

MINUTES

SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE

NORTH YUBA WATER DISTRICT

Held at the District Office

8691 LaPorte Road, Brownsville

Friday August 24, 2018,

A. ROLL CALL

President Donald Forguson called the meeting to order at 4:01:00 PM at the District Office in Brownsville, CA. The recording secretary called the roll.

	<i>PRESENT</i>	<i>ABSENT</i>	<i>VISITORS</i>
<i>DIRECTORS</i>	President Donald Forguson		
	Vice President Eric Hansard		
	Director Doug Neilson		
	Director Terry Brown		
	Director Gary Hawthorne		
<i>GENERAL MANAGER</i>	Jeff Maupin		

B. PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Director Brown.

C. PUBLIC INPUT:

President Forguson read the rules for public input.

D. IRRIGATION SERVICE TERMINATION HEARING:

The District Legal Counsel explained how the hearing would proceed. This is a semi-formal hearing held so the board members can hear what staff has determined about the use of water and anything that Ms. Cavaliere wants to bring forth. General Manager Maupin will first present the information that has been gathered by staff and the evidence that resulted in the determination of the staff. Ms. Cavaliere's legal counsel will then have an opportunity to present their side of the story. In addition to presenting each side there will be an opportunity to ask staff questions about their presentation and Ms. Cavaliere what she is presenting. Both sides will have an opportunity rebut any information presented. The board will then go into closed session for their determination.

Introduction:

General Manager Maupin began with the background of Ms. Cavaliere who has been a long-term resident and customer of North Yuba Water District. She has also served on the District Board of Directors. Currently Ms. Cavaliere has three contracts with the District to provide properties with irrigation water in the Districts jurisdiction. Ms. Cavaliere signs the contracts for all the properties as the applicant and by signature certifies that she understands the districts irrigation policy and agrees to abide by all rules and requirements under the Irrigation Policy. Exhibit A the Irrigation service contract along with maps highlighting the locations of each of the parcels' associated with those contracts are attached as Exhibit A. The properties associated with the violations of the irrigation policy discussed herein are APN 060240052 and 060240051. As part of Ms. Cavaliere's service to the District on the Board of Directors she participated in the process of developing and adopting the Irrigation Policy that currently governs this irrigation service and is the basis for this hearing. The Irrigation Policy is attached as Item B.

Investigation:

General Manager Maupin continued reading the statement that described the ongoing investigation and dialog with Ms. Cavaliere regarding irrigation service at her properties since March 23, 2017. The statement included Ms. Cavaliere's complaint against her neighbors alleged diversion of use of District irrigation water. Ms. Cavaliere also stated that there were other violations that she intended to pursue with the State agencies and requested that the District act to address the alleged illegal diversion. The District Board of Directors instructed General Manager Maupin to review Ms. Cavaliere's claims during the investigation and in the capacity of General Manager, Mr. Maupin was also interviewed by the

State Water Resource Control Board regarding the complaint. Ms. Cavaliere's complaint against her neighbor was dismissed. Due to the initial investigation against Ms. Cavaliere's neighbor the District revealed several violations of the Districts irrigation policies on Ms. Cavaliere's property which included violation of irrigation section 2G2, 4G2, 2F and 6B. The details of each of the violations were read by General Manager Maupin. Photographs of Ms. Cavaliere's parcel during the 2017 irrigation season was submitted as Exhibit D. District field staff who took the photographs are present to answer any questions.

Discussions with Ms. Cavaliere and her attorney regarding the violations:

On May 09, 2018 the District provided Ms. Cavaliere with a notice of the violations of the irrigation policy outlined above. The letter is attached as Exhibit E. The May 09, 2018 correspondence requested Ms. Cavaliere provide additional information to address her violations of the irrigation policy within 30 days of receipt of the letter. On May 24, 2018 Ms. Cavaliere made a California Public Records Act request (PRA) for all photographs with the date and time of the photographs documenting the irrigation policy violations discussed above. The PRA requested is attached as Exhibit F.

Correspondence continued with Ms. Cavaliere's attorney Raz S. Chima, of a letter dated June 08, 2018 that was received on June 18, 2018 attached as Exhibit G. A response was provided by the District to Ms. Cavaliere's PRA request furnishing her requested photos sent to her on June 29, 2018. That response is attached as Exhibit H. Mr. Chima sent a letter dated July 02, 2018, received on July 16, 2018 objecting to the photographs being given directly to Ms. Cavaliere in response to the PRA request, and seeking attorney's fees to review all documents, visit the site and correspond with the District failing to provide him with the documents sought in the letter dated June 08, 2018. Mr. Chima's letter dated July 02, 2018 is attached at Exhibit I.

