

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
PUBLIC HEARING
PROPOSED REVOCATION OF LICENSE 5763
(APPLICATION 15679)

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
COASTAL HEARING ROOM, SECOND FLOOR
1001 I STREET
SACRAMENTO, CALIFORNIA

TUESDAY, APRIL 2, 2013

9:02 A.M.

TIFFANY C. KRAFT, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

CALIFORNIA REPORTING, LLC
52 LONGWOOD DRIVE
SAN RAFAEL, CA 94901
(415) 457-4417

APPEARANCES

HEARING OFFICER

FELICIA MARCUS

CO-HEARING OFFICER

FRANCES SPIVY-WEBER

WATER BOARD STAFF

Ms. Kathleen Groody, Staff Counsel Environmental Scientist

Mr. Ernie Mona, Engineer

Ms. Samantha Olson, Senior Staff Counsel

PROSECUTION TEAM

Mr. Nathan Jacobsen
Division of Water Rights
SWRCB
1001 I Street
Sacramento, CA 95814

SONOMA COUNTY WATER AGENCY

Mr. Alan B. Lilly
Bartkiewicz, Kronick & Shanahan
1011 Twenty Second Street
Sacramento, CA 95816-4907

MILLVIEW COUNTY WATER DISTRICT

Christopher J. Neary
110 South Main Street
Suite C
Willits, CA 95490

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Ross H. Liberty, Factory Pipe

INDEX

PAGE

DIRECT CROSS REDIRECT RECROSS

DIVISION OF WATER RIGHTS PROSECUTION TEAM

Ms. Lauren Mulloy	18	24		
Ms. Katherine Mrowka	31	46 58	68	

MILLVIEW COUNTY WATER DISTRICT

Mr. Beuving	84	88 92		
Mr. Bradley	99	108	117	
	110			

SONOMA COUNTY WATER AGENCY

REBUTTAL

Ms. Jeane	133	146		
-----------	-----	-----	--	--

1 you and don't use the elevators. Staff will endeavor to
2 assist you finding the nearest exit. But you should know
3 you can find an exit door by following the ceiling mounted
4 exit signs. Evacuees will exit down the stairways and
5 possibly to a relocation site across the street. If you
6 cannot use stairs, you will be directed to a protective
7 vestibule inside a stairway. Should we have to relocate
8 out of the building, please obey all traffic signals and
9 exercise caution crossing the street.

10 This hearing will be webcast to the public. This
11 hearing will be recorded by both audio and video.

12 In addition, a court reporter is present to
13 prepare a transcript of this proceeding. Anyone who wants
14 a copy of the transcript must make separate arrangements
15 with the court reporter. When you speak, please be sure
16 to use a microphone so that everyone can hear you.

17 The hearing is being held in accordance with the
18 Notice of Public Hearing dated December 6th, 2012, and
19 Notice of Rescheduling of Public Hearing dated February
20 7th, 2013.

21 This hearing will afford the participants who
22 have filed a Notice of Intent to Appear an opportunity to
23 present relevant oral testimony and other evidence that
24 address the following key issue specified in the December
25 6th, 2012, Hearing Notice:

1 1. Has licensee ceased to use water granted
2 under the license to useful and beneficial purposes and
3 failed to observe the terms and conditions in the license
4 such that License 5763 should be revoked?

5 Before we begin the evidentiary portion of this
6 hearing, we'll hear from any speakers who wish to make a
7 non-evidentiary policy statement. If you wish to make a
8 policy statement, please fill out a blue card and hand it
9 to the staff, if you have not already done so. The Board
10 will accept written policy statements. If you have
11 written copies of your policy statement, please also give
12 them to staff.

13 A policy statement is a non-evidentiary
14 statement. Persons making policy statements must not
15 attempt to use their statements to present factual
16 evidence, either orally or by introduction of written
17 exhibits. Policy statements should be limited to five
18 minutes or less.

19 The State Water Board received notice of intent
20 to present a policy statement only from the California
21 Department of Fish and Wildlife, but also received one
22 blue card this morning. Is there anyone else who has not
23 filled out a blue card who would like to present a policy
24 statement?

25 When I call your name, please come up to the

1 microphone and state your name and the party you represent
2 and proceed with your policy statement.

3 And now we'll move to the evidentiary portion of
4 the hearing. California Department of Fish and Wildlife.
5 Not here. Okay. Written submission I suspect.

6 Next, I'll call Ross H. Liberty, owner of Factory
7 Pipe.

8 MR. LIBERTY: So I'm Ross H. Liberty, the owner
9 of Factory Pipe. I recently purchased -- I'm a welder,
10 not a public speaker.

11 I own a company, Factory Pipe. We recently
12 purchased ten acres of the former Masonite property for --
13 that's so distracting -- the former Masonite property to
14 relocate my business and provide room for my growing
15 company. And I can tell you that up until we found this
16 site, we've been unable to find a suitable industrial
17 property in the Ukiah Valley. And the Millview Water
18 District pretty much contains all of the industrial area
19 for the city and for the most part for the county.

20 Being unable to find any suitable industrial
21 site, we were pretty much getting ready to find greener
22 pastures elsewhere and came across this. But what we're
23 concerned about is that there's no -- there's no
24 industrial areas that are served by water, sewer, that
25 kind of stuff.

1 One of the problems we ran into is the moratorium
2 that Millview is under right now. And without a stable
3 water supply, my understanding is they won't get that
4 listed.

5 One of the problems -- so right now, we were able
6 to get water. But one of the concerns I have is, as a
7 manufacturer, you can't be an island unto yourself. You
8 have to have the synergy, the critical mass of other
9 companies. And lacking that makes Ukiah really difficult
10 place to manufacture.

11 When I moved to Ukiah some 40 years ago, Ukiah
12 was a logging community. And unfortunately, it had turned
13 into a pot-growing community. And we're hoping that --
14 those guys stay under the radar, because I don't think
15 they get the water permits they need.

16 So, you know, that industry is kind of waning
17 with more and more areas making it legal. So I'm hoping
18 that we'll bring back industrial jobs so folks can weld
19 instead of trim bud or something.

20 So my goal -- obviously, I have selfish motives.
21 I'm looking to get more industry there in the community
22 because it helps my business work. And, you know, I'm
23 hoping to be able to stay there. But this -- I'm hopeful
24 this body gives consideration to that when they decide on
25 the evidence you're going to hear today. So that's all I

1 got.

2 CHAIRPERSON MARCUS: Thank you, Mr. Liberty.

3 We also received one policy statement in writing
4 from Daniel C. Thomas for the Hop Kiln Industrial Park.
5 If anyone wants to see that, I'll sure staff will let you
6 see it.

7 Any other policy statement?

8 We'll now move to the evidentiary portion of the
9 hearing. We'll now hear the parties' cases-in-chief. The
10 parties will present their cases in chief and/or conduct
11 cross-examination in the following order:

12 First, the Division of Water Rights' prosecution
13 team, Nathan Jacobsen.

14 Next, the Millview County Water District
15 represented by Christopher Neary.

16 And third, the Sonoma County Water Agency
17 represented by Alan Lilly.

18 Are there any other parties present I haven't
19 called?

20 At the beginning of each case-in-chief, the party
21 may make an opening statement briefly summarizing the
22 parties' position and what the parties' evidence is
23 intended to establish. After any opening statement, we
24 will hear testimony from the parties' witnesses. Before
25 testifying, witnesses should identify their written

1 testimony as their own and affirm that it is true and
2 correct.

3 Witnesses should summarize the key points in
4 their written testimony and should not read their written
5 testimony into the record.

6 Direct testimony will be followed by
7 cross-examination by the other parties, Board staff, and
8 the Hearing Officers.

9 Redirect testimony and recross-examination
10 limited to the scope of the redirect testimony may be
11 permitted. After all the cases-in chief are completed,
12 the parties may present rebuttal evidence.

13 The parties are encouraged to be efficient in
14 presenting their cases and their cross-examination.
15 Except where I approve a variation, we will follow the
16 procedures set forth in the Board's regulations and the
17 hearing notice.

18 The parties' presentations will be subject to the
19 following time limitations:

20 All opening statements will be limited to ten
21 minutes for each party.

22 Oral presentation of direct testimony of each
23 witness will be limited to a maximum of 20 minutes per
24 witness and one hour total.

25 Cross-examination will be limited to one hour per

1 witness or panel of witnesses. Additional time may be
2 allotted upon a showing of good cause.

3 Oral closing arguments will not be permitted. An
4 opportunity, instead, will be provided for submission of
5 written closing briefs. I'll set the briefing schedule at
6 the close of the hearing.

7 Before we begin, I'll call upon Mr. Mona to
8 introduce the staff exhibit.

9 MR. MONA: Thank you, Chair Marcus.

10 To ensure the development of a complete record
11 and because no party indicated the following will be
12 introduced as an exhibit in this proceeding, staff would
13 like to offer into evidence by reference all files related
14 to Water Right Application 15679 that are maintained by
15 the Division of Water Rights' records unit. The related
16 files are identified as follows: Application 15679,
17 Category 1, Volume 1, covering the period January 11th,
18 1954 to the present and Application 15679, Category 3,
19 Volume 1. Thank you.

20 CHAIRPERSON MARCUS: Are there any objections to
21 staff's offer of the files?

22 Are there any other procedural issue that need to
23 be addressed? And are there the written policy statement?

24 MR. MONA: Yes.

25 (Whereupon the above-referenced exhibit

1 was admitted into evidence by the Hearing
2 Officer.)

3 CHAIRPERSON MARCUS: I'll now invite appearances
4 by the parties who are participating in the evidentiary
5 portion of the hearing. Will those making appearances
6 please state your name, address, and whom you represent so
7 the court reporter can enter this information into the
8 record?

9 MR. NEARY: Good morning. My name is Christopher
10 Neary. I'm representing Millview County Water District.

11 MR. JACOBSEN: Good morning. My name is Nathan
12 Jacobsen. I'm representing the Division of Water Rights
13 prosecution team.

14 MR. LILLY: Good morning. Allen Lilly
15 representing Sonoma County Water Agency.

16 CHAIRPERSON MARCUS: I'll now administer the
17 oath.

18 Will those persons who may testify during this
19 proceeding please stand and raise your right hand?

20 (Whereupon all prospective witnesses were sworn.)

21 CHAIRPERSON MARCUS: You may be seated.

22 In order to help you note the time, there is a
23 clock over there, but I don't know if you all can see it.

24 Kathleen will give you a two-minute warning after
25 eight minutes. And then when we get to the point where

1 you're nearing the hour of your total time, she'll give
2 you a ten-minute signal so that you know. Hopefully, that
3 will be helpful.

4 All right. Let's start with the prosecution
5 team's opening statement and direct testimony, followed by
6 cross-examination from Millview and Sonoma.

7 MR. JACOBSEN: Good morning, Chairwoman Marcus,
8 Vice Chair Spivy-Weber, and the hearing staff.

9 My name is Nathan Jacobsen. I'm the attorney
10 representing the Division of Water Rights in this
11 prosecution matter.

12 As a preliminary matter, I would like to make the
13 request that one of my witnesses, Ms. Lauren Mulloy, be
14 cross-examined and her testimony be complete prior to
15 examination of my other witness so that she can return to
16 her vacation. She was subpoenaed to come in today and has
17 a long drive back. So if there are no objections from any
18 parties --

19 MR. NEARY: No objection.

20 MR. LILY: No objection.

21 CHAIRPERSON MARCUS: Thank you. Sure.

22 MR. JACOBSEN: She'll appreciate that.

23 So the facts regarding the use of water under
24 License 5763 and the eventual loss of that water right for
25 non-use are fairly straight forward.

1 Masonite Corporation was issued a water right
2 license to divert water from the Russian River for its
3 Ukiah Masonite plant in 1959. The water right was issued
4 solely for industrial purposes. For a variety of reasons,
5 the company decided to close its plant and cease
6 operations in Ukiah. Production gradually ramped down and
7 evidence we will present shows production ended for good
8 in 2001.

9 The plant was closed, buildings torn down, and
10 the water diversion facilities became inoperable.
11 Masonite filed its last licensee report documenting water
12 use in 1999.

13 The water right in 1959 was issued for 5.9 CFS,
14 cubic feet per second, year round. The 1999 report
15 indicated only a minor portion of that water right was
16 issued.

17 In July 2006, the Division of Water Rights
18 received a petition for long-term transfer to transfer the
19 water right from Masonite to Millview Water District.
20 Millview proposed to change the point of diversion, place
21 of use, and purpose of use. Although Millview indicated
22 that it would be acting as the lead agency for California
23 Environmental Quality Act purposes, no CEQA documentation
24 was included with the petition.

25 In August 2007, nearly a year later, the Division

1 received a letter from Millview stating it inadvertently
2 submitted a transfer petition and it really wanted to
3 petition for a long-term permanent change in water right.
4 Along with this letter, it submitted updated points of
5 diversion and places of use. The Division still had not
6 received any CEQA documentation to support the requested
7 change.

8 By August 2007, when this correspondence was
9 received, the plant had been shuttered since at least
10 December 2001. Five and a half years had passed since
11 water was used for industrial uses at the plant.

12 When Millview informed the Division that it
13 intended to use the water right, there was no credible
14 evidence presented to suggest that Millview was prepared
15 to use the water, either for industrial purposes as
16 authorized by the license or in the manner that it
17 requested in its petition.

18 In 2008, the Division of Water Rights visited the
19 Masonite site and conducted a field investigation with a
20 Masonite representative. The field investigation
21 confirmed the plant was shuttered, the land nearly empty,
22 and the pumps in disrepair. There was no evidence of
23 water use at the site from the licensed points of
24 diversion.

25 The Division then issued a proposed notice of

1 revocation for License 5763 in May 2008.

2 A fundamental component of a water right is that
3 the right must be used. Water must be put to beneficial
4 use or it can be lost. This brings assurance to other
5 water right holders, allows for short- and long-term
6 planning of water resources, and allows for protection of
7 in-stream uses.

8 Here, we have no reports of water use since 1999
9 and no credible evidence of water use since, at the
10 latest, 2001 when the plant was closed permanently.
11 Despite Millview's claims, there's simply no documentation
12 of water use. There is no evidence of use observed in the
13 2008 field investigation. If some use had occurred, why
14 did Millview not file the required licensee reports or
15 begin the CEQA documentation that would have been
16 necessary for any change to be approved by the Division?

17 The evidence shows water was not used under
18 License 5763, and the right was forfeited for non-use
19 pursuant to Water Code Section 1241. Millview should not
20 now be allowed to resurrect an unused right on the Russian
21 River twelve years after the Masonite plant shut down and
22 water use ceased. Thank you.

23 I'd like to call my first witness, Lauren Mulloy.

24 DIRECT EXAMINATION

25 BY MR. JACOBSEN:

1 Q Ms. Mulloy, would you please state your name and place
2 of employment for the record?

3 A My name is Lauren Mulloy. I'm currently an
4 Environmental Scientist with the California Department of
5 Fish and Wildlife North Central Region.

6 Q And just to be clear, during your employment at the
7 Division of Water Rights, prior to your marriage, what was
8 the name you used?

9 A Lauren Dailey.

10 Q Thank you.

11 And have you reviewed your written testimony for
12 this hearing?

13 A Yes.

14 Q Is there anything you'd like to correct from your
15 written testimony?

16 A Yes. The site visit date was listed incorrectly. The
17 actual date of the site visit was April 17th.

18 Q Is that the only portion of your testimony you'd like
19 to correct?

20 A Yes.

21 Q Thank you. So with this amendment would you say your
22 written testimony is true and accurate?

23 A Yes.

24 Q Thank you.

25 What is your current position with the Department

1 of Fish and Game?

2 A I'm the Water Rights Coordinator for the north central
3 region.

4 Q And how long have you held this position?

5 A Since 2009.

6 Q And prior to this position, where were you employed?

7 A With the State Water Board Division of Water Rights.

8 Q And how long were you with the Division of Water
9 Rights?

10 A Approximately two years, from 2007 to 2009.

11 Q What were your primary duties and responsibilities
12 while at the Division of Water Rights?

13 A I was responsible for processing new water right
14 applications and changes associated with permits and
15 licenses.

16 Q And have you reviewed the exhibits associated with
17 your testimony in this hearing?

18 A Yes.

19 Q Are they the type of exhibits ordinarily maintained as
20 part of a water rights file?

21 A Yes.

22 Q Are the exhibit true and correct copies of what you
23 reviewed while employed by the Division?

24 A Yes.

25 Q When you did you first become involved in the

1 Masonite/Millview revocation matter?

2 A 2008.

3 Q Was reviewing licenses or permits for compliance part
4 of your typical job responsibilities?

5 A Yes.

6 Q When you reviewed License 5763, what was the last year
7 of documented water use as shown by licensee reports on
8 file?

9 A 1999.

10 Q In April 2008, did you -- in April 2007 -- I'm sorry.
11 April 2008 -- excuse me -- did you conduct a site visit to
12 the Masonite site?

13 A Yes.

14 Q And what was the purpose of the site visit?

15 A To document a condition of the place of use and points
16 of diversion associated with the license.

17 Q What did you observe when you toured the
18 Millview/Masonite site?

19 A That it was non-functional and had been dismantled.

20 Q In terms of the water diversion facilities, did
21 anything appear operational or functional?

22 A No.

23 Q What was the condition of the pumps and diversion
24 facilities that are described in the Masonite license?

25 A They were in disrepair.

1 Q And did you take photographic evidence of the
2 condition of the pumps?

3 A Yes.

4 Q Was there any apparent use of water at the site from
5 the licensed points of diversion?

6 A No.

7 Q And would this include temporary storage areas, such
8 as settling ponds?

9 A Yes.

10 Q Was there the capability to use water at the site for
11 industrial or other purposes from the licensed points of
12 diversion?

13 A Did not appear so.

14 Q At the conclusion of your investigation, did you
15 prepare prosecution Exhibit 20, the site visit report?

16 A Yes.

17 Q Following the inspection, did you review additional
18 files to determine the status of the Masonite water right?

19 A Yes.

20 Q Did you review Prosecution Exhibit 14, the last
21 licensee reports on file for years '97 through '99?

22 A Yes.

23 Q Did you review the notice of intent to close the plant
24 correspondence received by the Division, Prosecution
25 Exhibit 16?

1 A Yes.

2 Q The petition for long-term transfer submitted by
3 Millview, Prosecution Exhibit 19?

4 A Yes.

5 Q Correspondence from Millview requesting that the
6 long-term transfer petition instead be viewed as a change
7 petition, Prosecution Exhibit 21?

8 A Yes.

9 Q And finally, did you review the letter from the
10 Division to Masonite acknowledging the closure of the
11 plant in 2001, Prosecution Exhibit 22?

12 A Yes.

13 Q Based on your review, your site visit, and all the
14 files contained in the Division of Water Rights' file for
15 License 5763, when did the plant cease diversions under
16 its license?

17 A 2001.

18 Q Based on your observations and notes from the site
19 visit and review of the file, in your opinion, had water
20 been diverted from the Millview site for five years prior
21 to the date of your field investigation in accordance with
22 the terms of the license?

23 A No.

24 MR. JACOBSEN: Thank you. Those are all the
25 questions I have for this witness.

1 CHAIRPERSON MARCUS: Did you want to go ahead and
2 move -- based upon your request -- do you want to move
3 directly to cross-examination?

4 MR. JACOBSEN: Yes.

5 MR. NEARY: Where would I conduct the
6 cross-examination from?

7 CHAIRPERSON MARCUS: You might have to -- it will
8 be musical chairs.

9 CROSS-EXAMINATION

10 BY MR. NEARY:

11 Q Good morning. My name is Chris Neary. I'm the
12 attorney for Millview County Water District. We'll try to
13 get you on your way to enjoy your vacation very quickly
14 here.

15 A Appreciate it.

16 Q I just want to take you back to the time of your site
17 visit. Do you recall being accompanied by Tim Bradley?

18 A Yes.

19 Q And who did you understand Mr. Bradley to be?

20 A The General Manager for Millview.

21 Q And how long did your site visit take?

22 A Only a couple hours.

23 Q So did he accompany you on your visit to the Masonite
24 property?

25 A Yes.

1 Q And during that site visit, did he tell you that the
2 dismantling had just been completed within weeks prior to
3 your visit?

4 A I don't believe there was a time line. That it had
5 been dismantled by thieves.

6 Q The plant?

7 A No. Oh, are you talking about --

8 Q Yes, I'm talking about the Masonite plant having been
9 dismantled, the process been completed within just a few
10 weeks prior to your visit.

