendocino and Redwood under which Mendocino would provide up to 4000 acre-feet of water per year to Redwood. (MCRRF & WCID 1.) On May 29, 1980, Mendocino and Redwood obtained a Stipulated Judgment from the Mendocino County Superior Court in Case No. 42059. (RVCWD 2.) The Judgment stipulates that it supersedes the earlier agreements under which Redwood had obtained water from Mendocino. Under the Judgment, Mendocino will sell Redwood water available under Mendocino's 8000 acre-feet per annum (afa) water right (Permit 12947B) that is deemed surplus to the needs of Mendocino. The Judgment sets a formula for determining the purchase price of surplus water, requires reporting of Redwood's diversions of water, sets the payment dates, allocates responsibilities, and establishes a procedure under which

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<sup>2</sup> Redwood has filed additional applications, but has not yet received permits on them.

Mendocino will notify Redwood at such time as it no longer has surplus water available for Redwood's use. The judgment includes provisions for resolution of disputes through arbitration and includes termination provisions. (RVCWD 2.)

In Decision 1610 (D-1610), adopted in 1986, the State Water Board also added Redwood's service area to the place of use of Sonoma County Water Agency (Sonoma) under Permit 12947A, and authorized Sonoma to deliver up to 7500 afa to Redwood, subject to terms and conditions that include curtailment of deliveries to Redwood when the stored water in Lake Mendocino drops below 30,000 acre-feet. (RVCWD 7.) Delivery to Redwood under Permit 12947A also is subject to the approval by the State Water Board of a water conservation plan for Redwood within one year after the signing of a contract between Redwood and Sonoma, pursuant to Condition 11 on page 56 of D-1610. Currently, no contract has been executed under which Sonoma will deliver water to Redwood.

### **2.3 Permit 17593**

Permit 17593 authorizes Redwood to appropriate up to 4,900 afa from the East Fork Russian River at Lake Mendocino. (RVCWD 8.) By direct diversion, Redwood is authorized to appropriate water (1) at the maximum rate of 26.6 cubic feet per second (cfs) from March 1 to April 30 of each year for frost protection purposes, and (2) at the maximum rate of 1.9 cfs from November 1 to April 30 of each year for domestic purposes. By diversion to storage, Redwood is authorized to appropriate up to 2800 afa from November 1 of each year to April 30 of the following year. The maximum rate of diversion to offstream storage under Permit 17593 is 26.6 cfs. Redwood is authorized to provide irrigation water to a net area of up to 3300 acres within a gross area of 5000 acres.

Relevant to this order, conditions 16 and 17 of Permit 17593 make the permit subject to (1) an agreement between Redwood and Sonoma to limit diversions to periods when the water level in Lake Mendocino cannot be increased due to the requirement to preserve flood control capacity, and (2) an agreement between Redwood and the Department of Fish and Game to limit diversions to periods when the surface level of water in Lake Mendocino is above the conservation pool. (RVCWD 8.)

## **2.4 Positions of the Hearing Participants**

The Enforcement Team, in the draft CDO, alleges that Redwood is violating or threatening to violate Permit 17593 and the prohibition in Water Code section 1052 against the unauthorized diversion or use of water. The draft CDO alleges that Redwood is violating Permit 17593 by delivering water for domestic use outside the place of use, delivering water for irrigation of more acres than is authorized under the permit, and using water appropriated by direct diversion for irrigation. The draft CDO also alleges that Redwood is making unauthorized diversions of water from the Lake Mendocino conservation pool at times when Permit 17593 does not authorize diversions. The draft CDO proposes that Redwood be required to do the following: 1. Cease to divert water outside the authorized place of use or for purposes not authorized by Permit 17593 unless and until the State Water Board approves a water right change petition. 2. In connection with the change petition, prepare a contingency plan that identifies alternative sources of water for periods when no water is available under Permit 17593. 3. Diligently pursue approval of the change petition and petition for extension of time. 4. Immediately cease violation of terms 16 and 17 of Permit 17593. 5. Provide evidence that the water Redwood diverted since 1999 outside of Permit 17593 was diverted under another basis of right. 6. Establish a plan for determining whether Mendocino had surplus water available for the year 2002. 7. Develop a compliance plan to ensure that diversions claimed to be under Mendocino's right are under Mendocino's right and submit the compliance plan within 60 days of this order.

