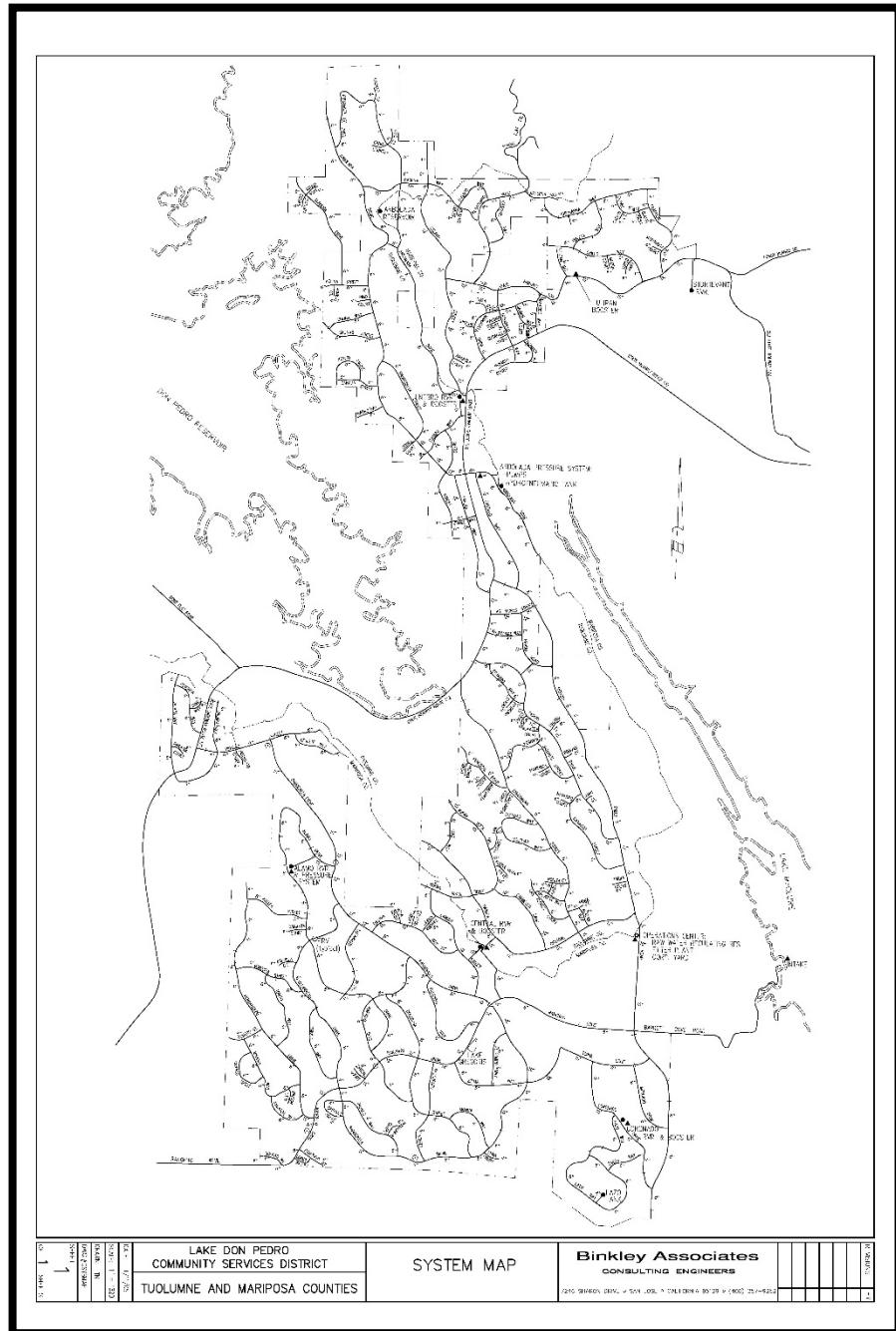


LAKE DON PEDRO COMMUNITY SERVICES DISTRICT

Frequently Asked Questions Related to Water Supply

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Submitted by: Peter J. Kampa, Interim General Manager

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Background:

The Board of Directors of the Lake Don Pedro CSD (District) has long struggled with understanding its water supply contract with the Merced Irrigation District (MID), the related obligations, state and federal requirements, boundary issues, limitations on water use, reporting requirements and the District's role in responding to growth in the community. This question and answer document is intended to address many of the questions; which were posed recently by Director Emory Ross, who has been on the Board for several terms and seen the associated struggles. This document is being produced in a manner for public distribution, as recommended by Board President Danny Johnson.

