

## PT EXHIBIT 1

### Proposed Revocation Hearing

Millview County Water District  
License 5763 (Application 15679)

#### DIVISION OF WATER RIGHTS PROSECUTION TEAM WRITTEN TESTIMONY OF KATHERINE MROWKA, SENIOR ENGINEER

My name is Katherine Mrowka. I am a Senior Engineer assigned to the Inland Streams Unit of the Permitting Section, Division of Water Rights (Division), State Water Resources Control Board (State Water Board or Board). I have a Bachelors of Science degree in Environmental Resources Engineering, and a Master of Science degree in Civil Engineering. I am a registered civil engineer. I have been employed in the Division for 27 years. A true and correct copy of my resume is attached as Prosecution Team (PT) Exhibit 2.

I am the supervisor in charge of the Inland Streams Unit that processes water right applications, as well as change petitions and petitions for extension of time on applications, permits and licenses. My unit is also responsible for processing both voluntary and statutory revocations of water right permits and licenses. Regarding petitions, the Division's permitting units review all pertinent information and make recommendations on whether specific petitions should be processed for approval or denied. The Division's process is shown on flow charts. (PT Exhibit 5.) I also make recommendations on whether permits and licenses should be processed for statutory revocation.<sup>1</sup>

#### Status of the Watershed:

The Russian River is located within the area covered by Assembly Bill 2121, which requires the State Water Board to adopt principles and guidelines for maintaining instream flows in northern California coastal streams for the purposes of water right administration. Coastal streams in the five counties covered by Assembly Bill 2121 provide habitat for steelhead trout, coho salmon and Chinook salmon. The National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW) have listed steelhead trout and Chinook salmon as "threatened" under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA), respectively. Coho salmon are listed as "endangered" on both the ESA and CESA lists.

Water diversions result in a significant loss of fish habitat in California. (NMFS, 1996, Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead Under the

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<sup>1</sup> When it appears that a licensee may have ceased beneficial use of water in accordance with the terms of the license, the regulations of the Board and the law, I prepare a Notice of Proposed Revocation to notify the Licensee that the State Water Board is considering revocation of the license. (Cal. Code Regs., tit. 23, § 850.)

Endangered Species Act. Accessible online at: <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Reports-and-Publications/upload/stlhd-ffd.pdf>.) (PT Exhibit 6.) Water withdrawals change the natural hydrologic patterns of streams and can directly result in loss or reduction of the physical habitat that fish occupy. Degradation and loss of freshwater habitat is one of the leading causes for the decline of salmonids in California. (CDFW, 2004, Recovery Strategy for California Coho Salmon. Accessible online at: [http://www.dfg.ca.gov/fish/documents/SAL\\_SH/SAL\\_Coho\\_Recovery/ReportToCommission\\_2004/CohoRecoveryStrategy.pdf](http://www.dfg.ca.gov/fish/documents/SAL_SH/SAL_Coho_Recovery/ReportToCommission_2004/CohoRecoveryStrategy.pdf).) (PT Exhibit 7.)

### License 5763

The State Water Board issued License 5763 on June 30, 1959 pursuant to Application 15679 to Masonite Corporation. (PT Exhibit 8.) The Division transferred License 5763 to Millview County Water District (Millview) on April 5, 2007. The Division records show Millview (Licensee) as the owner of License 5763. (PT Exhibit 9.)

License 5763 authorizes diversion of 5.9 cubic feet per second (cfs) by direct diversion from the Russian River (subterranean stream) from January 1 through December 31 for industrial purposes. (PT Exhibit 8.)

### Documents Attesting to Water Use

#### a. 1960s through 1970s:

During the 1960s and 1970s, Licensee did not report the quantity of water used on the Reports of Licensee. Licensee simply put an "X" in the box each month that water was used, to indicate that water was used. (PT Exhibit 10.)

Until 2009, the Division required Licensee's to document their annual diversion and use of water on forms covering a three-year period. For example, diversions during the period 1963 through 1965 would be reported on one, triennial report.

Reports of Licensee from 1963 through 1977 showed Licensee was diverting water year-round. The Licensee did not report its water diversion and use for the period 1978 through 1980.

#### 1980s through 1990s:

The Report of Licensee for 1980 to 1982 showed water was diverted year-round. (PT Exhibit 11.) Licensee did not file the required Report of Licensee for 1983 through 1985.

On July 29, 1985, the Division conducted a field inspection to verify whether Licensee was in compliance with the terms and conditions of the license. As a result of the inspection, Division staff required installation of a flow measuring device in the main conveyance line to measure

river diversions. Division staff recommended the license be amended by deleting Well 4 as a point of diversion. (PT Exhibit 12.)

Licensee did not report its water diversion and use for the period 1986 through 1993.

The Report of Licensee for 1994 through 1996 states water was diverted year-round as follows (flows reported in million gallons per day and converted to cfs): 1994 – 0.72 cfs; 1995 – 0.79 cfs; and 1996 – 0.53 cfs. (PT Exhibit 13.)

Report of Licensee for 1997 through 1999 states water was diverted year-round as follows: 1997 – 0.79 cfs; 1998 – 0.80 cfs and 1999 – 0.31 cfs (PT Exhibit 14.)

The 1999 water usage reflected a downsizing in one of the main Masonite plant production lines. (PT Exhibit 14.)

b. 2000s:

Licensee did not file the required Reports of Licensee from 2000 through 2008. Beginning in 2009, annual Reports of Licensee were required to be filed electronically. The 2009, 2010 and 2011 reports are available on the Division's eWRIMS database, and are attached as PT Exhibit 15. These reports document that diversion and beneficial use of water did not occur during 2009 through 2011.