11 MR. JACOBSEN: Excuse me. I'd like to object to
12 that question as hearsay. He's asking the witness to
13 recall what another person said at the site visit.

14 MR. NEARY: This is cross-examination.

15 SENIOR STAFF COUNSEL OLSON: You need a mike.

16 MR. NEARY: I'm requesting whether the
17 information was provided to the witness, not offering for
18 the truth of the matter asserted.

19 CHAIRPERSON MARCUS: We'll take it in and
20 consider it and give its appropriate weight.

21 MR. NEARY: So the witness may answer the
22 question.

23 THE WITNESS: She did say the plant had been
24 dismantled

25 BY MR. NEARY:

1 Q Did he tell you it had just been dismantled within a
2 short time prior to your visit?

3 A I don't recall.

4 Q Did he tell you that extensive amounts of water were
5 used during the dismantling process?

6 A He said that water had been used.

7 Q And did it appear that the electrical panels that
8 enabled the use of the wells had been vandalized?

9 A Yes.

10 Q Did he tell you when they had been vandalized?

11 A No.

12 Q Did he tell you that there was a water tower located
13 on the Masonite property, which had just been dismantled a
14 short time before your visit?

15 A No.

16 Q Did Mr. Bradley also take you over to the Millview
17 well field?

18 A Yes.

19 Q That's a very short distance from the place of the
20 original Masonite diversion?

21 A It's on the opposite side of the river.

22 Q So it's very close?

23 A Uh-huh.

24 Q Now, are you familiar with the fact that Millview in
25 July of 2006 filed an application for a transfer?

1 A Long-term transfer, yes.

2 Q And was it within your job description to work on that
3 application or petition after it was submitted to the
4 agency?

5 A It would have been if the file were mine at the time.

6 Q Had you had any prior contact with Millview prior to
7 the time of your site visit?

8 A No.

9 Q So between the time of 2006 when the application --
10 the petition was filed and the time of your site visit, as
11 far as you know, was there any contact by Division staff
12 with Millview concerning the petition?

13 A No.

14 Q Were you aware that when the application -- I keep
15 calling it an application -- I suppose it's a petition --
16 when the petition was filed that it was requested that
17 Division staff meet with Millview staff to work out a
18 Memorandum of Understanding for proceeding with what would
19 be a very expensive environmental process?

20 A No.

21 Q You were unaware of it, that that had been requested?

22 A I was unaware.

23 Q Okay. Did you, between 2006 and the time that this
24 draft order was issued, do anything to process along the
25 Millview petition for transfer?

1 A No. I was not assigned the file until 2008.

2 Q I see. So who was assigned the file prior to that?

3 A Fellow employee.

4 Q Do you know his name?

5 A Her name, Pat Meroni. She retired.

6 Q Did you have any -- did you examine the file when it
7 was assigned to you?

8 A Once I received it.

9 Q Did you see any indication that Ms. Meroni had any
10 contact with Millview concerning the development of a
11 Memorandum of Understanding for environmental document?

12 A No.

13 Q When you left Mr. Bradley, did you leave him with the
14 impression that work was going to begin on the Millview
15 petition for transfer?

16 A Yes.

17 Q And that cease and desist order draft was issued just
18 about a month later?

19 A Yes.

20 Q That's all I have.

21 A It's not a cease and desist.

22 Q Pardon?

23 A It was a proposed revocation.

24 Q Excuse me. Petition and application, cease and desist
25 order. Proposed revocation.

1 That's all I have. And unless counsel has any
2 further questions for you. Good luck on your vacation.

3 CHAIRPERSON MARCUS: Do you have any redirect?

4 MR. JACOBSEN: I do just a few short questions

5 CHAIRPERSON MARCUS: I'm sorry. Do you want to
6 you go ahead?

7 MR. JACOBSEN: I'm sorry.

8 CHAIRPERSON MARCUS: Mr. Lilly, go ahead, sir.

9 MR. LILLY: I was just going to, say I don't have
10 any questions for this witness. I'm sorry to interrupt
11 you, but I thought I should at least let you know.

12 REDIRECT EXAMINATION

13 BY MR. JACOBSEN:

14 Q Ms. Mulloy, just to clarify, based on your
15 observations and notes and photographs from the field
16 investigation, had water recently been diverted from the
17 licensed points of diversion?

18 A No.

19 Q And what led you to that conclusion?

20 A The pumps were in disrepair and not capable of
21 functioning.

22 Q I'd like to show you Prosecution Exhibit 20, your
23 field visit/site investigation notes and the photographs
24 attached. And referring to the photographs, page 2, what
25 do you see with those diversion facilities?

1 A They appear not to have been maintained for some time.
2 There's vegetation growing around them.

3 Q Was there any power currently supplied to those
4 licensed points of diversion?

5 A No. The power poles had been dismantled by thieves.

6 Q Okay. So based on your photographic evidence and your
7 observations during the site visit, your estimation is
8 that water had not been used for quite some time from
9 those licensed diversion points?

10 A Correct.

11 Q Thank you. I just have one more question. Regarding
12 Prosecution Exhibit 19, the petition for long-term
13 transfer, which was initially filed by Millview, in
14 environmental information section number four under
15 environmental documents, review this exhibit. And under
16 question four, who does it indicate will be responsible
17 for producing documents compliant with the California
18 Environmental Quality Act?

19 A California public agency other than State Water
20 Resources Control Board.

21 Q Is the agency --

22 A Millview Water District.

23 Q Thank you. I don't have any more questions.

24 CHAIRPERSON MARCUS: Are you ready for your next
25 witness?

1 Thank you, Ms. Mulloy.

2 MR. JACOBSEN: So a just housekeeping matter,
3 while I know all of the exhibits in the public water
4 rights file were previously entered into evidence by the
5 hearing team, but I would like to introduce into evidence
6 all of the exhibits referenced in Ms. Mulloy's testimony
7 today.

8 CHAIRPERSON MARCUS: All right.

9 MR. JACOBSEN: Thanks, Lauren.

10 DIRECT EXAMINATION

11 BY MR. JACOBSEN:

12 Q Could you please state your name and place of
13 employment for the record?

14 A My name is Katherine Mrowka. I'm employed by the
15 State Water Resources Control Board Division of Water
16 Rights.

17 Q Could you affirm that your written testimony and oral
18 testimony presented here today for this hearing is true
19 and accurate?

20 A It is.

21 Q Are there any corrections or amendments you'd like to
22 make to your written testimony?

23 A No. There are not.

24 Q Thank you.

25 Ms. Mrowka, how long have you been with the

1 Division of Water Rights?

2 A Twenty-eight years.

3 Q What is your current position?

4 A I'm the Chief of the Inland Streams Permitting Unit.
5 Our duties include permitting, licensing change petitions,
6 transfers, and temporary urgent actions.

7 Q How long have you held this position?

8 A Ten years.

9 Q And have you reviewed all of the exhibits submitted in
10 support of the prosecution team?

11 A Yes, I have.

12 Q And with the exception of the two reports on fisheries
13 on the Russian River which have been introduced by
14 official notice and the testimony and résumé of the other
15 witness, are all of the exhibits introduced by the
16 prosecution team in this hearing the types of records that
17 are normally kept in conjunction with the water rights
18 file that you routinely review in the scope of your
19 position?

20 A Yes, they are.

21 Q I would like to show you Prosecution Team Exhibit 8.
22 What does License 5763 --

23 (Interruption in proceedings.)

24 BY MR. JACOBSEN:

25 Q What does License 5763 authorize in terms of diversion

1 amounts?

2 A The license authorizes direct diversion of 5.9 cubic
3 feet per second throughout the year. The authorized
4 purposes of use is industrial use. There are three wells
5 authorized for use. And the place of use is the Masonite
6 plant.

7 Q And what are those three wells that are authorized?

8 A They are wells 3, 4, and 5.

9 Q Now I'd like you to refer to the licensing and
10 progress reports for License 5763 introduced as
11 Prosecution Exhibit 10, 11, 13, and 14. When reviewing
12 these reports, what information do you look at in
13 determining a licensee or permittee has diverted water in
14 compliance with the permit or license?

15 A Our license reports require water right holders to
16 assert that they used water in compliance with the terms
17 and conditions of the water right. They include blanks to
18 provide information regarding water put to use and also
19 blanks to indicate the months when water was used. There
20 are remarks sections where our water right holder can
21 indicate whether their facilities were operating properly
22 or they were doing other activities with their water right
23 license. There are blanks to indicate if credits are
24 claimed for water conservation or other types of credits.

25 Q Now I'd like you to refer to Prosecution Team

1 Exhibit 12 and inspection report from 1985. What does
2 this report document with respect to licensed diversion
3 point well number 4?

4 A It indicates that the well was no longer in service.
5 It had been abandoned.

6 Q And in reviewing Prosecution Team Exhibit 13,
7 previously provided, the licensee reports for 1994 to
8 1996, is there anything in that report that you would like
9 to point out?

10 A I would like to point out that water use was not at
11 the face value of the water right. That a lesser quantity
12 was used. I would like to -- it indicates they had
13 started using water for some recycling, and it also
14 indicates they were claiming some credits. This
15 particular exhibit includes information on page 3 that
16 wells 3 and 5, which are licensed facilities, were in use,
17 but that an additional well titled "the potable water
18 well" was also in use. And I'd like to state that's not a
19 licensed facility.

20 Q What does that well refer to?

21 A It is unclear what facility that is because it's not
22 an authorized facility.

23 Q There is no nomenclature to list that additional --

24 A It does say that in June of 1996 they started using
25 groundwater well for facility potable water system,

1 replacing surface water usage in this system.

2 Q Okay. Now referring to Prosecution Team Exhibit 14,
3 what did the licensee reports from 1997 to 1999 show in
4 terms of the amount of water used under the license?

5 A Well, first, they checkmarked the box indicating that
6 full use of water under the license did not occur and that
7 documented quantities were less than the licensed amounts.
8 They also indicate they irrigated 26 acres of pear trees.
9 I would like to state that irrigation is not an authorized
10 use under this water right, and the 26 acres is not the
11 authorized place of use for the water right. They
12 indicate the groundwater well 6 replaced some surface
13 water use from wells 3 and 5. And again, groundwater well
14 six is not an authorized facility.

15 Q Is there any documentation of how much water is being
16 pumped from that groundwater well, well number six?

17 A I believe that may be the well referenced in
18 Exhibit 13 where it provides data for 1997 through 1999
19 use beginning at page 3 of that exhibit. But it's not
20 clear because that exhibit is labeled potable water well.

21 Q Okay. Was the licensee report for 1999 the last year
22 that Masonite submitted a report that water had been
23 diverted under the license?

24 A Yes, it was. In the most recent three years of
25 reporting, they indicated no water use occurred. But as

1 to the last year when any water use was documented, yes,
2 it was 1999.

3 Q Okay. And in that licensee report for 1999, what
4 diversion points were used?

5 A For 1999, they're indicating groundwater well six
6 replaced surface water use from well 3 and well 5, but
7 that is the only information on which diversion facilities
8 were in use that's provided on the form.

9 Q So there is no indication of diversions from well
10 number four?

11 A No.

12 Q And again, is well 6 an authorized point of diversion?

13 A No, it is not.

14 Q In your opinion, does diversion and use of water
15 outside the scope of the water rights serve to maintain
16 the water right?

17 A No, it does not.

18 Q Now I'd like you to refer to Prosecution Team
19 Exhibit 19, the petition for long-term transfer. On
20 Attachment 1, that petition for long-term transfer in the
21 environmental documentation section, according to
22 Masonite, when was the Division informed that no more
23 water was in use at the site?

24 A Attachment 1 states that Masonite's use of water was
25 year round until its plant closed in 2001. During the

1 last full year of operation, Masonite diverted 651.57 acre
2 feet.

3 Q So the attachment indicates the last year of water use
4 was --

5 A 2001.

6 Q Thank you.

7 When was this petition for long-term transfer
8 filed with the Division of Water Rights?

9 A It was filed July 28th, 2006.

10 Q Could the Division act on the petition as it was
11 submitted?

12 A The Division requires several things. In order to act
13 on a petition, I submit an exhibit which is a chart that
14 shows the water right petition process. And on that, it
15 indicates that we have to comply with the California
16 Environmental Quality Act and that we also have to make
17 findings in order to approve a petition.

18 Q And just for clarification, the witness is referring
19 to Prosecution Team Exhibit 5, the Division processes flow
20 charts.

21 So additional environmental information,
22 specifically compliance with the California Environmental
23 Quality Act, was necessary prior to acting on the
24 petition?

25 A Yes. The State Water Resources Control Board is a

1 responsible agency under CEQA for this matter and the lead
2 is Millview County Water District. So as responsible
3 agency, we cannot act until lead agency provides the
4 information necessary under CEQA to fulfill its duties.
5 And then the responsible agency can act.

6 Q I'd like you to refer Prosecution Team Exhibit 9,
7 correspondence from the Division. According to that
8 correspondence, when did the Division officially recognize
9 the transfer of ownership from Masonite to Millview?

10 A It was April 5th, 2006.

11 Q Is that -- would you like to review the letter for the
12 date?

13 MR. NEARY: Objection. Leading.

14 THE WITNESS: The date on the top of the letter
15 is April 5th, 2006. And it states, "Masonite Corporation
16 submitted a petition for long-term transfer," dated July
17 25th, 2006.

18 CHAIRPERSON MARCUS: Excuse me. Mr. Neary, did
19 you just make an objection? I'm sorry.

20 MR. NEARY: Counsel is leading the witness. I
21 mean, it's pretty clear that letter was dated 2007 instead
22 of 2006 because it refers to something from April 2006.

23 CHAIRPERSON MARCUS: Come to the microphone so
24 also the court reporter can hear. I'm sorry.

25 MR. NEARY: I'm sorry.

1 CHAIRPERSON MARCUS: I'm sorry I missed you.

2 MR. NEARY: The copy that I have shows that it is
3 dated April 2006, but the 2006 is crossed out and it
4 provides for 2007; is that correct?

5 THE WITNESS: I see what you're saying.
6 Unfortunately, I wearing reading glasses and I can't
7 always see things without assistance.

8 I does have a cross-out through the six and there
9 is a seven handwritten in on top of that. So I believe
10 that means letter was dated April 5th, 2007. And that is
11 consistent with the type of notes that are on the letter
12 that indicate it was 4-4-07 that the typist typed it.

13 BY MR. JACOBSEN:

14 Q Now referring to Prosecution Team Exhibit 21. This
15 correspondence is dated August 1st, 2007. What was the
16 subject of this correspondence?

17 A The subject of the correspondence was the petition
18 that was originally submitted as a transfer petition. It
19 indicates that Masonite wanted the petition to be
20 considered standard change petition.

21 Q So to be clear, a petition for long-term transfer and
22 the request in the August 1st, 2007, correspondence that
23 it be considered a petition for change are two separate
24 petition processes?

25 A The Division is required to make different types of

1 findings for a transfer petition then for a standard
2 change petition. That's based on Water Code and
3 regulatory provisions.

4 Q If the Division now in August 1st, 2007, considered
5 the long-term transfer petition that was submitted in
6 2006, as you refer to it as a regular change information,
7 change the place of use, points of diversion, purposes of
8 use, could the Division act on the petition?

9 A The Division cannot act on any petition that's subject
10 to the requirements of CEQA until CEQA has been fulfilled.

11 Q And was this petition subject to the requirements of
12 CEQA or the California Environmental Quality Act?

13 A Yes, it was.

14 Q And as of that date, had you received any
15 documentation that would indicate compliance with CEQA?

16 A No, we had not.

17 Q Was this August 1st, 2007, correspondence received
18 five years after the last recorded date of use of water at
19 the plant?

20 A Yes, it was.

21 Q Was there any information in that letter to suggest
22 water had been used in this site?

23 A No.

24 Q So now referring to Prosecution Team Exhibits 16, 18,
25 and 19. Prosecution Team Exhibit 18 is a revised remedial

1 action plan for the site. According to this remedial
2 action plan, when did operations cease at the plant?

3 A The document itself starts with some preamble. But on
4 the numbered pages, on Page 2, it states -- it states that
5 the molded door phasing line was shut down permanently in
6 2000. The exterior siding and soft board lines were shut
7 down in June 2001, and all soft board processing ceased in
8 December 2001. No operations have occurred since that
9 time. Subsequently an auction was held and some equipment
10 and buildings have been sold and removed.

11 Q And referring to Prosecution Team Exhibit 16, what is
12 the subject line of that correspondence?

13 A It says, "Intention to close the Masonite Ukiah
14 California mill in 60 to 90 days."

15 Q What is the date of that letter?

16 A March 6th, 2001.

17 Q And now referring to Prosecution Team Exhibit 22, what
18 does that correspondence indicate?

19 A This is a letter from the Division of Water Rights to
20 Masonite Corporation, and it acknowledges receipt of their
21 March 6th, 2001, letter informing the Division that the
22 Ukiah Mill would be closing in the near future. And it
23 asks the question whether the water right had been
24 abandoned.

25 Q What does Water Code Section 1241 provide for in cases

1 where water has not been used by a licensee for five
2 years?

3 MR. NEARY: Objection. It calls for a legal
4 opinion. The witness is designated as an expert witness,
5 but not as a witness to the effect of statutes, which
6 require legal training.

7 CHAIRPERSON MARCUS: Do you want her to read a
8 portion of the statute or issue a legal opinion?

9 MR. JACOBSEN: Sure. I'll just --

10 CHAIRPERSON MARCUS: She can read it.

11 MR. JACOBSEN: I'll have her read the portion of
12 the statute Water Code Section 1241.

13 MR. NEARY: To save time, could we take notice of
14 the statute?

15 CHAIRPERSON MARCUS: Do you want to restate the
16 question? You talk about how you applied the statute in
17 the practice, but how do you want to ask your question?

18 MR. JACOBSEN: Well, my question actually was
19 going to the statutory language itself and what Water Code
20 Section 1241 states in terms of forfeiture of water
21 rights.

22 I do believe the witness is an expert witness in
23 administering water rights, which concerns permitting,
24 licensing, compliance which would involve interpreting the
25 statutory sections to ensure compliance with applicable

1 water law.

2 CHAIRPERSON MARCUS: Why don't you go ahead and
3 take it under advise meant. But I think just if you talk
4 about how it's interpreted and how you apply it, that
5 would be better.

6 THE WITNESS: Okay. The Water Code Section 1241
7 provides a mechanism for the Division to advise water
8 right holders that their water right is at risk -- well,
9 actually, this one talks about the use. Water rights can
10 revert if unused is actually what it says. And that the
11 reversion shall occur upon a finding by the Board
12 following notice to the right holder. And that's the
13 procedure we followed here. We noticed the water right
14 holder that there was an issue with respect to ongoing
15 water diversion and use. And now we're further following
16 the procedure with this administrative proceeding.

17 BY MR. JACOBSEN:

18 Q Could you for clarity just read the first sentence of
19 Section 1241?

20 A "If the person entitled to the use of water fails to
21 use beneficially all or any part of the water claimed by
22 him or her for which a right of use has vested for the
23 purpose for which it was appropriated or adjudicated for a
24 period of time of five years, that unused water may revert
25 to the public and shall, if reverted, be regarded as

1 unappropriated public water."

2 Q Thank you.

3 Before issuing a Notice of Proposed Revocation
4 for license 5763, did you or staff visit the site?

5 A Yes.

6 Q So referring to Prosecution Team Exhibit 20, site
7 inspection report, did you review the site inspection
8 report?

9 A Yes, I did. I was at that time Ms. Daley's direct
10 line supervisor. So I requested that she conduct the
11 investigation, and I reviewed her work product when she
12 returned to the office.

13 Q And what, in your opinion, was the conclusion of the
14 site inspection?

15 A The conclusion was that the facilities were incapable
16 of being operated. No water use was occurring.

17 Q After reviewing the site inspection report, did you
18 initiate a process to issue a Notice of Proposed
19 Revocation?

20 A Yes, I did.

21 Q And referring to Prosecution Team Exhibit 23, is that
22 a copy of the proposed revocation notice?

23 A Yes, it is.

24 Q In your opinion, was there any credible evidence to
25 suggest water had been used in compliance with the license

1 since 2001 when you prepared the Notice of Proposed
2 Revocation in 2008?

3 A No, there was not. As previously stated, water use
4 had ceased at an earlier date. Our last reported use
5 documentation in the file was 2001. Licensee did not
6 submit reports that are required to be submitted to
7 document use for a number of years, and then I provided
8 evidence regarding the most recent three reports that I
9 did submit showing non-use.

10 Q So referring to those exhibits, Prosecution Team
11 Exhibit 15, licensee reports for 2009 through 2011, do
12 those reports indicate any use of water at the site?

