

**From:** Buckman, Michael@Waterboards

**Sent:** Thursday, May 23, 2013 1:53 PM

**To:** Alan B. Lilly; Christopher J. Neary; Mona, Ernie@Waterboards; Arnold, Jane@Wildlife; LaBanca, Tony@Wildlife; Jacobsen, Nathan@Waterboards

**Cc:** Groody, Kathleen@Waterboards; Olson, Samantha@Waterboards; Fischer, Lynnette@Waterboards; millviewwater@comcast.net; jgoldsmith@kmtg.com

**Subject:** RE: Millview revocation hearing and deadline for filing closing briefs

Ladies and Gentlemen,

On April 2, 2013, the State Water Resources Control Board (State Water Board) held a hearing to receive evidence relevant to the proposed revocation of License 5763 (Application 15679), held by Millview County Water District (Millview). By email dated April 22, 2013, parties were asked to address the following supplemental questions in their closing briefs:

- a. As it relates to the proposed revocation, what is the significance, if any, of the recycled water component to the Masonite water right?
- b. As it relates to the proposed revocation, what is the significance, if any, of the characterization of water from Well 6?
- c. As it relates to the proposed revocation, what is the significance, if any, of testimony regarding some unquantified use of water by Masonite from 2001-2011 for demolition purposes, domestic use, and fire suppression (e.g. incidental rotational use of Wells # 3, #5 and #6)?

Following the April 22, 2013 email, State Water Board staff received the Division of Water Rights Prosecution Team's Motion To Submit Rebuttal Evidence, and Report Titled: "Final Aquifer Characterization of Masonite Property, Ukiah California." The Report was prepared for Tim O'Laughlin, O'Laughlin & Paris, by Greystone Environmental Consultants, Inc. in November 2002. On May 16, 2013, Millview objected to the Prosecution Team's Motion, arguing that the report is improperly submitted as rebuttal evidence and is hearsay. The Report provides information related to use of water at the former Masonite Plant, and is responsive to the supplemental questions asked by the State Water Board. Because the Report is responsive to the State Water Board's follow up questions, it need not be characterized as rebuttal testimony. Therefore, a ruling on the objection to the evidence as rebuttal is not necessary.

Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. (Evid. Code, § 1200, subd. (a).) Hearsay evidence is generally not admissible in court because of its inherent unreliability. There are numerous exceptions to the hearsay rule based on the rationale that even though the statement is made out of court, it is still reliable. Government Code section 11513 also states that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Gov. Code, § 11513, subd. (d).) At this time, no evidence will be excluded from the record; however, all objections will be taken into consideration and will inform the State Water Board as to the weight to be given to that evidence.

Closing briefs shall be due by **12 Noon, Friday, May 31, 2013.**

Sincerely,

Michael Buckman

Senior Environmental Scientist

Hearings Unit Chief