Redwood, in responding to the draft CDO, argues: 1. The place of use under Permit 17593 includes the annexations that Redwood has made, and there is no requirement that Redwood seek a change of place of use when it annexes new territory. Nevertheless, Redwood points out that it has filed a petition for change of place of use. 2. The maximum irrigated acreage is less than the 3300 acres on which the permit allows irrigation. 3. The petition for a change in place of use should be adequate to satisfy the requirement in the draft CDO for a contingency plan for serving the areas outside the place of use. 4. Redwood is not in violation of terms 16 and 17 because it uses water available under Mendocino's permit. Redwood here seems to assert that Mendocino has more water available under its permit because Mendocino cannot serve some areas that it serves. In effect, Redwood seeks to take on the burden of proving that Mendocino has unused

water as a defense to the draft CDO's allegation that Redwood may not be taking water under Mendocino's permit. Redwood also inexplicably suggests that Mendocino's failure to enter into a Pooling Agreement between Mendocino and Sonoma so that Redwood can obtain water from Sonoma is to blame if Mendocino does not have surplus water for Redwood.

### **3.0 ALLEGED VIOLATIONS OF PERMIT 17593**

#### **3.1 Water deliveries outside the place of use**

Redwood has expanded its service area outside the boundaries of the place of use designated on the map of its authorized place of use in Permit 17593 and is serving water to the new parts of its service area outside the place of use boundaries of Permit 17593. (R.T., p. 20-21; WR 02.) The Enforcement Team presented a copy of the place of use map (WR 29) and a colored map showing both the authorized place of use and the four areas that have been annexed to Redwood's service area but have not been added to Redwood's place of use under its water right permit. (WR 22.) Redwood does not deny that it is serving water for domestic use in the four areas that are outside the boundary on the place of use map. The Enforcement Team also presented four Local Agency Formation Commission (LAFCO) maps showing the four annexations; Redwood's April 21, 2001, response to a complaint filed against Redwood for serving water outside its place of use; and a copy of the water service agreement between Redwood and the Redwood Valley Rancheria to serve water in one of the four annexed areas. (WR 23, 24, 25, 26, 27, and 28.)

The place of use of Permit 17593 is described in condition 4 of the permit as "Irrigation of a net area of 3,300 acres within a gross area of 5,000 acres and other given uses within the boundaries of the Redwood Valley County Water District in T16 and 17N, R12W, MDB&M." and "The place of use is shown on map filed with the State Water Resources Control Board." Redwood argues, based on the first of these two sentences, and ignoring the second sentence, that it can serve water anywhere within its district so long as the water is served within T16 and 17N, R12W, MDB&M. Redwood argues that the map does not control. The Enforcement Team, on the other hand, argues that Redwood is in violation of Permit 17593 because it is serving water outside the boundary on the map of its place of use. For the following reasons, the State Water Board finds that both sentences together define the place of use, with the first sentence placing a

restriction of 3,300 acres on the place of use in the case of irrigation use of the appropriated water.

In effect, Redwood is arguing that it can change the place of use of the water right permit issued to it by the State Water Board without seeking the permission of the State Water Board.<sup>3</sup> This argument is based on the first sentence in condition 4 of the permit, quoted above. Redwood argues that the second sentence quoted above is not part of the place of use designation because it is at the bottom of the first page of the permit, not in the lined columns for place of use on the first page of the permit form. It is necessary, however, to consider both sentences. The purposes of the first sentence are to limit the number of acres that can be irrigated under Permit 17593 within the place of use, which is 5,000 acres, to no more than 3,300 acres, and to generally allow the other purposes of use to be applied anywhere within the place of use. The second sentence actually designates the place of use.

Not only is Redwood incorrect as to the construction of the permit itself, Redwood ignores the legal requirements for the place of use in a water right permit. Under the Water Code, a water right application shall set forth the place where it is intended to use water. (Wat. Code, § 1260(f).) Further, the application must contain all maps required by the State Water Board, and the maps are part of the application. (Wat. Code, § 1261.) When the State Water Board issues a permit, it must find that all of the information required for an application has been provided, including the specific place of use. (*Central Delta Water Agency v. State Water Resources Control Board* (2004) 124 Cal.App.4<sup>th</sup> 245, 257; Wat. Code, § 1375.)

