

MENDOCINO CITY COMMUNITY SERVICES DISTRICT
Post Office Box 1029
Mendocino, CA 95460
Business Phone (707) 937-5790 Treatment Plant (707) 937-5751 Fax (707) 937-3837

Minutes of November 24, 2014

The regular monthly meeting was called to order at 7:00 p.m. in the Community Room at the Mendocino Community Center. Present were Directors Kraynek, Waldman, Stubbs, Hauck, and Schwartz. Also present were Attorney James Jackson, Mike Kelley and Jodi Mitchell.

1. Agenda – no changes, additions, or deletions
Items 6 (b) and (c) were moved in their order prior to agenda item 6 (a).

2. Approval of Minutes
November 3, 2014 Typographical errors were noted on page 5 and corrected.
November 14, 2014 It was noted that under Section 10 (b) Director Stubbs suggested that there be a 6-month review of the current budget status on the January meeting agenda.
MOTION Waldman/Stubbs To approve the minutes of November 3rd, and November 14th, as corrected.
ROLL CALL VOTE: AYES: Directors Kraynek, Waldman, Stubbs, Hauck and Schwartz.
NOES: None
ABSENT: None

3. Communications

4. Public Comment
Alex Fields, Mendocino Film Festival representative, addressed the Board of Directors to thank them for their support for allowing the Film Festival to hold their annual event at the Palette Drive location for the past two years. Mr. Fields asked for their consideration to allow the Film Festival to hold the 2015 event at that location because of the strong community support. President Schwartz noted that the Film Festival did an exemplary job of clean up after the event, however, there had been complaints about the parking within the subdivision. Mr. Fields would prepare a proposal to the Board of Directors, which would address the parking issue.
Barbara Reed noted that the re-zoning of the parcel to Public Facility was currently being addressed in the Mendocino Town Plan at the Coastal Commission level, and she encouraged the Board to use caution in utilizing the property on Palette Drive for special events.

5. Groundwater Management
 - a. Memorandum of Understanding between the MCCSD and Hills Ranch Mutual Water Company
 - b. Memorandum of Understanding between the MCCSD and Big River Vista
Representatives from Hills Ranch Owners Association and Water Company, and Kari Hutchens from Big River Vista met with Mike Kelley on separate occasions regarding the proposed Memorandum of Understandings with MCCSD. Superintendent Kelley reported that the MOU's were still a work in progress and the proposed documents should be ready for the December meeting. Director Schwartz commented that the Board had been more than patient regarding the proposed Memorandum of Understandings with Hills Ranch and Big River Vista, and he asked for a date certain at the December meeting, with no negotiations going into the New Year.
 - c. Hearing for Failure to Obtain a Groundwater Extraction Permit 44401 Little Lake Road, APN 119-120-19 – Steven Gomes
Mr. Gomes, owner of a residence located at 44401 Little Lake Road had requested a hearing before the Board of Directors regarding his failure to obtain a Stage 4 Groundwater Extraction Permit.

Superintendent Kelley stated that on February 24, 2014, MCCSD declared a Stage 4 Water Shortage that required a GWEP, water meter and allotment. On April 11, 2014, correspondence and an application were sent to all owners of developed parcels. On September 10, 2014, an informational letter from Attorney Jackson was sent to property owners that did not return the Groundwater Extraction Permit Application. On October 7, 2014, MCCSD received a letter from Mr. Gomes, dated September 20, 2014 asking for a hearing before the Board. The hearing was scheduled for November 24th. In Mr. Gomes letter of September 20th, he expressed the following concerns about the permit requirement: 1) the well was over 100 years old, and the family had owned the property a long time, 2) the parcel was 1.86 acres with a single family residence, 3) he believed he may not have received proper notice of the adoption of Water Shortage Ordinance 07-4, 4) Stage 4 GWEP requirement violated his private property rights, 5) MCCSD was ordering him to abandon his water rights to percolating groundwater, 6) No explanation was given by the MCCSD that the restricted water use was justified by current drought conditions, 7) he wanted an explanation for why the water restrictions were permanent, 8) What authority MCCSD had to regulate groundwater extraction, and 9) were there any groundwater studies that supported MCCSD's Groundwater Management actions? Mr. Gomes offered two options to MCCSD: 1) to allow him to voluntarily comply with Ordinance No. 07-4 to pump water from his well and restrict consumption to 200 gallons per day for one year or until May 1, 2015, after which he would terminate such compliance or, if conditions justify, reasonably negotiate an extension. Since the rain season was rapidly approaching and could hopefully be plentiful to resolve all drought issues, it was his hope that no further discussion would be necessary, or 2) Provide him with a due process hearing wherein the District shall have the burden of, among other things, establishing the necessity and authority to regulate large parcel land owners located east of Highway 1 based upon, at least hydrological studies that respect, understand and protect the historical and intended uses of groundwater on his acreage.

