

RESOLUTION NO. 2021-281

**RESOLUTION OF THE MENDOCINO CITY COMMUNITY SERVICES DISTRICT
TO FIND AND DECLARE THE EXISTENCE OF AN UNDUE FINANCIAL HARDSHIP
PURSUANT TO GOVERNMENT CODE SECTION 970.6**

WHEREAS, Mendocino City Community Services District (MCCSD) provides sewer services to residents within its boundaries; and

WHEREAS, the District manages groundwater within the District's boundaries; and

WHEREAS, the District projects annual revenue for the 2021/2022 fiscal year of \$932,483.33 and expenditures of \$830,061.21 (which include costs related to District services, maintenance and operation of facilities, employee related expenses). The expenditures do not include an interest payment in the amount of \$201,422.12, bringing the total expenditures for this fiscal year to \$932,483.33; and

WHEREAS, The District's Finance Committee did not budget funds to pay opposing counsel's attorney's fees, as the income of the District did not allow for such an expense. There is an Equipment Replacement Reserve in the amount of \$ 470,745.71 based on straight-line depreciation of the District's equipment and facility. According to the District's Fiscal Policies adopted in 2018, these funds are earmarked for Equipment Replacement, but that account is not strictly reserved for that purpose. It is anticipated that any fees ordered by this court to pay opposing counsel will come from the Equipment Replacement Reserve. The Board was unable to budget any money for equipment replacement this fiscal year.

WHEREAS, the District is pursuing grant funding for a consultant/grant writer to assist pursuing grant opportunities in planning for water and wastewater infrastructure upgrades;

WHEREAS, the District is pursuing drought relief grant funding for the procurement and installation of two 500,000-gallon water storage tanks to increase water security through the State of California, Department of Water Resources, Small Community Drought Relief Program;

WHEREAS, the District is pursuing grant funding for re-engineering and construction of a new Recycled Water System to meet current California State Title-22 standards, including adding 50,000-gallon recycled water storage/chlorine disinfection contact tank, through the State of California, Department of Water Resources Small Community Drought Relief Program; and

WHEREAS, the District is presently expending funds that could exceed \$100,000 to defend a lawsuit filed by Plaintiff, Steven Gomes, filed on April 6, 2021 in Mendocino Superior Court (No. 21CV00177), which action seeks additional attorney fees and to invalidate existing District fees used to fund operating expenses; and

WHEREAS, the District is in Stage 4 drought conditions and expending extra funds on groundwater management and seeking potential long-term water source supplies in the near-term – and potential permanent water source supplies in the mid to long-term; and

WHEREAS, the District has been adversely impacted by the COVID-19 pandemic financially both by the additional unexpected expenditures and reduces revenues; and

WHEREAS, on May 28, 2021, the First District Court of Appeal upheld a decision of the Mendocino Superior Court granting Steven Gomes attorney fees in the amount of \$128,983.00 against the District in the case of *Gomes v. Mendocino City Community Services District*, Sup Ct. Case No...SCUK CVPT 13-65985 (A160420) (“2015 Action”); and

WHEREAS, on or about September 4, 2021, Plaintiff Steven Gomes filed a new motion seeking attorney’s fees and costs related to the 2015 Action and appeal of *at least* \$39,042.70 in appellate attorney’s fees and another \$8,865 in fees for bringing this motion (totaling \$47,908); and

WHEREAS, a lump-sum payment of the attorney’s fees awarded to, and now sought by, Steven Gomes would serve as a severe undue financial hardship on the District and its ability to provide services now and in the future; and

WHEREAS, Government Code Section 970.6 provides that a judgment that imposes an undue hardship on a public agency may be paid over a period of ten (10) years in equal yearly installment payments; and

WHEREAS, the District must invoke the procedures of Government Code Section 970.6 in order to continue to provide services and avoid any undue financial hardship; and

NOW THEREFORE, IT IS RESOLVED AND ORDERED, that the MCCSD Board declares that pursuant to Section 970.6, the imposition of attorney’s fees in the amount of \$128,983.00 upheld by the Court of Appeals along with any additional attorney’s fees sought by Mr. Gomes in his new motion filed on September 4, 2021 will result in an undue, severe and unreasonable financial hardship unless the District is allowed to pay such amounts in installments over a 10-year period; and

BE IT FURTHER RESOLVED AND ORDERED, that the Board therefore directs legal counsel to take all necessary actions to authorize a 10-year installment payment plan under Government Code section 970.6 of any and all attorney’s fees awarded to Steven Gomes pursuant to his action against the District.

PASSED AND ADOPTED by the Board of Directors of the Mendocino City Community Services District at a Special Meeting on September 24, 2021, by the following vote:

ROLL CALL VOTE: AYES:
NOES:
ABSENT:

ATTEST:

Katie Bates, District Secretary

Harold Hauck, Board President