

Minutes
SPECIAL MEETING OF
THE NORTH YUBA WATER DISTRICT

September 3, 2013

A. ROLL CALL

President Olsen called the meeting to order at 5:01 PM at the district office in Brownsville, CA. The recording secretary called the roll.

	PRESENT	ABSENT	VISITORS
Directors			
	Forguson		See attached list
	Cavaliere		
	Olsen		
	Jacobson		
		Skinner	

B. POTENTIAL RESPONSE TO DROUGHT CONDITIONS

President Olsen asked Manager Maupin to give the board any information he had obtained since the last meeting. Manager Maupin reviewed the questions that were asked during the previous meeting.

1. Were there any potential monies available from the 2005 agreement?
2. Could district funds cover the cost of additional water?

He thought it would be appropriate for the attorney to respond to the questions first. Assistant General Council, Michael Cobden addressed the board and informed them that his firm, Colantuono & Levin, provided the district with general counsel advice to the board and the board also has special counsel for water rights issues and contracts related to that.

He addressed question number one first. He stated that the district's water attorneys have provided an opinion regarding that issue. The question asked was if the 2005 South Feather

Water and Power Agency agreement gave the NYWD any additional money to use for purchasing water under the various permits. The conclusion of water counsel is that the agreement does not give the district any additional money. The contract provided a certain fund of money to be used for repairs on the Forbestown Ditch Project in certain circumstances. The money could be used if the power agency was making a certain amount of money, the district was not getting revenue from the power generation, and the repairs needed to be made. As of 2011 he noted that the district was receiving revenue from the power generation. The conditions for the contract to give the district additional funds did not exist. If they did, the funds could only be used for the purpose of repairs on the ditch, not additional water purchases.

Mr. Cobden then responded to the second question regarding the use of general district funds to purchase additional water for district customers. He felt the conclusion was a bit more complicated. The district cannot use general funds that would only benefit certain customers. The money being raised by rates charged to domestic customers could not be used to buy water for irrigation customers. Neither can rates charged to irrigation customers be used to benefit domestic customers. The constitutional provisions adopted by California voters under prop 218 stated the rates from one type of water delivery cannot be used to fund another type of water delivery. This constitutional limitation was placed on all special districts, cities, counties, and government agencies by the voters. He stated that this law may also apply to power generation revenue.

Director Cavaliere stated that Assistant General Council Michael Cobden addressed the water as "supplemental water". She stated that this is water that the customers have already paid for. It is not "supplemental water". This is water that the customers have paid for and need. She asked that the term not be used. Mr. Cobden responded that the term was being used to avoid confusion with the water that the district receives under the first permit, #516 (3,700 acre feet free to the district). The additional water available under permit #518 is water that the district must purchase. The use of the word supplemental was used to differentiate between the water that the district gets freely and the water that must be purchased.

Director Cavaliere asked if the general funds from taxes received are not partly monies from the irrigation customers. Mr. Cobden responded that it is assumed that the district revenues are derived from a number of sources including water rates paid by domestic irrigation customers, property tax revenue and possibly power generation revenues. The problem from a legal standpoint is that there are rate revenues as well as other types of revenue. Director Cavaliere stated that the irrigation customers have paid taxes, ID-1 taxes and have paid money that is in the general fund. The district benefits from irrigation customers and the funds should be available to them to purchase water. Mr. Cobden responded that he thought he understood what Director Cavaliere was asking but felt the real problem was not that there were funds from the irrigation customers in the general fund but that there is also domestic rate money in the general fund. He stated that under prop 218 the district cannot spend money from domestic water users to benefit

other water users. Director Cavaleire asked that only the portion of funds raised by the irrigation users be used to purchase water. She stated that amount could easily be found out.

Director Cavaliere stated that Soper-Wheeler attended the last meeting to propose a logging contract. According to a previous board member, she stated the money used to purchase the land was definitely from irrigation customers. The money from logging that property was used to build the current district building. Funds from irrigation, dating back to the 1970's, have been taken advantage of by the district and continue to do so. She stated that all she is requesting is five weeks of water for people that are desperate. She asked for a solution aside from Prop 218. She referred to the proposal from Soper-Wheeler and asked that the funds raised from the logging be used to offset the cost of additional water for irrigation. Mr. Cobden was unsure if the use of the logging revenue may apply under Prop 218. He had not looked into the derivative use of funds. He thought it was an unusual situation that was not regularly addressed by the courts. He then stated that there was another potential problem with the constitutional prohibition on gift of public funds which requires that the board declare that a use of the districts money, of any type, for a sub-group of its membership is a proper use of funds for the district. It is something that the board can adopt and determine as a matter of policy. He understood her frustration but felt like the options that have been presented are not going to be available for various reasons. He stated that the district runs a grave risk of violating laws that will expose it to expensive lawsuits. He reminded that it would only take one member of the district to sue when he had advised that the actions taken by the district may not be legal. Director Cavaliere asked if there was a major breakdown in the domestic system, could the district use any available money to fix the leak. She wanted to know if the money in the budget was marked from irrigation or irrigation taxes. She felt like we were a district and we have to function as a district. She deemed the water shortage was a district problem not an irrigation problem. She stated the line was unclear.

President Olsen asked Manager Maupin to address the district's ability to transport additional water and review the condition of the ditch. After the last meeting Manager Maupin had investigated the possibility of delivering additional water with Superintendent Eric Manley. Manager Maupin reviewed the capacity of the Forbestown Ditch. He stated it had a maximum capacity of 24 cubic feet per second. He stated there was a little bit of room left but not enough to make a real difference. He stated the argument of who will pay for the water was becoming not as critical as the question of how to deliver the water. The restrictions of the ditch at this time don't allow the district to make a difference in delivering. He reviewed the water account, losses, domestic and irrigation. He stated that the ditch was almost to capacity and if additional water was added, the water would spill out. There was only enough room in the ditch to add 20 inches but after losses it would be less than that. Until the ditch is piped, these difficulties will continue.

Director Cavaliere addressed Manager Maupin asking why the water was able to be delivered from April through July and why is it any different now. Manager Maupin reminded Director