

ORDINANCE 2020-2
MENDOCINO CITY COMMUNITY SERVICES DISTRICT
WATER SHORTAGE CONTINGENCY PLAN ORDINANCE

This ordinance establishes the policies, criteria, rules, duties, procedures, restrictions and prohibitions on wasteful water usage, water conservation measures, and the penalties and enforcement actions for the Mendocino City Community Services District to implement during a drought and declared water shortage. The drought management response procedures, including year round water conservation measures, shall include the provisions of this Ordinance and the District's adopted Water Shortage Contingency Plan.

1. Authority

Pursuant to the authority as set forth in California Water Code Sections 10700 through 10717, naming the Mendocino City Community Services District (hereafter MCCSD) as an entity with groundwater management authority, with the power to prepare and implement a Groundwater Management Plan, and with the powers of a Water Replenishment District including the authority as a water provider to buy and sell, and transmit water for public water supply as contained in California Water Code Sections 60220,

The Board of Directors of MCCSD therefore adopts the following Water Shortage Contingency Plan Ordinance for prohibition of water wastage, year-round water conservation measures, and establishment of provisions for designation of water shortage emergency conditions.

All real property within the boundaries of the MCCSD shall be subject to these regulations. The intent of the Ordinance is to protect the groundwater resources within the boundary of the MCCSD for the common good of all present and potential users.

2. Findings of Fact

Findings of Fact for this Ordinance are based on the following detailed groundwater studies that have been completed for the MCCSD area. These studies are incorporated by reference and are available for review at the District office:

1. California Dept of Water Resources (DWR). Town of Mendocino Groundwater Study. June 1985. 53 pp.
2. Kennedy Jenks, Inc., Mendocino Drought Scenarios Technical Memorandum. Consultant Report prepared for MCCSD. November 2006.

3. Questa Engineering Corporation and ETIC, Inc. Groundwater Modeling Study of the Mendocino Headlands, Mendocino, California. Consultant Report prepared for MCCSD. June 2004.
4. Questa Engineering Corporation. Water Shortage Contingency Plan. Consultant Report prepared for MCCSD. December 2006.

The Board of Directors of MCCSD makes the following findings:

This Ordinance is considered for action by the Board of Directors at a regularly scheduled and noticed meeting. The agenda was posted in accordance with District policies with opportunity for public review in advance of the meeting and public comment during consideration of the Ordinance by the Board. The District has followed the procedures for notice, publication, public participation and adoption, as set forth in Government Code Section 25120.

a. Prior to the adoption of This Ordinance, the District held a public hearing on April 16, 2020 after publication of notice for the first hearing on April 2 & 9, 2020 pursuant to Section 6066 of the Government Code. The District adopted a resolution of intention to adopt and implement the groundwater management program on April 16, 2020. A copy of the program was published in a newspaper of general circulation on April 23, 2020. Notice of the second hearing was published on April 2 & 9, 2020. The Board of Directors scheduled the second hearing for April 27, 2020 to consider protests to the implementation of the program by eligible registered voters residing within the boundaries of the District. There was no majority protest by more than 50% of eligible registered voters of the District. The Board may accordingly adopt this Ordinance within 35 days of the second hearing.

b. The protection, conservation, and replenishment of the underground water supplies are the main functions of the Mendocino City Community Services District.

c. MCCSD is located in a part of California that receives an average of 40 inches of rainfall a year. Since there are no surface water diversion and storage facilities and limited public water storage tanks, the owners of real property within MCCSD must rely on the groundwater contained beneath their individual properties as the principal source of their domestic water supply.

d. The groundwater supply available to property owners within MCCSD is highly constrained, of limited extent and seasonal availability, and is ultimately dependent upon local rainfall as the primary source of groundwater recharge and replenishment. Due to unique hydro-geologic and groundwater conditions occurring within the District, and the small amount of year to year carryover storage in the underlying groundwater aquifer, the available groundwater supply is highly subject to overdraft and depletion, competition among adjacent wells, and seasonal shortages due to declining water levels, especially during times of drought.

