TESTIMONY of TIM BRADLEY

General Manager, Millview County Water District

Millview County Water District (“Millview”) is a municipal water purveyor in Mendocino County serving approximately 1500 water residential, commercial and industrial users. I have been General Manager of Millview since November 2000.

When Masonite Corporation in 2000 announced that it would start the process of closing its manufacturing facility in Ukiah the County of Mendocino indicated an interest in purchasing the water rights evidenced by License 5763 held by Masonite Corporation. By late 2002 it became apparent that the County would not act to purchase the License and Millview opened negotiations with Masonite Corporation to purchase the right.

After I became manager of Millview County Water District I followed as closely as possible the negotiations of the Board of Supervisors of Mendocino County with Masonite Corporation for the acquisition by the County of License 5763 by the Board of Supervisors of Mendocino County. I followed these negotiations because Millview did not have a dependable summertime water right and was suffering from a water source deficiency as determined by the Department of Public Health, and because the acquisition of the License by the County of Mendocino would likely provide a summertime right for Millview. It was important to Millview to obtain a dependable summertime water right because the municipal water purveyors in the Russian River valley, Millview and Willow County Water District could not rely upon the right reserved to Mendocino County. The SWRCB had in 1961 rejected Millview’s petition for summertime water rights upon the State Board’s erroneous assumption in SWRCB Decision 1110, at ¶10 that the Mendocino County Russian River Flood Control & Water Conservation Improvement District, (referred by the SWRCB as the “Mendocino District,”) would agree to contract for the use of summertime rights in a manner consistent with the needs of Millview as a municipal purveyor, or consistent with the needs of any municipal purveyor.

It was my understanding from following the Mendocino County deliberations for the acquisition of License 5763 that Sonoma County Water Agency, consistent with its apparent ongoing interest in minimizing any water usage in Mendocino County which would reduce the background flow of the Russian River, had argued to the Mendocino County Board of Supervisors that License 5763 was not viable in its paper amount due to unavailability of water in the Russian River. I attended open public meetings, including meetings in which representatives of Sonoma County Water Agency were present, and I also followed local press reports of the progress of the matter.

It was my observation during the time of the negotiations between Mendocino County and Masonite Corporation that Sonoma County Water Agency was actively concerned that the License 5763 might be utilized in its full amount thereby reducing the background flows in the Russian River affecting the obligation of Sonoma County Water Agency to maintain specified flows. In essence, if Sonoma County Water Agency could prevent or disrupt by whatever means the exercise of water rights in Mendocino County there would be additional background flow in the Russian River, thereby relieving its obligations to maintain flows in the Russian River by reason of the Coyote Valley Project. The result of
this is that any reduction in the exercise of Mendocino County water rights would permit Sonoma County to store additional water for sale excess water pursuant to its agreements with Marin County to sell to Marin County excess water originating in the Russian River. Therefore, Sonoma County has been active and is expected to be active in the future in suppressing the exercise of water rights in Mendocino County. For example, it is expected that Sonoma County Water Agency will appear at the present hearing to argue that the Masonite License be forfeited, the Masonite Right perhaps being the most significant water right in Mendocino County outside the Mendocino Coyote Project reservation.

In May 2001 the Department of Public Health which regulates municipal water purveyors such as Millview issued to Millview a Compliance Order numbered 02-03-01CO-002 finding that Millview had insufficient water source supply to serve its existing customers in a predictable drought. The Order required Millview to take such action as necessary to correct its source supply deficiency. Millview determined that among other avenues to resolve its source supply deficiency that it would seek to open negotiations with Masonite Corporation to acquire License 5763 by purchase to supplement its source supply as required by the Department of Public Health.

It is my understanding from my personal observations that operations declined at the Masonite Plant from the time that closure was announced in 2000 to the time that operations completely ceased sometime in late 2001 or early 2002. I understand that Masonite’s consultants represented to the North Coast Regional Water Quality Control Board that operations ceased at the Masonite Plant on December 31, 2001. After 2002 components of the plant were sold and removed by the purchasers. The demolition process began in 2007. It is my understanding that Masonite utilized its water rights minimally for basic domestic needs at the plant after the plant closure and more substantially throughout the removal period during 2002 and even more substantially during the demolition process which required water for dust suppression and high pressure saturation with fire hoses for asbestos removal.