Remedies Sought

Section B.E of the Irrigation policy provides that violation of the Irrigation policy is good cause to terminate water service to any customer who commits such violations. Before the District can take any action, the District must serve the customer with written notice of the violation and a request to act to correct the violation with a reasonable amount of time to make that correction. As outlined above the District provided Ms. Cavaliere notice of these violations and Ms. Cavaliere's attorney provided a response on her behalf. The initial notice and the revised notice of the Public hearing are attached as Exhibit J. As required in the irrigation policy the District has provided Ms. Cavaliere notice of the violations outlined in this statement and has given her over three months to address these violations. To date, the District has not received an adequate response to the violations to the irrigation policy leading up to and during the 2017 irrigation season. Therefore, Districts staff recommends termination of Ms. Cavalieres irrigation service with the District. General Manager Maupin stated that he would be available to answer any questions the Board may have regarding the irrigation policy and the Districts observations in response to those violations.

President Forguson inquired how many inches of water was Ms. Cavaliere receiving. General Manager Maupin replied two. District Staff came in individually. Jeremy gave his account of his findings regarding the cap on the irrigation that was missing. There was also a question raised regarding the dry section of property that has in the past been the source of the irrigation water. Discussion continued regarding the diversion of water which seemed to be going to a holding pond. Director Brown asked what the specific complaints were. General Manager Maupin report that they included taking water before the season began, tampering with District equipment and diverting water. The District Legal Council asked if the Board of Directors had further questions. The question was asked how long the water was diverted and the staff answered that due to the discoloration of the land, in appeared all season.

Ms. Cavaliere's attorney Mr. Chima Presented items 1 through 6. He began his questioning regarding the missing cap and if there were any wells on the property. Mr. Chima presented pictures that were taken by himself and his hired investigator on August 23, 2018 of the area in question on Ms. Cavaliers property. Questioning continued by the Board clarifying how the water flowed off Ms. Cavalier's property. The District's Legal Counsel clarified to Mr. Chima that the staff was giving his observation.

Danny, the second staff member to give an account of the findings began his testimony. Once again, the question was asked about flowing water from the property. Danny responded that the water was running toward the pond. He did not know how Ms. Cavaliere's irrigation was set up. The question was asked if there was enough water to make a continuous flow to the 2nd pond. Danny concurred that there was. Ms. Cavaliere's attorney Mr. Chima questioned Danny regarding what he saw on the property. He presented item H, a Google map of Ms. Cavaliere's property displaying the ponds and wells and pump house. The District Legal Council asked if there were any more questions of staff. There was not. Director Hawthorne asked a question of Item F. General Manager Maupin answered that you cannot go on private property. What is being identified is where the water is authorized to be delivered to and how it left that property which is a violation of policy.

Mr. Chima called Ms. Cavaliere forward to comment on Item H, the Google map. Ms. Cavaliere explained the history of the land and the system that was installed in 1964. The water has been delivered over most of the years since. The system is a gravity flow system with a water intake of four-inch intake volume which flows into a minor's inch box. Before the road was paved the previous owners put in an eight-inch line underground which is now under the road which goes directly into a very simple concrete inlaid water trough. There are three diversions inlaid in the concrete. Each hole directs the water south, east or west. The water direction is controlled manually. The west does not work. There is also a side bar welded on the Pelton valve which takes care of the underground system. All are connected to both of Ms. Cavaliere's wells. Ms. Cavaliere explained that there are three ponds and they are enter connected by culvert. The ponds are dirt laden and there is natural seepage that happens between the three. Ms. Cavaliere stated that she has the same caps as the District uses. In 2017 to 2018 Ms. Cavaliere was very ill and could not maintain her irrigation system due to physical

limitations of her illness. She stated that there was never any diversion of water done intentionally off the property.

Mr. Chima addressed the Board with his opening statement regarding the staff accounts of the policy violation. He stated that there was conflict in the testimony of who took the picture of the missing well cap. He also questioned the account of water flowing on the property but not exiting the property. Mr. Chima continued to discuss the witness's account of water flow and the similarity of the well caps which can be purchased at any hardware store. Mr. Chima continued his discussion and stated to the Board that the burden of proof rest with the State to find Ms. Cavaliere at fault.