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<sup>3</sup> Redwood may also be arguing that the LAFCO can change the place of use under the water right permit. There is evidence that Redwood's manager assumed that the LAFCO approval was the only approval required. The LAFCO can change only the service area, however, and not the place of use of the water right. As recognized in *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4<sup>th</sup> 965, 974, the service area, which is set locally, and the place of use, which is set by the State Water Board, are set under separate authorities. A water right permittee cannot use water appropriated under the water right permit outside of the place of use, but it is under no obligation under the permit to use water in all places within the authorized place of use. (*Id.*) The State Water Board has exclusive authority over changes in water right permits, and the right to take and use water cannot exceed the extent allowed in the permit. (Wat. Code, §§ 1225, 1381.) The place of use is a primary element of an appropriative water right and changes in the place of use are subject to the permission of the State Water Board. (Wat. Code, §§ 1260, 1261, 1701.)

The State Water Board's regulations require, for a project of the size of Redwood's, a map prepared by a licensed engineer or surveyor showing the place of use and other specified features. The regulations require that the place of use on the map shall be identified by reference to the subdivision, section, township, range, and meridian of a public land survey or projection. (Cal. Code Regs., tit. 23, §§ 715, 717.) (Emphasis added.) Using the references to the townships, ranges, etc. to identify the part of the county or state within which the place of use is located does not, however, displace the map, which shows the specific place of use within these broader areas. The requirement to use these references simply ensures that the mapped place of use is located within the geographically designated areas.

In effect, Redwood argues that it should not have to file a petition for the State Water Board's approval of a change of place of use before it changes its place of use by annexing new areas and delivering water there. Under Water Code section 1701 and under other Water Code provisions, however, Redwood must obtain the permission of the State Water Board before it changes the place of use from that specified in the permit. These laws specify the requirements and procedures for obtaining changes in water right permits or licenses on either a temporary or permanent basis. (See Wat. Code, §§ 1435-1442; 1700-1707; 1725-1732; 1735-1737; 1740.) Considering the foregoing matters, Redwood's argument is without merit.

As a backup, Redwood filed, in 2004, a petition for change of place of use changing the exterior boundaries of the place of use to be coextensive with the current service area. The State Water Board takes official notice of the file on Permit 17593 (A024955), which includes a request dated August 2004 for additional information before processing the petition. The file does not contain the requested additional information. This order requires immediate compliance with the existing permit. Redwood may not serve water outside its authorized place of use unless the State Water Board approves the petition.

### **3.2 Amount of acreage irrigated with water appropriated under Permit 17593**

The draft CDO alleges that Redwood may be serving more than the authorized 3,300 acres of land with irrigation water. In the hearing, Redwood denied this allegation and Redwood's witness testified that the area currently served irrigation water is approximately 2,800 acres,

based on a survey of users. (R.T., page 107.) The evidence does not support a finding that Redwood is serving more than 3,300 acres of land with irrigation water appropriated under Permit 17593.

### **3.3 Direct diversion of water for irrigation in November and April**

Under Permit 17593, Redwood is authorized to deliver water for irrigation to a maximum of 3,300 acres of land within its approximately 5,000-acre place of use. The permit does not, however, allow Redwood to use water for irrigation that is taken by direct diversion. Condition 5 of the permit limits the water that can be taken by direct diversion to frost protection during March and April of each year and domestic uses from November 1 to April 30 of each year. The permit allows the collection to storage of up to 2,800 acre-feet per annum from November 1 to April 30. Under the permit, this stored water is the only water the permit authorizes to be used for irrigation. Redwood has not built a reservoir for the 2,800 acre-feet of water it is authorized to store, nor has it made contractual arrangements for using existing reservoirs for this storage. (R.T., pp. 22, 125; WR 01, pp. 3-4.)

Redwood points out that it has a 67 or 68 acre-foot reservoir after its pumping station. (R.T., pp. 49, 109.) The purpose of this reservoir is to serve water for domestic use. (R.T., pp. 49-50.) Irrigation water can be either run through the reservoir or diverted by a pipe before it reaches the reservoir and delivered to customers. (R.T., pp. 49-50.) Redwood argues that if the water is run through the reservoir, it should be considered to have been stored. Redwood argues that water does not need to be held in an offstream reservoir for a minimum of 30 days before it can be considered stored water and therefore available for irrigation use. Redwood is correct that the Water Code does not specify a period of time during which water must be impounded before it can be considered “stored.” “Storage of water” is defined in California Code of Regulations, title 23, section 658 as follows:

“Storage of water means the collection of water in a tank or reservoir during a time of higher stream flow which is held for use during a time of deficient stream flow. For licensing purposes, all initial collections within the collection season plus refill, in whole or in part, held in a tank or reservoir for more than 30 days shall be considered water diverted for storage except as provided in Section 735(c).”

