

**A G E N D A**

**Board of Trustees – Special Meeting**  
**Monday, December 11, 2017, 5:30 pm at the District Office**

1. Roll Call
2. Public Expression- See End of Agenda for Information on Public Expression
3. Urgent Items
4. Approval of Agenda

**Items for Discussion and Possible Action:**

5. Discussion of Fair Political Practices Committee Conflict of Interest Determination
6. Discussion of Draft Ordinance #17-01 Establishing Regulations and Rules for Meter Installation – *Strategic Plan: RA Goal 3*
7. Direction on Future Agenda Items
8. Adjournment

ACTION ITEMS – All agenda items are potential action items unless otherwise noted.

PUBLIC EXPRESSION – The Board welcomes public participation in its Board meetings. Comments shall include any item not on the agenda that is within the subject matter jurisdiction and authority of the District. No action may be taken on any item not appearing on the agenda; however, the Board may direct such items to be placed on the agenda of a future meeting or may request additional information on any such item. The Board may limit testimony to three (3) minutes per person and not more than ten (10) minutes for a particular subject. All items on the agenda are considered action items unless otherwise noted. All times and the order of business are approximate and subject to change. (Posted 12-07-17)

<b><i>President</i></b>	<b><i>Vice President</i></b>	<b><i>Treasurer</i></b>	<b><i>Trustee</i></b>	<b><i>Trustee</i></b>
<i>William Carson</i>	<i>Matthew Froneberger</i>	<i>Tyler Rodrigue</i>	<i>Alfred White</i>	<i>John Reardan</i>

**Date:** December 6, 2017  
**To:** TAMARA ALANIZ  
**From:** Jeanne M. Zolezzi  
**Subject:** Mendocino County Russian River Flood Control District/Water Measurement  
**File:** 3322-012

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We have received guidance from the Fair Political Practices Commission regarding whether or not it is a conflict of interest for a Board Member to vote on the Meter ordinance when it would result in the board member receiving reimbursement from the District for a previously installed meter.

The response of the Commission Counsel for the FPPC was NO. Please see email attached.

The analysis for a Conflict of Interests is as follows:

1. **IS THERE A FINANCIAL INTEREST?** There are five types:
  - Business Entity.
  - Real Property
  - Income
  - Gifts
  - Personal Finances
2. **IS THERE A DISQUALIFYING FINANCIAL IMPACT OR EFFECT ON THE FINANCIAL INTEREST?** Generally, if the entity in which the Board Member is financially interests has come before the Board for a request there is a disqualifying financial impact. If not, you must undertake an analysis to determine if it is material.
3. **IS IT MATERIAL?** The FPPC has numerous regulations that determine the standards of materiality for each type of financial interest. The FPPC here is saying that while the Board member has a financial interest in his real property, the impact of getting reimbursed for the meters is not material.

ORDINANCE #17-01

**AN ORDINANCE ESTABLISHING REGULATIONS AND RULES FOR  
METER INSTALLATION BY THE MENDOCINO COUNTY RUSSIAN RIVER  
FLOOD CONTROL AND WATER CONSERVATION IMPROVEMENT DISTRICT**

WHEREAS, Senate Bill 88 was signed by Governor Edmund G. Brown Jr. on June 24, 2015. Sections 15 through 18 of SB 88 add measurement and reporting requirements for the District as a water right diverter (**SB 88**).

WHEREAS, pursuant to the legislation, the State Water Board adopted regulations requiring measurement for water right holders who divert 10 acre-feet of water or more per year requiring annual reporting (**Regulations**). SB 88 and the Regulations are collectively referred to in this Ordinance as the “**Measuring Requirements**.”

WHEREAS, pursuant to the Measuring Requirements, starting on January 1, 2016, the District is required to measure its diversions hourly and certify the accuracy of all measurement equipment. For existing equipment, the standard is currently fifteen percent (15%) accuracy. For newly installed equipment, the standard is currently ten percent (10%) accuracy. This means that all Service Connections must be measured and tested to certify the accuracy.

WHEREAS, while all existing Service Connections under the District’s water right License 13898 (“**License**”) are metered, they are not all compliant with the Measuring Requirements.

WHEREAS, the purpose of this Ordinance is to require Customers to install Meters capable of meeting the Measuring Requirements and consistent with the requirements of this Ordinance.

WHEREAS, the Board of Trustees has determined that it is in the best interest of the District to own Meters at all diversion points authorized under the License, and will purchase all Approved Meters.

