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## Millview Water District wins court battle

Ukiah Daily Journal Staff  
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Judge rules pre-1914 water right was not in state board's jurisdiction  
By JUSTINE FREDERIKSEN

Ukiah Daily Journal

The Millview County Water District won a court battle this month that should lift a moratorium that has been blocking it from adding new customers for more than a decade.

Attorney Chris Neary said the state Department of Public Health imposed the moratorium in 2001 because it deemed the district did not have a dependable water source for its customers during a drought year.

In 2002, the district began leasing the Waldteufel water right, which was established in 1914 by entrepreneur J.A. Waldteufel. That right was to divert two cubic feet per second, or about 1,465 acre feet per year.

In February of 2006, Lee Howard, president of the Russian River Flood Control and Water Conservation Improvement District, filed a complaint asserting that the Waldteufel right had been forfeited. Following that complaint, the State Water Resources Control Board ordered Millview to stop using the right in 2010.

The district cut its water use by about 50 percent and began buying 900 acre feet of water a year from the RRFC&WCID.

In 2012, Millview filed a lawsuit alleging that the state water board did not have jurisdiction over the Waldteufel right because it is a "pre-1914" water right and it could not "adjudicate either (its) validity or (its) forfeiture."

Neary said a judge in Mendocino County Superior Court May 10 ruled both that the state water board did

not have jurisdiction, and the facts did not support the claim that the right had been forfeited. "We presented evidence that it had been continuously used since 1913," said Neary, adding that during the drought year of 2009, the district purchased the water right from Thomas Hill and Steven Gomes for \$2 million. "At the time of the cease and desist order, the district had already invested \$800,000, so this (court victory) is a deep sigh of relief," he said. "It is gratifying."

Neary said the court case was also closely watched statewide because it was a test case for pre-1914 water rights. "About 40 percent of the surface water in California is covered by pre-1914 water rights, and this was the first time the state has tried to regulate an old water right by using a cease and desist order," he said.

Neary said the state has 60 days to appeal the ruling, but in the meantime the district will contact the Department of Public Health to get the moratorium lifted.

"Then we will advertise that we have water rights," he said, recalling that at one point the waiting list of customers, both businesses and residential, wanting new hookups had 300 names. He said the water district board

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will need to determine how to address the waiting list.

In the meantime, Neary said the district is also waiting to see if it can use the water right given to it by the Masonite company, which allows diversion of 4,200 acre feet a year. The state board also issued a cease and desist order on that right, and Neary expects that court case to be resolved this summer.

If that right is also upheld, Neary said "Millview will have enough water for supplying all of its customers if every piece of property (in the district) was built out."

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