By its terms, this regulation applies the 30-day holding period only to the process of deciding how much water has been appropriated to storage when the State Water Board issues a water right license after a permittee has appropriated to beneficial use the maximum amount of water that actually can be diverted in accordance with the conditions of the permit. As applied to licensing, this rule results in a conservative determination as to the amount of water proved up under a storage right.

Assuming for sake of argument that water can be considered stored if it is impounded for a shorter period than 30 days, this does not help Redwood justify its delivery of water by direct diversion for irrigation purposes under Permit 17593. To store water means that the water is impounded for later use. Usually water is stored to hold it from one season to another drier period when water otherwise is not available. There is no reason to assume that moving water through a water treatment reservoir, however, involves storage. Redwood has not established that the water appropriated for irrigation under Permit 17593 is impounded for any significant period that would constitute storage before it is applied to irrigation.

Accordingly, to deliver water for irrigation use under Permit 17593, Redwood needs either a change in its permit to authorize appropriation of water by direct diversion for irrigation or it needs a reservoir or reservoirs to store the water for later irrigation use.

#### **4.0 ALLEGED UNAUTHORIZED DIVERSIONS OF WATER**

Permit 17593, condition 5, authorizes diversions from the East Fork Russian River at Lake Mendocino from November 1 to April 30 of the succeeding year. By direct diversion, Redwood can take up to 26.6 cfs for frost protection from March 1 to April 30 of each year and up to 1.9 cfs for domestic uses from November 1 to April 30. By diversion to storage, Redwood can take up to 2,800 afa to be collected from November 1 to April 30, subject to various restrictions. The total maximum amount of water to be taken for all uses is 4,900 afa.

The draft CDO alleges that Redwood is taking water from Lake Mendocino both outside its diversion season and during its diversion season at times when conditions 16. and 17.A. of

Permit 17593 do not authorize diversions. Conditions 16. and 17.A. of Permit 17593 are the result of protest dismissal agreements. Condition 16. provides in pertinent part:

“Diversions by Redwood Valley County Water District under this permit may be made only during those times when the water level in Lake Mendocino cannot be increased due to the requirements of preserving storage capacity for flood control as determined by the U.S. Army Corps of Engineers.”

Condition 17.A. provides in pertinent part:

“A. Permittee will not divert water for use or storage under this permit or any license issued pursuant to this permit except under the following circumstances:  
1. When, during the period from October 1 through April 30, the surface level of the water in lake Mendocino is above the conservation pool as established by the U.S. Corps of Engineers.”

Under conditions 16. and 17.A., Redwood is prohibited from diverting water during its diversion season except when there are flows that cannot be impounded in Lake Mendocino because the lake is at or above the upper limit of its authorized capacity. Further, the season of diversion restricts Redwood’s diversions to periods between November 1 and April 30. When these conditions restrict Redwood’s diversions, Redwood’s only alternative is to obtain water from an alternative source. Due to the Stipulated Judgment entered in 1980 (Redwood 2), Mendocino is Redwood’s current alternative source of water from Lake Mendocino when Redwood cannot divert under Permit 17593.

Redwood regularly takes water from Lake Mendocino during periods when Permit 17593 does not authorize diversions. In accordance with the terms of the Stipulated Judgment, Mendocino historically has billed Redwood for the water diverted from Lake Mendocino outside of the limits of Permit 17593. In August 2002, Redwood paid Mendocino for the summer water it had diverted during the 2000-2001 and 2001-2002 fiscal years, but disputed a bill for winter diversions. (WR 15, 16.) In November 2002, Mendocino notified Redwood that it did not have any surplus water remaining under its Permit 12947B for the remainder of the year. Redwood diverted water during this period nevertheless, including 37.5 acre-feet of water during December 2002 after Mendocino notified Redwood that it had no surplus water. This water also was not available under Permit 17593. Redwood disputed Mendocino’s determination that there was no surplus water and requested arbitration, but the arbitration has not been pursued. Since August 2002, Redwood has continued to divert water from Lake Mendocino as needed, and

Mendocino has billed Redwood for summer water diversions, but Redwood has not paid the bills. (WR 30.) Until and unless Redwood obtains a determination in the arbitration process or from the Superior Court that the water taken in November-December 2002 was appropriated under Mendocino's permit, the State Water Board will consider the water to have been illegally appropriated.