Discussion:

When it comes to community growth, the District is considered a "Responsible Agency" under the California Environmental Quality Act, or CEQA (Pronounced Seekwa), which is found in the California Public Resources Code [Section 21060 et Seq.](#) Under California law, the District is formed to provide specific services to an area. The type of services we provide and the boundaries in which we provide them are determined by the Local Agency Formation Commission or LAFCO. In our case, we are governed by the Mariposa County LAFCO. LAFCO in general is intended by its enabling laws found at [California Government Code Section 56000](#), to encourage orderly growth and development in an area within a county. LAFCO is an independent body of appointed members from cities, the county and Districts within the county. Since Mariposa county has no cities, the 5 LAFCO members are the Board of Supervisors. The law allows special districts to have a seat on, and vote in the LAFCO process in [Government Code Section 56332](#).

As a service provider, the Board of Directors sets the level of service it desires in the community. Some service levels are set by laws and regulations, such as quality of clean drinking water, providing a continuous water supply, operator certification and such. Other service levels, such as whether we are going to prepare ourselves for future growth of the region, is for the most part at the discretion of the Board.

For example, if our Board decided we were not going to plan in advance to have water supply available for new development projects, management would not be spending time trying to find other available water supplies when they come available. Then, when a new land development project is proposed, the developer would be 100% responsible for all costs, up front to develop a new water supply for the District, to be able to be served by our system. For a small project with 10 new lots for example, the cost for the developer would likely be too high to move forward with the project. However, if the District had built a small water supply surplus, the project could be developed and served and the developer would pay to the District in mitigation and connection fees the cost of developing a new surplus water supply. The added customers if done correctly will improve the revenue picture of the District, reducing the financial load on existing customers.

In our case, the District contract with MID provides water for full buildout of the development, but calculated at the 1970 customer water consumption rate. So in theory, we have surplus water supply available so long as we are not restricted by government regulations or pump capabilities. New connections to the system do help offset the base administrative costs of the District, such as our office, manager, directors, administrative staff, insurance, etc. However, our monthly fees need to cover the cost of system operation, or the new customers no matter how many will be part of a funding shortfall and will never subsidize the cost on behalf of existing customers.

Although it would seem as though due to our recent drought experience we have no surplus water supply; so long as we have this contract with MID and enough well water to meet minimal customer demand in extreme drought, then we have ample water to serve additional customers. Connection fees from new development projects will be used to fund new wells to the benefit of all customers in a drought.

[District's Role in New Development](#)

In the case of new land development projects, such as a subdivision, the county in which the project is located is the Lead Agency under CEQA. When the county planning department receives an application for a new land subdivision, the laws and county codes lead them to require services provided by an established public agency, if one is available. If one is not available, depending on the size of the project and service needs, the county may propose the formation of a County Service Area or another new special district. However, it does not make sense to form more small districts, adjacent to another established district, even if the subdivision is not in the boundaries of the existing agency. Small districts have shown over history that they struggle providing services, and the trend now is consolidation of smaller districts.

If the subdivision is in our boundaries, we will receive a copy of the project immediately once the CEQA process starts. We will be asked to respond as to whether we can serve the project, and if so, what are our conditions for development/how will it affect our services. Our response determines in many cases whether the project proceeds or not. As stated above, if a project is outside our boundaries, or partially in our boundaries, the county will look for the District to adjust its boundaries to serve the project. As detailed in the FAQ below, all costs for accommodating the new development is placed on the project developer. The District is NOT responsible for any of the costs including processing the annexation, extending infrastructure, securing new water supply, paying engineers, etc. Again, if we build infrastructure that has beneficial capacity built in, such as the new wells, there is a value to any new connection to the system and their connection/capacity fees are paid to us to reimburse for our inenstment, even if paid by grants.

The District's response to a subdivision project can be as simple as (and usually is) a statement that the project will be subject to our Water Rules and Regulation including entering into a development agreement in advance of our commitment to provide water supply to the project. There is really no such thing as a "will-serve" letter, simply a statement that if the project meets our conditions, and receives its entitlements through the county process, we will provide service to the project.

This forces the developer to the table with the District, we set up a development account and they deposit the funds for us to hire and manage engineers etc to review the project as it proceeds through the planning process. The agreement requires construction of all works in compliance with our standards, under our inspection, for which they also pay. The agreement requires items like construction of new wells, and payment of connection/capacity fees to offset the value of the capacity in the system mains, tanks, treatment plant, wells, etc dedicated to the new project.

The developer must comply with our requirements in order to get through the county planning process, and to be entitled to sell lots. New development projects can be subject to different conditions including different rules than your current customers, if needed. However enforcing different rules for different customers can be difficult.