Masonite represented to Millview, without warranty, that its most recent use of the License prior to beginning was approximately 549 acre feet in 2001 and 571 acre feet in the 1997 with flow into the Masonite recycling facility at 1158 acre feet in 2001 with some of the flow deriving from an unmetered well commonly referred to as Well 6. Millview was informed that Masonite’s water conservation recycling facility allowed it to reuse water that it could otherwise divert under its license and that it had notified SWRCB that it claimed that the recycled water representing slightly in excess of 100% of its diversion was deemed the equivalent to beneficial use of water in a reasonable manner under provisions of the Water Code recognizing such use and protecting such use from Millview was informed that usage reflected in the Statement of Diversion for the years prior to the announcement of mill closure reflected the downsizing of one of the Masonite product lines. In consultation with Masonite staff and review of its usage records, including its Statement of Diversion for years 1997-1999, I concluded that the use ranged from approximately 600 acre feet diversion under the License per year, recycled at least once, during Masonite’s most recent full scale industrial operations, supplemented in part from an unmetered well on the property bringing the total usage to about 1158 acre feet. At all times Millview understood that the amount that had been used by Masonite was less than the licensed amount, but that usage continued for industrial purposes from an amount ranging from approximately
600 ac/ft/yr to approximately 1100 ac/ft/yr. In 2002 Millview consulted with the Sonoma County Water Agency which Millview had understood had previously opposed the acquisition of License 5763 by the County of Mendocino. Millview’s counsel Jan Goldsmith reported to me that Sonoma County Water Agency had reviewed at least the representations of Masonite usage and informally indicated as a preliminary matter that it would not protest acquisition if Millview would limit its use under the license to that approximating recent usage of Masonite Corporation in the amount of approximately 1100-1275 afa. Having witnessed the opposition of Sonoma County Water Agency to the acquisition of the Masonite License by the County of Mendocino, the willingness of Millview to pursue the acquisition of the Masonite Right and to expend public funds to do so was with the understanding that Sonoma County Water agency would not interfere with the acquisition of the License for Millview to utilize up to 1100-1275 acre feet per year.

Millview having need for additional water source supply was interested in purchasing, and ultimately contracted to purchase the maximum amount that the SWRCB might eventually find to be supported by the Masonite records, with the understanding for financial budgeting purposes that the maximum amount would not likely exceed 1275 afa. At all times it was understood that Masonite was contractually committed to reserve between 250 afa to 350 afa for water which was being used on portions of the former Masonite property for agricultural purposes conducted by Dan Thomas and Charles Sawyer prior to the plant closure starting in 2003 and through the present.

In Summer 2002 Millview commenced negotiations with Masonite Corporation for the purchase of the License. June 21, 2006 Millview and Masonite Corporation concluded negotiations for the purchase of License 5763 which called for the immediate transfer of the License to Millview and for the purchase price to be determined in the amount to be determined from the amount of water that would be authorized by the SWRCB for use by Millview for potential customers on the Masonite property and throughout the Millview boundaries for residential, commercial and industrial use. Approximately one month after the agreement was executed by Millview to acquire License 5763 Masonite Corporation filed a petition with the SWRCB to transfer the License to Millview, to enable use by Millview, to change the place of diversion to a place immediately upstream from the historic diversion by Masonite to the Millview water treatment plant facility, to change the place of use to the entirety of the Millview District and to expand the type of use to Millview’s municipal uses. This Petition was subsequently clarified by James C. Hanson, an engineer retained by Millview in August 2007. The original petition filed by Masonite Corporation for transfer of the License to Millview was filed prior to the expiration of the fifth anniversary of the closure of the Masonite Plant and prior to the expiration of period calculating forfeiture from the time of the Masonite Plant.

Although Millview had been in negotiations with Masonite Corporation throughout the period of 2003-2006 for the acquisition of License 5763, one of the motivating factors bringing Masonite to closure on the negotiations was Millview’s representation to Masonite that Millview would not be interested in the acquisition of the License if five years elapsed from the time of closure of the Masonite Plant and cessation of most of the use of the License. The petition to the SWRCB also referenced a separate agreement by Millview to purchase land approximating five acres from Masonite Corporation,
including the land upon which Masonite Well 6 was located. After the application was filed with the SWRCB Millview had no control over the administrative process of the SWRCB in approving the transfer.

Upon executing the agreement Millview immediately acted upon the agreement by consulting Bartle Wells for financial advice as to funding the purchase price for the License through market financing; Millview agreed to retain Leonard Charles and Associates of San Anselmo to conduct such environmental services as might be necessary to consummate the transaction; retained James C. Hanson of Sacramento, as a consulting civil engineer; and conducted tests to characterize and determine the viability of Well 6. However, Millview endeavored not utilize the License because its petition for change of type of use, place of use and place of diversion was pending during the entire time after July 2006 to the time that the State Board issued the order necessitating the present hearing to avoid issuance of a cease and desist order, the Water Code having been recently amended to grant the power to issue cease and desist orders while petitions are pending. Indeed, the Petition has been pending since 2006 without any action by the State Board except one short visit in 2008 shortly before issuance of the proposed present order.