On October 14, 2014, MCCSD responded with a letter informing Mr. Gomes of his hearing before the MCCSD Board of Directors regarding his failure to obtain a GWEP following the declaration of a Stage 4 Water Shortage. On November 21, 2014, MCCSD received a letter from Mr. Gomes Attorney, Matisse M. Knight, which he asked be entered into the administrative record. In his letter he challenged MCCSD's groundwater management authority to regulate extraction. Property rights, due process and just compensation issues were also raised.

Mr. Kelley provided Mr. Gomes with the studies he requested in his correspondence.

Superintendent Kelley prepared several memorandums that addressed the timing of the water shortage declaration. He also provided minutes, press releases and copies of letters to property owners informing them of water shortage declarations, and the latest 2012 GW Management Plan. The information was entered into the public record.

Mr. Kelley noted that the age, depth, type of construction or yield of an existing well in the MCCSD were not elements for obtaining a Stage 4 GWEP. All developed properties in Mendocino were required to now have a GWEP independent of parcel size or use. All developed parcels were required to limit extraction to an approved allotment, install a water meter and to submit monthly meters of water use. Mr. Gomes was being treated the same as all other property owners in the District.

Attorney Jackson responded to several issues in Mr. Knight's correspondence.

Section 10755.4 of the California Water Code, as quoted by Mr. Knight, was not applicable to the MCCSD. Mr. Jackson's opinion was the MCCSD had the right and responsibility to manage groundwater pursuant to Water Code Section 10700-10717, written specifically to the local agency of MCCSD. Since 1987, the District had maintained authority for the management of groundwater resources within the District and in 1990 assumed responsibility for Groundwater Management, as authorized by AB786, and the adoption of the Groundwater Extraction Permit Ordinance. The references Mr. Knight made to Section 10755.4, 10750.2, 10750.6 and 10750.4 of the water code were not applicable to the groundwater basin that was managed by MCCSD.

Mr. Jackson responded to Mr. Knight's claim that MCCSD "jumped the gun" in declaring the Stage 4 Water Shortage Condition solely off data available for January 31, 2014. . This year, Governor Brown issued a Drought Emergency Proclamation. As part of that proclamation, local water managers were called upon to implement their local water shortage contingency plans immediately. Consistent with that direction from the proclamation, and in accordance with the District's Water Management Plan, the MCCSD Board of Directors declared a Stage 4 Water Shortage. With only 3.81 inches of rainfall, with groundwater levels at the lowest ever recorded at the end of January in the District, and because of the

third year in drought, the MCCSD Board of Directors took action to protect the primary groundwater supply for Mendocino.

Attorney Jackson noted that the District was not “taking” property as Mr. Gomes claimed.. The District was regulating a common resource of groundwater for the benefit of the community as a whole. He noted that out of approximately 400 parcels, all but approximately a dozen property owners had applied for and obtained a Groundwater Extraction Permit.

Attorney Jackson determined the Board had acted properly in declaring the Stage 4 Water Shortage in accordance with their Water Shortage Response Plan, and they proceeded with due process and equal protection under the law.