e. Because of periodic drought conditions that occur within the MCCSD, and that are common to all of California, and the consequent reduction in local groundwater recharge and replenishment during periods of low rainfall, water shortage conditions of varying degrees of severity may occur from time to time within the MCCSD area. The completed groundwater studies have verified that because of the natural characteristics and limited thickness of the groundwater aquifer, the MCCSD area should be considered to be in a perpetual state of water supply shortage, with some individual water wells going dry seasonally, even in above-average rainfall years.

f. Year-round water conservation measures are an integral component of both short term and long term efforts to preserve and protect the groundwater supply of the MCCSD area, and as a means of managing the available groundwater supply during times of water shortage. Additional, more stringent water conservation and water use reduction measures will be appropriate during periods of more severe drought and water shortages.

g. Wasteful water use practices in the area served by the District constitute a potential threat to, and an unacceptable diminution of, the District's underground water supply. The prevention of water waste through enactment of a water conservation ordinance is an economically and environmentally feasible way to protect and conserve, and to prevent unacceptable diminution of the District's water supply.

h. Therefore it is advantageous and necessary in order to protect the underground water supply of the District, that the District enacts this Ordinance addressing Water Wastage and Water Conservation and Water Use Reduction.

3. CEQA Inapplicability/Exemptions

The Board of Directors finds that this Ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA), and/or is exempt from CEQA requirements in accordance with the following reasons:

a. This Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

b. On a separate and independent basis, the District finds this Ordinance is categorically exempt from CEQA under Sections 15307 of the CEQA Guidelines as a regulatory action taken by the District pursuant to its powers under California Water Code Section 10700 *et seq.* to assure maintenance and protection of a natural resource and the environment during the existence of the water shortage condition and potential emergency declared pursuant to this Ordinance.

c. On a separate and independent basis, the District finds this Ordinance is categorically exempt from CEQA under Sections 15308 of the CEQA Guidelines as a regulatory action taken by the District pursuant to its powers under California Water Code Section 10700 *et seq.* to assure maintenance and protection of a natural resource and the environment during the existence of the water shortage condition and potential emergency declared pursuant to this Ordinance.

d. On a separate and independent basis, the District finds this Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment as the Ordinance is intended to help maintain current groundwater availability.

For the reasons set forth above it can be stated that there is no possibility that adoption and enforcement of this Ordinance will have a significant effect on the environment, consistent with applicable guidelines for CEQA assessment.

4. Adoption of MCCSD Water Shortage Contingency Plan

The Board of Directors of MCCSD has by Resolution No. 2020-269 adopted the Mendocino Community Services District Water Shortage Contingency Plan. The Plan will be implemented when the Board declares by resolution any Water Shortage Emergency Condition.

The Water Shortage Contingency Plan may be modified from time to time as more information on the hydrogeology and groundwater conditions of the MCCSD area becomes available, and as new methods and techniques for water conservation, storage, treatment, and re-use become feasible and implementable.

5. Declaration of a Continuous Water Shortage Condition

Because of the unique geology, water supply, and groundwater conditions occurring within the MCCSD boundaries, the Board of Directors hereby recognize that a continuous, year-round Water Shortage Condition is present within the MCCSD boundary.

Through various public outreach and education programs, the Superintendent of MCCSD will encourage year-round Water Conservation and Water Use Reduction measures, as described in the MCCSD Water Shortage Contingency Plan.

6. Prohibition of Water Wastage

No person shall cause, suffer, or permit the indiscriminate running of extracted groundwater not otherwise prohibited in Section 7, Adoption of Year-Round Outdoor Water Conservation and Water Use Reduction Measures, and which is wasteful and without reasonable purpose.

No person shall cause, suffer, or permit extracted groundwater to spill into streets, curbs, or gutters. No person shall use any extracted groundwater that results in runoff beyond the immediate area of use.

Every person is deemed to have under his/her control at all times his/her water distribution lines, to inspect and maintain them to prevent leakage, and to know the manner and extent of his/her use, and where a water allocation has been issued, the extent of his/her extracted groundwater usage with respect to said allocation.