[California Water Rights and MID/LDPCSD Water Agreement](#)

As discussed below, the MID Place of Use is a separate process through the State Water Board, who is responsible for the water rights of the state. When a permit to appropriate water is filed, which was done by MID for the Sierra Highlands Water Company, an area of land on which the water will be put to “beneficial use” is identified. This is done to ensure for orderly and efficient use of the state’s waters. All post 1914 Appropriative Water Rights require that the applicant (MID in this case) identify:

1. point of diversion
2. time period when diversion can take place
3. quantity of water that can be diverted, usually in cubic feet per second
4. **intended place of use**
5. intended purpose of use

MID likely used a map provided by Sierra Highlands to establish the initial application to the state. We may be able to request a copy of this documentation for our records. The boundary as approved by the state in the beginning of the agreement was likely inconsistent with the service area as we know it today. MID was issued a specific water right for water used out of Lake McClure and that right became part of their state permits, as well as their federal energy regulatory commission permits (FERC) which allow MID to generate power. MID will not ever jeopardize their FERC license, as this is their largest revenue producer. Therefore, MID cannot allow us to use Lake McClure water on lands outside the place of use.

To determine compliance, annually MID submits a “statement of diversion and use” for water diverted from McClure which contains the amount of water we pump from Barrett Cove intake. If requested, and certainly for their records, they also document our total water sold to the customers both inside and outside the place of use on an annual basis. We must be able to document that the amount of water sold to customers outside the Lake McClure place of use is the same as, or less than the amount of water pumped from water sources other than Lake McClure.

There is a process in place through the State Water Board to amend the Lake McClure water Place of Use. The process involves MID filing a petition, which will include specific engineering

evaluations, and environmental review in support of the proposed change. The main concern with any process such as this, where a very public environmental review and public input process is required, is that additional requirements could be placed on MID unintentionally through the process. The process basically opens MID up to more regulations, where right now, most everything is predictable.

As conveyed by Director Ross, the following questions are issues that former Boards could not agree to, fought over, could not resolve, or could not find answers to. Director Ross suggests that these issues need to be resolved before the Board can consider increasing the customer base outside the original District boundaries, whatever they are.

Question 1. What are the legal District boundaries?

Answer: *The Boundaries are established by LAFCO and should be current and available easily. LAFCO can provide both a district boundaries and sphere of influence boundaries.*

Question 2. Are the legal boundaries the subdivision boundaries?

Answer: *No, the District boundaries and the subdivision boundaries are not identical. The District boundaries are set by LAFCO as stated above. The boundaries were set years ago, and can be amended through a LAFCO process if necessary. There is no relationship between the LAFCO process in setting the district boundaries and the subdivision boundaries. The only related requirement is that all of our customers must be in our legal boundaries set by LAFCO, or served under a contract, which is supposed to be blessed by LAFCO. There is absolutely no relationship between the LAFCO process, our legal boundaries, subdivision boundaries, and the Place of Use set by the State Water Board and FERC for use of water out of McClure.*

Question 3. Are the legal boundaries the LAFCO County boundaries?

Answer: *There is no LAFCO county boundaries. There are only boundaries set by LAFCO, which are set in accordance with requirements in law, and regulations set forth by the State Office of Planning and Research (OPR). All boundary and type of service decisions are made by LAFCO, not the county. The legal boundaries set for us through the LAFCO process, are our legal boundaries.*

Question 4. Do new outside place of use properties need to annex or were they grandfathered in when the District made the agreement with MID years ago?

Answer: There is no relationship between the LAFCO process and the State Water Board, water rights permitting process. As stated above, the Place of Use is set by the State Water Board for MID, and is separate from the District boundaries, set by LAFCO. LAFCO would not require an annexation of property into the LDPCSD just because it is in, or out of the State Water Board Place of Use. If we are providing water service to properties outside our legal boundaries set by LAFCO, then LAFCO could require annexation of the properties being served, or allow an “out of (service) area agreement. In reality, LAFCO is not a property or service “cop” in our county; so if we are servicing properties outside of our boundaries, it is unlikely LAFCO would take action to force anything.

Question 5. How can we comply with the current MID agreement that states they cannot be served with lake water when we co-mingle water?

Answer: MID is only required by the SWRCB to report water diverted from the lake on an annual basis. As long as our water diverted from the wells meets the total water use of the properties located outside the SWRCB (MID) place of use. We do meet the requirement now by having the water available from the wells. Our water is metered separately from the lake and wells so comingling is no problem; it is simply a mathematical calculation.