13 A No, they do not. They have zeros.

14 Q Has any documentation been received since 2011?

15 A I'm unaware of any documented water use.

16 Q What is your understanding of the purpose of the
17 forfeiture provision contained in Section 1241 of the
18 Water Code?

19 A It's to ensure orderly use of water waters that are
20 not used. Water rights that are not used would then be
21 revoked so that their resources are managed and maintained
22 for the ongoing beneficial uses of water, including in
23 stream purposes.

24 Q Thank you. That completes my questioning.

25 CHAIRPERSON MARCUS: Mr. Neary.

1 MR. NEARY: I have a few questions.

2 CROSS-EXAMINATION

3 BY MR. NEARY:

4 Q If Ms. Mrowka, do you have your written testimony in
5 front of you?

6 A Yes, I do.

7 Q I just have a few questions. Turning to -- pages are
8 unnumbered, but it's the third page. Under licensed place
9 of use, the last -- actually, the last line on that page,
10 you state that no operations have occurred since that
11 time. And you're referring to December of 2001; is that
12 correct?

13 A Yes, it is.

14 Q And when you say no operations, are you referring to
15 Masonite manufacturing operations?

16 A In my context, operations is water division end use
17 operations.

18 Q So there could be -- could there be other industrial
19 uses of water other than actual production of Masonite
20 products?

21 A The information submitted to the Division did not
22 indicate any other uses.

23 Q Okay. You say that the cessation of water use was
24 documented by Prosecution Exhibit 19, Attachment 1. Do
25 you have that in front of you?

1 A Yes, I do.

2 Q And is there any place in Attachment 1 where there is
3 any indication that water has ceased to be used?

4 A It states Masonite's use of water was year round until
5 the plant closed in 2001. And it does not indicate water
6 use after that.

7 Q When it refers to the cessation of use, it's
8 referring -- it's in a qualified form by saying that the
9 use year round or continuous use ceased in 2001; is that
10 correct?

11 A Can you repeat, please?

12 Q Do you see that -- your statement says that in several
13 places that the Attachment 1 indicates that water use had
14 ceased?

15 A Uh-huh.

16 Q The only possible thing that you could be referring to
17 is the first sentence, where it says Masonite's use of
18 water was year round until its plant closed in 2001?

19 A I would like to also state that on the same exhibit,
20 page one of the environmental information for petition's
21 portion states, "Masonite corporation ceased operations at
22 the current place of use and desires to transfer its water
23 right License 5763."

24 Q But nowhere is there a statement that all water use
25 has ceased?

1 A It states that it ceased operations at the current
2 place of use.

3 Q Ceased manufacturing operations?

4 A It just -- I'm not going to reinterpret what Masonite
5 wrote.

6 Q But you did interpret it to the extent you interpreted
7 it as saying all water use ceased?

8 A I interpreted the word "ceased" to mean had stopped
9 using water, yes.

10 Q Now, the Division received a request from Masonite to
11 transfer the license to Millview in July of 2006; is that
12 right?

13 A Yes, it is.

14 Q And that was less than five years after the Masonite
15 operations had ceased in December of 2001?

16 A The request was submitted a date which was
17 approximately five years. However, the Division was not
18 able to authorize any new uses until after CEQA
19 compliance. So, in effect, the non-use continued. There
20 was no -- nothing used on the authorized place of use,
21 continuing through the time up to the Notice of Proposed
22 Revocation.

23 Q Excuse me. My question was is that -- just trying to
24 get the time line straight.

25 A Uh-huh.

1 Q And the time line is, is that the documentation shows
2 that manufacturing operations ceased in December of 2001,
3 even if there was no water used after the cessation of
4 operations in December of 2001. The filing of an
5 application in July of 2006 would have occurred before the
6 five years had lapsed; is that right?

7 A The form was submitted, yes.

8 Q Okay. Now, once you received the form requesting
9 transfer of the license, what did the Division have to do?

10 A The Division had to provide public notice of a
11 petition, opportunity for protest, resolve any protest
12 received, comply with the California Environmental Quality
13 Act and then also make the specific finding depending
14 whatever processed as long-term transfer or change
15 petition required by the Water Code.

16 Q Okay. Maybe you misunderstood my question.

17 Earlier, we looked at the letter that was dated
18 April 2007 approving the license transfer from Masonite to
19 Millview. Do you recall that exhibit?

20 A Yes. That was the change of ownership.

21 Q Right. So my question is: What did the Division have
22 to do after it received the request for the transfer of
23 the ownership of the license in July of 2006 to actually
24 transfer the license?

25 A Ownership change occurred when we issued the letter.

1 That's our standard operating procedure is to provide a
2 written confirmation that we're transferring an ownership.
3 The Division considered the ownership to have transferred
4 when it provided the confirmation. And that was the
5 entirety to switch ownership.

6 Q So what did the Division have to do? In other words,
7 between July of 2006 and April of 2007 to approve or to
8 issue a letter acknowledging that the license had been
9 transferred?

10 A The Division simply had to author the letter.

11 Q So it could have authored the letter in the following
12 month?

13 A It could have done so.

14 Q Now, your testimony says the long-term transfer was
15 not approved. The change petition has not been approved.
16 Is that for the sole reason that you've been provided with
17 no CEQA documentation?

18 A No. The petition itself had to have public notice and
19 resolution of any protests. And we had information
20 indicating that the original long-term change petition
21 that there was perhaps change coming to it. I don't have
22 the written record, but I was here at the time. We did
23 not want to process until it was clear what we were
24 processing.

25 Q And what efforts did you make to determine what it was

1 that you were processing?

2 A I assigned staff to review the petition and to take it
3 through the noticing process, if appropriate.

4 Q Were you aware that Millview's counsel had requested a
5 meeting with Division staff to start the environmental
6 process that ended in July of 2006?

7 A I believe that information to that effect is in the
8 file.

9 Q It's in the letter from Jan Goldsmith to you
10 requesting a meeting to develop the terms of a Memorandum
11 of Understanding to proceed with an environmental process?

12 A Yes. Unfortunately, that's not the correct process.
13 Because we don't do Memorandums of Understanding with CEQA
14 lead agencies. CEQA lead agencies independently prepare
15 their own environmental document. We're simply serve as
16 responsible agency.

17 Q Did you ever communicate that to Millview in any way?

18 A I don't have documentation as to whether or not I
19 communicated that to Ms. Goldsmith.

20 Q Or to anyone else at Millview?

21 A I don't have written documentation to that effect.

22 Q So would you -- in the context of transfer of a water
23 right like this, would you expect that it would require an
24 Environmental Impact Report?

25 A The issue isn't the transfer of the right itself.

1 It's the request to add new point of diversion place of
2 use and things of that sort. And under the CEQA process,
3 you do the CEQA checklist to determine the appropriate
4 document to prepare. We don't predetermine that. We do
5 the checklist.

6 Q You understand that Millview is a public agency?

7 A And I would expect they could do the checklist because
8 that's the CEQA procedure.

9 Q And they would be required to comply with CEQA for its
10 own actions, separate and apart from the actions of the
11 Division?

12 A Well, the Division would be required under CEQA
13 provisions to use the lead agency's document in its own
14 evaluation.

15 Q In your testimony, you say that you referred to a
16 letter that was sent by the Division staff in I believe
17 2001, which says that -- this is on page three under
18 change of ownership, just to direct your attention.

19 A Do you know which exhibit number?

20 Q It's your testimony.

21 A Thank you.

22 Q I'm referring to the third unnumbered page.

23 A What is the question?

24 Q Are you there? You say that the public file for
25 License 5763 shows that the Division warned Masonite in

1 2001, six years before -- prior to the reassignment of the
2 water right that if diversions had ceased under the
3 license, the right may be subject to revocation, referring
4 to Prosecution Exhibit 22. You note in your testimony
5 that Masonite did not reply to the Division's letter or
6 refute that the right had been abandoned?

7 A That is correct.

8 Q Are you aware that there was a meeting in 2002 with
9 Division staff, Masonite staff, and even participation by
10 Sonoma County Water Agency and the County of Mendocino I
11 believe of December of 2002 attempting to develop a
12 procedure for the transfer by Masonite of this right to
13 the County of Mendocino?

14 A Is that in the Division's files?

15 Q It's Prosecution Exhibit Number 17. If you'd like,
16 I'll show you a copy of it.

17 A Yes, I'm aware of it.

18 Q Okay. So it was clear that Masonite did not intend to
19 abandon the right, at least a full year after it ceased
20 operations, but wanted to transfer it to the County of
21 Mendocino to preserve the right for use in Mendocino
22 County?

23 A When I prepared my testimony, I was referring to the
24 fact we didn't receive a timely reply to a letter that the
25 Division authored.

1 Q Okay. But at the time that you prepared the Notice,
2 you were aware that Masonite did not intend to abandon
3 this right, that it wanted to transfer it to a public
4 agency, first the County of Mendocino, and then Millview
5 County Water District to preserve the right for use in
6 Mendocino County?

7 A The fact that there was a meeting with respect to
8 potential choices of how to proceed in the future doesn't
9 lay with the fact we didn't get a response to the staff
10 letter.

11 Q Other than the reference to Millview not submitting a
12 CEQA document, can you point to any lack of diligence by
13 Millview after June 2006 in having its petition considered
14 by the Division?

15 A What type of information are you requesting me to --

16 Q I'm just asking if you know of anything that Millview
17 was asked to do that it did not do or failed to cooperate
18 in any way?

19 A Millview's responsibility at that time would have been
20 with respect to the CEQA.

21 Q Other than that, any other actions requested by the
22 Division of Millview?

23 A No. The Division had not noticed these because we
24 were evaluating the issue of non-use.

25 Q In your testimony, you referred to conditions incident

1 to the person rather than the enterprise, referring to an
2 administrative regulation. Can you point to any
3 conditions incident to the person that you can attribute
4 to Millview?

5 A Millview is an enterprise.

6 MR. JACOBSEN: I'm having trouble following the
7 question myself.

8 BY MR. NEARY:

9 Q Well, let me turn to your testimony, the next page,
10 Page 4. You say in the second paragraph, third line down,
11 "but changes to ownership of the property are incident to
12 the person, not to the enterprise, and will generally not
13 be accepted as good cause for delay in putting the water
14 to beneficial use."

15 A Uh-huh.

16 Q Yeah. I'm just asking you what you meant by that.

17 A Basically, that the water right itself must
18 continuously be put to reasonable beneficial use in order
19 to maintain it, and that the mere act of changing
20 ownership does not provide excuse for failing to comply
21 with that requirement.

22 Q Okay. Is it true that although Millview held the
23 ownership of the license that unless it was going to
24 engage in industrial use on that particular property that
25 it could not make any use of the water right?

1 A Well, Millview had the opportunity to use the right as
2 described in the license. If it was not able to do so,
3 that was their issue.

4 Q The plant had been dismantled; is that right?

5 A That's my understanding.

6 Q And Millview was requesting that the permission from
7 the Division, authorization from the Division, to change
8 the type of use to municipal uses, including industrial
9 use, to change the place of use to Millview's boundaries,
10 which are adjacent to the Masonite site, and to change the
11 place of diversion to its facility immediately across the
12 river. And that until that was approved, Millview could
13 not make use of the license, except to use it for
14 industrial purposes on the Masonite property?

15 A Correct, because all water right holders must use the
16 water right within the terms and conditions of the right.

17 Q Unless it's changed?

18 A Unless the change is approved by the State Water
19 Board.

20 Q And Millview, it filed a petition for it to be changed
21 so it could use the water right?

22 A They did file a petition.

23 Q And is that petition still pending?

24 A The petition was not officially withdrawn to my
25 knowledge.

1 Q So it's still pending today?

2 A It's still pending. It's still could not be approved
3 today.

4 Q Okay. Why could it not be approved?

5 A The requirements of the California Environmental
6 Quality Act have not been met. The petition has not been
7 noticed. We have not determined if there would be protest
8 to the specific modifications of the right.

9 Q So the only impediment to action on the petition by
10 your staff is Millview complying with CEQA?

11 A The Division would also have to notice it. And at
12 that point, then we could make determination whether the
13 requirements for approval have been met. There are
14 specific requirements in the Water Code.

15 Q But now you noted -- at one point, you said there was
16 no documented water use on the Millview site. Isn't it
17 true that the Attachment 1 to the change actually
18 referenced an amount of water that had been used in the
19 last full year of operation?

20 A It referenced the recycled water component, which I
21 believes includes both authorized and non-authorized
22 diversions.

23 Q But the actual change petition filed by Masonite
24 actually had the amount of use for 2000 and 2001; is that
25 correct?

1 A It specifically states on Attachment 1 of PT
2 Exhibit 19 during the last full year of operation Masonite
3 diverted 651.57 acre feet. In addition, water was
4 recycled at least twice after initial use for conservation
5 purposes. Records of recycled water use indicate that the
6 inflow of recycled water to the plant was 896.65 acre feet
7 during the last full year of operation, which I believe
8 since the plant closed in 2001 may be a reference to the
9 year 2000.

10 Q Okay. So is that documentation of water use?

11 A I believe it documents use in 2000, 2001.

12 Q That's all I have. Thank you very much.

13 CHAIRPERSON MARCUS: Mr. Lilly, I won't forget
14 you this time.

15 MR. LILY: Thank you.

16 CROSS-EXAMINATION

17 BY MR. LILLY:

18 Q Good morning, Ms. Mrowka. I'm Allen Lilly. I
19 represent the Sonoma County Water Agency.

20 I'd like you to get your written testimony
21 Exhibit PT 1 and go to the third page. And now in the
22 second full paragraph, the paragraph refers to the
23 licensee report for 1994 through 1996 and describes the
24 flows in millions of gallons per day, which are then
25 converted into CFS. Do you see that?

1 A Yes, I do.

2 Q Could you please just explain for us what calculations
3 you used to determine those CFS numbers that are listed in
4 that paragraph?

5 A Yes. They are automatic calculators available on the
6 internet where you plug in the number and they
7 automatically calculate for you the number in other valued
8 units. And I used one of those.

9 Q Okay. What data did you use as a starting point to
10 plug into the calculator?

11 A I went to the report of licensee numbers and put in
12 the gallons indicated there. And it automatically
13 calculates for me the cubic feet per second.

14 Q Just so we're clear, could you just take a look at
15 Exhibit PT 13?

16 A Yes.

17 Q So is this exhibit where you, in fact, got the gallons
18 that you put into the calculator to determine CFS?

19 A Yes, I did. For example, in 1994, it indicates 169.58
20 million gallons. The "m" as a reference to million.

21 Q So you basically said if that's a uniform flow rate
22 during that year, that equates to 0.72 CFS?

23 A Yes.

24 Q Okay. And just so we're clear, I don't want to be too
25 nitpicky here, but it says flows reported in million

1 gallons per day. But it actually should be million
2 gallons per year; right?

3 A The total annual is in million gallons per year.

4 Q That's what you used to determine the CFS?

5 A Yes, because otherwise, you'd have different CFS rate
6 on a daily or monthly basis. That was not the purpose of
7 the testimony. The testimony was to illustrate that full
8 use of the license was not occurring.

9 Q Okay. And then the next paragraph refers to the
10 licensee reports for 1997 through 1999 and has CFS
11 numbers. Did you use the same procedures and obviously
12 using the numbers from PS Exhibit 14 to determine those
13 CFS numbers?

14 A Yes, I did. In fact, on that particular exhibit, they
15 provided no monthly values and only single annual values.

16 Q So you took the single annual value and converted it
17 into a uniform CFS flow rate for the year?

18 A Yes, I did.

19 Q Okay. And then if you could go onto the fifth page of
20 your written testimony, Exhibit PT 1, do you have that?

21 A Yes, I do.

22 Q It's up on the screen, too. Down in about the fifth
23 line of that page, it says the Russian River has intense
24 competition for water resources and the supply is limited
25 to the point of being scarce under certain conditions. Do

1 you see that sentence?

2 A Yes, I do.

3 Q And if you could just please explain and elaborate
4 what you mean by intense competition?

5 A Yes. The Division maintains a list. It's called the
6 declaration of appropriate stream systems and it documents
7 stream systems that have seasonal limitations on water
8 availability. Russian River has seasonal constraints on
9 availability, as documented there. And that particular
10 list is all based on past Board decisions.

11 Q Okay. And then if you could just also elaborate what
12 you mean when you say the supply is limited to the point
13 of being scarce under certain conditions?

14 A Yes. During the summer months, there is -- there are
15 so many water rights already issued on the Russian River
16 that there are difficulties with respect to water supply
17 availability. In fact, the Russian River system has
18 changed over the years that I have been working here.
19 There at one point was a significant amount of water
20 coming from the Eel River system and being transported
21 into this basin. That has now diminished. And so it's
22 created a greater competition for resources.

23 Q Okay. And then again, based on your testimony that no
24 water has been diverted or used under this license 5763
25 since 2001, is it correct to say that these increasingly

1 scarce conditions, at least over the last twelve years,
2 have occurred, even without any diversions under License
3 5763?

4 A That is correct.

5 Q So that is it fair to say that if diversions were to
6 start under that license again, that would exacerbate
7 these scarce conditions?

8 A It would make it more difficult, yes.

9 MR. LILY: Thank you. I have no further
10 questions.

11 CHAIRPERSON MARCUS: Any redirect?

12 MR. NEARY: Nothing.

13 MR. JACOBSEN: I just have a few.

14 CHAIRPERSON MARCUS: Okay. Mr. Jacobsen, do you
15 mind if Mr. Mona asks his questions?

16 MR. MONA: I have a couple questions regarding
17 the current status of the mentioned petitions for change
18 as you describe on page 4 of your testimony. First, you
19 state that the long-term transfer was not approved. Who
20 did not approve that transfer and how was it not approved?

21 THE WITNESS: The long-term transfer petition was
22 superceded by their request to change the petition to
23 being a standard change petition. But it was not -- we
24 did not act on it, therefore we did not approve it prior
25 to the request to consider it as standard petition.

1 MR. MONA: And you followed that up by stating
2 the change petition has not been approved. Are you -- is
3 it your testimony that the -- processing the change
4 petition was suspended while the enforcement action was
5 being enacted or what?

6 THE WITNESS: The Division has limited staffing
7 resources. And as a supervisor, it's my obligation to use
8 them in a reasonable fashion. I instructed staff to
9 proceed with the investigation that Ms. Malloy did to
10 whether water was used under this water right. And we did
11 that investigation, made a conclusion that water was not
12 used. And at that point, I asked staff to proceed with
13 the Notice of Proposed Revocation rather than proceeding
14 with the petition.

15 MR. MONA: So is it your understanding then that
16 it would take a subsequent order issued by the Division to
17 not approve the existing change petition?

18 THE WITNESS: The Division didn't issue an order
19 of denial or of approval. We suspended our processing of
20 that particular petition once we determined that cause
21 existed for revocation.

22 MR. MONA: Thanks.

23 VICE CHAIRPERSON SPIVY-WEBER: I have one
24 question. On the long-term transfer, Attachment 1, there
25 was a listing that the purpose of use for the long-term

1 transfer was not only for industry, but also for
2 irrigation and municipal. Since you didn't approve it,
3 did anyone make note of that? Or is that -- is it common
4 that these requests come in and they aren't strictly
5 adhering to the original water right?

6 THE WITNESS: When we look at -- let me separate
7 issues.

8 It's very often that water right holders ask to
9 use the water right in a new fashion. That's what the
10 petition does. It says, you know what? I'd like to make
11 some additional uses of my water right. And that's fine.
12 If it had been approved, then it would count under the
13 water right toward maintaining the right and all of that.

14 But until the date of approval occurs, then there
15 is no authorization to use the right in any manner, other
16 than as written. So in this instance, because there has
17 been no approval action for any modifications to the
18 right, the review focused simply on did water use occur
19 under the terms and conditions of the license, which was
20 industrial use at the Masonite site.

21 VICE CHAIRPERSON SPIVY-WEBER: I guess just so
22 I'm clear, if the petition -- the change petition had been
23 accompanied by the CEQA documentation, you would have been
24 noticed the -- what would you done?

25 THE WITNESS: Okay. Let me explain for you how

1 that would have happened. Okay. So if the petition had
2 come in and we were not evaluating the non-use issue, our
3 standard business practice is to provide public notice of
4 the petition, address protests, require that CEQA
5 compliance be achieved. You don't have to submit a CEQA
6 document on the date of submittal of a petition. That's
7 not a requirement by the Division. But it's a prior to
8 approval type of requirement. We must comply with CEQA
9 before we can approve.