Mr. Chima called Bryan Giles, Private Investigator, 1110 Civic Center Blvd, Yuba City, CA. to recount his visit to Ms. Cavaliere's home. Questions were asked regarding the submitted pictures that were taken by Mr. Giles. Mr. Giles was asked during his account if the pump to the well was running. He stated that it was. It was emptying into the first pond. Questions were asked regarding the caps found at the trough and the size of the intake on the canal and if there was more than one well on the property. Mr. Giles stated that there was. Director Neilson asked if it could be hear the pump from the road. He stated that it could not. Mr. Giles finished his testimony. Ms. Cavaliere stated that she is using the pump to keep her fish healthy and for fire protection. Director Neilson asked the question of why the landscape was brown when previously irrigated. Ms. Cavaliere stated the cattle was moved off the property and the need to irrigate for grass was not essential. After continued conversation Director Neilson stated that there were a lot of question about caps. He asked Ms. Cavaliere if she was stating that the cap was not open which the District is saying was removed prematurely. She stated that she did not. Ms. Cavalier continued to explain how the irrigation system worked on her property which is a gravity pulled system. Mr. Chima asked Ms. Cavaliere if she has ever seen water leaving her property. She stated yes, only when issues with the irrigation system are not working property. After continued discussion Mr. Chima asked Ms. Cavalier how far away is the property that is not approved for water? Ms. Cavalier stated that the parcel that is land split and never gets water due to policy. The 5th parcel is approximately 3.5 miles away. There is one small pond on the property that is filled with a small well for 240 hives of bees that are kept on the property. President Forguson asked if the ditch that crosses Indian School Rd come close to the property. Ms. Cavalier stated that it did not.

Following further discussion President Forguson called a recess at 6:20 pm.

President Forguson called the meeting to order at 6:34 pm.

Rebuttal:

Director Neilson asked the question of Mr. Chima regarding his request of a continuous. Mr. Chima stated that two weeks would give him time to prepare for the witness that were called. The District Legal Counsel stated that the District would move forward with the Rebuttal testimony.

General Manager Maupin begin the Rebuttal with the question of the caps and who removed them. Water was taken outside the season and no explanation has been given as to why the District was not called to eliminate the problem prior to the start of the season. General Manager Maupin explained that with a two-inch miner's inch box would allow 22 ½ gallons of water per minute in a 24-hour period which is approximately 36,000 gallons of water a day. This could be the equivalent of two swimming pools of water every day which a substantial amount of water is. It would not take long before the ponds of Ms. Cavaliere's property would be overfilled. The beneficial use of water is the main question. General Manager Maupin also stated that the two of the staff members primarily working at that time are no longer with the District. One is on medical leave due to a snake bite and the other is pursuing a different career. Staff has been there two to three times a week over a five-month period and General Manager Maupin himself twice where water was seen leaving the property through the drain thought he unnamed tributary. The reason a picture could not be taken was due to the overgrown blackberries and grass. The picture of the water is defused due to the plants.

General Manager Maupin stated that Ms. Cavaliere in the past while on the Board of Directors stated that one of her wells was 60 gallons per minute times 1440. She states that she has been using wells as well. That is another 86,000 gallons of water on top of the 36,000 water that the District is providing. General Manger Maupin stated that to his knowledge Ms. Cavaliere's neighbor has about the same acreage and operates on a ½ minors' inch and his property is green.

The District Legal Counsel asked if there were any questions relevant to General Manger Maupin's rebuttal. Mr. Chima asked General Manager Maupin about his statement regarding out of season water use and specifically what he was referring to. General Manager Maupin went on to explain the preparation of the water season and when the caps are removed.

Mr. Chima then asked who chose the pictures to be sent to him. General Manager Maupin stated that they were not selected, they were all the photos that were taken. Mr. Chima stated that all were time stamped and dated except for one. General Manager Maupin stated that he did not know, some came by phone. Mr. Chima asked if September 18th was in the water season, General Manager stated yes. Mr. Chima asked if there were any pictures of water usage outside the water season prior to April 15th, 2017. There were not. Mr. Chima asked who discovered the cap. General Manager Maupin stated he believed Jeremy did. He was not physically with him and could not say who took the picture. Jeremy who testified earlier is the one who reported the cap but stated he did not take the photo. General Manager Maupin stated the he was the one sent out to take the photo of what he had reported to him. Mr. Chima continued with questions regarding the picture of the cap and who took the cap and what it was taken with.

