

Mendocino City Community Services District

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Dear MCCSD Community:

I wanted to briefly provide some comments on, and hopefully clarify, some of the issues raised in the May 7, 2020 Mendocino Beacon article of titled “Services district ordered to pay local man’s attorney fees.” That article appears to have been written almost entirely from the perspective of Mr. Steven Gomes and his attorney.

It is important for your readers and the residents of the Mendocino City Community Services District to know that the District won on nearly every issue raised by Mr. Gomes in his lawsuit against the District. The courts held against Mr. Gomes as to his various claims that MCCSD violated his substantive due process, took his property without compensation, devalued his property, issued excessive fines and fees, and lacked authority to regulate and limit groundwater extraction including requiring the installation of water meters. The courts found in favor of the District on all of these issues. Any implication in the article by Mr. Gomes that the ordinances now being adopted by the District are somehow invalid is absolutely false. In fact, these ordinances, as well as the Water Shortage Contingency Plan were determined to be lawful and enforceable by courts.

The only issue ultimately found in Mr. Gomes favor was whether the procedure used by the District to initially adopt a groundwater management program in 1990 needed to be followed yet again when adopting amendments to the original groundwater plan. The trial court initially held against Mr. Gomes finding that the District had properly adopted the ordinances at issue and rejecting Mr. Gomes’ contentions. This was a case of first impression with the approval process for amendments to the District’s Water Management Program having never before been challenged. On appeal, the Appellate Court essentially issued the District a “fix-it” ticket directing the District to re-adopt the Ordinances and Water Shortage Contingency Plan using the procedure for the original adoption of the District Groundwater Program. The District is presently going through this process.

On the other hand, the Appeals Court ruled in the District’s favor on the most fundamental issue raised by Mr. Gomes finding that the District had the power to manage and regulate groundwater in the District. The Appellate court held: “We thus conclude that the authority to manage the

district's groundwater resources includes the authority to impose extraction limitations on users of the groundwater.”

With respect to the recent decision on Mr. Gomes' attorney's fees, while the District respectfully disagrees with the court's decision, the District appreciates the court refusing to award Mr. Gomes the full amount of the requested attorney's fees. In so refusing to award Mr. Gomes his entire request for fees, the court held: “In this case, the success on appeal was on a ‘single issue’ of statutory interpretation and that issue was not specifically identified by [Gomes'] counsel in the initial petition for writ of mandate.” In other words, the trial court agreed that Mr. Gomes' lawsuit against the District was a pyrrhic victory of sorts, prevailing only on a single issue while not succeeding on almost every other aspect of the case including the most critical issue of the District's statutory ability to manage groundwater.

Perhaps the most important issue for your readers to consider is that the purpose of the District's groundwater management plan is to protect the availability of groundwater for the common benefit of all residents and landowners in the District. The state is slipping into another severe drought and some experts are predicting the possible onset of a multi-year megadrought. Thus far, 2020 is the third driest year since 1901.

The District's groundwater management ordinances and Water Shortage Contingency Plan are scientifically based and were developed by well-known engineering firms like Questa Engineering, Kennedy Jenks, ETIC, and Todd Groundwater. The Department of Water Resources funded development of the Mendocino Headlands Groundwater Model, a geographic information system used for mapping and accessing groundwater database information, improvements to the District's groundwater monitoring program, and installation of a well monitoring field use to track monthly changes in aquifer conditions.

As a result, the exact ordinances challenged by Mr. Gomes in his lawsuit were instrumental in preserving the availability of groundwater during the recent drought and water crises. Notably, and respectfully, Mr. Gomes acknowledges in your article that at least part of the District's purpose in regulating groundwater is to protect wells from overdraft. The District's process of monitoring groundwater use, ensuring preparedness for potential water shortages, and regulating extraction, were all upheld as valid by the courts and ensure the continued availability of groundwater in the future for the community.

The District sincerely hopes that Mr. Gomes and others will work constructively in the coming months to support the District in protecting the continued availability of local groundwater. Thank you for allowing me to provide this information to your community and readers.

MATTHEW EMRICK

Special Legal Counsel

Mendocino City Community Services District