Attorney Brian Momsen, Mr. Gomes’ legal representative, wanted to focus on the issues outlined in Mr. Knight’s correspondence dated November 20, 2014. Mr. Momsen claimed that MCCSD Ordinance 07-4 and the scientific study by Questa Engineering created a process of measuring rainfall during certain periods of the year. According to the MCCSD’s Contingency Plan, there were certain points to declare a water shortage and he suggested that according to MCCSD Ordinance, April was the earliest the stage 4 should have been declared. Under the Contingency Plan, the District must adhere to their own calendar for declaring water shortages and determining water shortage response plans as outlined in Table 4, the calendar for declaring water shortage and determining water shortage response plan from the Water Shortage Contingency Plan. Their conclusion was that the District did not proceed in the manner required by law, ignored their own procedure, took dramatic action disregarding their Ordinance by declaring the water shortage crises in February with March and May rainfall data not included, therefore inadequate data and evidence to support the findings of the stage 4 crisis. He further noted that the April determination was required to consider a 50 year drought event, and referred to page 14 of the contingency plan - that if the water condition was defined prior to May 31, there should have been additional evaluation whether the water shortage condition should be continued, increased in stage or terminated. Mr. Jackson thought they misunderstood where the District was in the process, because the Board had been evaluating rainfall and well levels for the past 36 months, prior to declaring the Stage 4. Mr. Jackson also noted that every benchmark since the Stage 4 Declaration indicated the District was in a stage 4 drought conditions with less than 50% of normal rainfall. Mr. Momsen thought that the table dates and amounts were not even close to being met by the MCCSD.

Mr. Momsen disagreed with MCCSD’s position that there was permanency associated with the contingency plan because the MCCSD failed to re-assess the necessity of its February 24th declaration under their own groundwater management plan. The MCCSD responded that they needed the water meter so the District did not exceed the perennial safe yield of the aquifer. Also, with the declaration of the Stage 4 Water Shortage, permanent Groundwater Extraction Permits with an allotment must be obtained by all property owners with developed parcels irrespective of their size or use, and it would be irrational to argue that the Stage 4 GWEP with requirements for limiting groundwater would be abandoned following a change in the drought stage.

Mr. Gomes stated his well sat on almost 2-acres and had been in existence for over 100 years. He had an existing residence, and he claimed that his property rights were being violated by the enforcement of the provisions in 07-4 for the Stage 4 declaration. Mr. Gomes raised issues regarding proper noticing of District Ordinances and also the responsibility of MCCSD to provide potable water to those who are without. Mr. Gomes accused the District of “taking” his water rights for the good of the public use. He refused to install a water meter subject to someone else’s needs. He claimed that he had a right to pump his well continuously down the street if he wanted. Mr. Gomes discussed historical uses on the parcel, which included horses and farming. He wanted to comply with the emergency, but he would not put a meter on his well permanently. He questioned the science, and said that rain affects the available water, not the type of use. He wasn’t asking for special treatment, just proper treatment. Mr. Gomes requested that if the Board could not make a decision, that they continue the matter for 60 days, or allow him one year to voluntarily comply until May 1, 2015.

Ed O’Brien explained the history of the District’s attempts to find a solution to the ongoing water problem in Mendocino. When they realized there was no available source for a development of a community water system and because of political and financial obstacles they focused on Groundwater as the resource, not water system development.

Attorney Jackson responded to Mr. Gomes issue of noticing stating that, as a matter of law, publication of the Ordinance in a newspaper of general circulation in the District is adequate legal notice for adoption of the Ordinances. The meter installations and monthly readings are required and necessary to develop and enhance the District's Groundwater Model.

Superintendent Kelley noted that non-urban uses were not included in the District's Water Use Standard, however, in the case of non urban water uses, the Groundwater Extraction Permit Ordinance, under the Water Use Standards, allowed for the Board to handle special requests on a case by case basis. He also noted that the water meter readings were necessary so the District did not exceed the safe perennial yield of the aquifer.

According to Attorney Jackson, it was his understanding that Mr. Gomes was requesting an exemption from the Stage 4 Groundwater Extraction Permit requirements of the District.

MOTION Hauck/Waldman

To deny the request of Mr. Gomes for an exception to the Stage 4 Groundwater Extraction Permit requirements based on the District's legal counsel's presentation.

ROLL CALL VOTE: AYES: Directors Kraynek, Waldman, Stubbs, Hauck and Schwartz.