7. Adoption Of Year-Round Outdoor Water Conservation and Water Use Reduction Measures

The following non-essential outdoor water uses are restricted and/or otherwise prohibited during all Water Shortage Conditions. Through education and public outreach, MCCSD shall seek voluntary compliance during a Stage 1 Water Shortage Emergency Alert. Water Conservation and Water Use Reduction Measures shall be mandatory and enforced by means of penalties and surcharges in Stages 2, 3, and 4 declared Water Shortage Emergencies.

a. Landscape Watering

Watering using groundwater extracted from beneath the MCCSD service area to establish new lawns and other high water demand (non-Xeric) landscaping is prohibited. The watering of existing established landscaping shall be limited to manual garden hose watering or use of a drip irrigation system between the hours of 7:00 PM and 10:00 AM, unless a variance is issued by the District Superintendent. The establishment of and/or maintenance of existing Xeric landscaping, using a manual hose watering system equipped with an automatic shutoff system or drip irrigation system, is exempt.

Watering of lawns, turf areas and athletic fields using reclaimed water is exempt from this provision.

b. Washing of Vehicles

The washing of personal and commercial motor vehicles, including boats and other equipment, shall be permitted only by means of a “bucket and sponge,” and a hose with a shutoff nozzle.

c. Cleaning of Exterior Surfaces

The hosing down of porches, sidewalks, driveways, and other hard surfaces is prohibited, except as needed for health and safety reasons, and as authorized by the District Superintendent of MCCSD. The use of water from a bucket for cleaning food and grease, oil, or other stains or spillage on exterior surfaces is permissible.

d. Cleaning of Structures

No person shall use water through a hose to clean the exterior of buildings, except as is necessary to avoid creation of a public nuisance, and then only with a hose equipped with an automatic shutoff nozzle.

e. Pools and Spas

No person shall empty and refill a swimming pool, hot tub, or spa except to prevent or repair structural damage or to comply with public health regulations. All pools, hot tubs, and spas shall be covered to prevent evaporative losses when not in use.

f. Fountains

Use of decorative fountains is discouraged. No person shall use water to operate a fountain or maintain levels in decorative fountains unless such water is re-circulated.

g. Visitor-Serving Facilities

The owner and manager of each hotel, motel, bar, restaurant, and other visitor-serving facility shall ensure that such facility displays in places visible to all customers, placards or decals approved by the District, promoting public awareness of the need for water conservation and/or advising the public that waste of water is prohibited.

h. Restaurants

Restaurants in the District shall not serve water to restaurant customers, except upon request of the customer.

i. Construction

No potable water obtained from the groundwater supply from beneath the MCCSD boundaries may be used for soil compaction or dust control during construction activities. The District Superintendent may authorize use of groundwater for construction of small projects. All water hoses used in connection with construction activities shall be equipped with an automatic shutoff nozzle.

j. Public Health and Safety

These regulations shall not be construed to limit water use which is immediately necessary to protect public health and safety.

k. Additional Water Conservation and Water Use Reduction Measures

Additional Water Conservation and Water Use Reduction Measures may be implemented during Stage 2, 3, and 4 Water Shortage Conditions as described in the MCCSD Water Shortage Contingency Plan.

8. Periodic and Necessary Declaration of Water Shortage Emergency Conditions, Stages 1 through 4, and Implementation of Water Shortage Contingency Plan

The District Superintendent of MCCSD shall regularly monitor rainfall amounts and groundwater conditions within the MCCSD boundary, and as appropriate and according to the criteria contained in the MCCSD Water Shortage Contingency Plan, report to the Board recommendations on declaration of Stage 1, 2, 3, or 4 Water Shortage Emergency Conditions.

The Board shall act on the District Superintendent's recommendation as they deem appropriate, and after considering the information and findings of fact presented by the District Superintendent, declare through a resolution voted on during a regularly scheduled meeting, stages of Water Shortage Emergency Conditions, and instruct the District Superintendent to

implement appropriate Water Conservation and Water Use Reduction Management Actions, as contained in the MCCSD Water Shortage Contingency Plan.