10 SENIOR STAFF COUNSEL OLSON: This is Samantha
11 Olson, Staff Counsel.

12 There's been a few mentions regarding groundwater
13 well and also conservation. And my question is whether
14 there is any evidence of documentation of water for
15 conservation purposes under Water Code 1011 or 1010.

16 THE WITNESS: Yes. There was documentation prior
17 to the cessation of water diversion and use. However,
18 there are a number of years in which the reports were not
19 submitted. Under those particular Water Code provisions
20 related to water conservation, use of groundwater in lieu
21 of surface water, you must timely submit annually your
22 documentation that you were claiming the credits. You
23 cannot claim those credits in arrears. They must be
24 timely submitted. And so the failure to submit the
25 reports means the credits were not claimed during those

1 years. And then that was followed by three -- the last
2 three reports where they documented that no water was
3 diverted and used.

4 SENIOR STAFF COUNSEL OLSON: Did you testify that
5 the actual face value of the permitted water right for
6 Masonite was not used? And where in your testimony is
7 that?

8 THE WITNESS: Yes. I indicated in my testimony
9 on the third page the report of licensee where it
10 documents that 1994 0.72 CFS was used and thereafter where
11 it provides other numeric information on use. Those
12 numbers were all significantly less than the face value of
13 the water right, which is 5.99 CFS.

14 SENIOR STAFF COUNSEL OLSON: Would those
15 conclusions change at all pursuant to Water Code Section
16 1011 or 1010?

17 THE WITNESS: No. I evaluated that issue. It's
18 a very interesting issue for this particular water right
19 in that the claimed -- in PT Exhibit 13 beginning on page
20 3 for 1997 to 1999, there are three columns of
21 information. The third column is river wells three and
22 five. The middle column is potable water well flow.
23 That's unauthorized facility. And the third column is
24 recycled water flow conserved. It's very interesting
25 because they're claiming credits apparently for including

1 facilities that were not authorized under the water right.

2 SENIOR STAFF COUNSEL OLSON: Can you explain
3 though when you say it's not authorized, I'm assuming if
4 it was groundwater, it wouldn't need to be authorized this
5 license. So --

6 THE WITNESS: I don't have the information to
7 make an assumption of it's a surface water well or
8 groundwater well.

9 SENIOR STAFF COUNSEL OLSON: But assuming it was,
10 and then assuming recycled water was also being reused
11 again for the purpose of recycling water, can you make
12 sense for us of these numbers here?

13 THE WITNESS: Yes, I can make some more sense for
14 you of the numbers. Their recycled water facility was not
15 built until 1996, and that's in the staff exhibits. And
16 so they couldn't claim credit for water recycling until
17 after they had their recycling facility. And prior to
18 1996, we had already seen the diminution of use under this
19 water right.

20 Now, you can only maintain a right through
21 credits to the extent that the right had earlier been
22 maintained. And so the failure to use the full face value
23 of the right prior to the first year of credits were
24 started to be claimed leads to a question regarding how
25 much credit they can, in fact, claim.

1 SENIOR STAFF COUNSEL OLSON: I didn't think this
2 was going to lead to so many more questions. I apologize.

3 Can you then elaborate on the length of time
4 where the water right use had diminished and what years?

5 THE WITNESS: Yes. It was in 1986 that Division
6 started to require this water right holder to install
7 actual facilities to measure water because we were not
8 getting numeric data. In a period after that until 1996,
9 there were no recycled water facilities. And that's when
10 you see water use numbers that are not the face value of
11 the water right, but for which credits cannot be claimed.
12 Credits maintain a right to the amount that had been
13 previously put to beneficial use. And so if you haven't
14 been using your water right, you can't reestablish it
15 through the credit.

16 SENIOR STAFF COUNSEL OLSON: So they had
17 diminished use from 1986 to 1996?

18 THE WITNESS: Yes. At some point in 1996, their
19 recycled water facility came online.

20 SENIOR STAFF COUNSEL OLSON: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. JACOBSEN:

23 Q Ms. Mrowka, I just have a few questions on redirect.

24 So as you testified earlier, the last reported
25 year of water use on licensee reports was in what year?

1 A 1999 was the last reported.

2 Q Subsequent to 1999, in exhibits and testimony
3 previously presented, Masonite indicated there was some
4 use in 2001; correct?

5 A Their letters indicated that the operations did not
6 cease until 2001. So I don't know how many months in
7 2001. Presumably, a portion of the year at least some
8 water had been used.

9 Q Is there a requirement to file licensee reports of
10 water diversion and use?

11 A Yes, there is.

12 Q Do you have any evidence that there was the intent to
13 or the submission of the licensee report for the period of
14 1999 to present?

15 A During the most recent three years of reporting, they
16 had reported that it required zero values for the use.

17 Q So with respect to the exhibit and testimony presented
18 earlier regarding the long-term transfer which was
19 submitted in 2006 by Masonite and Millview, which was
20 prepared and signed by an attorney, did you have any
21 reason to believe at that point in time that what Masonite
22 and Millview actually sought was a petition for change
23 rather than a long-term transfer?

24 A No. I did not have information earlier in time that
25 when they made the actual request.

1 Q So the August 2007 letter from Millview PT 21, which
2 requested the long-term transfer be evaluated as a change
3 petition which had accompanying information on points of
4 diversion, places of use, purpose of use, was the first
5 documentation that you had that Masonite Millview sought a
6 change petition?

7 A Yes. It's very unusual for a party to ask that
8 petition be considered as a different class of petition.
9 So it was really memorable for me.

10 Q Water Code Section 1702 states, "Before permission to
11 make such a change is granted, the petitioner shall
12 establish to the satisfaction of the Board and it shall
13 find that the change will not operate to the injury of any
14 legal use of the water involved." Had the Board made such
15 a finding as of August 2007?

16 A No, it had not.

17 Q Okay. Is it the responsibility of the Division to
18 determine what type of change a water right holder
19 requests?

20 A No. Change petition is submitted to the Division and
21 it's reviewed for whether the form is complete as part of
22 our initial review, but not if it's the correct type of
23 form to file.

24 Q So as of August 2007, when Millview Masonite indicated
25 it was seeking a change petition, were requirements

1 including the Board determining that here not be injury to
2 another user of water, by that date, had five years
3 elapsed since the last documentation of any water use in
4 any form from the Masonite site?

5 A By the time that we received the letter requesting
6 that this be considered a change petition, the five years
7 had lapsed.

8 Q Typically, does the filing of documentation or
9 paperwork serve to preserve a water right?

10 A It's the actual water use that preserves the water
11 right in my opinion.

12 MR. JACOBSEN: Thank you.

13 MR. NEARY: I have no follow up.

14 MR. LILY: No further questions. Thank you.

15 CHAIRPERSON MARCUS: Thank you.

16 MR. JACOBSEN: Just as another housekeeping, I'd
17 like to move all the exhibits referenced by Ms. Mrowka's
18 testimony.

19 MR. NEARY: No objection.

20 (Whereupon the above-referenced exhibits
21 were admitted into evidence.)

22 CHAIRPERSON MARCUS: All right. Mr. Neary, it's
23 all yours.

24 Oh, forgive me. Someone from Fish and Wildlife
25 did show up. Do you mind if they make their five-minute

1 policy statement now? It's up to you.

2 MR. NEARY: I was just going to tell you I
3 thought we could probably get done by 11:30. But I have
4 no objection.

5 CHAIRPERSON MARCUS: Thank you.

6 MR. STOKES: Good morning. I apologize for being
7 late.

8 My name is Wes Stokes. I'm with Region One for
9 Department of Fish and Wildlife. And I have a prepared
10 policy statement to read. Here goes.

11 The Department thanks Hearing Officer and Board
12 members of the State Water Resources Control Board for the
13 opportunity to express our interest and policy in regard
14 to this matter.

15 The Department of Fish and Wildlife's mission is
16 to manage California's diverse fish, wildlife, and plant
17 resources and habitats upon which they depend for their
18 ecological values and for their use and enjoyment by the
19 public.

20 Fish and wildlife resources are held in trust for
21 the people of the state of California. Under Fish and
22 Game Code Section 711.7, the Department is Designated as
23 trustee for the state's fish and wildlife resources.

24 Fish and Game Section 1802 grants the department
25 jurisdiction over the conservation protection and

1 management of fish wildlife, native plants, and habitat
2 necessary for biologically sustainable populations of
3 those species.

4 Additionally, Fish and Game Code Section 1600
5 grants the Department jurisdiction over projects that
6 substantially divert water from lakes, rivers, or streams.

7 The Department seeks to maintain native fish,
8 wildlife, plant species, and natural communities for their
9 intrinsic and ecological value and for their benefits to
10 all citizens in the state. This includes habitat
11 protection and maintenance of habitat and sufficient
12 amounts and quality to ensure the conservation of all
13 native species in natural communities.

14 The Department is also responsible for oversight
15 and assurance of the diverse uses of fish and wildlife,
16 including recreational, commercial, scientific, and
17 educational.

18 As trustee agency for the aquatic resources in
19 the state, the Department has a material interest in
20 assuring the water flows within streams are maintained at
21 levels that are adequate for long-term protection,
22 maintenance, and proper stewardship of these resources.

23 Russian River stream flow supports Chinook and
24 coho salmon, steelhead trout, and other sensitive aquatic
25 species. Because of the Department's mission to conserve

1 these resources, the Department filed protest in 2003 and
2 2008 with the State Water Resources Control Board against
3 the petitions for change filed by Millview County Water
4 District for water Applications 3601 and 17587.

5 The upper Russian River and its tributaries
6 support Chinook salmon and steelhead trout. Both species
7 are listed as threatened pursuant to the Federal
8 Endangered Species Act. Coho salmon are present in the
9 watershed downstream and are listed as endangered pursuant
10 to both the Federal Endangered Species Act and the
11 California Endangered Species Act.

12 Chinook and coho salmon and steelhead trout spawn
13 and rear in the Russian River and its tributaries during
14 the period at issue in this hearing. The upper Russian
15 River not only supports native aquatic species on site,
16 but also contributes flow crucial to supporting anadromous
17 and other species in the lower reaches of the watershed.
18 Seasonal water temperature is sufficiently low to protect
19 anadromous fish and other aquatic life, holding and
20 rearing habitat along with timely attraction flows for
21 migration are critical to supporting all life stages of
22 steelhead and other aquatic species in the Russian River.

23 In addition to their many other values,
24 anadromous fish are important to California's economy. In
25 2008 and 2009, the Governor of California declared state

1 of emergency for commercial salmon fishing, resulting in
2 estimated loss of over \$500 million to California's
3 economy and thousands of jobs. Recovery of listed
4 salmonids to support commercial recreation and native
5 fisheries is important to the economy of California and an
6 integral strategy for recovery plans for listed
7 salmonids.

8 Water Code Section 1257 requires the Board to
9 consider the relative benefit to be derived from all
10 beneficial uses of water, including, but not limited, to
11 those listed for fish and wildlife resources. Categories
12 of beneficial uses of water in the upper Russian River
13 hydrological unit relevant to fish and wildlife resources
14 including freshwater habitat, migration of aquatic
15 organisms, commercial and sport fishery rare, threatened,
16 or endangered, spawning reproduction and/or early
17 development and wildlife habitat.

18 State Water Resources Control Board has
19 designated the Russian River as fully appropriated. The
20 Russian River is also listed as sediment and temperature
21 impaired pursuant to Clean Water Act Section 303(b).
22 These beneficial uses of water will be negatively impacted
23 by the licensed rate of diversion and face value amount of
24 water. The Department cautions water diversion from the
25 Russian River have the potential to cause site-specific

1 and/or cumulative adverse impacts by degrading established
2 in-stream habitat for Chinook and coho salmon, steelhead
3 trout, and other native aquatic species.

4 The Department understands the State Water
5 Resources Control Board and this hearing is addressing
6 Millview's attempt to divert substantial amounts of water
7 from the Upper Russian River pursuant to water rights that
8 have not been exercised in any significant quantity for a
9 period of more than five years.

10 The Department is very concerned Russian River
11 fishes have already experienced deleterious effects from
12 water diversions and cannot withstand additional water
13 diversions, especially during low flow periods.

14 The Department encourages the Board to place
15 great weight on the need to preserve existing flows in the
16 Russian River for protection of in-stream habitat as a
17 beneficial use of water for Chinook and coho salmon,
18 steelhead trout, and other native aquatic life and provoke
19 diversion that have not been in use.

20 The Department takes seriously its responsibility
21 to safeguard the natural resources of California,
22 including Russian River aquatic resources it holds in
23 trust for the public.

24 To that end, the Department firmly supports the
25 proposed revocation before the Board. We believe that

1 such action is consistent with Fish and Game Code and will
2 be in the public's best interest overall. Because of the
3 low flow conditions of the Russian River, in the status of
4 anadromous fish dependent on aquatic in-stream flows, the
5 Department believes the current and proposed diversion by
6 Millview would be substantial and, thus, subject to Fish
7 and Game Code Section 1600. Thank you.

8 CHAIRPERSON MARCUS: Mr. Neary.

9 MR. NEARY: Good morning. Thank you for this
10 opportunity to appear before you today to address this
11 issue.

12 I want to tell you that your staff has been very
13 helpful in preparing for this hearing. And you don't know
14 how daunting this procedure is for country lawyer to come
15 down to the big city. And Mr. Mona and Ms. Olson have
16 been very helpful throughout this process. And you should
17 be proud of them.

18 I'm the local counsel for Millview County Water
19 District, which is a water district that was formed in the
20 '50s to provide water service to the area immediately
21 north of the city limits of the city of Ukiah. And it has
22 about 1,400 customers. It has budget of about a million
23 dollars a year. And it provides only water service.

24 We all noticed when Masonite announced it was
25 getting ready to close down. Masonite was a major

1 employer in the Ukiah Valley. It employed two or three
2 hundred employees. It was a major blow to our economy
3 when Masonite closed.

4 Millview had an interest in the water right
5 almost immediately. But the County of Mendocino jumped
6 the gun and it started the process of considering the
7 acquisition of this license from Masonite Corporation. It
8 was a little bit frustrating because the county chose to
9 operate in a very sort of closed door fashion, but we were
10 able to monitor some of the meetings when it would emerge.
11 And it was clear that the county was actively attempting
12 to acquire this right.

13 After some time -- you'll see some of the news
14 clippings. We were able to follow in this process. It
15 was apparent the county was backing away from the
16 acquisition of this right.

17 Millview at this time had just been placed under
18 a water moratorium in 2001 by the Department of Health
19 because it did not have, among other things, a sufficient
20 source of water supply to cover its existing uses during
21 periods of draught as designed by the Department of Public
22 Health, which is two years. And so we not only were
23 interested, we were highly motivated to see if we could
24 obtain this right.

25 We started negotiations with Masonite

1 corporation. Now, you have to remember this is a
2 corporation that just ceased operations and moved all
3 their administrative functions to Florida. And it was
4 very difficult to deal with Masonite because its apparatus
5 for interfacing with us essentially ended. But over the
6 course between 2002 and 2006, we went through a number of
7 negotiations that were complicated by several things.
8 There was a water right reservation to Mr. Thomas who put
9 in a policy statement. There was a proposal for a very
10 controversial commercial development on the Masonite site
11 and sort of a regional Costco that ultimately went down to
12 defeat after a referendum. So all of those factors
13 complicated the negotiations with Masonite.

14 Finally, in June of 2006, you'll see in the
15 documents that we submitted that we entered into an
16 agreement to purchase as much of the right that the
17 Division of Water Rights would recognize. And we
18 calculated that to be approximately 1142 -- 1158 acre feet
19 per year, which was substantially less than the amount of
20 the license, which face amount is 42 acre feet per year.
21 So that's what we have attempted that we thought we were
22 going to end up being able to document that that was
23 Masonite's latest use. And we understood that the whole
24 right -- that Masonite had not been utilizing the entire
25 right. Don't know why. Don't know what the -- we don't

1 have insight into how Masonite conducts its operations.

2 We do know they had a recycling facility and we
3 know a little bit about their operation. But we don't
4 know why they were able to get a license for 42 acre feet.
5 And looks like they were just using about 1200 acre feet
6 per year throughout the '80s and '90s and into the early
7 years of this millennium.

8 So basically, this proceeding is brought pursuant
9 to Water Code Section 1275, which is addressed to your
10 discretion. It's not like the five years passes and an
11 alarm clock goes off and the right is automatically
12 forfeited. It requires this Board acting as discretion to
13 make some determinations. And presumably, your discretion
14 includes the furtherance of public interest. And in this
15 case, the public interest is to -- we would request that
16 you exercise it to allow the application process by
17 Millview to proceed.

18 Now, I'm going to explain to you a little bit
19 about the CEQA process and some of the complications. But
20 we would -- we want to use that water. We have the
21 ability to use that water. 1158 acre feet represents
22 about the amount of water that would get us out of the
23 moratorium and allow us to supply the additional demand
24 that we are aware of. And I will tell you that we remain
25 under a moratorium today and the only issue to emerge from

1 the moratorium is to have a solid summertime water right,
2 which we don't have.

3 We pointed out in Mr. Bradley's testimony that
4 the Division denied Millview's request back in the '60s
5 for a summertime water right, thinking we would be able to
6 get it from the Russian River Flood Control District,
7 which has never materialized.

8 So Millview has no summertime water rights.
9 That's basically its primary deficiency in terms of source
10 supply. And this is a year-round right, and it would
11 represent this 1,158 acre feet would representing about 24
12 percent of the original licensed amount.

13 We fully expect that this proceeding is going to
14 result in partial revocation of a substantial portion of
15 this right. But we're asking to preserve 1,158 acre feet.

16 Let me explain a little bit about, you know,
17 Ms. Mrowka talked about staff issues and so forth. We all
18 suffer from that. This 2007-2012 period has been a period
19 of substantial pressure on public agencies as well as
20 individuals.

21 In order to purchase this right to complete the
22 purchase from Masonite, we're going to have to do an EIR.
23 It's going to cost about a million dollars. Hopefully, it
24 won't cost that much. Maybe we get by with a half million
25 dollars. But between half million dollars and a million

1 dollars represents about a year's worth of budget for
2 Millview.

3 When we contracted to purchase this right from
4 Masonite, we wanted to sit down with Division decision
5 staff and work out the parameters of how such an EIR would
6 work. We didn't want to go through the process, come in
7 and find that the EIR didn't work or whatever the
8 environmental document was did not meet the Division's
9 standards. And I've been there where the Division staff
10 sometimes looks very critically at environmental
11 documents. So this subject wasn't covered that should
12 have been covered. That's why we wanted to enter into a
13 Memorandum of Understanding.

14 You know, about the time that we put in this
15 petition, we're talking about furlough Fridays. And we're
16 aware that everyone was short staffed and having a
17 difficulty in keeping up with their respective work loads.
18 But we did not want to embark upon a million-dollar
19 process until we had some sort of an understanding with
20 the Division as to what they were going to recognize as
21 the amount not to be forfeited and what they wanted that
22 environmental document to look like.

23 We also had another complication. We hired an
24 environmental firm in 2006 even before we entered into the
25 contract with Masonite, the Leonard Charles firm, to

1 prepare the EIR. We hired him because he was also
2 handling the County of Mendocino's Specific Plan for the
3 entire Ukiah Valley. Basically, he told us that until
4 that specific plan process was complete, there was no way
5 for him to proceed with the growth-inducing impact
6 requirements of the EIR for the Millview acquisition
7 because he would have -- it would be up in the air. So we
8 had to await a political process of the County of
9 Mendocino, which has since been completed. But it wasn't
10 completed at the time that you issued your Notice of
11 Revocation.

12 Once you issued your Notice of Revocation, this
13 issue had to be settled before we could make a major
14 commitment to a million-dollar Environmental Impact
15 Report.

16 So we have two witnesses. If we're going to
17 break at 11:30, we probably won't get through them. But
18 we'll have Tim Bradley, who is the General Manager of
19 Millview County Water District who will explain the
20 negotiations process, the needs of Millview, and what
21 Millview would like to get to. And we also have Mr.
22 Beuving who is a long-time Masonite employee and is
23 familiar with the practices of Masonite. In fact, he's
24 not only a long-term Masonite employee, he's the last
25 standing Masonite employee. I think he worked up to just

1 about 2006. He was there during some of this dismantling
2 process and so forth and can provide some insight into
3 what happened.

4 So it's 11:15. Are we going to break sharply at
5 11:30?

6 CHAIRPERSON MARCUS: We should break -- yeah, at
7 about a minute before that. Do you have time to do your
8 initial --

9 MR. NEARY: Maybe what I'll do is have Mr.
10 Beuving testify because we might be able to complete his
11 testimony in 15 minutes. And then I would have just one
12 witness after lunch.