Question 6. Our attorney has said by adding outside place of use properties, we are in jeopardy of losing our agreement with MID.

Answer: Any properties added outside the place of use need to be served by a water supply other than Lake McClure. Our MID contract would be in jeopardy only if we are in violation of its requirements and continuously refuse to remedy such violations. I am not aware of any area where we are in violation of the MID agreement, as we produce and record adequate alternate water supply to meet the supply demand of the properties located outside the POU. This is simple to meet this requirement with the wells, and we would also require any development project, in a development agreement, to develop their own adequate water supply and dedicate that supply to the District to serve their water demand.

Question 7. What is the penalty for violating our water license or do we operate under MID's license?

Answer: The only agency in jeopardy is MID as they could get fined by the SWRCB if they cannot show how the water diverted from the lake was not diverted to our customers outside the POU. This is where our contract with MID would also be in jeopardy; if we did not have adequate alternate supply for OPU customers. As long as our annual well water total meets their needs, MID will NEVER have a violation problem.

Question 8. What is the cost of giving the money back to the property owners paying the availability fee?

Answer: *There is not a circumstance where the District would ever be required to return money to property owners, unless forced to do so by the courts. All availability fees charged have been spent on reasonable expenses to keep the system functioning for future use. Only a court could make the determination that money needs to be returned, and that would only occur if we were found to have violated some law with an illegal fee or charge. There are no outstanding lawsuits or claims related to the charging of an illegal fee by the District.*

Question 9. The water treatment plant was supposedly designed for half build-out. How can we add properties without increasing capacity?

Answer: *The only way to meet demand without increasing the capacity of the plant, is to reduce peak demand. We have to be able to control peak demand, by either offering customer incentives for peak conservation, restricting water use during peaks, or building more storage, or treatment capacity.*

Question 10. The Water Treatment Plant lacks capacity on a hot July holiday. What are our plans to increase treatment plant capacity at buildout? Do we have an obligation to the people paying availability for years first?

Answer: *The availability customers are not specifically paying toward system expansion, and are not assured any reduction in cost or guaranteed water supply in the future, so there is no priority offered to them. Availability customers are paying a minimal cost toward keeping the mains repaired and the current system ready to serve. Expansion is always done in a connection fee; one that current customers do not pay. Connection fees are required by law to be set based on a capital improvement plan, with the per unit cost of system expansion calculated and applied based on a specific rationale, such as single family equivalent. The cost of new system Capacity, such as expansion of the water treatment plant, should be paid by the beneficiaries of the new capacity, which is those paying availability fees (and not paying monthly rates) and new connections outside the current system. When new areas annex in, or subdivide a lot into multiple lots, etc, their capacity portion of the connection fee is supposed to be specifically calculated to cover the cost of (the following applies to **ALL new connections**, including those paying availability).*

For example, the District never thought we needed wells before due to a dry lake, or levels below minimum pool. We know better now. We need a backup supply ready to go all the time. New connections, through a connection fee, pay a proportional share of:

- A. *Added source water supply in terms of a proportional cost of new wells for drought years and/or if they are outside the MID/Lake McClure POU. They pay for the cost per gallon*
- B. *Added pumping capacity at Lake McClure (bigger pumps, more pumps, larger valves, etc)*

- C. Added treatment plant capacity
- D. New tanks added in certain locations like Central Tank (was planned for a second tank)
- E. Added pumps if determined necessary to get water out to the furthest point of the system during high demand and buildup.
- F. The cost of larger water mains in certain locations if determined necessary. I can't think of locations, but we may identify areas in the future.

Question 11. What does the MID map look like that was submitted to the State?

Answer: We have not found this map in our records, but it should be available at the SWRCB. This map may be available from MID, and will be provided to District Engineer Binkley' to be overlaid with the District boundary map from LAFCO to determine the differences. When MID applied for the new license through FERC, which is not yet final but started over 5 years ago, the District could have said we would support their application if they agree to submit to the SWRCB a modified POU map for McClure. MID can apply for the map to be changed, but it will be an expensive process now requiring a separate environmental review. But can be done.,,, MID may not want to.

Question 12. What were the original subdivision boundaries?

Answer: Maps are available through LAFCO records (Likely).

Question 13. What laws are being broken by not placing availability funds in an escrow account and using them for operating funds?

Answer: No laws are being broken. We should take action to define exactly what these fees do fund, as discussed below, but there are no laws that state exactly how they are to be used. We are using the availability fees for operating funds. We combine them into our cashflow. We can show that the fees help fund a portion of the cost to keep the system in a ready to serve condition. The availability fees are not limited to funding capital costs, staff costs, or any other specific costs.