NOES: None

ABSENT: None

Sam Kraynek excused himself from the meeting at 8:30 p.m.

d. Application for Hydrological Study Approval Extension
Bryan Bird, 44580 Little Lake Road, APN 119-090-49

An application was submitted for a Hydrological Study Approval Extension for a period of two years. A Hydrological Study approval shall automatically expire by its own terms if the applicant did not apply for a Groundwater Extraction Permit within the two year period. The Board of Directors may extend the Hydrological Study Approval for an additional period of two years if it was determined that the conclusions of the hydrological study were still valid. Superintendent Kelley recommended approval of the application for an extension to the Hydrological Study Approval, noting that the MCCSD had not determined that they were exceeding the safe yield of the aquifer.

MOTION Stubbs/Waldman: That the request for a Hydrological Study Approval Extension from Bryan Bird on Assessor parcel Number 119-090-49 be approved.

ROLL CALL VOTE: AYES: Directors Waldman, Stubbs, Hauck and Schwartz.

NOES: None

ABSENT: Kraynek

e. Groundwater Management Report

A September 10, 2014 follow-up letter from Legal Counsel to property owners reminding them of the requirement to obtain a Groundwater Extraction Permit had resulted in a number of applications being submitted to the District. On November 6, a First Violation Notice was mailed to 25 property owners for failing to submit a Stage 4 GWEP application.

The District received a total of 24.15 inches of rainfall during the 2013-2014 rain year. The historic average rainfall total for Mendocino was 40.33 inches. The District received approximately 60% of average rainfall during the 2013-2014 rain year.

Rain year 2014-2015 started on October 1, 2014. The rainfall total for October 2014 was above normal. Normal rainfall was 2.28 inches, and the District measured 3.98 inches in October, which was 75% above normal for the month and represented 10% of annual average rainfall. Through November 14th, total rainfall was 4.49 inches or 11% of annual rainfall.

The MCCSD Board declared a Stage 4 water shortage on February 24, 2014 based on low rainfall and the Water Shortage Contingency Plan. The Stage 4 remained in effect for rain year 2014-2015 which started on October 1, 2014.

The drought stage would be re-evaluated on November 30, 2014. Depth ^{to} water in the indicator wells and the rainfall since October 1, 2014 would be used to determine the current drought stage. 7.51 inches of additional rain was needed in November to reduce the drought stage to a Stage 3 Water Shortage.

12/29/14

Ann Kessler updated the meter reading database on the week of September 13th. The accuracy of the lists and compliance reporting letters generated by the database would be tested.

e. Ad-Hoc Water Conservation Committee

The committee reported that Mike Kelley was preparing a one page billing insert for the January 1, 2015 billing statements.

6. New Business

a. Review of Past Due Sewer Accounts to Consider Disconnection

1. 10391 Blair Street, APN 119-120-30
2. 45270 Albion Street, APN 119-217-06

The Board of Directors reviewed two sewer use accounts which were past due. Certificates of Liens had been recorded on both properties. Superintendent Kelley requested that the discussion be continued to next month's meeting. The Board of Directors was open to payment arrangements in cases of special hardship, and they would be open for discussion of a payment arrangement at the next meeting.

7. Attorney's Report

8. District Superintendent's Report

During the month of November 2014, the treatment plant operated normally. Plant personnel performed routine plant maintenance.

The dryer thermal fluid heater was serviced by RF MacDonald Co. on October 28, 2014. They would be replacing the thermal fluid pump once the oil analysis was completed.

The 5-year National Pollutant Discharge Elimination System (NPDES) permit application would be submitted as soon as all of the analytical test results were returned to the District.

The No. 2 water pump was replaced on November 12th.

The October self-monitoring online report was sent in to the Stage Water Quality Control Board. There was no sanitary sewer overflow in October 2014.

There was one 45,486 gallon recycled water transfer to the High School in November.

Staff took their regular monthly safety meeting. The Safety Officer also conducted the monthly safety inspection of the plant. Several on line safety courses from Target Solutions had been taken by staff.

9. Committee Updates

10. Secretary's Report

a. Register of Cash Disbursements

MOTION Hauck/Stubbs To approve the cash disbursements in the amount of \$35,530.83 for checks #12041 through 12075.

ROLL CALL VOTE: AYES: Directors Waldman, Stubbs, Hauck and Schwartz.

NOES: None

ABSENT: Kraynek

11. Matters from Board Members

12. The meeting adjourned.

Respectfully submitted,


Jodi Mitchell, Secretary

12/29/14