To avoid being penalized for taking water illegally, Redwood must demonstrate that the water it takes from Lake Mendocino during periods that are not covered by Permit 17593 is covered by another water right. Redwood claims that it is taking water under Mendocino's water right pursuant to the Stipulated Judgment. The State Water Board is charged with deciding what is adequate proof that Redwood is taking the water under another basis of right.

The Enforcement Staff, in the draft CDO, suggests that it would be sufficient for Redwood to present receipts for payment made to Mendocino for the water diverted outside the conditions of the permit. Redwood, on the other hand, argues that the State Water Board should not act as a bill collector for Mendocino, and that the payment or nonpayment of money does not prove that water is available to Redwood under Mendocino's permit.

In opposing the Enforcement Staff's suggestion that Redwood should provide proof that it has paid for the water, Redwood sought instead to prove that Mendocino is obligated to provide its surplus water to Redwood, and that Mendocino is illegally attempting to withhold surplus water from Redwood in violation of the Stipulated Judgment. Redwood alleges that Mendocino is serving water outside its proper place of use to use up water it should rightfully be allocating to Redwood. Redwood points out that under the 1980 Stipulated Judgment between Redwood and Mendocino, Mendocino must provide surplus water to Redwood. In effect, the Stipulated Judgment is a court-approved water supply contract.<sup>4</sup>

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<sup>4</sup> To demonstrate that Mendocino has surplus water that it is withholding, Redwood asserted that Mendocino is serving water outside its proper place of use. Mendocino's place of use, including the area that Redwood claims is outside the place of use, was approved by the predecessor of the State Water Board in Decision 1030 in 1959. Accordingly, this is an attempt to make an untimely collateral attack on Decision 1030.

No condition in Mendocino's water right, however, requires Mendocino to provide its surplus water, if any, to Redwood. Mendocino's contractual obligation to Redwood is more properly before the court under the Stipulated Judgment, since it is outside the scope of the water right permits.<sup>5</sup> The State Water Board does not decide contractual disputes between water right holders (e.g., Mendocino) and their water supply contractors. (See Decision 1641, pp. 129-130; Order WR 2000-02, pp. 17-21 for a discussion of the contractor's rights before the State Water Board.)

We agree with the Enforcement Staff that Redwood must provide proof of an alternative water supply from Lake Mendocino for periods when diversions are outside the limits of Permit 17593. We also agree with Redwood, however, that requiring proof of full payment to Mendocino as provided in the Stipulated Judgment is not the appropriate form of proof of an alternative basis of right to take the water. The State Water Board is not a bill collector for its water right holders. The payment issue is a matter between the parties to the Stipulated Judgment. Either the parties or the court should decide the payment issue.

Mendocino's verification in each instance that water Redwood has taken is water that is appropriated under Mendocino's right and made available to Redwood will be adequate to establish that Redwood has used an alternative water supply. Redwood must have a form of written verification that the water it takes outside the limits of Permit 17593 is appropriated under another's water right. Mendocino's verification could be a bill issued to Redwood for the water, or it could be another written document verifying that the water was available to Redwood in the amounts and at the times when Redwood diverted it, and that the water was diverted and used within Mendocino's right. When Redwood has diverted water outside of Permit 17593 that Mendocino considers appropriated under Mendocino's permit, Mendocino has billed Redwood for the water. If Redwood obtains an additional or substitute contractual water supply from Sonoma, a similar verification from Sonoma likewise will be adequate to establish that Redwood is diverting an alternative water supply from Lake Mendocino.

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<sup>5</sup> In response to objections to Redwood's attempt to convert the hearing into a hearing on Mendocino's water rights, the hearing officer ruled that Mendocino's place of use would not be considered in the hearing with respect to the issue of whether Redwood is illegally diverting water from Lake Mendocino. (R.T., pp. 79-82.)