NOW, THEREFORE, The Board of Trustees of the Mendocino County Russian River Flood Control and Water Conservation Improvement District does ordain as follows:

<b>Article 1</b>	<b>General Provisions</b>
<b>Article 2</b>	<b>Definitions</b>
<b>Article 3</b>	<b>Meters</b>

## ARTICLE 1 GENERAL PROVISIONS

### Sections:

- 1.1 Short Title
- 1.2 Tense, Gender and Number
- 1.3 Notices
- 1.4 Severability
- 1.5 Penalties for Violation
- 1.6 Attorneys' Fees
- 1.7 Non-Responsibility of District
- 1.8 Conflict

1.1 **Short Title.** This Ordinance shall be known and may be cited as “Meter Ordinance.”

1.2 **Tense, Gender and Number.** As used herein, the present includes the past and future tenses, and the future includes the present; the masculine gender includes the feminine and neuter; and the singular number includes the plural, and the plural the singular.

1.3 **Notices.**

1.3.1 Service of Notice. Whenever notice is required to be given under this Ordinance it may be given either by personal delivery to the person to be notified or be deposited in the United States mail in a sealed envelope, first class postage prepaid, addressed to the person to be notified at his last known business or residence address as the name appears in the public records or other records pertaining to the matter to which the notice is directed. Service by mail shall be deemed to have been completed at the time the notice is deposited in any regularly maintained United States Postal Service receptacle intended to receive mail.

1.3.2 Proof of Notice. Proof of giving any notice required by this code may be made by the certificate of any officer or employee of the County or by affidavit of any person over the age of eighteen years, which shows service in conformity with this code or other provisions of law applicable to the subject matter concerned.

1.4 **Severability.** If any provision of this Ordinance is held by a court of competent jurisdiction or an arbitrator or arbitration panel to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way notwithstanding such invalidity, illegality or unenforceability.

1.5 **Penalties for Violation.** It shall be unlawful for any person to violate any provision or to fail to comply with any requirement of this Ordinance. Any Customer who violates any provision or fails to comply with any requirement of this Ordinance shall be deemed to have violated the Customer’s Water Sale and Purchase Agreement, as shall be subject to the remedies provided therein, including default of contract terms and contract termination.

1.6 **Attorneys' Fees.** If the District prevails in any action to enforce the provisions of this Ordinance, or of any resolution adopted by the Board to implement this Ordinance, or the provisions of any state or federal statute that is has a duty to enforce, it shall be entitled to receive from the opposing party or parties its reasonable attorneys' fees incurred in prosecution the action.

1.7 **Non-Responsibility of District.** The District shall not be responsible for any loss or damage caused by any negligent or unlawful act of any customer or any other person in installing, maintaining, supplying or using any facilities, equipment or appliance for which water is furnished by the District. Customer is responsible for seasonally removing meters from flood prone areas where flooding could destroy District meters.

1.8 **Conflict.** All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

## **ARTICLE 2 DEFINITIONS**

### **Sections:**

- 2.1 Generally**
- 2.2 Approved Meter**
- 2.3 Board**
- 2.4 Business Day**
- 2.5 Customer**
- 2.6 District**
- 2.7 General Manager**
- 2.8 Measuring Requirements**
- 2.9 Meter**
- 2.10 Person**
- 2.11 State Water Board**

2.1 **Generally.** Unless otherwise provided or the context otherwise requires, the following definitions shall apply to this Ordinance and to any resolution, rule, regulation or order made pursuant to this Ordinance.

2.2 **Approved Meter.** "Approved Meter" means a McCrometer MC MAG 3000 Meter.

2.3 **Board.** "Board" means the Board of Trustees of the District.

2.4 **Business Day.** "Business Day" means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

2.5 **Customer.** “Customer” means any individual, corporation, limited liability company, partnership, trust, public agency or special district whose Application for Purchase of Water from the District is accepted by the District, and who executed a Water Sale and Purchase Agreement in the form approved by the District’s Board of Trustees.

2.6 **District.** “District” means the Mendocino County Russian River Flood Control and Water Conservation Improvement District.

2.7 **General Manager.** “General Manager” means that individual hired by and working under the direction of the Board who is responsible for the administration of the District’s business and the development, maintenance and operation of its facilities and programs.

2.8 **Measuring Requirements.** “Measuring Requirements” shall mean the requirements of SB 88, as implemented in Article 3 (commencing with Section 1840) Chapter 12 of Part 2 of Division 2 of the Water Code and the implementing regulations adopted by the State Water Board, as they may be amended from time to time.

2.9 **Meter.** Meter means a manufactured instrument for accurately measuring and recording the flow of water in a pipeline.