The District Superintendent shall prepare periodic reports and updates of rainfall and groundwater monitoring results, following declaration of a Stage 1 Water Shortage Emergency Condition, and recommend to the Board, meeting in regularly scheduled session, or as warranted, emergency meetings, when in the opinion of the District Superintendent, a Stage 1, 2, 3, or 4 Water Shortage Emergency Condition declaration should be rescinded, or changed to a lesser or greater stage.

The Board shall act on the District Superintendent's periodic updates and recommendation as they deem appropriate, and after considering the information and findings of fact presented by the District Superintendent, declare through a resolution voted on during a regularly scheduled meeting, the rescission or change in stages of Water Shortage Emergency Condition and instruct the District Superintendent to implement the appropriate Water Conservation and Water Use Reduction Management Actions, as contained in the MCCSD Water Shortage Contingency Plan, and associated with the stage of the Water Shortage Emergency Condition.

9. Temporary Moratorium on Issuance of New Groundwater Extraction Permits and on Drilling and Test Pumping

The Board of Directors may proclaim through resolution a temporary moratorium on the issuance of new Groundwater Extraction Permits issued in accordance with the Groundwater Extraction Ordinance, following the public declaration of a Stage 3 or Stage 4 Water Shortage Emergency Condition. The moratorium would extend until the Stage 3 or Stage 4 Water Shortage Emergency Condition has been rescinded by resolution of the Board. No new water well drilling or pump testing will be permitted during Stage 3 or Stage 4 declarations. The drilling of replacement wells may be considered by the Board on a case-by-case basis.

10. Modification of Water Allotments

Water allocations made by the MCCSD Board under the Groundwater Extraction Permit Ordinance may be reduced uniformly among all current permit holders by resolution of the Board made during a regularly scheduled Board meeting, or at an emergency meeting of the Board, following the declaration of a Stage 3 or Stage 4 Water Shortage Emergency Condition. Water Allocations shall be reduced by 20 percent during a declared Stage 3 Water Shortage Emergency and by 40 percent during a Stage 4 Water Shortage Emergency.

The District Superintendent shall notify, in writing and by registered U.S. mail, each current Groundwater Extraction Permit holder of their specific water allocation reduction and their revised allowable groundwater allocation in effect during the declaration of a Stage 3 or Stage 4 Water Shortage Emergency Condition. The notification shall also include a listing of potential water conservation and water use reduction measures, and an advisory that MCCSD staff is available upon the written request of the permit holder to conduct an audit of water usage and to make specific recommendations on water usage and additional conservation measures.

The District Superintendent shall notify, in writing and by registered U.S. mail, all other MCCSD customers of a Stage 3 or Stage 4 Water Shortage Emergency, and of the request to reduce water usage by 20 percent during a Stage 3 Water Shortage Emergency. During a Stage 4 Water Shortage Emergency, all allotments shall be reduced by 40 percent. The notification shall also include a listing of potential water conservation and water use reduction measures, and an advisory that MCCSD staff is available upon the written request of the property owner to conduct an audit of water usage and to make specific recommendations and additional conservation measures.

11. Misdemeanor and Penalty for Violations and Failure to Comply

After the adoption and publication of this Ordinance, it shall be a misdemeanor for any person to violate any provision, restriction, regulation, or prohibition contained in this Ordinance, including those contained in the MCCSD Water Shortage Contingency Plan. Any violation of this Ordinance is declared a Public Nuisance.

Violation of MCCSD Water Wastage Prohibition, or Water Conservation and Water Use Reduction Ordinance provisions during a declared Stage 2, 3, or 4 Water Shortage Emergency Condition, including those contained in the adopted MCCSD Water Shortage Contingency Plan shall be subject to the following penalties:

a. First Violation

For a first violation during any Water Shortage Emergency stage, the MCCSD District Superintendent shall issue a written notice to the Ordinance violator of the facts of violation of the Ordinance and the requirements for Water Conservation and Water Use Reduction, and a reasonable period of time to make corrections where applicable.