## **5.0 CONCLUSIONS**

1. Redwood is delivering water for domestic use in four locations that are outside the place of use authorized under Permit 17593. This order requires that Redwood immediately cease delivering or using water appropriated under Permit 17593 outside of the place of use.
2. There is no evidence that Redwood is serving water for irrigation use to more than the 3,300 acres authorized under Permit 17593.
3. Redwood is delivering water for irrigation that it takes by direct diversion from Lake Mendocino under Permit 17593. This is a violation of Permit 17593, which authorizes irrigation uses only from stored water. This order requires that Redwood immediately cease using water appropriated by direct diversion for irrigation unless and until the State Water Board approves a change in purpose of use of water appropriated by direct diversion to allow irrigation use.
4. Redwood is diverting water from Lake Mendocino during periods when diversions are not authorized by Permit 17593. During these periods, Redwood must demonstrate that it has an alternative supply of water if it takes water from Lake Mendocino. Redwood has a dispute with Mendocino as to whether the water it diverted in November and December 2002 was available to it under Mendocino's Permit 12947B. This order requires that Redwood provide verification of all of the occasions when it obtained alternative water supplies.

## **ORDER**

**IT IS ORDERED** that, pursuant to Water Code sections 1831 through 1836, Redwood shall take the following corrective actions and satisfy the following time schedules:

1. Commencing on the date of this Order and continuing until such time as the State Water Board approves a change in place of use, Redwood shall cease delivering or using water appropriated under Permit 17593 outside of the place of use specified on the map on file with the State Water Board for Application 24955 that is dated November 24, 1975.

2. Commencing on the date of this Order and continuing until such time as the State Water Board approves a change in purpose of use of water appropriated by direct diversion, Redwood shall cease using water appropriated by direct diversion under Permit 17593 for irrigation.<sup>6</sup>

3. Within 90 days after the date of this Order, Redwood shall submit a contingency plan to the Chief of the Division of Water Rights for approval. The contingency plan shall identify any sources of water that are available to serve the areas not within the place of use of Permit 17593, a schedule for securing such sources, and measures to assure that Redwood will not deliver water appropriated under Permit 17593 except as authorized under Permit 17593. The Chief of the Division of Water Rights may direct Redwood to revise the contingency plan as necessary to meet the purposes of this Order, and Redwood shall revise the contingency plan as directed and within the period allowed by the Chief of the Division of Water Rights. Redwood shall implement the approved contingency plan.

4. Commencing on the date of this order, Redwood shall not divert water under Permit 17593 when such diversion is prohibited by condition 16. or term 17.A. of Permit 17593.

5. Within 30 days after the date of this Order, Redwood shall submit evidence to the Chief of the Division of Water Rights of its alternative supply or supplies of water during periods when Permit 17593 did not authorize diversions from January 1, 1999, until the present, but not including the winter of 2002. If Redwood relies on another water right permit as the basis for taking water from the East Fork Russian River, the place of use of that permit must already include an authorized place of use that includes the places where Redwood delivers water.

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<sup>6</sup> If the State Water Board authorizes a change in the purposes of use under Permit 17593, the changed purposes of use will control the use of water thereafter until such time as a further change is approved in the future.

6. Redwood shall obtain and submit to the Chief of the Division of Water Rights documentation showing whether or not water that Redwood diverted during 2002 other than under Permit 17593 was available to Redwood under another basis of right. Such documentation may consist of written verification from the water supplier from whom Redwood obtained the water that the water was available to Redwood in the amounts and at the times when Redwood diverted it, and that the water was diverted and used within the right relied upon by the water supplier. If such written verification is not available, Redwood may take any legal measures available to it to obtain such verification, including through court proceedings or arbitration. Within 30 days after the date of this order, Redwood shall submit a plan to the Chief of the Division of Water Rights for approval setting forth the procedures Redwood will use to obtain the documentation required by this condition, including time limits on steps in the process.

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7. Within 60 days after the date of this order, Redwood shall submit to the Chief of the Division of Water Rights, for approval, a compliance plan that will provide assurance that any diversions to its service area Redwood claims are being made under a water right held by another water right holder are in fact being diverted under that other right and are verified in writing by the other water right holder. In preparing the compliance plan, Redwood shall consult with any water right holder from which it expects to obtain water. The compliance plan shall include advance notice to the other water right holder of the diversion and shall include the filing of reports with the Chief of the Division of Water Rights.

### **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 May 19, 2005.

AYE:        Arthur G. Baggett, Jr.  
             Peter S. Silva  
             Richard Katz  
             Gerald D. Secundy  
             Tam M. Doduc

NO:         None.

ABSENT:   None.

ABSTAIN:   None.

  
Debbie Irvin  
Clerk to the Board