2.10 **Person.** “Person” means any human being, individual, company, limited liability company, partnership, corporation, governmental entity, governmental agency, special district, public corporation, political subdivision, the State of California, the United States of America and any federally recognized Indian tribe or band, or any group or combination of the foregoing acting in concern.

2.11 **“Point of Delivery” or “Service Connection”** shall mean the location(s) where Customer diverts Project Water from the Russian River as identified in EXHIBIT D to the Customer’s Water Sale and Purchase Agreement.

2.12 **State Water Board.** “State Water Board” means the State Water Resources Control Board.

### **ARTICLE 3 METERS**

Sections:

- 3.1 Revocation**
- 3.2 Meter Requirements**
- 3.3 Installation**
- 3.4 Meter Standards**
- 3.5 Ownership**
- 3.6 Meter Access**
- 3.7 Meter Testing**

- 3.8 Change in Location**
- 3.9 Change in Equipment**
- 3.10 Back-up Measurement**
- 3.11 Altering Meters**
- 3.12 Violations**

3.1 **Revocation.** Article 5 of Ordinance No. 00-1 of the District is hereby revoked in its entirety.

3.2 **Meter Requirements.** All deliveries of water sold by the District to a Customer shall be metered with an Approved Meter, except as provided in Section 3.4.4. Upon the approval of an application from a Customer for the purchase and delivery of water by the District to the Customer, the District shall furnish and the Customer shall install an Approved Meter of such size and at such diversion point as the applicable request, subject to the approval of the District, and compliance with this Ordinance. After approval of a Customer's application by the District, the Customer shall install an Approved Meter at the Service Connection. The Customer and the District shall mutually agree as to the size and location of the Meter. The District shall not be liable for rents or other charges related to Customer' placement or installation of Customer's Meter. All Meters will be tested by the District prior to full operation.

3.3 **Installation.** Meters required by this Ordinance for existing Customers shall be installed by the Customer in accordance with the standards set forth in Section 3.4 no later than March 1, 2018. All Meters shall be located at the Service Connection unless a new location is approved in writing by the District prior to installation. All Meters must be easily accessible to meter readers and repairmen.

3.4 **Meter Standards.** The District will require that all water diverted at Customer Service Connections be metered with Approved Meters.

3.4.1 For Customers without Approved Meters, the District will purchase Approved Meters and make them available to the Customer. The Customer is responsible for proper installation of the Approved Meter at the Customer's Service Connection. The Approved Meter will remain property of the District after installation.

3.4.2 The District will purchase Approved Meters from those Customers that have already purchased and installed Approved Meters. The purchase price for Approved Meters will be the cost of the meter only, documented by a written receipt provided by the Customer. Customers without receipts will receive the unit cost as provided by a McCrometer sales quotation obtained by the District. Upon such payment, the Approved Meters will be owned by the District.

3.4.3 Customers with an SB 88 compliant Meter that is not an Approved Meter will have a period of three (3) years to install an Approved Meter purchased by the District, and shall coordinate in advance with District on its installation. District will not take ownership of any Meter that is not an Approved Meter, but shall take title to the Approved Meter upon installation.

3.4.4 Customers with domestic meters that are not used for irrigation shall not be required to install Approved Meters, but must maintain, at all times, Meters that meet the Measuring Requirements.

3.5 **Ownership.** All Approved Meters will be owned by the District. It shall be the responsibility of the Customer to report to the District if Meters are not in good working order at all times. After installation of any Meter, District approval will be required to:

- Change the location of the Meter from the existing Service Connection
- Alter, or
- Interfere in any way with the Meter.

3.6 **Meter Access.** It is the Customers' responsibility to provide District representatives adequate access to Meters and remote reading devices, and District shall have the authority to enter Customer's property for purpose of reading the Meter and testing the accuracy of Meters. Obstacles that prevent convenient access to the Meter must be removed. Customers must provide an accessible location for their meter so they can be easily read, tested, or inspected by authorized District employees or vendors. If Meter access is required by the District, the Customer shall provide such access as noted on bills, or otherwise presented.

Meters shall be read at a frequency established by the General Manager as specified in the Water Sale and Purchase Agreement to permit the computation, operation and mailing of bills as soon thereafter as practicable, and in compliance with the legal requirements imposed by the State Water Board on the District.

### 3.7 **Meter Testing.**

3.7.1 A Meter may be tested whenever the District has reason to believe it is failing to function properly. It is the District's right to contract for or independently inspect, test, and to require service of such Meters. Authorized employees or contracted vendors of the District shall be permitted to inspect and test Meters when requested by the District. A Meter is considered accurate when it meets the requirements of the Measuring Requirements.