The Districts Legal Counsel asked if there were any further questions regarding General Manager Maupin's Rebuttal. Director Brown made a statement regarding Mr. Chima's questioning about the photograph of the cap. The Districts Legal Counsel stated that was Mr. Chima's interpretation of the evidence. Once again, the Districts Legal Council asked if there were any further questions. Ms.

Cavaliere discussed coming into to the District office to inquire the start date for the irrigation season. She stated that historically it began on April 1st. Previous managers began the water on April 1st and did not set the minor inch boxes until the ditch had full flow. After the ditch was regulated the minor inch boxes were set. Ms. Cavaliere stated that did not mean she took water, she stated that on May 10th she began to receive her two inches. She had to call the District office and requested that someone come and check the flow because she had not received it until then. She stated that since that time the District has revised their policy and now charges a fee to check for problems. After 32 years on the same property Ms. Cavaliere stated that she knows what her water should be. Taking water out of season did not occur. The Districts Legal Counsel stated that Ms. Cavaliere's statement would be considered part of the Rebuttal.

Mr. Chima continued his Rebuttal testimony and asked Mr. Bryan Giles, Private Investigator if he investigated family law matters and in April and May was he retained to conduct surveillance on Ms. Cavaliere's neighbor? Mr. Giles answered yes. Mr. Chima continued and asked approximately how many times during the surveillance did he drive by Ms. Cavaliere's home. He answered 9 times. Mr. Chima asked if any time during the surveillance did he see any water leaving or being removed from the property? Mr. Giles stated no he did not. The District's Legal Counsel stated that she was going to ask some clarifying questions. She asked Mr. Giles if in 2017 irrigation season he just happened to be going to the neighbors. He stated that he was sitting on the road for a few hours at a time. She asked if it was his job to look for water going across the road. He stated no. So, the purpose of your surveillance was the neighbor. He stated again, yes.

Director Neilson referred to Ms. Cavaliere's statement regarding the start date of the irrigation season. He stated that the policy clearly states the 15th and it is the policy that Ms. Cavaliere agreed to during her time on the Board. Ms. Cavaliere responded that she did not say water was available on the 1st but that the ditch would run beginning the 1st to let the ditch fill before water was taken. She also stated that there were no caps before General Manager Maupin through the winter. The intake pipes were always left open in the winter. The permit was received in 1992 and states that the season starts on April 1st. She also stated that the ditch tenders are the ones who take the caps off the ditch. Mr. Chima asked if any water was used prior to April 15th. Ms. Cavaliere stated absolutely not. There was no water to use.

Director Neilson asked in terms of reasonable doubt how do we define what the standard is. The Districts Legal Counsel explained that there is some guidance in the law that gives in a more formal hearing those things would be addressed. These types of hearings usually do not involve briefing. These questions can be discussed during deliberation.

Mr. Chima once again asked the Board for a continuance. President Forguson stated that the question of who removed the cap had not been answered. Mr. Chima stated that he did ask Ms. Cavaliere if she took water prior to the 15th, she said no. He asked if she tampered with the cap, she said no. Mr. Chima stated that the Board was operating under the assumption that the violations have been

proven. Any time the Government brings an action, the burden of proof is upon them. Mr. Chima stated that Ms. Cavaliere has clearly stated that she had no wrong doing regarding the water.

The District's Legal Counsel asked if any wanted to entertain the request for additional time. After discussion the Board decided to continue with the hearing.

Director Neilson made a motion to not extend the hearing. Director Brown seconded the motion. The motion was approved with a unanimous vote.

Public Input:

E. CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

THE BOARD ENTERED INTO CLOSED SESSION TO DISCUSS ITEM E. AT _____

BACK IN SESSION AT 8:05 PM

President Forguson called the meeting to order at 8:05 pm. President Forguson stated that the Board had given due consideration and with Ms. Cavaliere's medical condition and oversight of the water flowing off her property could have been inadvertent. Given the severity of the policy is to extreme, the Board has decided not to impose any penalties in the current situation. No action will be taken.

F. ADJOURNMENT

There being no further business to discuss, Director Hawthorne made a motion that the board adjourn. Director Neilson seconded the motion. The motion passed with a unanimous vote.

The meeting was adjourned at 8:06 p.m.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Catherine L. Fonseca", is written over a horizontal line.

Catherine L. Fonseca, Recording Secretary