13 CHAIRPERSON MARCUS: Let's give that a try.

14 DIRECT EXAMINATION

15 BY MR. NEARY:

16 Q Mr. Beuving, would you state your name and present
17 employer?

18 A My name is Lauren Beuving, and my employer is
19 Mendocino Forest Products.

20 Q And that's a manufacturing facility just immediately
21 north of Masonite facility?

22 A That's correct.

23 Q And how long have you been employed there?

24 A Since 2006.

25 Q And when did -- were you ever employed by Masonite

1 Corporation?

2 A Yes.

3 Q And when was that?

4 A From 1974 through 2006.

5 Q When you left -- in 2001, when the plant ceased
6 operations, what was your position with Masonite?

7 A I was a plant engineer.

8 Q And what was your function between 2001 and 2006 when
9 you left employment?

10 A I was responsible for selling the removable assets
11 from this facility.

12 Q Okay. Now, you have provided written testimony in
13 this proceeding. Have you reviewed that testimony?

14 A Yes, I have.

15 Q Do you wish to make any changes to it?

16 A There's a couple changes that I'd like to make. One
17 is a clarification in the second paragraph that says that
18 the -- before the plant closed, Masonite Corporation
19 pumped 1200 gallons per minute, 24 hours a day. And in
20 clarification, there was three wells that we pumped from,
21 and two of those wells were located by the river. They
22 delivered about 800 gallons per minute each. There was
23 the third well, which is referred to as well number 6.
24 That was rated at 1200 gallons a minute. The flow was
25 regulated by control valves. So the band would change

1 from time to time.

2 Q And any other changes?

3 A Yes. There was a typo in the second to last paragraph
4 that should say "within the month of September 2001," not
5 2011.

6 Q Other than that, is your testimony as presented
7 accurate?

8 A Yes.

9 Q After -- when did the Millview -- I mean the Masonite
10 operations cease manufacturing operations?

11 A Toward the end of 2001.

12 Q And what happened on the site after manufacturing
13 operations ceased?

14 A We were doing clean up. We were washing down the
15 facility and cleaning it up for -- so it could be --
16 there's going to be a lot of cutting and welding in the
17 plant and it had to be cleaned to prevent fires from
18 occurring and just for general cleanup of the facility.

19 Q And when you left in 2006, had the plant been
20 dismantled yet?

21 A They were just starting on the dismantling process,
22 the major dismantling process.

23 Q Are you generally familiar with what happened during
24 the dismantling process? In other words, what transpired
25 there?

1 A Yeah. I was working next door. So I was familiar
2 with it.

3 Q You were interested because you kept the -- you had
4 been involved there for many years?

5 A Certainly.

6 Q Were you aware of any water being used during the
7 dismantling process?

8 A They were using water for fire suppression systems and
9 for -- they were removing asbestos. They were using that
10 for control of asbestos as well.

11 Q And did you have anything to do with Masonite's
12 reporting of water to the Division of Water Rights?

13 A No.

14 Q And who did?

15 A I'm not sure who it would have been at that time.

16 Q But you know it wasn't you?

17 A That's correct.

18 Q And was there a -- do you have an estimate of about
19 the time that the dismantling operations ceased?

20 A I would guess probably maybe in 2007 or may be '08.
21 It was a long process.

22 MR. NEARY: That's all I have.

23 CHAIRPERSON MARCUS: Mr. Beuving, do you know
24 where the water came from that was used?

25 THE WITNESS: Oh, during that time period, yeah,

1 it was came from all three wells.

2 CHAIRPERSON MARCUS: How do you know it came from
3 all three? Is that the way the water system worked?

4 THE WITNESS: Yeah. We tended to rotate between
5 the wells depending on the quality of the water that was
6 coming to us. It was usually good to exercise the pumps
7 and keep them operational, so it just depended on you
8 making sure the other ones were functional as well.

9 CHAIRPERSON MARCUS: Are you aware of when the
10 electrical systems were cut apart and vandalized?

11 THE WITNESS: That would have been probably
12 toward the end of 2006 or 2007.

13 CHAIRPERSON MARCUS: Go ahead, Mr. Jacobsen.

14 CROSS-EXAMINATION

15 BY MR. JACOBSEN:

16 Q Nathan Jacobsen again, Division of Water Rights
17 prosecution team.

18 I just have a couple of questions, Mr. Beuving.
19 You referred to water being pumped from the various wells
20 on the site and their capacities. And do you have any
21 knowledge of how much water was being diverted from each
22 well?

23 A No, I don't.

24 Q So is it possible that all of the water could have
25 been diverted from an unlicensed well that's commonly

1 referred to as well number 6?

2 A When I was on site, we were rotating between the
3 wells. And so while I was still on site up until 2006, I
4 would say that it was a combination of those wells where
5 the water was coming from.

6 Q So between 2001 when the plant closed and 2006, water
7 was diverted from a series of wells?

8 A That's correct.

9 Q And what do you base that statement on?

10 A Well, that was our operating procedure was to not
11 depend on one well, to make sure they were all
12 functioning. And the only way you could ensure that is by
13 switching from one well to the other.

14 Q In your written testimony, paragraph -- well, it's
15 actually paragraph 4 and paragraph 5, you state the water
16 is used for domestic purposes. Water was also used for
17 irrigation on land and fire protection. And in the
18 following paragraph you state it's utilized for domestic
19 purposes, irrigation, fire protection, and dust
20 suppression. To your knowledge, is domestic purposes
21 listed as an authorized use on the license?

22 A I'm not aware of the use required by -- authorized
23 under the license. And by domestic, I mean -- my
24 definition would be drinking water and for bathroom
25 facilities.

1 Q So are you a -- so you also list irrigation. What
2 type of irrigation are you referring to?

3 A That was part of the recycle system. So the water
4 would come up to the facility to be used. Could be washed
5 down or in the process of making the hard board siding.
6 And that water then would go back to a water treatment
7 plant. Some of it would be recycled back to the mill, and
8 a portion would be irrigated on surrounding property.

9 Q So your prior statements that water was used for
10 various purposes at the site until 2006, but you have no
11 knowledge of how much water came from each well?

12 A That's correct.

13 Q And you have no reports, nor did you view any reports,
14 documenting that water use?

15 A I have seen the one report that was submitted I
16 believe in 2001 by Mr. Morrison. That's the only report
17 I'm aware of.

18 Q From 2001?

19 A I believe it was 2001.

20 Q So subsequent to 2001, you have not observed, seen, or
21 been aware of any reports documenting the water use on the
22 site?

23 A I have not.

24 MR. JACOBSEN: I have nothing further.

25 CHAIRPERSON MARCUS: Can you explain in the very

1 end of your testimony you talk about that water was used
2 up until 2011 by Ernie Whif, contractor. What are you
3 referring to?

4 THE WITNESS: There was a portable tank that was
5 installed in the field next to the number 6 well. And
6 from -- we work with his contractor at my present
7 location. So we have some information. I would ask him
8 from time to time. And my understanding from him was that
9 he was using this portable tank. It was being supplied by
10 that well that was right there, which I believe is the
11 number six well for his use as a contractor.

12 CHAIRPERSON MARCUS: On the site?

13 THE WITNESS: I believe on the site. It may have
14 been other areas, too, but he was doing work on the site.
15 So from time to time.

16 CHAIRPERSON MARCUS: Thank you.

17 THE WITNESS: And they were dismantling the water
18 treatment plant so there was dust control they were using
19 it for I believe as well.

20 CHAIRPERSON MARCUS: Thank you.

21 Mr. Lilly.

22 MR. LILY: I don't know if I'll finish or not,
23 but I'll start.

24 CHAIRPERSON MARCUS: If you don't mind

25 MR. LILY: It's not problem at all. You just

1 tell me when I need to break and I will do as I'm told.

2 CROSS-EXAMINATION

3 BY MR. LILY:

4 Q Mr. Beuving, I'm Alan Lilly for Sonoma County water
5 Agency. Good morning. I just have some questions about
6 your written testimony. Do you have it there in front of
7 you?

8 A I do.

9 Q Okay. Good. In the second paragraph second sentence
10 says, "Before the plant closed, Masonite Corporation
11 pumped 1200 gallons per minute, 24 hours per day the plant
12 was in operation and the boilers functioning." Do you see
13 that?

14 A Yes, I do.

15 Q Now, was that rate of 1200 gallons per minute before
16 or after Masonite installed the recycled water system?

17 A To the best of my knowledge, it would be both. And I
18 also clarified that written statement there as well just a
19 few minutes ago. But in essence, I would say it was
20 before and after the recycled system was installed in
21 1974.

22 Q Okay. Well, then I'm really confused because I
23 thought when the recycled water system was installed and
24 started operating, the amount of water pumped from the
25 river or from the wells, wells 3, 5, and 6 went down

1 significantly. But now you're saying it didn't. So
2 please clarify.

3 A Let me clarify. So I came to the plant in 1974. One
4 of my first responsibilities was to install the recycled
5 system and the water treatment plant. So I would have no
6 knowledge of what usage was before that time. This
7 statement would be based on my knowledge after 1974 when
8 the treatment plant was put in and the recycling system
9 was started.

10 Q Oh, okay. I was confused as to the dates. So when
11 did the recycled plant and system go on line and start
12 operations?

13 A It was early in 1975.

14 Q Okay. So then, again, you may not know about before
15 the recycled system was in place, but I'll ask for both,
16 both before it was in place and after, did the plant still
17 have some discharges of water back to the river?

18 A Can you repeat that?

19 Q Yeah. I'm sorry. Let me split it up. During the
20 time you were working there and the recycled plant was in
21 operation, were there any discharges of water from the
22 plant into the river?

23 A My recollection is it was a very rare occurrence when
24 there was large storm event like a 50-year storm event.
25 We finally had no choice as to what to do with the storm

1 water and we had to make a discharge to the river.

2 Q Okay. Was there any effort to process water from the
3 plant that had to go somewhere?

4 A Yes.

5 Q And what did you have? Ponds? Percolation ponds or
6 something for that?

7 A We applied it to acreage around the treatment plant.

8 Q Was that to irrigate some crop or --

9 A Yes.

10 Q What crop was that?

11 A It was reed canarygrass.

12 Q Is that for pasture?

13 A Yes, it is for hay.

14 Q And about how much acres were you irrigating with
15 that?

16 A There was probably 60 or so acres.

17 Q All right. And so do you have any idea as to what the
18 rate of flow was of water from the plant onto that
19 irrigation field?

20 A I could only guess. I mean, I would guess it's
21 probably around 600 gallons a minute. But that's just a
22 very rough guess.

23 Q Okay. And was that year long? Were the discharges
24 all year long?

25 A Yes. Yes.

1 Q And did you have to have a waste discharge requirement
2 from the Regional Water Quality Control Board for that?

3 A I believe so, yes.

4 Q So now going down to the second to last paragraph of
5 your written testimony which discusses the 2001 to 2006
6 period, as I understand it, you were still working for
7 Masonite during that time frame; is that correct?

8 A That's correct.

9 Q And how much water was the Masonite facility pumping
10 from wells through five and six during that time frame?
11 This was after the plant had ceased operations and while
12 the dismantling process was going on?

13 A Well, there was quite a bit of cleanup that was going
14 on because we had fiber in the mill. So they had been
15 washed down. So there would be periods of high usage and
16 periods where there would be lower usage. With the
17 dismantling process, people removing equipment, there
18 would be times when they would be wetting down the
19 facility where they were going to be welding or cutting.
20 So there are high usages during that time. So it would
21 vary significantly.

22 Q Can you put any numbers on the amounts of the usage in
23 terms of gallons per minute or gallons per year or
24 anything like that?

25 A Yeah. When the pumps were operating, we had a

1 capacity of about 2,000 gallons a minute when the fire
2 pumps were running.

3 Q And that was -- just to clarify, that's the total
4 pumping from wells 3, 5, and 6?

5 A Well, the water from wells 3, 5, and 6 went to a
6 storage tank. We had a water tower for fire protection,
7 but that was taken out of service many years before
8 because of earthquake hazard. So there was another -- I
9 think it was about 300,000 gallon tank used for fire
10 protection. And we needed the capacity from those wells
11 to fill that tank because it could be -- at 2,000 gallons
12 a minute, you can lower that tank very quickly.

13 Q Can you put any handle on numbers of gallons per year
14 that were pumped during that I'll say 2002 through 2006
15 period?

16 A You know, I would be hard pressed to be able to put a
17 number to it.

18 Q Okay. And then the last paragraph of your testimony
19 talks about the 2006 to 2011 period and I think you
20 briefly testified about that today as well. Do you see
21 that paragraph in your testimony?

22 A The last paragraph?

23 Q Yeah.

24 A Correct.

25 Q And as I understand it, during that period, you were

1 not working for Masonite, but you were working for another
2 plant next door?

3 A That's correct.

4 Q And you mentioned that you saw some activities that
5 you thought involve some water use during the 2006 to 2011
6 period; is that correct?

7 A That's correct.

8 Q But can you put any number on the number of gallons of
9 water per year that were being used during that time
10 frame?

11 A I could not.

12 Q Okay. And again during that time frame, could you
13 even clarify or give any indication as to how much of that
14 water was coming from well 3 versus well 5 versus well 6?

15 A I could not.

16 MR. LILY: Those are all the questions I have.
17 I'm done. I appreciate you giving me a couple extra
18 minutes before the break.

19 CHAIRPERSON MARCUS: That's all right. Thank you
20 very much. Thank you all of you for your patience. I
21 think -- how about if we come back at 12:15? Does that
22 give people enough time?

23 I see no objection. We'll be back at 12:15.

24 MR. NEARY: Is Mr. Beuving excused?

25 CHAIRPERSON MARCUS: Yes, you may. Thank you for

1 your time.

2 (Whereupon a lunch recess was taken 11:33 AM)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 12:20 PM

3 CHAIRPERSON MARCUS: Thank you all very much. I
4 hope you had a chance to have your lunch. We do have a
5 policy statement that's come in since the start of the
6 day. And if you don't mind, Mr. Neary, I'll just let
7 someone do another five minute. Do you mind?

8 MR. NEARY: Sure.

9 CHAIRPERSON MARCUS: Okay. Great. I don't have
10 her card though. Is it just a written one? It's Mr. Jeff
11 Martin from DDR Mendocino Holdings, LLC. If you need to
12 take a look at it, staff has a copy.

13 Okay. We should probably post them. This is the
14 person Mr. Liberty bought from. Okay. Great. Thank you
15 for allowing us to break a little bit early. So with no
16 further ado, back to you, Mr Neary.

17 MR. NEARY: I'll call our last witness, Tim
18 Bradley.

19 DIRECT EXAMINATION

20 BY MR. NEARY:

21 Q Mr. Bradley, would you state your name and occupation?

22 A Tim Bradley, General Manager, Millview County Water
23 District.

24 Q How long have you been General Manager of Millview?

25 A November of 2000.

1 Q And you have presented written testimony in this
2 proceeding?

3 A Yes.

4 Q Is it true in all respects?

5 A Yes.

6 Q I want to call your attention to the exhibits, and I'm
7 just going to go down the exhibits and have you identify
8 or lay some foundation for it.

9 Is it true that in 2001 the Department of Health
10 issued a Compliance Order against Millview County Water
11 Districts for want of sufficient water source supply?

12 A Yes.

13 Q And that's in the document Millview Number 1. Is that
14 the document that you received from the Department of
15 Health?

16 A Yes.

17 Q And has that moratorium been listed as of this date?

18 A No.

19 Q And in June of 2006, did Millview enter into a
20 purchase agreement with Masonite Corporation?

21 A Yes.

22 Q And that's listed as Exhibit Millview 2. Is that the
23 correct copy of that transaction?

24 A Yes.

25 Q And again, is Millview 3, Petition for Transfer, filed

1 by Jane Goldsmith with the Division of Water Rights a true
2 and correct copy of the record in district files?

3 A Yes.

4 Q And that also applies to Exhibit Millview 5, letter
5 from Jane Goldsmith to the Division of Water Rights
6 requesting a conference for the purpose of developing the
7 ground rules for environmental documents?

8 A Yes.

9 Q And Millview 6, letter from Lee Howard -- represents a
10 complaint filed by Mr. Howard?

11 A Yes.

12 Q And you did receive a letter in April 2007 from the
13 Division of Water Rights approving the transfer of the
14 license from Masonite to Millview?

15 A Yes.

16 Q And did the agreement call -- in June of 2006
17 agreement call for the immediate transfer of the license
18 from Masonite to Millview?

19 A Yes.

20 Q And then did the district at some time retain the
21 services of Jim Hanson, an engineer, to assist in the
22 application process?

23 A Yes, we did.

24 Q And there is a letter from Mr. Hanson listed as
25 Millview 8. Is that a true and correct copy of the letter

1 he sent to the Division of Water Rights?

2 A Yes.

3 Q And there's also Millview 9. Notes of your meeting on
4 April 17th, 2008, with the young lady who testified here
5 today?

6 A Yes.

7 Q What was the circumstances of the preparation of those
8 notes?

9 A Well, during a normal course of business, I like to
10 document meetings that I've had. And having gone through
11 a recent inspection with Gerald Rich, I felt it was
12 necessary to document our visit.

13 Q And that was on another matter with the Division of
14 Water Rights?

15 A Yes.

16 Q And did that -- those notes represent the
17 conversation -- accurately reflect the conversation you
18 had with the representative from the Division?

19 A Yes.

20 Q And when was it prepared?

21 A April 17th.

22 Q Same day?

23 A Yes.

24 Q Contemporaneously.

25 And you've also seen the newspaper articles

1 listed as Millview 10 that appeared in Mendocino County
2 newspaper during the time the County of Mendocino was
3 considering the acquisition of the Masonite?

4 A Yes.

5 Q And you also have seen Millview 11, which is a letter
6 from Barbara Spazek to the Department of -- to the
7 Division of Water Rights referring to information they
8 should be aware of in connection with the County's
9 attempted acquisition of the water right?

10 A Yes.

11 Q And then also you've seen a letter from Barbara Spazek
12 who at this time is the Executive Director of the Russian
13 River Flood Control District indicating a protest of some
14 sort?

15 A Yes.

16 Q And what is Lee Howard's -- is Lee Howard affiliated
17 with any organizations?

18 A I believe he's currently President of the Mendocino
19 Russian River Flood District.

20 Q Has he been a member of the Flood Control District
21 through much of the last decade?

22 A Yes.

23 Q Now, when the agreement was signed with Masonite in
24 June 2006, had Millview made any efforts to proceed with
25 environmental review?

1 A We contacted Leonard Charles and Associates who was
2 currently doing the environmental review for the Ukiah
3 Valley Area Plan.

4 Q And the area plan was basically a specific plan
5 specifically for the Ukiah Valley?

6 A Yes.

7 Q Of which, of course, all of Millview is located in?

8 A Yes.

9 Q And did it ever reach the contract stage with Leonard
10 Charles in terms of proceeding with environmental review?

11 A We did have a proposed contract, but we did not follow
12 through.

13 Q Why is that?

14 A Basically, because we received notice of potential
15 revocation of the license and received -- of the
16 revocation of the license and we didn't want to proceed.

17 Q Did Leonard Charles ever offer any opinions to you as
18 to the possibility of proceeding with environmental review
19 before the Ukiah Valley Area Plan was completed?

20 A He didn't feel it was possible while they were doing
21 the Ukiah Valley Area Plan. He felt it would be
22 appropriate to complete afterwards.

23 Q And was one of the reasons why Millview contacted
24 Leonard Charles is because he was familiar with that Area
25 Plan process?

1 A Yes.

2 Q And was the Area Plan eventually resolved?

3 A I believe it was September of 2011 it was finally
4 completed.

5 Q And of course, the Notice of Revocation had already
6 issued by that time?

7 A Yes.

8 Q Could you tell us what the yearly budget of Millview
9 is?

10 A It's approximately a-million-50,000 a year.

11 Q And was there any estimate of how much that
12 environmental process was going to cost?

13 A Somewhere between \$500,000 and a million.

14 MR. NEARY: That's all I have. I would move
15 exhibits all of our exhibits into evidence.

16 CHAIRPERSON MARCUS: So moved.

17 I was going to ask her first if she had any
18 questions

19 MR. LILY: I just want to ask you your process on
20 ruling on moving the exhibits into evidence, because I do
21 have objections to those. Normally, we wait until all the
22 questions are done before we handle exhibits, but I just
23 want to state my objections at some point before you rule
24 on whether the exhibits are admitted into the record.