3.7.2 Meters shall be checked for accuracy whenever a Meter is installed or repaired, and at regular intervals thereafter upon request of the District or the State Water Board, in accordance with the Measuring Requirements. Meters not determined to be accurate shall be repaired or replaced within a period not to exceed sixty (60) days after the inaccuracy is detected.

3.8 **Changes in Location.** No Meter shall be relocated from the existing Service Connection without the prior written approval of the General Manager. All relocation work shall be done by the Customer or under Customer's direction. All costs of relocating a Meter shall be borne by the Customer where the Meter is moved for the Customer's convenience or to provide required access to the Meter.



3.9 **Changes in Equipment.** A larger Meter that is required because of a material change in the size, character, or extent of a Customer's equipment, operation, or water supply needs, will be supplied by the District after notification by the Customer as required in Section 3.5, and in compliance with this Ordinance. Installation cost will be the responsibility of the Customer.

3.10 **Back-up Measurement.** Customers shall be prepared to provide another acceptable method of computing diversions during any period of Meter failure to avoid the loss of such information. Two acceptable back-up methods consist of using hour meters and records on pumping rates or use of power company records and pump efficiency tests that are no more than three (3) years old and are adjusted for average pumping level during the period of use. If special circumstances exist where either of these back-up procedures cannot be used, or are impracticable to use, the Customer shall request approval of another alternative back-up procedure from the District. The District will provide assistance and will review the requested alternative back-up procedure and notify the Customer whether the proposed back-up procedure is approved or denied. If a meter does not register, and no back-up measurement is in place, amounts of water sold and delivered will be established based on previous use.

3.11 **Altering Meters.** It shall be a violation of this Ordinance for any person to alter, remove, reset, adjust, manipulate, obstruct or in any manner interfere or tamper with or procure or cause or direct any person to alter, remove, reset, adjust, manipulate, obstruct or in any manner interfere or tamper with any Meter to improperly or inaccurately measure and record. Customers shall be responsible for paying for the cost of damages caused by neglect, abuse or other Customer action as determined by the General Manager or Board of Trustees.

3.12 **Violations of Meter Ordinance.** The District may, at its option, either discontinue service or require installation of a District owned Meter of appropriate size at Customers' cost, in addition to the violation penalties identified in Section 1.5 of this Ordinance.

## General Manager Report – December 11, 2017

### **Agenda Item 5. Discussion of Fair Political Practices Committee Conflict of Interest Determination**

In order to ensure that the Trustees are voting fairly on the proposed Meter Ordinance, the District received an opinion from the Fair Political Practices Commission. The attached memorandum from legal counsel is based on an email opinion from FPPC staff that clearly states there is not a conflict of interest for any of the members on the Board of Trustees and all can legally vote on this item.

### **Agenda Item 6. Discussion of Draft Ordinance #17-01 Establishing Regulations and Rules for Meter Installation**

In order to ensure customer equity and protect the District interests, especially pertaining to water rights license 13898 and SB 88 compliance, the Board has been working toward a public hearing to adopt an ordinance for metering compliance. The Ordinance will require that customers install McCrometer MC Mag 3000 meters that are purchased and owned by the District.

The District will purchase: “Approved Meters” (MCMag 3000) to distribute for customer installation; and, Approved Meters from customers who have already invested in installation at their cost with proof of receipt or at the cost in specifications provided by the meter vendor. If customers have already installed a meter that is SB 88-compliant but is not an “Approved Meter”, they must be replaced with an Approved Meter from the District and installed within 3 years. *Residential meters (3) will not be replaced with Approved Meters due to low flow restrictions on these diversions.*

It will be the customers’ responsibility to ensure District meters are not destroyed by negligence or from flooding and to notify the District if meters are not properly functioning. The District will continue to monitor meters monthly and will maintain the ability to access the datalogged information at each meter. The District will keep a log of installation dates and notify customers when the meters must be removed for calibration every five years. Customers must work with the District to coordinate meter installation.

This Special Meeting was specifically scheduled to review the final draft of the Meter Ordinance and to allow customers an additional opportunity for public comment and questions. Customers were notified by mail of the Special Meeting scheduling and purpose of the meeting. This correspondence included specific communication to customers who were identified as needing to update their water supply contracts to the new format adopted in 2014.

A future agenda item will be scheduled to review and approve meter expenditures.

**A motion** to schedule a Public Hearing at a Special Meeting to be held on January 8, 2018 to consider adoption of Ordinance #17-01.