

OFF THE RECORD

THE STATE WATER RESOURCES CONTROL BOARD, as reported in the Ukiah Daily Journal in a story by Justine Frederiksen, has issued a final ruling revoking the former Masonite water right now owned by Millview County Water District. There are lushly productive wells on the old plant site just north of Ukiah. Millview bought the water right from Developer's Diversified Realty (DDR), which spent \$1 million in an effort to rezone the Masonite property for a retail mega-mall. DDR said the County was taking too long to act on its application, so it tried an end run around the planning process at the ballot box, but failed big time. Voters said no mall. DDR then sold the rights to a number of wells formerly owned by Masonite with the understanding that Millview would treat the water and then make part of it available for future development at the Masonite site. The only prob is the type of water right held by Masonite requires that the water has to be put to "beneficial use" (which could include municipal, industrial or agricultural) or after a period of five years of non-use the water right is forfeited. And since Masonite shut down circa 2000 the State Water Board has now declared the water right forfeited for non-use.

THE MASONITE WATER RIGHT, established in 1954, allowed for the continuous direct diversion of 5.9 cubic feet per second from the nearby Russian River. But the Russian River has been declared "over-appropriated," which means that there are more people claiming "rights" to pump water, either directly or from wells fed by the river, than there is water available to pump. Which means people are fighting over "paper water" which only exists on paper if they all tried to pump at the same time. All Masonite had to do to preserve its right, was to put the water to beneficial use at least one year out of every five, which it failed to do. Millview argued it should be able to continue to rely on the water right because they have been under a moratorium for new connections since 2001 and the water is needed to end the moratorium and serve additional customers living in Millview's jurisdiction.

STATE FISH AND WILDLIFE, and the Sonoma County Water Agency, countered Millview's claim that revoking the license was needed "to protect water supply and prevent environmental impacts on Russian River public trust resources," which include three endangered species of salmon and steelhead. The State Water Board acknowledged the importance of having adequate water supply for human consumption, but concluded, "the need to serve additional customers is not a valid policy argument to nullify a forfeiture." Doing so "would essentially allow Millview to initiate a new water right with a much earlier priority than could be obtained by following the proper procedures [which] would be unfair to junior appropriators...and to water users who followed proper procedures for obtaining a water right." The beneficiaries are downstream "junior appropriators" who have water rights established after 1954. Those junior appropriators, at least on paper, now have the right to pump the amount of acre-feet previously recognized for the Masonite water right.

DON'T BE SURPRISED IF MILLVIEW, represented by Willits attorney Christopher Neary, sues the State Water Board in an effort to overturn the decision. Millview, again represented by Neary, is in a protracted legal battle over the "Waldteufel" water right, which Millview purchased (from Hill and Gomes, the developers of the West Fork subdivision on Lake Mendocino Drive) for a cool \$2 million. The County Planning Commission, by the way, initially turned down the West Fork subdivision on a 7-0 vote because it was in the flood plain; converted ag land to housing, and was built on top of a spiderweb of earthquake faults. The Board of Supes, using Mendo style reasoning, overturned the Planning Commission. After all, only the roads, not the houses, would be built on top of the earthquake faults. And the houses would also be built on little pads of fill that would keep them out of the flood plain. So after the roads are destroyed by an earthquake, the residents can pray for a flood so they can get in and out of their houses by boat.

BUT THE WALDTEUFEL WATER RIGHT, which Hill and Gomes represented, amounted to upwards of 1,500 acre feet of water a year, and was determined by the State Water Board to only amount to about 15 acre feet a year. And Millview neglected to include a clause in the purchase agreement that tied the cost to the amount of water that was really available. Which means that the Millview rate payers are on the hook for the full \$2 million for 15 acre feet of water, which makes it some of the most expensive water around. It is not known at this time if Millview's purchase of the forfeited Masonite water right was conditioned on water really being available. The case is now awaiting a final ruling by the State Court of Appeals.

IN A SEPARATE ACTION, Millview is also pursuing rights to Masonite "well #6," which it claims is not be subject to State Water Board control since it is "percolated ground water." As distinct from "underflow," or water that is hydrologically connected to the Russian River, and therefore subject to State control. But you can bet the State Water Board and the Sonoma County Water Agency will unleash cadres of well funded attorneys if Millview seeks to start pumping from well #6. Which means only Millview and Neary stand between Mendocino County's tenuous rights to its own water and the continued expropriation of Mendocino County water to top off Marin County hot tubs and swimming pools.