25 CHAIRPERSON MARCUS: All right. I will take it

1 back. And we'll talk about it at the end of the dialogue.

2 A question. Just a question in this process. If
3 there are letters in the record that talk about a warning
4 to Masonite that their lack of water use was potentially
5 an issue, is there a reason why you didn't nudge the folks
6 at the Water Board to try to ring a bell on that?

7 THE WITNESS: Honestly, I don't recall seeing a
8 letter that those documents were presented to us. We did
9 see the water usage. We did not --

10 CHAIRPERSON MARCUS: So you didn't have somebody
11 go look at the file of the Water Board on the water right?

12 THE WITNESS: I believe Mr. Hanson or Jane
13 Goldsmith may have looked at those.

14 VICE CHAIRPERSON SPIVY-WEBER: So since 2001, is
15 it, that you had -- the Department of Public Health has
16 had a moratorium on -- is that on additional connections?

17 THE WITNESS: Yes.

18 VICE CHAIRPERSON SPIVY-WEBER: In your area?

19 THE WITNESS: Yes.

20 VICE CHAIRPERSON SPIVY-WEBER: So have you done
21 anything in terms of conservation measures, programs, with
22 people who are living in your service area to reduce the
23 amount of water that's being used?

24 THE WITNESS: We have done some summertime water
25 reservation efforts, and we've actually decreased our

1 usage by 15 percent.

2 VICE CHAIRPERSON SPIVY-WEBER: So do you actually
3 have water now where the existing connections -- not the
4 new connections, but the existing connections for your
5 service area in the summer?

6 THE WITNESS: Yes. We do have a couple of water
7 right permits and a limited contract with the Flood
8 Control District. Unfortunately, the Department of Health
9 does not recognize a contract with a Flood Control
10 District as a reliable source of supply, which keeps us in
11 the moratorium.

12 VICE CHAIRPERSON SPIVY-WEBER: And if you were
13 able to get the additional water and could get out of the
14 moratorium, what is that then triggered?

15 THE WITNESS: I'm sorry?

16 VICE CHAIRPERSON SPIVY-WEBER: Well, are you
17 going -- do you have plans for expansion or additional use
18 of water? I assume you can't be too much more than that
19 because you have the moratorium.

20 THE WITNESS: We do have on file application for
21 approximately 300 applications for service. I sincerely
22 doubt that should we get out of the moratorium that all
23 300 would come running in for service connections. But we
24 do have a need for it.

25 VICE CHAIRPERSON SPIVY-WEBER: Thank you.

1 CHAIRPERSON MARCUS: Let's go ahead and go to
2 cross. Mr. Jacobsen.

3 CROSS-EXAMINATION

4 BY MR. JACOBSEN:

5 Q Good afternoon, Mr. Bradley. Nathan Jacobsen for the
6 prosecution team Division of Water Rights.

7 I just have a few clarifying questions regarding
8 your testimony and your written testimony submitted. So
9 on page 2 of your written testimony, paragraph four, you
10 state that -- waiting for them to pull it up here.
11 Paragraph beginning with "Masonite represents to Millview
12 without warrantee." So when you were the General Manager
13 of Millview Water District in November 2000, as you
14 earlier stated, and you were investigating purchase of
15 this right, this information was available to you that in
16 2001 approximately 549 acre feet of water had been used at
17 the Masonite plant; is that correct?

18 A Yes.

19 Q And was that, to your understanding, far below the
20 face value of the license?

21 A Yes. As we understood it, the face value it was 4200
22 acre feet.

23 Q Now, going to page 4 of your testimony, you stated at
24 the top of page 4 after the application was filed with the
25 State Water Resources Control Board Millview had no

1 control over the administrative process of the State Water
2 Resources Control Board and approving the transfer. So I
3 mean, as General Manager of Millview Water District, was
4 it your understanding that Millview -- and I believe you
5 testified earlier to the effect that you were in
6 negotiations for environmental documentation to be
7 produced for the requested change.

8 A Yes.

9 Q So would that be the responsibility of Millview for
10 the State Water Resources Control Board?

11 A I think we had requested a meeting with State Water
12 Resources Control Board or staff to get an understanding
13 of what they felt would be required in the environmental
14 documents.

15 Q And was that request made to the Board prior to the
16 clarification from Mr. Hanson in August 2007?

17 A Yes.

18 Q Okay. So is it fair to say that in 2006 the project
19 that you had proposed to the State Water Resources Control
20 Board is different than the project you presented in 2007?

21 A I don't think substantially different. I think what
22 we were trying to -- when the attorney Goldsmith filed the
23 original paperwork, it was for a long-term transfer. And
24 as I understand, it was just a mix-up in a form.

25 Q Okay. And finally just going to the paragraph on the

1 same page that begins with, "In August 2007," the last
2 sentence in that paragraph states, "however, Millview
3 cannot exercise any enjoyment of the license until the
4 State Water Resources Control Board favorably acts upon a
5 petition." So is that statement an affirmation that you
6 could not use any water under the license and had not used
7 any water under the license?

8 A We have not used any water under the license since it
9 was transferred to Millview, and we reported no usage on
10 the last licensing reporting for 2009 to 2011.

11 MR. JACOBSEN: No further questions.

12 CHAIRPERSON MARCUS: Mr. Lilly.

13 CROSS-EXAMINATION

14 BY MR. LILLY:

15 Q Good afternoon, Mr. Bradley. I'm Alan Lilly, attorney
16 for Sonoma County Water Agency. And I have a couple of
17 questions regarding your written testimony. Do you have a
18 copy of that in front have you?

19 A No, I don't.

20 Q Okay. We'll put it up on the Board, but I have an
21 extra copy as well. Could you turn to page 2 of that
22 written testimony and it's -- for the record, this is
23 Exhibit Millview 13. And in the just near the top of the
24 page in the third line, there is a sentence begins about
25 the middle of the line there it says, "Therefore, Sonoma

1 County has been active and is expected to be active in the
2 future in suppressing the exercise of water rights in
3 Mendocino County." Do you see that sentence?

4 A Yes, I do.

5 Q And when you say Sonoma County, are you actually
6 referring to the Sonoma County Water Agency?

7 A Yes.

8 Q Okay. And what actions do you contend that the Sonoma
9 County Water Agency has been taking to suppress the
10 exercise of water rights in Mendocino County?

11 A Their participation in the lawsuits against Millview
12 and the State Water Resources Control Board.

13 Q Okay. That's the --

14 A 1914 right.

15 Q Excuse me. That's regarding the pre-14 right that
16 Millview claims?

17 A Yes.

18 Q And in fact, there is -- the State Water Board issued
19 a cease and desist order regarding that right in 2011?

20 A That's correct.

21 Q And isn't it correct that the order largely agrees
22 with the position that the Sonoma County Water Agency has
23 taken in that matter?

24 A I don't know.

25 Q Okay. Are there any other actions that you contend

1 that the Sonoma County Water Agency has taken to suppress
2 water rights in Mendocino County?

3 A No.

4 Q Okay. And then if you can just go down to the next
5 paragraph on page 2 of your written testimony, the first
6 sentence refers to that, "In 2001, the Department of
7 Health issued a Compliance Order to Millview numbered
8 020301CO-002." Do you see that sentence?

9 A Yes. That's correct.

10 Q And I'll give you a copy of exhibit Millview 1. Is
11 that, in fact, the order that you're talking about?

12 A Yes, it is.

13 Q Okay. And then if you can just flip in your written
14 testimony in exhibit Millview 13 to page 4 -- you have
15 page 4 in front of you?

16 A Yes.

17 Q And just right above the middle of the page there is a
18 paragraph that begins, "instead of processing the Millview
19 petition." And then if you can go down four lines there
20 is a sentence that starts, "The Mendocino district has not
21 only refused to contract with Millview for any of the
22 Mendocino County water right in a manner which would
23 satisfy the Department of Public Health, its Board
24 President actively solicited the imposition of a
25 moratorium on Millview on the basis, among others, that

1 the Mendocino District water right had been fully
2 utilized." Do you see that sentence?

3 A Yes, I do.

4 Q Okay. So when you're referring to, "in a manner that
5 would satisfy the Department of Public Health," do you
6 mean in a manner that would basically address the issues
7 in that 2001 Compliance Order that's exhibit Millview 1?

8 A Yes. As a reliable source capacity.

9 Q Okay. And I think your written testimony states that
10 this Order found Millview had an insufficient source
11 capacity to service its customers in a predictable
12 drought; is that correct?

13 A Yes.

14 Q When you refer to insufficient source capacity, do you
15 mean insufficient physical facilities or insufficient
16 water rights?

17 A Water rights.

18 Q Okay. And could you just look through exhibit
19 Millview 1, the Order, and see whether it talks about
20 water rights? Because I read it over and I found all it
21 talked about was physical facilities and not water rights.

22 A It says --

23 Q Maybe you can tell us what page you're on so you can
24 put it up on the screen.

25 A I don't know what page it's on. It does refer to

1 source capacity. And in a subsequent letter from Millview
2 to the Department of Health Services requesting additional
3 service connection after we completed all the
4 deficiencies -- or corrected all the deficiencies
5 identified the district received the letter back stating
6 that while they appreciated all our efforts, correcting
7 all the deficiencies, we still lack reliable source
8 capacity.

9 Q And is that subsequent letter in the exhibits Millview
10 has submitted to the State Water Board?

11 A It's not.

12 Q If you can go onto your written testimony back on
13 page 2, and about the middle of the page, it says -- this
14 is in that middle paragraph, there is a sentence that
15 begins "The demolition process began in 2007. It is my
16 understanding that Masonite utilized its water rights
17 minimally for the basic domestic needs at the plant after
18 plant closure and more substantially throughout the
19 removal period during 2002 and even more substantially
20 during the demolition process which required water for
21 dust suppression and high pressure saturation with fire
22 hoses for asbestos removal." Do you see that sentence
23 there?

24 A Yes.

25 Q And my question is: Do you know or do you have any

1 idea how much water Masonite used in 2002 for those
2 purposes?

3 A I don't. I do know that in 2006 they had a failure
4 with the pump or a generator that they were using to pump
5 water with, and Millview did supply them for three days
6 with water.

7 Q From Millview's system?

8 A Yes.

9 Q So again then you don't know how much water Masonite
10 used from its own water system?

11 A No, I don't.

12 MR. LILY: Thank you. I don't have any further
13 questions.

14 MR. MONA: Good afternoon, Mr. Bradley. I'm
15 Ernie Mona. Mr. Bradley, when did the district begin to
16 enter into contractual agreements with the Flood Control
17 District for water during the summertime when the water
18 right license and permits constrain your diversion from
19 the Russian River?

20 THE WITNESS: In 2000 -- I believe in 2001.

21 MR. MONA: Has the district been able to enter
22 into such agreement every year?

23 THE WITNESS: We have an expired contract for
24 9700 acre feet. We've been waiting a new contract for
25 about three years.

1 MR. MONA: Well, the initial 2001 contract, is
2 that an annual contract that you have to renew every year
3 or something that takes you through a period?

4 THE WITNESS: It was supposed to be good for five
5 years. And they expired in I believe 2010. And we're
6 waiting for a new contract.

7 MR. MONA: So then the district's whole purpose
8 for submitting the change petition to get allow you to
9 divert water and the license is to simply have an
10 alternative water right, other than having to rely on this
11 water supply contract with the Mendocino flood control; is
12 that correct?

13 THE WITNESS: That's correct. And to meet this
14 source water reliability required by the Department of
15 Health.

16 MR. MONA: You're now entered into negotiations
17 for another contract to take you over the next five years?

18 THE WITNESS: We haven't seen a contract yet.
19 Apparently, they're still drawing one up or --

20 MR. MONA: But they are drawing one up and you
21 are pursuing the enter into an agreement with them; is
22 that correct?

23 THE WITNESS: Yes.

24 MR. MONA: If you did not get this water right
25 offer under this license, what would happen? Would you be

1 out of water or what?

2 THE WITNESS: We'd probably still remain under a
3 moratorium.

4 MR. MONA: But you would have sufficient water
5 available to satisfy your current connection in the
6 moratorium?

7 THE WITNESS: Yes.

8 MR. MONA: Thank you.

9 CHAIRPERSON MARCUS: Thank you very much.

10 MR. NEARY: May I ask a few follow-up questions?

11 CHAIRPERSON MARCUS: Yeah. Of course. Sorry.

12 REDIRECT EXAMINATION

13 BY MR. NEARY:

14 Q There's been several questions about the Russian River
15 supply contract. Has Millview, along with other water
16 districts, sought to obtain recognition by the Flood
17 Control District that there is a necessity for a
18 reliability factor that has never been present in the
19 Russian River supply contracts?

20 A Yes. It's been brought up a number of occasions.

21 Q And has there been times where Millview has had to
22 make a substantial setback under the direction of the
23 Flood Control District?

24 A Yes.

25 Q And, in fact, in the year 2009, how much of the

1 summertime use had to be cut back?

2 A It was a 50 percent reduction.

3 Q Did Millview achieve a 50 percent reduction?

4 A About 47 percent.

5 Q So it's -- during the summer of 2009, water use was
6 cut back in the Millview district by 49 percent because of
7 an order from the Russian River Flood Control District as
8 authorized by its contract?

9 A Yes.

10 Q And what impact did that water cut back in 2009 have
11 upon the Millview district?

12 A It was painful. Substantial loss of revenue. Just an
13 increase of workload trying to enforce that conservation
14 rules.

15 Q Were there any green lawns left at the end of the
16 summer?

17 A No.

18 Q The Compliance Order from the Division of Water Rights
19 does not require a source capacity for a normal year. It
20 requires a source capacity -- dependable source capacity
21 for the worst case scenario; is that right?

22 A Yes. From the Department of Health.

23 Q And that's defined as a two-year drought. I think
24 they use the 1991/1992 drought as the basis for
25 determining the level of supply that's necessary. So that

1 would be available in the face of a drought of that
2 magnitude?

3 A I believe so, yes.

4 Q So even though Millview might have sufficient water,
5 if there was a contract with the Flood Control District as
6 of now, the Division of Public -- Department of Health
7 does not recognize the Flood Control District as being of
8 sufficient reliability?

9 MR. LILY: I'm going to object. I mean, this
10 really this calls for hearsay and speculation as to what a
11 Department of Public Health might order in the future
12 under water supply conditions we don't know. And
13 particularly under a future -- he already testified he's
14 in negotiations with a Flood Control District for a new
15 contract and we don't know the terms of it. So calls for
16 hearsay and speculation; as far as hearsay as to what
17 Department of Public Health said in the past and
18 speculation as to what Department of Public Health might
19 order in the future.

20 CHAIRPERSON MARCUS: All right.

21 MR. NEARY: Just a comment on that. I think as a
22 General Manager is certainly entitled to testify as to
23 direct positions taken by the Department Health with him
24 in his capacity as General Manager. Of course, it's
25 hearsay. But we can't offer that for the proof of the

1 matter asserted. But certainly when it comes to why we're
2 here and as motivation of the district to be here
3 attempting to secure an additional water supply, it's
4 certainly evidence that it supports that, corroborates
5 that. That's what it's being offered for.

6 That's all I have.

7 CHAIRPERSON MARCUS: Anything else? Recross?
8 Are we all right?

9 MR. LILY: I don't have any further questions of
10 this witness.

11 CHAIRPERSON MARCUS: Okay.

12 VICE CHAIRPERSON SPIVY-WEBER: I do have one.
13 There was one reason that you were unable to get someone
14 to work on the CEQA document is because they were engaged
15 in a report for the Ukiah Valley. Did that have to do
16 with making an assessment of water availability for the
17 valley?

18 THE WITNESS: Yes. There was a water assessment
19 done for all agencies within the valley, yes.

20 VICE CHAIRPERSON SPIVY-WEBER: Is there a water
21 master in the valley?

22 THE WITNESS: No. Mendocino County Water Agency
23 did a water assessment for this planning document.

24 VICE CHAIRPERSON SPIVY-WEBER: Thank you.

25 SENIOR STAFF COUNSEL OLSON: Mr. Bradley,

1 Samantha Olson, Staff Counsel.

2 There was testimony regarding an industrial park
3 starting up where Masonite used to be. My question is:
4 Would Millview supply the water? And if not, some of
5 these companies, do you know where they're getting their
6 water from?

7 THE WITNESS: Currently, they aren't being
8 supplied. Millview will supply the factory pipe project.
9 There is an additional proposed industrial park that
10 Millview would like to serve. I think they might be able
11 to get Flood Control District water, and we could supply
12 that way maybe.

13 SENIOR STAFF COUNSEL OLSON: You may or may not
14 know this, but do you know by chance whether the
15 groundwater well on the site is functional and produces
16 water? Would that be different in -- would that be a
17 different source?

18 THE WITNESS: Honestly, I believe it's all
19 underflow.

20 SENIOR STAFF COUNSEL OLSON: Thank you.

21 CHAIRPERSON MARCUS: I have one more question.
22 Is there anything other than the filing of the petition --
23 the improper form of the petition for long-term use that
24 you feel you did to try to deal with the clock?

25 THE WITNESS: Sorry?

1 CHAIRPERSON MARCUS: The clock was ticking on the
2 water usage. Was there anything other than that letter
3 that was filed or the petition for long term -- the
4 license change that you were relying on?

5 THE WITNESS: No.

6 CHAIRPERSON MARCUS: Okay. Thank you very much.

7 MR. NEARY: Could I ask one additional question
8 as a follow up?

9 CHAIRPERSON MARCUS: Sure.

10 BY MR. NEARY:

11 Q Mr. Bradley when you were referring to the well, you
12 were referring to well 6?

13 A Yes.

14 Q And what's the basis of your opinion that it's
15 underflow?

16 A We had an engineering stake and it came back they felt
17 it was underflow or a combination of underflow and some
18 groundwater.

19 Q Did you also review an engineer report prepared by
20 County of Mendocino?

21 A Yes.

22 Q What did it conclude?

23 A That there was, in fact, underflow.

24 Q Thank you.

25 CHAIRPERSON MARCUS: Thank you very much.

1 Mr. Lilly, you're up.

2 MR. LILY: Mr. Neary previously offered
3 Millview's exhibits into the record, and I have some
4 objections to some that I'd like to state. I think now is
5 the time.

6 CHAIRPERSON MARCUS: Okay.

7 MR. LILY: Is now the time?

8 CHAIRPERSON MARCUS: Yep. Now is the time.

9 MR. LILY: Thank you.

10 The testimony -- the written testimony of Mr.
11 Bradley, which is exhibit Millview 13 on page 3 beginning
12 at line three, there is a sentence about what Millview's
13 Counsel Jane Goldsmith allegedly reported to Mr. Bradley
14 about what Sonoma County Water Agency had informally
15 indicated as a preliminary matter regarding what it might
16 or might not do if Millview was going to take over this
17 water right license. And I object to that statement.

18 It's clearly is hearsay. It's clearly a
19 statement that Mr. Bradley is making by some other witness
20 who is not here to testify. Under Government Code Section
21 11513 Subdivision D, which is the rule regarding hearsay
22 that's stated in the State Board's notice for this
23 hearing, hearsay evidence may be used to supplement or
24 explain other evidence, but other timely objection shall
25 not be sufficient in itself to support a finding unless it

1 would be admissible over objection in civil actions. I
2 hear there's no other evidence in this proceeding that the
3 statement is explaining or supplementing and it would not
4 be admissible in court. So therefore, I object to this
5 sentence being admitted into evidence for any purpose in
6 this proceeding.

7 CHAIRPERSON MARCUS: Well, I believe we can take
8 it in and just adjust the weight we give it based upon
9 that.

10 MR. LILY: That's obviously the Hearing Officer's
11 decision. But we do under the Government Code -- we have
12 to state our objection and we have stated it.

13 CHAIRPERSON MARCUS: Okay.

14 MR. LILY: I will leave it to the Hearing Officer
15 and Board to decide how they handle that.

16 CHAIRPERSON MARCUS: Yeah.

17 MR. LILY: I also object to exhibits Millview 10
18 and 11. These are -- Exhibit 10 is a copy of a newspaper
19 article about what Sonoma County Water Agency allegedly
20 said back in 2002.

21 And exhibit Millview 11 is a copy of various
22 other articles regarding what other people may have said
23 in 2002 regarding the Masonite water right.

24 And I object on the grounds that clearly there
25 are hearsay and would not be admissible. But also it's

1 not clear what purpose these are being admitted for in
2 this proceeding. I guess if the purpose is to document
3 that Millview was on notice even back in 2002 before it
4 bought this water right that there are uncertainties
5 regarding whether or not the water right could be changed
6 to serve Millview's service area, then I don't object to
7 it. But I don't see any other purpose for these exhibits
8 coming into evidence.

