



State Water Resources Control Board



Matthew Rodriguez
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Edmund G. Brown Jr.
Governor

May 1, 2013

VIA EMAIL ONLY

State Water Resources Control Board
Hearing Team
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, CA 95814

Dear Mr. Mona:

MILLVIEW PROPOSED REVOCATION LICENSE 5763: MOTION FOR LEAVE TO
SUBMIT REBUTTAL EVIDENCE

Accompanying this letter please find the State Water Resources Control Board's Division of Water Rights Prosecution Team's motion to submit rebuttal evidence for the above referenced hearing. Also included is an affidavit from the staff person that located the evidence, and the rebuttal evidence. The evidence consists of a single report prepared in November 2002 titled, "Final Aquifer Characterization of the Masonite Plant Property Ukiah, California". The evidence was only recently located and is offered as rebuttal to Millview's witnesses' testimony regarding water use under the license. The evidence is also relevant to the specific questions the hearing officers requested the parties address in closing briefs. All parties have been copied on this request, and all referenced documents have been electronically delivered to the parties.

Sincerely,

Nathan Jacobsen
Attorney I
Prosecution Team

California Environmental Protection Agency

Mr. Ernie Mona

- 2 -

cc: Christopher Neary Esq.
Alan Lilly Esq.
Samantha Olson

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Attorney for the Division of Water Rights Prosecution Team

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of:
Millview Proposed Revocation Hearing
License 5763

MOTION TO SUBMIT REBUTTAL
EVIDENCE, REPORT TITLED: FINAL
AQUIFER CHARACTERIZATION OF
MASONITE PROPERTY, UKIAH
CALIFORNIA.

Date: May 1, 2013

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I. MOTION

The Division of Water Rights Prosecution Team (Prosecution Team) hereby moves to submit rebuttal evidence in support of the Prosecution Team’s revocation of License 5763, the subject of the Millview Proposed Revocation Hearing held April 2, 2013. The rebuttal evidence is a report titled, “FINAL Aquifer Characterization of the Masonite Plant Property Ukiah, California” (Report), and is attached as Exhibit A to the Declaration of Katherine Mrowka accompanying this motion. The relevance of this evidence is explained below. To accommodate any potential prejudice that might inure to any party due to the timeliness at which this evidence is submitted, the Prosecution Team also hereby requests the deadline for the submission of closing briefs be extended, as discussed below.

By its very nature, rebuttal evidence in an adjudicative proceeding before the State Water Resources Control Board need not be submitted in advance of the hearing. (Cal. Code Regs., tit. 23 § 648.4 subd. (f).) Additionally, under the Administrative Procedures Act (APA), “[t]he hearing need not be conducted according to technical rules relating to evidence and witnesses...[a]ny relevant evidence shall be admitted if it is the sort of evidence in which responsible persons are accustomed to rely in the conduct of serious affairs....” (Gov. Code, § 11513, subd. (c).) There is no evidence that any party will be unduly prejudiced by the inclusion of this evidence. (Cal. Code Regs., tit.23 § 648.4 (e).) At the conclusion of the hearing, the hearing officers requested additional briefing information from the parties and acknowledged that it may require the submission of additional evidence. (Reporter’s Transcript, p.149 line 16-20.) The parties were on notice that the hearing officers might require additional evidence to evaluate claims made at the hearing, and to reach a determination on the status of Millview’s water right. The Report is being offered so the Hearing Team has all relevant evidence prior to making its decision.

The Report is relevant evidence in response to testimony provided by two witnesses examined by Millview. Millview presented two witnesses who testified that water use under License 5763 continued after the Masonite Plant closed. Specifically, witnesses Tim Bradley and Lauren Beuving claimed water was used after 2001 from Masonite’s licensed wells on a rotational basis or schedule. Tim Bradley also provided testimony indicating that Well No. 6, a well that is not covered by License 5763, is not a groundwater well, but rather diverts water from underflow from the Russian River.

As a result of the testimony provided at the hearing, the hearing officers requested

1 that parties in their closing briefs address issues related to: 1) recycled water use at the Masonite
2 plant; 2) the characterization of water from Well No. 6; and 3) the testimony that incidental
3 rotational use of water occurred at Wells No. 3, 5 and 6 from the time of plant closure in 2001 until
4 2011.

5 The Report the Prosecution Team seeks to admit as rebuttal evidence addresses
6 these three issues and directly rebuts testimony offered by Millview's witnesses. It demonstrates
7 that Well No. 6 diverts underflow from the Russian River. The Report makes clear that Well No. 6,
8 at the time the report was prepared in November 2002, was the sole source of water for all uses at
9 the property—including the recycling facility. This rebuts testimony that licensed wells No. 3 and
10 No.5 were rotated in use with well No. 6 following Plant closure in 2001. The report also confirms
11 that Well No. 6 was unmetered, that the other wells on site existed in various conditions of
12 dilapidation, and that Well No. 3 was not in use due to sanding problems.

13 The Report is relevant to whether the right as it pertains to the licensed points of
14 diversion was forfeited for non-use, directly responds to testimony offered by Millview's
15 witnesses, and addresses questions on which the hearing officers requested additional briefing.
16 The Report could not have been produced earlier because Prosecution staff was not aware of its
17 existence. Accompanying this motion is the Affidavit of Katherine Mrowka attesting that the
18 Report was only located after the hearing.

19 In consideration of the date of this request, and the imminent deadline for the
20 parties to submit closing briefs, the Prosecution Team hereby respectfully requests that if this
21 motion is granted and the Report admitted, the closing brief due date be extended one week to May
22 14, 2013, or to another date agreeable to Millview to allow the parties an opportunity to address
23 the information contained in the report and to obviate any potential prejudice to the parties.

24 **II. CONCLUSION**

25 For these reasons, the Prosecution Team requests the Report be admitted as
26 evidence in support of: 1) the characterization of the water derived from Well No. 6; 2) the source
27 of recycled water that was used at the Plant; 3) the operational condition of the wells on the
28 Masonite property; and 4) the source of water used to serve the Masonite site from 2001 onward.

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Respectfully,


Nathan Jacobsen
Attorney I
Attorney for the Division of Water Rights Prosecution

AFFIDAVIT OF KATHERINE MROWKA

I, Katherine Mrowka, declare as follows:

1. I am a Senior Water Resources Control Engineer in the Division of Water Rights at the State Water Resources Control Board (State Water Board).
2. I was a witness in the State Water Resources Control Board hearing held on April 2, 2013 concerning the proposed revocation of Millview Water District's water right under License 5763.
3. Following the hearing, I located a report titled, "FINAL Aquifer Characterization of the Masonite Plant Property, Ukiah, California" (Report). The Report is dated November 2002.
4. The Report reaches conclusions regarding the characterization of the aquifer located beneath the Masonite property and its connectivity to the Russian River.
5. The Report concludes that all water use for the site was derived from Well No. 6.
6. The Report contains evidence relevant to Millview's claim that water use was cycled from a series of pumps beginning in 2001.
7. The Report also notes the condition of pumps on the Masonite property and that Well No. 3 is not used due to sanding problems.
8. I had no knowledge of the existence of the Report until following the hearing. Prior to the hearing, I had conducted a diligent search of the files related to the hearing and the Report was not located. The Report was located in a vacant former staff person's office after the hearing concluded.

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

Executed this 1 day of May, 2013, at Sacramento, California

Katherine Mrowka

Katherine Mrowka
Division of Water Rights
State Water Resources Control Board