

SB 135 redefined latent powers as those services and facilities authorized by the new CSD Principal Act that a CSD did not provide before January 1, 2006, as determined by LAFCo. Therefore, SB 135 effectively grandfathered in all services and facilities that CSDs provided before January 1, 2006.

The old CSD Principal Act from 1955 required voter approval of latent powers and predated the statewide creation of LAFCo in 1963. With SB 135, all powers authorized for CSDs but not being exercised became latent powers, regardless of the initial formation petition.

Consistent with SB 135, on December 29, 2005 LAFCo staff determined that the current services provided by Mendocino City CSD were as follows.

1. Collection and treatment of sewage, wastewater, recycled water and storm water in the same manner as a Sanitary District.
2. Acquire, construct, improve, maintain, operate street lighting and landscaping on public property, public rights of way and public easements.
3. Water services for any beneficial use in the same manner as a Municipal Water District, including a ground water management program as provided by Water Code Sections 10700-10717, and the District's Ordinance for Groundwater Extraction Permits and policies to manage and protect groundwater resources, to promote water conservation, increase the use of reclaimed water, reduce ground water extraction and to collect information on groundwater conditions in Mendocino.

The 2008 MSR/SOI study prepared for the District reaffirmed the above list of active powers.

(LAFCo, 2008)

3.3.2 POWERS

3.3.2.1 Active Water Powers

After the passage of Measure A in 1985, the District secured grants, prepared studies, and tested multiple locations to identify a water source of adequate quantity and quality to create a municipal central water system to serve the entire District. To date, no adequate water source has been identified.

While the District does not provide water services in the traditional sense of the word with a raw water source, water treatment plant, and piped delivery system, the District does supply water for beneficial uses including tertiary treated reclaimed water per agreement with the Mendocino Unified School District and State well water from a water storage tank at the Wastewater Treatment Plant during drought conditions per agreement with State Parks.

All functions or classes of water services provided by the District prior to January 1, 2006 are considered active powers and may be continued and expanded without LAFCo approval.

3.3.2.2 Latent Water Powers

According to GOV §56050.5, a "latent service or power" means those services, facilities, functions, or powers authorized by the principal act under which the district is formed, but that are not being exercised, as determined by the commission pursuant to subdivision (i) of Section 56425.

Making a determination regarding latent powers involves evaluating whether an authorized service or power has been exercised and whether it constitutes a new or different function or class of service. To

date, the District has provided water services supplied by groundwater wells from the local aquifer and reclaimed water from that original source.

The unconfined Mendocino Headlands aquifer has a significant amount of water loss annually through cliff faces and does not hold or store groundwater from one year to the next; thus, groundwater conditions in the local aquifer are strongly influenced by annual precipitation. (MCCSD, 2019c)

In order to expand water services beyond reclaimed water supply and well water storage, the District will likely need to identify and establish a new water source from outside the local aquifer to develop a water system or replenish the local aquifer.

While water replenishment is naturally related to groundwater management services, in this case, water replenishment is considered a new or different function or class of groundwater management services. In addition, a municipal central water system is considered a new or different function or class of water services. Therefore, LAFCo approval is required for activation of latent powers for the District to provide water replenishment activities or develop a municipal central water system in the District.

3.4 GROUNDWATER MANAGEMENT

3.4.1 GROUNDWATER MANAGEMENT OVERVIEW

Groundwater is the primary water supply for the unincorporated Town of Mendocino. Mendocino residents and business owners rely on approximately 420 privately owned wells for their water supply. Although the permanent population in the District is less than 800, the Town of Mendocino is a popular tourist destination, which increases the population served by the District substantially at various times of the year.

Groundwater is pumped from the unconfined Mendocino Headlands aquifer (Department of Water Resources Bulletin 118 Groundwater Basin 1-021, Fort Bragg Terrace Area Basin). Unlike typical California groundwater basins, which contain alluvial sediments surrounded by low permeability bedrock that holds the water in the basin, the Mendocino Headlands are surrounded by cliffs. A major portion of the annual inflow into the aquifer is discharged through these cliffs via springs generally within the same water year, so a significant amount of water loss occurs annually.