9 CHAIRPERSON MARCUS: Mr. Neary, you want to
10 explain your thinking?

11 MR. NEARY: Just briefly. I'm going to get the
12 numbers mixed up, but the first batch of articles
13 testified by Mr. Bradley as documents in his file that
14 represented his following the Mendocino County process and
15 to support the statements that following the conclusion of
16 that process when the County backed out that Millview
17 stepped in, the next document is a business record.

18 CHAIRPERSON MARCUS: Can I just ask you a
19 question? Is that just to make a point about why you
20 didn't step into earlier? Is that what the point is?

21 MR. NEARY: That's not only for that reason, but
22 how Millview followed this process because he did testify
23 that it was a secretive process that the county did not
24 operate in open session on in with the exception of these
25 occasions.

1 And certainly that he also testified that Sonoma
2 County Water Agency has been very active in commenting
3 upon any attempted use of water in Mendocino County. And
4 certainly in 2002 Sonoma County Water Agency had a whole
5 different approach to why the County should not buy these
6 rights. And it supports its statement that Mr. Lilly
7 questioned him about as to the basis for his understanding
8 that Sonoma County Water Agency is expected to, in the
9 future, act as it has in the past to actively suppress the
10 exercise of water rights in Mendocino County.

11 CHAIRPERSON MARCUS: You tell me what's the
12 relevance of them exercising their rights just as you're
13 exercising your rights to come before us or anyone else?

14 MR. NEARY: It's perfect --

15 CHAIRPERSON MARCUS: I understand --

16 MR. NEARY: It's perfectly legitimate for Sonoma
17 County Water Agency to do so. But Mr. Bradley did testify
18 and was questioned on it as to why he thought that Sonoma
19 County Water Agency could be expected to be there to
20 address the exercise of water rights in Mendocino County.

21 CHAIRPERSON MARCUS: How about exhibit -- does
22 that clarify Exhibit 13 that was the issue about what
23 Ms. GoldSmith said to Mr. Bradley?

24 MR. NEARY: I think that that is hearsay and a
25 finding could not be based on that Sonoma County Water

1 Agency agrees to that amount of water. Obviously, they
2 don't. They're here.

3 But it does support Mr. Bradley and district's
4 understanding that they would be successful in obtaining
5 Division approval eventually of about 1100, 1200 acre feet
6 of water, particularly if Sonoma County Water Agency did
7 not bring all of its resources to bear to try to interfere
8 with it.

9 And so the testimony was that when we went into
10 this process with Masonite, we understood that we would be
11 successful in eventually getting about 1200 acre feet -- a
12 little bit less than 1200 acre feet recognized by the
13 Division as not having been forfeited.

14 CHAIRPERSON MARCUS: So you're submitting it just
15 to support what you thought your client's realistic
16 expectation might have been at the time?

17 MR. NEARY: Right. It's being offered to
18 corroborate the testimony of Mr. Bradley. And it is
19 hearsay. But it's certainly permissible to corroborate
20 testimony with hearsay. It's just as Mr. Lilly pointed
21 out, you just cannot base a finding on it.

22 CHAIRPERSON MARCUS: Mr. Lilly.

23 MR. LILLY: This statement doesn't corroborate
24 anything Mr. Bradley has said in his written testimony or
25 today. He said nothing about what he thought or how he

1 thought Sonoma might react to a change petition. And
2 certainly, he never said anything about how much water he
3 thought they might get under a change petition of this
4 water right license. So this is hearsay. This is exactly
5 why the rule is there.

6 If they wanted to call Ms. Goldsmith to testify
7 as to what she allegedly heard from somebody, some unknown
8 person at Sonoma County Water Agency, then we could
9 cross-examine her and find out what really was said and
10 what was not said.

11 But the problem is with this statement coming in
12 and he's basically offering for the truth of the matter
13 asserted, it might be okay if he wanted to limit it just
14 to what Millview was on notice of. But he's trying to go
15 way beyond that and basically use this to say that Sonoma
16 County Water Agency had represented that it would take a
17 certain position in a future water right proceeding and
18 it's just not appropriate for that reason.

19 CHAIRPERSON MARCUS: All right. We'll take that
20 in and discuss it when we get to that point. Thanks.

21 MR. LILY: I just had one more.

22 CHAIRPERSON MARCUS: I think I have that in my
23 head, but hopefully someone wrote it down.

24 MR. LILY: And the last one I object to exhibit
25 Millview 12. This was a Mendocino County Flood Control

1 District protest to the Millview change petition. I guess
2 they filed a protest letter, even though the change
3 petition has not been noticed by the State Water Resources
4 Control Board. I just don't know what the relevance. I
5 object on the relevance this is not relevant to the
6 present proceeding. Whether or not the Flood Control
7 District has protested or will oppose a change petition in
8 the future really has nothing to do with whether or not
9 this Board should revoke the Masonite/Millview water right
10 license.

11 CHAIRPERSON MARCUS: Thanks. We'll take that
12 under submission, as well as Mr. Lilly.

13 Someone is keeping track. All right.

14 MR. JACOBSEN: Chair Marcus, just one point I'd
15 like to make on that last exhibit. That would be 12.
16 When I look at the subject line there, the application and
17 license and application and permit numbers referenced do
18 not pertain to --

19 CHAIRPERSON MARCUS: The other one.

20 MR. JACOBSEN: -- 5763, which is the subject of
21 this hearing.

22 CHAIRPERSON MARCUS: Thank you. You're right.
23 We'll rule on all those.

24 MR. LILY: Just for the record, I appreciate Mr.
25 Jacobsen's correction, and that makes this exhibit even

1 less relevant.

2 CHAIRPERSON MARCUS: All right. So Ms. Olson,
3 how should I accept the exhibits, subject to us ruling on
4 the objection? Got it.

5 Now Mr. Lilly, you're up for your opening and
6 direct and we'll move to cross-examination. And then so
7 you know, when you're done with this, I want to take a
8 15-minute break for the court reporter to flex her
9 fingers, for people to take a post-lunch bio break, and
10 then we'll come back for rebuttal, so you plan mentally
11 where we're going.

12 MR. LILLY: Okay. Well, first of all, I
13 appreciate all your continuing attention as the day wears
14 on. As you know, I'm Alan Lilly. I represent the Sonoma
15 County Water Agency. We're here for this proceeding under
16 water Code Section 1675. And the key word it says when a
17 licensee is not putting water under the license to
18 beneficial use, the State Board may revoke the license.
19 And Water Code Section 1241 also uses the word "may" when
20 it's saying unused water may revert to the public. So by
21 using the word "may," the statutes obviously gives the
22 State Water Board very broad discretion to decide what to
23 do. And there are no specific standards that are spelled
24 out in the statute for what the Water Board is supposed to
25 apply a ruling in a proceeding like that.

1 So that, in turn, means that the evidence that
2 can be relevant may be broader than it would be if the
3 statute had specified exact standards.

4 And there are two very relevant factors that we
5 are going to offer evidence on today. And that is the
6 amounts of water that are available in the Russian River
7 for all beneficial use and the impacts that would occur to
8 availability and other beneficial uses if License 5763 is
9 not revoked and Millview is allowed to start diverting
10 water under the license.

11 We've submitted the written testimony and
12 exhibits from Pamela Jeane, who is Sonoma County Water
13 Agency Assistant General Manager for water and wastewater
14 operations, and she will summarize her written testimony
15 today.

16 Basically, she's going to go into more detail.
17 Sonoma County Water Agency operates the water supply
18 storage component of Lake Mendocino, also Lake Sonoma, but
19 Lake Mendocino is the reservoir that controls flows in the
20 upper Russian River. And Sonoma's water right permits
21 contain terms that require Sonoma to maintain specified
22 minimum instream flows throughout the entire upper Russian
23 River all the way down to Healdsburg, which is well over
24 50 miles from Lake Mendocino.

25 And this Board is very familiar with the problems

1 that can happen when Lake Mendocino storage drops to low
2 levels as it did in 2002, 2004, unfortunately a lot in
3 2007, 2008, 2009, and where it's headed to this year. In
4 several of these years, Sonoma County Water Agency had to
5 file temporary urgency change petitions with this Board to
6 ask the Board to temporarily reduce the minimum instream
7 flow requirements basically to prevent Lake Mendocino from
8 going to dangerously low levels or drying up. If it were
9 to dry up, of course, there would be no water level to
10 maintain instream flows, and there would be significant
11 impact on the fisheries in the river.

12 Because of this, because Sonoma has to maintain
13 these instream flow requirements throughout this entire
14 reach of the upper Russian River, any additional
15 diversion -- once Sonoma's control and release leads to a
16 corresponding reduction in the amount of water left in
17 storage. So later in the year, that's when these impacts
18 can happen.

19 So the evidence we've heard today also shows that
20 essentially no water has been diverted under this license
21 for the last twelve years when all these problems with low
22 flows have been occurring. So obviously there had been --
23 under this license, that would have just increased or
24 exacerbated these problems.

25 So that's why we're here. We're here to protect

1 and try to protect the water supplies that Sonoma uses to
2 maintain these instream flows and to avoid future impacts.
3 And that's why we're asking that the State Board proceed
4 at the end of this proceeding to revoke the license.

5 So with that, I will call Pamela Jeane, who is
6 our only witness today.

7 DIRECT EXAMINATION

8 BY MR. LILY:

9 Q So Ms. Jeane, please state your name and spell your
10 last name for the record.

11 A My name is Pamela Jeane. Last name is spelled
12 J-e-a-n-e.

13 Q And have you taken the oath today for this hearing?

14 A I have.

15 Q And you have a copy of exhibit SCWA-1 in front of you?

16 A I do.

17 Q Is that an accurate statement of your written
18 testimony for today's hearing?

19 A Yes, it is.

20 Q And do you have exhibit SCWA-2 in front of you?

21 A Yes, I do.

22 Q Is that an accurate statement of your education and
23 work experience?

24 A Yes, it is.

25 Q And who do you work for now?

1 A I work for the Sonoma County Water Agency.

2 Q How long have you worked for the Sonoma County Water
3 Agency?

4 A I've worked for the agency for over 20 years. And in
5 my current position since 2000.

6 Q And what is your current position?

7 A I'm currently in charge of operations at the agency.
8 My actual job title is Assistant General Manager of Water
9 and Wastewater Operations.

10 Q And just briefly summarize what your responsibilities
11 are in that position.

12 A So I'm responsible for all of our operations,
13 including our river operations, our water supply system
14 operations, which is a very large water wholesale
15 transmission system, as well as multiple wastewater
16 treatment plants that we operate and various other things
17 that go along with that.

18 Q All right. Well I'll ask the State Board staff to put
19 exhibit SCWA-3 up on the screen. And then if you can -- I
20 won't try to ask question by question. But if you can
21 briefly summarize your testimony and refer to exhibit
22 SCWA-3 and as necessary let them know when you want to
23 refer to exhibit SCWA-4.

24 A Sure. So what this depicts, this map as well as the
25 data that you see on the map, is the Russian River system

1 starting up in the Lake County and Mendocino County area
2 all the way down to the estuary in Jenner. It depicts the
3 system, both reservoirs and power system, as well as Lake
4 Pillsbury, which is in Eel River system. This was
5 referred to in an earlier testimony that there is a
6 diversion from the Eel River to the Russian River and
7 specifically into the east fork of the Russian River,
8 which drains into Lake Mendocino.

9 That particular diversion, which is done for
10 hydroelectric generation purposes by Pacific Gas and
11 Electric Company did change very significantly in about
12 2004. I believe Ms. Mrowka spoke about the reduction in
13 diversion from the Eel River, and that's about the time
14 you have that reduction.

15 Both Lake Mendocino and Lake Sonoma are jointly
16 operated facilities between both the Sonoma County Water
17 Agency and the US Army Corps of Engineers. The Corps of
18 Engineers' interest in those lakes is for flood control
19 purposes as well as recreational purposes. The Sonoma
20 County Water Agency's interested as well as Mendocino
21 County Flood Control interests in Lake Mendocino for the
22 water supply. We do hold water rights to store and then
23 release and re-divert water out of both Lake Mendocino and
24 Lake Sonoma.

25 And as Mr. Lilly said a little earlier, we are

1 required by our water rights to maintain instream flows in
2 different reaches of the river as well as in Dry Creek,
3 which is downstream of Lake Sonoma. The numbers that you
4 see on this map are essentially those minimum stream flow
5 requirements. The criteria that we use to determine which
6 requirements we're trying to comply with are in the box in
7 the upper right-hand corner of this exhibit.

8 So you can see we're either in a normal dry or
9 critical type year.

10 Q Just to clarify, upper left hand?

11 A Did I say right? Upper left. I apologize.

12 So we determine the year type and then the
13 minimum flows are set. There's three reaches that we must
14 meet minimum stream requirements. One of the reaches we
15 refer to is the Upper River is from Lake Mendocino down to
16 Healdsburg, the confluence of Dry Creek is another reach,
17 is in Dry Creek itself. And the third reach is downstream
18 of the confluence at Dry Creek and the main stem of the
19 Russian River out to the estuary out to the ocean
20 essentially at Jenner.

21 So there's -- we have to maintain minimum stream
22 flows according to our water rights permits and decision
23 1610 which was adopted by this Board in 1986 for the
24 entire reach, not just at a specific point, but the point
25 that we actually have to maintain that flow actually

1 fluctuates during the year.

2 So we are watching the stream gauges at various
3 locations all the time. We have an operator that works
4 24 hours a day, and we make adjustments to stream flows,
5 if necessary, on a daily basis, especially in the
6 summertime when the vast majority of the flow in both the
7 river and Dry Creek is really coming from those reservoirs
8 and is being augmented by water released out of those
9 reservoirs once the tributaries have dried up.

10 Q Okay. And I don't know whether you're going to do it
11 now or later. Why don't you just summarize and go on to
12 page three of your testimony and you can summarize the
13 potential impacts of new diversions under water right
14 License 5763.

15 A Okay. So one of the issues that we face is this issue
16 of maintaining minimum stream flows in the river. And
17 there is no -- there was a question a little earlier from
18 Vice Chair Webber about whether or not there is a water
19 master. There is no water master in the Russian River
20 basin. When we maintain minimum stream flows, we actually
21 operate with a little bit what we call an operational
22 buffer to make sure as people turn on and off pumps and
23 divert, don't divert, that we don't go below those minimum
24 thresholds.

25 The impact of something on the order of the

1 diversion that they're talking about, the diversion amount
2 they're talking about under this particular license is
3 something that we would notice and it would cause us to
4 change release out of the reservoirs from notice of
5 fluctuation.

6 But one of the largest issues and the things that
7 we worry about and the things that we have definitely seen
8 more of since 2004 is that we've experienced, as Mr. Lilly
9 explained, these very low lake levels and Lake Mendocino
10 towards the end of the summer in very dry years, 2002,
11 2004. There is an exhibit included in my testimony,
12 Exhibit 4.

13 Q Let's ask them to put up SCWA-4 on the screen. That
14 will help.

15 A It shows the lake storage at Lake Mendocino. And
16 specifically, what it's intended to show is how low the
17 lake got at the bend of the dry season and all of those
18 years, 2002, 2004, 2007, 2008, 2009 were actually
19 experiencing this year in particular that looks very much
20 like 2009. So for every extra bit of water that we have
21 to release out of Lake Mendocino in order to meet minimum
22 stream flow requirements and meet demand in the system,
23 that lake level will go even lower.

24 And the concern is not just for biological
25 concerns for the fish, but it's also for the people who

1 rely on water coming out of that reservoir to meet their
2 own demands. So there's users all the way from Lake
3 Mendocino down into Sonoma County up to the point where
4 Dry Creek meets the Russian River. All of those users
5 rely on summertime releases out of Lake Mendocino. And
6 the concern is that lake getting so low at the end of the
7 dry season that you actually can't even make a release out
8 of the reservoir, which is not anybody's interest. Nobody
9 wants to go there.

10 So the other concern, of course, is fish. We
11 have three listed fish in the Russian River, two of them
12 are listed as threatened under the Federal Endangered
13 Species Act. Those are both Chinook salmon and steelhead
14 trout. And we have a third species which is listed as
15 endangered both under the Federal Endangered species ACT
16 as well as the California Endangered Species Act. That's
17 coho salmon. And that salmon -- that particular species
18 is truly endangered and was on the verge of extinction
19 just a couple of years ago.

20 And the Chinook salmon specifically which are
21 listed as threatened use the Russian River as a migration
22 corridor as well as they actually spawn in the Russian
23 River in the fall. And that's the time of year that if we
24 have an issue with this lake and being able to make
25 releases out of it, it could greatly impact that run of

1 fish as they come into the system and they spawn
2 specifically in the Upper River upstream of the
3 Cloverdale, which is in that portion that is a receiving
4 water from Lake Mendocino.

5 Q And if you could just elaborate on the impacts at
6 lower water levels, are there issues with water
7 temperatures?

8 A Yeah. So Lake Mendocino is not a really large
9 reservoir. And so as the water level goes down in that
10 lake in the summertime, the temperatures get warmer and
11 warmer. And we get into that 30,000 acre foot level that
12 you can see that pink line is just below, you really start
13 to see warmer temperatures and the water releases that
14 come out of the lake. So the longer -- the more water we
15 can keep in the lake further into the season into the dry
16 season, the better the temperature is for the fish when we
17 start migrating into the stream.

18 We also experience fall comes around at that
19 time. So it helps that even if the temperature of the
20 water coming out of reservoir is not optimal, the
21 temperature is typically in the atmosphere or the
22 environments are changing at that point, which is helpful.
23 But if we have a very low storage level in that lake, we
24 will experience very high temperatures in those releases,
25 which is not good for the fish.

1 Q Does that complete your summary of your testimony?

2 A I believe so.

3 MR. LILY: I don't have any further questions for
4 this witness.

5 CHAIRPERSON MARCUS: Can we go back to the map?
6 So presumably from this map Millview is somewhere just
7 north of Ukiah, is that what --

8 THE WITNESS: Yeah. It's kind of near -- I don't
9 know exactly if I can describe it, but it's between the
10 Ukiah that you see printed on the map and lake Mendocino.

11 CHAIRPERSON MARCUS: And two things your
12 testimony talks about the 5.9 impact of 5.9 CFS
13 conversation today and evidence suggests potentially --
14 not making a judgment -- but potentially a much smaller
15 diversion being what is really the subject of the
16 revocation. I guess it all is. But sort of the bleeding
17 edge of it. Would you say the same thing about that
18 amount of water, the smaller amount of water? I heard you
19 say any.

20 THE WITNESS: I would say any. We're concerned
21 about any additional water that has to be released out of
22 Lake Mendocino, given the changes that have happened with
23 the diversions from the Eel River. And that reservoir at
24 this time has become very apparent to us in the last
25 ten years that it's not nearly as reliable as it was.

1 CHAIRPERSON MARCUS: I was going to ask how you
2 dealt with Masonite diversions 12, 13 years ago but then
3 you have a change circumstance.

4 THE WITNESS: We have a change circumstance since
5 then.

6 CHAIRPERSON MARCUS: And around -- again, you may
7 not know the answer to this question. If we look at this
8 whole stretch of river that you're talking about, about
9 how many diversions along -- around the size of what we're
10 talking about here are there?

11 THE WITNESS: Around the size of this diversion?

12 CHAIRPERSON MARCUS: Uh-huh.

13 THE WITNESS: Honestly, I don't know. I'm not
14 sure.

15 CHAIRPERSON MARCUS: Okay. Other questions?

16 SENIOR STAFF COUNSEL OLSON: I have a question.
17 My question is what, if any, evidence do you have of
18 unauthorized uses along the stretch of the river? And if
19 so, how does the agency go about handling that?

20 And I guess more to the point, I'm curious the
21 circumstances that are exacerbating the low storage,
22 whether that's the Eel River, the reduction in Eel River
23 diversion or whether there is evidence of -- suggested
24 earlier about marijuana growth and whether you have
25 experience of the percentage.

1 THE WITNESS: I don't have a sense of the
2 percentage. But I can tell you the experience that we've
3 changed in that diversion from the Eel River that
4 generally most of that water into the Upper Lake
5 Mendocino, we used to see about 160,000 acre feet a year
6 on average diverted from the Eel River into the Russian.
7 And in the last five years or so -- or even more so
8 because it's 2013, we've seen something on the order of 80
9 to 100,000 acre feet a year. So it's been a significant
10 almost -- I think that's larger than it was anticipated
11 when they were going through the relicensing process for
12 the hydroelectric facility up there that is what resulted
13 in this change. But that's what we've seen so far.