Question 14. Does it take a vote of the people on a ballot initiative to expand the District boundaries?

Answer: District boundaries are modified in the LAFCO process and boundary changes do not require voter approval. To modify boundaries, we submit a resolution to LAFCO, they then use the Cortese/Knox/Hertzberg government reorganization act provisions at Government

Code 56000 et seq. Once a District is formed, only dissolution requires a vote, other than a tax.

Question 15. Enabling legislation states we must serve all customers of Sierra Highlands Water Company, most of which was range land. That conflicts with the MID agreement.

Answer: *When we were formed, we likely said we had a contract with MID for water supply, and that was the end of the research on both sides. Now, LAFOC makes you prove up contracts and would resolve any discrepancies up front. Back then, the fights were not the same. Again, our agreement with MID is completely different than our boundaries under LAFCO. For example, A district may have 5 different sources of water supply, with 5 different agreements, and 5 different types of conditions to serve their LAFCO service area. Two completely separate issues.*

Question 16. (With new development) Who pays for the main extensions and fire hydrants, if needed? What about a property outside the MID POU?

Answer: *Simple, the District will have standards that are adopted that specifically spell out the requirements to connect to the system; including a requirement to develop new wells producing adequate supply to meet the demand of the project, under all conditions. WE would adopt the testing requirement that we used for our current wells and require that all new wells meet these standards. The new development pays for everything from management and engineering time to review plans, to environmental review, engineering to our standards, and construction under our inspection (to make sure it meets our standard, and usually an outside engineer doing the inspection). The standard we adopt requires that they construct adequate size mains, all the service connections, meter boxes, and dedicate all easements, etc BEFORE we accept the new system for our ownership and operation and BEFORE they get a final map from the county and can sell lots. Period and simple. The only time the District does something on behalf of a developer, is when we would have done it anyway, and they pay a proportional share on a unit for unit basis.*

Question 17. Nearly all of the 15 acre parcels on Ranchito have wells, are served District water, were not in the original Boise Cascade subdivision and not part of LDPOA. Why are they not on the outside place of use report?

Answer: *The exact number and location of customers outside of the POU can be definitively determined by overlaying the District boundaries and SWRCB Place of Use map, and making sure all customers served are within our LDPCSD boundaries. To get this done, the Board just needs to know it will require engineering work to do specific mapping, which will cost up to a maximum of \$10,000.*

Question 18. Two other properties are served District water and do not pay LDPOA dues. Why are they not on the outside place of use report?

Answer: Whether someone pays LDPOA dues or not is not a test of whether they are in or out of the SWRCB map for MID POU. These are again separate issues and can be resolved with the mapping work described above. We need to pay to do the map, identify the parcels outside the POU, and possibly request that MID submit a request to the SWRCB for modification of the McClure POU boundaries. If they support that request, we will likely get stuck with the cost of the application, environmental review and engineering. But we are done. If they reject the request, we need to develop enough groundwater to make sure we can serve the OPU parcels, and make sure our rates to the OPU properties reflect the well costs. BUT, because the wells benefit all, and the cost for the wells and their operation is less than the lake pumps, we will likely want to keep everyone paying for the wells and available for use by all customers, rather than dedicated to just OPU customers.

Recommended Action Plan (In priority order):

- A. Perform the engineering to create the two accurate maps; Place of Use and District boundaries (that is available free from LAFCO), and determine any properties served from our water system and located outside of our boundaries. Secure out of area agreements with the property owners, and secure LAFCO approval to clean up any discrepancies.
- B. Ensure that our well water supply current and future meets the demand of the outside POU connections
- C. Adopt construction and development standards and policies, as well as water supply policies and standards, including the requirement for well serving as emergency drought water supply
- D. Adopt policies defining what the current availability charge buys those paying the fee. They are currently paying to keep the system in a ready to serve condition, but they will pay a proportional share of all “capacity” costs as described above in the future at the time of connection.
- E. Adopt our Capital improvement plan, and consider funding an engineering study called a water system Master Plan that takes into consideration all possible future development within the District sphere of influence, and plans long term water supplies and infrastructure to serve them. This is the most accurate way to create development and capacity fees that take everything into consideration.
- F. Lift the ban on outside place of use connections, due to the fact that they will be required to develop their own new groundwater supply by paying a connection capacity fee that will allow the District to have the funding continue further groundwater

development. With additional groundwater, there will never be a problem meeting the water supply needs of customers outside of MID's POU.

- G. **(optional)** Submit a request to MID to amend the POU boundaries to be coterminous with our boundaries, or boundaries plus areas already served, all customers