Quantities Put to Beneficial Use:

During the period 1994 through 1998, the maximum documented quantity diverted and put to beneficial use was 0.80 cfs. In 1999, 0.31 cfs was used. From 2000 through 2011, there was no documented diversion and use of water.

Licensed Place of Use:

The place of use for License 5763 is the Masonite Ukiah Mill. The Division was notified on March 6, 2001 that the mill would be closing due to lack of demand for hardboard siding. The facility would continue to operate for the next 60 to 90 days and then close. (PT Exhibit 16.)

In a December 10, 2002 meeting, Licensee confirmed that it shut down its Ukiah plant served by License 5763 in 2001. (PT Exhibit 17.)

Plant closure, and the schedule upon which the plant was closed, was described in a July 7, 2006 submittal to the North Coast Regional Water Quality Control Board. (PT Exhibit 18, p. 2. (July 6, 2006 SCS Engineers document)) The molded door facing line was close in 2000, the exterior siding and softboard lines were closed in June 2001, and all softboard processing was shut down in December 2001. No operations have occurred since that time.

Plant closure and cessation of water use was also documented by Licensee on July 26, 2006. (PT Exhibit 19, (July 26, 2006 Petition for Long Term Transfer, Attachment 1).)

A site visit conducted by the Division on April 17, 2008 confirmed that the diversion pumps had not been in use. (PT Exhibit 20.)

#### Proposed Changes to License:

On July 26, 2006, Licensee submitted a Petition for Long Term Transfer that included a change in the point of diversion, place of use, and purpose of use of License 5763. License 5763 authorizes use of Well Nos. 3, 4 and 5. The petition requested to transfer the right to use Well No. 6. Well No. 6 is not part of License 5763. The petition also requested that the license be transferred to Millview. (PT Exhibit 19.)

On April 5, 2007, the Division re-assigned the license from Masonite Corporation to Millview. Millview seeks to change the point of diversion, place of use, and purpose of use of the water right in order to render the water right useful for its purposes. These changes were sought on August 1, 2007, when Millview requested that a July 26, 2006 Petition for Long Term Transfer be considered a Change Petition. (PT Exhibit 21.)

The Long Term Transfer was not approved. The change petition has not been approved.

Absent the requested changes, the current Licensee is unable to make use of the existing water right because Licensee has no need to provide water to the shuttered and abandoned mill. All of the Licensee's proposed new uses of water are located outside of the currently authorized place of use.

#### Change of Ownership:

License 5763 changed ownership on April 5, 2007. The public file for License 5763 shows that the Division warned Masonite in 2001, six years prior to re-assignment of the water right, that if diversions had ceased under the license the right may be subject to revocation. (PT Exhibit 22.) The Division letter indicated that the right may have been abandoned. Masonite did not reply to the Division's 2001 letter or refute that the right had been abandoned.

Records in the file show that the full face value of the right had not been documented as having been put to use after license issuance. For the period when numeric data was submitted (1994 to the present), only a fraction of the water right (0.80 cfs) had been put to use prior to shutting the plant and ceasing use in 2001.

#### Water Law and Policy Supporting Proposed Revocation:

Upholding the due diligence requirement in putting water to beneficial use supports the mandate in Article X Section 2 of the California Constitution that states, “the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable...” This holds true particularly in watersheds where there is a heavy demand for water and the supply is limited. The Russian River has intense competition for water resources and the supply is limited to the point of being scarce under certain conditions. The disparity between demand and available supply throughout the State has increased in the last decade.

Licensee has had ample opportunity to document continuous beneficial use, but has not done so. The record does not contain any evidence of a valid excuse for first failing to put the full, licensed quantity to beneficial use and subsequent to 2001 failing to put any water to beneficial use. Millview became the license holder of record on April 5, 2007. But changes in ownership of the property are incident to the person, not to the enterprise, and will generally not be accepted as good cause for delay for putting water to beneficial use. (Cal. Code Regs., tit. 23, § 844.) Millview’s acquisition of the property in 2007 does not negate Millview’s lack of diligence in putting water to beneficial use, nor that of the prior owners.

If the water is not needed to serve the license, it may be available for other purposes. Thus, the Division reviews whether permittees and licensees are exercising due diligence in putting water to beneficial use on a periodic basis to ensure that the limited available water resources are assigned to those persons who will timely develop their projects. The Division has been unable to document continuous beneficial use of water in the quantities authorized by the license.

Cause for Revocation has been Established:

Water Code section 1675 provides that, “a license may be revoked, if at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to that useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license...”

In the course of my investigation of water diversion and use under License 5763, I found that Licensee has not documented continuous beneficial use of water for a period of five or more years. Licensee failed to notify the Division that it did not intend to abandon the water right, when the Division wrote the Licensee on March 16, 2001, asking if diversions had ceased and the right should be considered abandoned. Licensee did not respond to the Division’s correspondence.

The Division staff inspection of 2008 found that the wells were not in use, the facility had been shuttered, and there are no records in the Division’s files showing an intention to re-open the facility. Water use ceased when the Masonite plant was permanently closed in 2001. Further, the Division has not received any evidence since the inspection in 2008 showing any water use under the license.

The current Licensee has not diverted water under the conditions of the right since at least 2001. The Division has no evidence to suggest the Licensee can make use of the license under the existing conditions of the right. The evidence shows the right has not been exercised for the statutory forfeiture period of five years prescribed by Water Code section 1241. Accordingly, allowing Licensee to retain the water right will not result in beneficial use of water. The License should be revoked pursuant to Water Code section 1675 and the water declared subject to appropriation.