The Notice of First Violation citation shall be issued by regular US mail at the address where the MCCSD customer is regularly billed.

b. Second Violation

For a second Ordinance violation during Water Shortage Emergency Stages 2, 3, and/or 4, the MCCSD District Superintendent shall issue a written citation and impose a groundwater management surcharge of \$100.00 on the customer's regular sewer bill, and provide a reasonable period of time to make corrections where applicable.

The Notice of Second Ordinance Violation citation shall be issued by registered US mail at the address where the MCCSD customer is regularly billed.

c. Third Violation

For a third violation during Water Shortage Emergency Stages 2, 3, and/or 4, the MCCSD District Superintendent shall issue a citation and impose an additional groundwater management surcharge of \$250.00 on the MCCSD customer's regular sewer bill, and provide a reasonable period of time to make corrections where applicable.

The Notice of Third Ordinance Violation citation shall be issued by certified-return receipt US mail at the address where the MCCSD customer is regularly billed.

d. Daily Violation Occurrence

Each day on which an Ordinance violation occurs shall be deemed to be a separate offense.

e. Violation of Reduced Water Allocations

Violation of any Water Allocation reductions mandated by the Board per Section 10 of this Ordinance during Stage 3 and Stage 4 Water Shortages shall be subject to the same penalties as contained in Section 15 of the adopted Mendocino City Community Services District Groundwater Extraction Permit Ordinance.

f. Failure to Comply

If a person fails to correct the violation within the timeframe specified in the written notice, the District Superintendent shall take one or more of the following actions.

1. Give the person one additional written notices of the violation.
2. Contact the Mendocino County District Attorney to initiate abatement proceedings as a Public Nuisance.
3. Upon order of the Board of Directors, direct the District's Attorney to bring civil suit or other action to enjoin or abate the nuisance.

g. Recovery of Attorneys Fees and Costs

In the event legal proceedings are filed by the District or any other party concerning this Ordinance, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and costs (including expert costs) incurred in such legal proceedings in addition to such other relief as may be granted by the court. This provision shall apply to any mediation, arbitration or litigation concerning this Ordinance. The District's successful defense of its groundwater extraction permit program in any legal proceeding shall entitle the District to recover its attorney's fees and costs in accordance with this Section.

12. Enforcement

The District Superintendent of the MCCSD shall, in connection with the Superintendent's duties and responsibilities afforded by law, diligently enforce the provisions of this Ordinance by issuing or causing to issue Misdemeanor Water Conservation and Water Use Reduction Ordinance Violation Citations. This ordinance shall also be enforceable by the Mendocino County Code Enforcement Officer and Mendocino County Sheriffs Department. The District shall have the right to seek an injunction against continuing violations of this ordinance.

13. Hearings Regarding Violations

Any person or designated representative of a property owner who has been issued a Misdemeanor Ordinance Violation Citation has the right to a hearing before the Board of Directors of MCCSD. The request for a hearing on the citation shall be made in writing to the Director of MCCSD within fifteen (15) days of receipt of the citation.

The hearing shall be held at the next regularly scheduled meeting of the Board, following receipt of the timely written request for a hearing.

The person receiving the citation's timely written request for a hearing shall automatically benefit from a stay in imposition of any penalty or surcharge until the Board renders a decision on the appeal.

The Board shall consider information presented by the Superintendent and by the citation recipient in rendering a decision. The decision of the Board shall be final.

14. Severability

If any section, subsection, paragraph, sub-paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of

this Ordinance and such remaining portions of this Ordinance shall remain in full force and effect.

15. Constitutionality

This Ordinance is not intended to authorize, and shall not be construed as authorizing, the MCCSD to exercise its power in a manner which will take or damage private property for public use. This Ordinance is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States of America.

This ordinance shall be published once in the Mendocino Beacon, a newspaper of general circulation published within the District. This Ordinance was introduced at a meeting of the Board of Directors on May 11, 2020 and adopted by the Board of Directors on May 18, 2020 by the following vote: 3-1

AYES: Directors Hauck, Arnold, & Sullivan

NOES: Rice

ABSENT: None

_____, Board President

ATTEST:

Jeannée Christ, District Secretary