Instead of processing the Millview petition which would permit the exercise of the License by its holder, Millview, the State Board issued the order proposing to revoke License 5763 in its entirety. The State Board’s issuance of the order to revoke the License in total supported the original complaint filed by the President of the Mendocino District. The Mendocino District has not only refused to contract with Millview for any of the Mendocino County Right in a manner which would satisfy the Department of Public Health, its Board President actively solicited the imposition of a moratorium upon Millview on the basis, among others, that the Mendocino District’s water right had been fully utilized. Despite the assumption asserted by the State Board in Decision 1110 that the Mendocino District would be cooperative with the municipal purveyors, Millview County Water District and Willow County Water District, the Mendocino District has joined with Sonoma County Water Agency to suppress the exercise of any water rights in Mendocino County not controlled by either of the two agencies. While the actions of Sonoma County Water Agency might be understood in the context of its pursuit of its financial interest, the actions of the Mendocino District are contrary to the interests of Mendocino County and contrary to the mission for which the Mendocino District was established.

In August 2007 Engineer James Hanson on behalf of Millview contacted the SWRCB to advise that the Petition filed by Masonite Corporation in 2006 was inadvertently submitted on a Long Term Transfer Form rather than a Change Form, but noting that the intention for a permanent change to Millview was reflected in the environmental information submitted originally with the Petition. During the year 2007 the SWRCB acted to transfer the License to Millview and it was held by Millview at the time the State Board staff caused to be issued the Order proposing the revocation of License 5763 in its entirety. However, Millview could not exercise any enjoyment of the License until the SWRCB favorably acted upon the Petition to change the place of use, type of use, and place of diversion to accommodate the needs of Millview as a municipal purveyor to provide service to its municipal customers.

The State Board’s action in this matter occurred after it had issued in June 2007 a “preliminary” report which effectively interfered with the contractual relationship Millview held for the acquisition of
a pre-1914 right, commonly referred to as the Waldteufel Right and which right was the subject of Decision 2012-16 declaring forfeiture of that right. The amount of the Waldteufel Right approximated 1400 afa, coincidentally approximating the amount of the historic use of the License 5763 by Masonite Corporation prior to its closure in late December 2001 or January 2002. The State Board, again acting on the complaint of Lee Howard, President of the Mendocino District, and in purported exercise of its investigative powers declared a forfeiture of all but 15 acre feet of that right. That matter resulted in a Superior Court ruling in 2009 requiring the State Board to either disavow the “preliminary report,” or to extend due process to Millview. A pending writ petition challenging the jurisdiction of the Board to regulate pre-1914 rights through cease and desist order authority, challenging whether Water Code section 1831 (e) to regulate pre-1914 rights, and challenging the legal and factual basis of the State Board’s Forfeiture is now pending before the Superior Court in Mendocino, the legal proceedings related to which have extended for five years.

On April 14, 2008, while Millview was the holder of License 5763 by transfer from Masonite, and while Millview’s petition had been pending since July 2006 for approval to exercise use of the License, I was contacted by Lauren Dailey representing herself as an employee of the State Water Resources Control Board and advised that she would be in Ukiah on April 17, 2008 and that she wanted to inspect the diversion site for the Masonite Diversion. On April 17, 2008 I accompanied Ms. Dailey on an inspection of the diversion site. Following the inspection Ms. Dailey advised that she would keep me informed as work progressed on the petition, but not to be discouraged if there was a lapse of time of several months before any contact was made as work progressed on the Petition. Immediately following the meeting I documented the discussion of the meeting with Ms. Dailey in the regular course of my duties as General Manager for the purpose of maintaining a permanent business record of the discussion. At no time during the meeting did she indicate that the revocation of the License was under consideration and the entire context of our discussion was the pending application by Millview for the change of type of use, place of use and place of diversion for License 5763. While Ms. Dailey expressed interest that the Masonite diversion facility was not then presently in operation having just recently having suffered theft of the electrical components permitting pumping, I explained that we would be diverting from a place slightly upstream at the Millview Well Field and Millview Water Plant, both adjacent to the Russian River.

After April 17, 2008 I did not hear anything further from Ms. Dailey on the progress of the petition for change of place of use, type of use and place of diversion, or any other person associated with the SWRCB. In May 2008 the SWRCB issued notice of proposed revocation of the License.