

*Mendocino County Russian River Flood Control
& Water Conservation Improvement District*

STAFF REPORT

Agenda Item 6: Uniform Water Supply & Purchase Agreement

Review of Article 12: Reduction in Use and Allotment

Monday, November 3, 2025

The Strategic Plan relevant priority is **Use** by maximizing beneficial use of water under the District's water right.

Background:

The District holds water rights to the Russian River in Mendocino County and has established a process by which customers may purchase and consume a specific amount of water from the District under its water rights through the Uniform Water Supply & Purchase Agreement ("Agreement").

Recently, several customers have raised questions about Article 12 Reduction in Use and Allotment, Term 12.2.1 of the Agreement, as shown below:

Article 12: Reduction in Use and Allotment

12.2 District Initiation.

12.2.1 If Customer's actual beneficial use of District Water is less than the Contract Quantity for three (3) consecutive Years, the General Manager may notify Customer in writing of District's intent to reduce Customer's Contract Quantity to an amount determined by District to reflect Customer's actual, historic, beneficial use. Such notice shall provide an opportunity for the matter to be considered by District's Board of Trustees, and Customer may present information relevant to the Board's consideration. The Board's determination of the matter after such consideration shall be conclusive and final.

Origin of Term

Language regarding reduction in Customer allotment of water was included in the 2004 Uniform Water Purchase Agreement, Section 2.8:

"Because the demands for District water resources generally exceed the District's supplies and after the first full calendar year of this Agreement, and every year thereafter, the District shall review the total annual use of the District's water by Customer. If the annual use of District's water by Customer, based on monthly meter readings and monthly billings, is less than the amount of water reserved for Customer, as referred to in Paragraph 1, Section 1 of this Agreement, the District shall reduce Customer's reserved water allotment to reflect actual use in the prior years. The unused water will then be made available to other water users at the sole discretion and determination of the District for the maximum beneficial use of the District's water resources."

In 2014, the customer agreement was updated to the Uniform Water Supply & Purchase Agreement and Term 12.2.1 as shown above was included.

(Continued...)

Intent of Term

The District's current legal counsel is the author of the 2014 Agreement and subsequent updates and reports the District's intent with including Term 12.2.1 was to prevent a customer from contracting for District water and not putting it to beneficial use. Despite having now gone to license, the District's water right can still be considered by the State Water Board for reduction or revocation due if the right is not put to beneficial use.

From the District's License 13898:

12. This right is subject to the continuing authority of the State Water Board to reduce the amount of water named in this right upon a finding by the State Water Board that the amount is in excess of that reasonably needed to be held in storage for the authorized uses. No action will be taken by the State Water Board without prior notice to the right holder and an opportunity for hearing.

Term 12.2.1 intends to mitigate the risk of not putting the District's licensed water to beneficial use. The Term was the District's way of insuring that the customers will use their full contract quantity of District water at least once every three years, putting the water to beneficial, non-wasteful, and reasonable use. A customer acquiring a contract quantity and not using it does not achieve this priority. The Term prevents monopolizing access to a public resource.

Discussion

The Board is invited to consider options to specify the intent of Term 12.2.1.

1. No Action

The Board may choose to discuss the intent and value of the Term at this meeting, document the discussion in the meeting minutes, and make no changes to the Agreement.

2. Develop a Policy regarding Term 12.2.1

Policies are used to guide decisions and actions, ensure consistency, and communicate clearly to employees, customers, and other stakeholders.

3. Amend the Agreement Term 12.2.1

As was done earlier in 2025, the Agreement can be updated. Due to workload issues, the 2025 Agreement amendment has not been issued to Customers yet and an additional change could be incorporated before distribution.

Policy or amendment language could include the intent and potential implementation of the Term. For example, in the case of a customer who has reported no use of District Water for three years, the District could first ask the customer to use District Water the following year. If the customer continued to not use District Water, the District could then require in writing the customer do so. If the customer fails to use District Water after such written request from District, District may notify customer in writing of District's intent to consider reduction of the contract quantity. Variations of this example can be developed by the Board, Staff, and/or Legal Counsel for consideration.

Recommended Actions:

- Provide direction to Staff and Legal Counsel.

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Prepared and submitted to the Board of Trustees by: *Elizabeth Salomone, General Manager*