Groundwater conditions are strongly influenced by the amount of annual precipitation. Historically, the Town of Mendocino has experienced water shortages during dry years and even during years with normal rainfall. In response to the high concentration of wells, lack of inter-annual (carryover groundwater) storage in the aquifer, and frequent water shortages, MCCSD obtained groundwater management authority in 1987 under Assembly Bill 786 per CWC §10700 et seq. (refer to Appendix D in Section 8.4 for specific language), which provided the District with the authority to establish programs for the management of groundwater resources within the District. Prior to enactment of AB 786, the Mendocino County Department of Environmental Health enforced the groundwater extraction provisions of the Mendocino Town Plan. In 1990, MCCSD assumed responsibility of groundwater management from Mendocino County.

The groundwater management authority provided in Water Code 10700 et seq. was considered an interim authority until the District could find a water source suitable for a community water system. Due to a lack of water source, however, a community water system has never been completed, and the Groundwater Management Plan, which limits water extraction, has stayed in effect.

The Groundwater Management Plan was initially developed in 1990, along with a Groundwater Extraction Permit Ordinance, to limit groundwater withdrawals from the Mendocino Headlands aquifer. The Groundwater Management Plan was most recently updated in 2020, and includes a Water Conservation Program, Data Management Program, Groundwater Monitoring Program, Water Recycling Program, and Water Shortage Contingency Plan.

The primary goals of the Groundwater Management Plan are to:

- Promote water conservation
- Limit groundwater withdrawals to prevent aquifer overdraft
- Manage Mendocino’s groundwater supply during drought
- Ensure groundwater quality is protected
- Develop groundwater management programs that serve as a foundation for groundwater management decision-making

(MCCSD, 2019c)

3.4.1.1 Gomes v. MCCSD

On June 30, 2015, Mr. Gomes filed legal action against the MCCSD in a Petition for Writ of Mandate and Complaint for Declaratory Relief and Damages. The petition was heard by Judge Richard Henderson who denied Gomes all relief on his petition. Mr. Gomes then filed a First Amended Complaint on June 13, 2016 which added claims for alleged taking of property for public use without compensation, violation of procedural and substantive due process, and damages claiming the fines levied by the District for Mr. Gomes’ non-compliance with the Groundwater Management Program were unconstitutional excessive fines. Trial of these claims was held before Judge Cindee Mayfield who denied Mr. Gomes all relief on his complaint and upheld the District Groundwater Management Program.

Mr. Gomes then appealed the denial of the petition and complaint. On appeal, the court found that the District has the authority to manage groundwater within the district (based on California Water Code § 10700 et seq.). However, the court determined that the District should have used the “majority protest” procedures found in Water Code §10703-10706 when adopting changes to the Groundwater Management Program in 2007. The District had followed those procedures when initially adopting its Groundwater Management Program in 1990. The District held multiple public hearings prior to adopting the 2007 amendments to its Groundwater Management Program, but did not precisely follow the “majority protest” provisions of the Water Code as it did not appear to the District that the procedure was required for the changes made in 2007.

The trial court judge had agreed with this determination, but the court of appeal reversed on that narrow procedural ground and awarded Mr. Gomes \$128,000 in Attorney fees. The District recently re-adopting its 2007 Groundwater Management Program using the procedures set forth in the Water Code. The resolutions of intention to adopt the Groundwater Extraction Permit and Water Shortage Contingency Plan ordinances were approved by the MCCSD Board of Directors on April 16, 2020, and the final resolutions for adoption of these ordinances, including a determination that there has been no majority protest against the Groundwater Management Program, was adopted by the MCCSD Board on May 26, 2020.

(MCCSD, 2020)