14 VICE CHAIRPERSON SPIVY-WEBER: And do you
15 coordinate with Flood Control District and the County on
16 diversions? I mean, as you're doing your operations, are
17 you in regular contact with them or constant contact with
18 them?

19 THE WITNESS: I don't know if I would call it
20 constant contact, especially in the summertime. But
21 certainly during this time of year between March 15th and
22 May 15th, there's frost protection going on. So we are in
23 almost daily contact with them in order to know what might
24 be coming and anticipated and make real uses if we think
25 we need to for frost control.

1 In the summertime, we don't have acute demand
2 like we do this time of year for frost. The farmers
3 aren't turning on their pumps at exactly the same time on
4 the same day. We don't see that acute issue we see right
5 now at this time of year.

6 And up until just a couple of years ago, the
7 Flood Control District actually didn't have the ability to
8 tell us on an instantaneous basis what was going on with
9 their diverters because they didn't have them metered in a
10 way they could tell.

11 But recently, in the last several years now, they
12 have installed meters that they can remotely monitor. And
13 it's been really actually a good thing I think both for
14 them and for us. But typically, in the summertime, we
15 don't have that issue with what I call acute demand on the
16 system.

17 CHAIRPERSON MARCUS: Again since you're asking us
18 to take this into consideration on a discretionary
19 basis -- and I apologize for not knowing the answer to
20 this. What's the seniority of your water rights? That's
21 a big question

22 THE WITNESS: Our right for Lake Mendocino and
23 two of the direct diversion permits that we have for --
24 issued in '49 -- they weren't issued in '49, but that's
25 the date on them. Lake Sonoma, of course, is much later

1 than that. But that wasn't even an issue until '86.

2 CHAIRPERSON MARCUS: Any other questions? All
3 right.

4 STAFF COUNSEL ENVIRONMENTAL SCIENTIST GROODY: My
5 name is Kathleen.

6 Did you mention that you serve municipalities
7 downstream, like Healdsburg and those municipalities?

8 THE WITNESS: We do not serve them. Our
9 diversion -- if you go down on the map and you see the
10 town there called Forestville, there is a little knob just
11 above the "s" in the word Forestville on the river. Our
12 diversions are all at that particular location. Our
13 diversions for our municipal water supply system are all
14 at that location.

15 We do, however, have agreements with multiple
16 municipalities, including the city of Healdsburg, the town
17 of Windsor and a couple of small water districts
18 downstream at our point of diversion for them to divert
19 water under our permits. But we do not serve, for
20 example, Cloverdale or others with a water supply system
21 itself.

22 STAFF COUNSEL ENVIRONMENTAL SCIENTIST GROODY:
23 Thanks.

24 CHAIRPERSON MARCUS: Time for cross-examination.

25 MR. NEARY: I have no questions.

1 CHAIRPERSON MARCUS: No questions?

2 MR. JACOBSEN: I don't have any questions.

3 CHAIRPERSON MARCUS: Okay. Thank you. Let's
4 take 15 minute break. We'll convene in eight minutes
5 until 2:00.

6 And housekeeping, the cafe closes sometime
7 between 2:00 and 2:30. So if you want coffee, now would
8 be the time.

9 (Whereupon a recess was taken.)

10 CHAIRPERSON MARCUS: Thank you very much for your
11 patience. We'll now turn to rebuttal testimony and
12 cross-examination, if any. I'll turn to you first, Mr.
13 Jacobsen. I'm assuming there will be.

14 MR. JACOBSEN: Thank you. No, we don't have any
15 rebuttal testimony.

16 CHAIRPERSON MARCUS: Mr. Neary?

17 MR. NEARY: No, we have no rebuttal testimony.

18 CHAIRPERSON MARCUS: Oh, Mr. Lilly.

19 MR. LILY: We do have some rebuttal evidence.
20 I'm going to call Ms. Jeane to the stand again. I guess I
21 could have just done this before, but I didn't know there
22 wasn't going to be any other rebuttal. I just have a
23 couple questions for her.

24 REBUTTAL

25 BY MR. LILY:

1 Q Just to remind you, Ms. Jeane, you're still under
2 oath. And do you have in front of you a copy of exhibit
3 Millview 13, the written testimony of Tim Bradley?

4 A I do.

5 Q And I'm just going to ask you to look at the last four
6 lines on page 1 and then it continues over onto page 2.
7 And the written testimony states, in essence, if Sonoma
8 County Water Agency could prevent or disrupt by whatever
9 means the exercise of water rights in Mendocino County,
10 there would be additional background flow in the Russian
11 River, thereby relieving its obligations to maintain --
12 excuse me -- to maintain flows in the Russian River by
13 reason of the Coyote Valley Project. The result is that
14 any reduction in the exercise of Mendocino County Water
15 Rights would permit Sonoma County to store additional
16 water for sale excess water pursuant to its agreements
17 with Marin County -- to Marin County excess water
18 originating in the Russian River. Do you see that
19 testimony?

20 A I do.

21 Q And I think it would be helpful if we put up exhibit
22 SCWA-3. I'm going to ask you to respond to that and
23 discuss whether or not changes in water rights in
24 Mendocino County actually would effect the amounts of
25 water that Sonoma County Water Agency could sell to water

1 districts in Marin County.

2 A Okay. So if you could scroll down to the right about
3 there. That's great. This would be true if we were
4 releasing water out of Lake Mendocino in order to meet our
5 water supply obligations.

6 By the way, we actually operate -- the Russian
7 River system is -- we release water out of Lake Mendocino
8 in order to meet the minimum stream flow requirement at
9 Healdsburg in the summertime that's the lowest flow point
10 in the upper Russian River. So we're just meeting the
11 minimum stream flow requirements at Healdsburg.

12 And then we're making releases out of Lake Sonoma
13 that flow down Dry Creek and meet up with the Russian
14 River just downstream of that last point where we're
15 doing -- meeting compliance for the Upper River. And that
16 water is what is -- really what's meeting our demand. So
17 our demand for our systems, which our system which
18 includes southern Sonoma County as well as Marin County,
19 is really being met from Lake Sonoma and releases being
20 out of Lake Sonoma, not out of Lake Mendocino.

21 Q All right. I don't have any further questions for
22 Ms. Jeane.

23 CHAIRPERSON MARCUS: At the risk of -- there were
24 a couple of questions -- I guess I thought -- we thought
25 there would be more rebuttal, so we thought there would be

1 more conversation at this point. There are a number of
2 issues that have come up that we're a little unclear on.
3 And I guess I'm trying to decide whether or not to offer
4 you a chance for closing comments after saying what the
5 questions are or just suggesting that you respond to them
6 in the briefing that will follow, which might be the best
7 way to deal with it.

8 Let me raise just there will be more questions as
9 we go through everything in the record, but let me raise
10 three points that sort of raise sort of a head scratcher a
11 little bit in terms of how the deal with.

12 One is question of when the recycled water plant
13 came on line. There was earlier testimony when Ms. Mrowka
14 was here that felt the recycled water plant came on line
15 in the '90s. But then we had testimony from Mr. Beuving
16 it actually came on line in the '70s. I don't know if
17 we're talking about different treatment plants or we're
18 talking about two different things. And so clarifying
19 that would be helpful to us.

20 MR. NEARY: Would you like me to take a stab at
21 that?

22 CHAIRPERSON MARCUS: Just --

23 MR. NEARY: Do you want us to do it in our
24 briefs? I would be happy to do it either way.

25 CHAIRPERSON MARCUS: I'm kind of dying to know if

1 you can clarify it.

2 MR. NEARY: Sure. I believe that Ms. Beuving was
3 talking about the first time that a credit was claimed.

4 CHAIRPERSON MARCUS: Right.

5 MR. NEARY: On the statements of use was in 1996.
6 I think Mr. Beuving was testifying to the fact that
7 actually they have been recycling.

8 CHAIRPERSON MARCUS: For a long time. They just
9 haven't claimed it.

10 MR. NEARY: There was no other recycling plant
11 built. That was the original recycling built. That the
12 effect of reducing the amount of water that Masonite
13 actually pulled out of the river.

14 CHAIRPERSON MARCUS: Thanks. That actually does
15 make sense then.

16 And then we'll want additional briefing on a
17 couple of other issues in terms of how to think about it.
18 And you know, it may require submission of more evidence,
19 and we'll figure out what to do with it and whether we
20 need a subsequent hearing or not. But that's the role of
21 the water in well 6, the use of the water in well 6. Some
22 of the testimony suggests it might have been groundwater.
23 Other testimony suggested it was underflow. How do we
24 think about that one, right, and how will it impact our
25 determination.

1 And then the other issue to brief is how to think
2 about and how to take into account the incidental use
3 between 2002 and 2011 where we don't have any
4 quantification numbers because nothing was filed. We do
5 have Mr. Beuving's testimony that it was used during the
6 dismantling and maybe in a couple other places. We have
7 no sense of the amount. How to take that into account in
8 our decision.

9 Mr. Lilly.

10 MR. LILY: I'm sorry for jumping around a little
11 bit. But I did have some more rebuttal evidence I wanted
12 to submit.

13 CHAIRPERSON MARCUS: Oh, you did?

14 MR. LILY: I didn't want to interrupt you. You
15 had such a good train of thoughts with your questions.

16 CHAIRPERSON MARCUS: That's nice of you to say.
17 Please, go ahead.

18 MR. LILY: I have three exhibits.

19 CHAIRPERSON MARCUS: I actually thought you were
20 done.

21 MR. LILY: I'm sorry. I didn't want to
22 interrupt. I have three exhibits I'd like to offer. I
23 have copies and I'll distribute them now.

24 CHAIRPERSON MARCUS: Great. The more info, the
25 better. The record reflects that counsel was too polite.

1 Yes?

2 MR. JACOBSEN: I just wanted some clarification
3 on question two, the role of water in water use in well 6.
4 And whether that was groundwater or surface underflow.

5 CHAIRPERSON MARCUS: And if so, how. And if not,
6 why.

7 MR. JACOBSEN: Okay. Well 6 was not a licensed
8 point of diversion under 1763.

9 CHAIRPERSON MARCUS: Right.

10 MR. JACOBSEN: Never the less, we'd like the
11 additional information on --

12 CHAIRPERSON MARCUS: It may be a very short
13 answer to the question.

14 VICE CHAIRPERSON SPIVY-WEBER: If it's -- is it
15 underflow? And on the form, it said ground. And on the
16 testimony from Millview, they said it was underflow. If
17 it's underflow, it's surface water.

18 MR. JACOBSEN: Correct.

19 VICE CHAIRPERSON SPIVY-WEBER: Basically.

20 MR. LILY: So I have -- I've given staff copies
21 of three exhibits, each one labeled the bottom of the --
22 label five, six, and seven.

23 CHAIRPERSON MARCUS: One second.

24 MR. LILY: I will wait.

25 CHAIRPERSON MARCUS: Here we go. Thank you.

1 Mr. Neary, you can explain why these are in
2 rebuttal.

3 MR. LILY: I just wanted to make sure everybody
4 had five, six, and seven. And I'll give a flashdrive to
5 your staff with electronic files and PDF of these as well.
6 I'm offering Exhibit SCWA-5. This is a copy of part of
7 the transcript of the hearing that this Board held on
8 January 26th, 2010, in the matter regarding Millview's
9 pre-14 right that's been briefly discussed here. And I'm
10 offering the testimony of Shawn White, who is the General
11 Manager of the Russian River Flood Control District that
12 he gave at that hearing.

13 And this basically is for the purpose of showing
14 that the Flood Control District, in fact, is ready,
15 willing, and able to contract or, in fact, has a contract
16 with Millview and can supply water to Millview under that
17 contract. And this is to rebut the testimony for Mr.
18 Bradley that suggested that there were uncertainties
19 regarding that future supply under that contract.

20 And this testimony he explains about the contract
21 for 9700 acre feet per year, that the Flood Control
22 District is willing to continue to supply water to
23 Millview. And I've attached in Exhibit 5, the excerpts of
24 the pages of the transcript of his testimony, both my
25 direct and the cross-examination and a copy of the

1 agreement which was referenced. It was an exhibit SCWA-1
2 in that proceeding and it is referenced in Mr. White's
3 testimony.

4 Mr. Neary was present during that hearing and
5 representing Millview County Water District in that
6 hearing. So therefore, even though this testimony is
7 hearsay, it would be admissible over objection in a civil
8 action under the exception to the hearsay rule for former
9 testimony. And that's in Evidence Code 1291, Subdivision
10 A2. So again, we're offering it for this rebuttal
11 purpose, and we believe it comes in under that statutory
12 exception to the hearsay rule.

13 CHAIRPERSON MARCUS: Mr. Neary, do you have an
14 objection?

15 MR. NEARY: Yes, I do.

16 I would object to all three exhibits. They are
17 hearsay. And these were hearings that hearing testimony
18 was addressing another matter.

19 I certainly think that you can accept it as
20 they're offering it for rebuttal, but not for the truth of
21 the matter asserted. The two declarations of Shawn White
22 are just pure hearsay. They weren't subject to
23 cross-examination.

24 And probably I also object on the grounds they're
25 relevant on relevancy. I think if you review them, you'll

1 see they are marginally relevant to this hearing. But I
2 would have no objection to your receiving exhibit SCWA-5
3 for limited purpose of rebuttal. It attaches the expired
4 water purchase agreement that expired in 2010 that Mr.
5 Bradley testified to.

6 MR. LILY: Mr. Neary jumped the gun on six and
7 seven. I hadn't gotten to them yet.

8 CHAIRPERSON MARCUS: I want you to explain.

9 MR. LILY: Exhibit 6 and 7 -- Exhibit 6 is a
10 March 2012 declaration from Shawn White, which was filed
11 in the pending litigation of Millview against the State
12 Water Board. Mr. Neary has seen that before. And it
13 discusses -- it supplements exhibit SCWA-5 and basically
14 provides updated information -- in fact shows that the
15 Flood Control District now is willing to increase its
16 supply of project water to Millview from 9700 acre feet
17 per year up to 1520 acre feet per year. This definitely
18 is hearsay.

19 I agree with Mr. Neary about that. But under
20 Government Code 11513(d), hearsay evidence is allowed to
21 supplement other admissible evidence. And we believe this
22 is certainly an appropriate supplement to exhibit SCWA-5
23 since it just is providing an update of the previous
24 testimony. And five is admissible.

25 And then exhibit SCWA-7 is the latest declaration

1 from Shawn White. It further supplements exhibit SCWA-5
2 and provides updated information as of December 2012
3 regarding the Flood Control District's completion of its
4 CEQA requirements for reallocating the additional water to
5 Millview. So we are offering these for the truth of the
6 matters that are asserted therein.

7 I disagree with Mr. Neary's suggestion that they
8 be somehow limited. We think this is very relevant for
9 the question of whether Millview has alternate water
10 supplies. Mr. Bradley has suggested that they do not and
11 that this Masonite water right license is critical to
12 Millview's supply. And we are rebutting that by showing
13 the fact that Millview does have an alternate water
14 supply. They would have to pay for it. But they do have
15 an alternate supply from the Russian River Flood Control
16 District.

17 CHAIRPERSON MARCUS: Not actually having had the
18 time to actually read the document, is the assertion that
19 they will do it something that Millview can take to the
20 bank?

21 MR. LILY: That's the assertion is -- don't know
22 what you mean by take to the bank. But the assertion is
23 the Flood Control District is ready, willing, and able to
24 enter into a long-term water supply contract with
25 Millview.

1 MR. NEARY: Well, Mr. White's not here for me to
2 cross-examine him. And this is precisely the reason why
3 we have the hearsay rule. This is -- the fact it's a
4 declaration doesn't make it any less hearsay. The fact of
5 the matter is Mr. Bradley has testified that there has
6 been no finalization that Russian River has been -- the
7 fact they had to file supplemental declaration
8 demonstrates that on one occasion they represented to the
9 court they were about ready to enter into an agreement
10 with Millview. And then there was a hiatus caused by the
11 Attorney General requesting a change of venue and up to
12 the court of appeal. So there was a lapse of about
13 nine months in the litigation. And that exceeded the time
14 that in the first declaration they said they were going to
15 have a contract in place. So he had to file supplemental
16 declaration saying it's coming.

17 I think the time has come and it expired for the
18 time that the fact of the matter is that Mr. White's not
19 here. And I don't have any problem with the former
20 testimony being admitted for a limited purpose. But just
21 pure hearsay for the purpose of the truth of the matter
22 asserted, I do have a big problem with.

23 CHAIRPERSON MARCUS: That was my question about
24 taking it to the bank.

25 MR. LILY: I don't have anything further. I

1 stand by my positions on the evidence.

2 CHAIRPERSON MARCUS: All right. We'll take that
3 under submission. Any other questions from anyone up
4 here? All right. Now, we talked about some of the issues
5 to be briefed. Obviously, it's the limit of what can be
6 briefed. A time line, it will be from the time you get
7 the transcript.

8 The question -- I know you're all busy people. I
9 also know people have an interest in getting this
10 resolved. So you know, we can do two weeks, if you are in
11 a big rush. We can do a month if that makes sense in your
12 busy schedules. I want to just defer to you as counsel
13 because you know what your calendars are. You want to be
14 able to represent your client as diligently as possible.

15 MR. NEARY: I would say the shorter the better.
16 We're very interested in getting this resolved because
17 it's a very big issue for us. I would be -- I would have
18 to adjust my schedule, but if you can do it on two weeks
19 following the receipt of the transcript, that would be our
20 suggestion.

21 CHAIRPERSON MARCUS: All right. I'm inclined to
22 defer to Mr. Neary, unless you two have a big problem.

23 CHAIRPERSON MARCUS: Do we have an idea what the
24 estimate date of the release of the transcript would be?

25 CHAIRPERSON MARCUS: That is an excellent

1 question. How long?

2 THE REPORTER: Two weeks.

3 MR. JACOBSEN: So we're looking a month.

4 CHAIRPERSON MARCUS: We are looking a month

5 MR. JACOBSEN: I don't object to Mr. Neary's
6 suggestion.

7 MR. LILY: I can live with two weeks if that's
8 the Chair's inclination. I'd like to have three, just
9 because I don't know exactly what I'm going to have on my
10 desk when the transcript comes in. But I will defer to
11 the Board.

12 My request is three weeks, but if the Chair says
13 two, I will live with two. I would request that you ask
14 Mr. Mona to -- and he's very good at this -- to send out a
15 notice to everyone saying the transcript has gone out,
16 here is the deadline, so we all are on the page and know
17 that we all know it's the exact same deadline. Otherwise,
18 there could be some confusion.

19 CHAIRPERSON MARCUS: I think that's a very good
20 suggestion. All right.

21 We were talking about the number of pages and
22 suggesting ten. That should help in getting it done
23 quickly, because you have to make choices and be succinct.
24 All right. So let's say we -- all due respect to Mr.
25 Lilly -- two weeks after we get the transcript, which is

1 likely to be more like three or four. So all right. And
2 we'll also -- everyone who has participated in the hearing
3 will get notice of the Board's proposed order in the
4 matter and the Board meeting at which the matter will be
5 considered.

6 Is there anything else? Single versus double
7 spaced? I personally prefer single spaced, but that's
8 just me to save paper. Does anybody have --

9 VICE CHAIRPERSON SPIVY-WEBER: Double.

10 CHAIRPERSON MARCUS: I hear double. Going once.
11 Okay. Double spaced. How about double sided though?

12 SENIOR STAFF COUNSEL OLSON: One sided.

13 MR. NEARY: Millview would be happy to produce
14 one copy, single spaced for you. Double space for
15 everyone else.

16 VICE CHAIRPERSON SPIVY-WEBER: Ten pages.

17 CHAIRPERSON MARCUS: Ten pages. Paying attention
18 to all of this. Great.

19 Anything else? Any other questions? All right.
20 Thank you all for your time and attention, your patience,
21 and your courtesy in this matter.

22 MR. NEARY: What is the page limit? Ten? Do we
23 have 15?

24 CHAIRPERSON MARCUS: Do you really want 15?

25 MR. NEARY: Yes.

1 CHAIRPERSON MARCUS: It won't kill me to give you
2 15. Whatever you need to tell your story, especially
3 since we're asking you to address certain things. And
4 we'll put that in, we'll get that out to you.

5 MR. NEARY: Thank you very much.

6 CHAIRPERSON MARCUS: Thank you all very much.

7 (Whereupon the hearing adjourned at 2:33 PM)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of April, 2013.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277