

# Mount Shasta Herald

## News

### What's next for Nestlé project?

By Deborra Clayton

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Last week's Siskiyou County Superior Court ruling in the McCloud Concerned Citizens' suit against the McCloud Community Services District has raised nearly as many questions as it answered.

Among the uncertainties are whether the contractual water sale agreement between Nestle and MCSD will be upheld or overturned on appeal, and how the ruling will ultimately impact the proposed Nestle water bottling project in McCloud. Also being questioned is whether the McCloud ruling or its appeal will impact similar county and state cases involving the California Environmental Quality Act.

Superior Court judge Roger Kosel ruled that the signing of the water sale contract between the MCSD and Nestle Waters NA in September 2003 was in itself part of the proposed project and was therefore subject to compliance with the California Environmental Quality Act.

The ruling grants MCC the petition filed on their behalf by attorney Donald Mooney, asking the court to set aside the contract agreement.

In the next few days Mooney said he will submit the order and writ requested by the court when it granted the petition.

"The order will be to vacate, rescind and set aside the contract between Nestle Waters and the MCSD. The writ will direct the district to take that action," Mooney said.

Nestle natural resources manager Dave Palais indicated that until that formal order is submitted, the consequence of the ruling is unclear.

"Nestle will follow an established legal process wherein they may or may not object to specific aspects of the order," he said.

Nestle attorney Robert Johnson said in any event the corporation will appeal the ruling.

"An appeal stays any further action. It puts the judge's ruling on hold until the

appeal is heard and decided," Johnson said.

Meanwhile, the proposed project's EIR, already underway, will move forward as scheduled.

Siskiyou County planning director Wayne Virag said, "The current plan is to continue the work contracts relative to the EIR between the county and Nestle and between the county and Pacific Mutual Consultants. The county has no jurisdiction regarding the contract between MCSD and Nestle."

Palais said that apart from their disappointment in the ruling and the potential delays it may cause the project, "nothing has changed in our minds from two weeks ago."

We will continue to honor our contractual agreement with McCloud until the appeal process has run its course," said Palais.

Mooney said one purpose behind the MCC lawsuit was to ensure that the quantity, sources and terms of the water sale contract were evaluated in the EIR and that alternatives analysis, as well as any necessary mitigation measures, were developed and addressed.

"Prior to the judge's ruling, the contract defined most of these aspects of the project," Mooney said.

"Nestle believes that the language in the existing contract and the court's ruling achieve the same objective," he added, "since both require that the contract be modified as needed based on the results of the final EIR."

He said, for instance, that if the EIR determines that the current maximum water take allowed by the contract creates a significant effect on the environment, Nestle will reduce the take to a lower level established in the final EIR.

He said the payments to McCloud would not be affected by the adjustments made in response to environmental concerns.

"In such a case, McCloud would still receive the same economic benefits agreed upon in the existing contract," Palais said.

McCloud residents and business owners had a range of responses to news of the ruling.

Ron Berryman, a McCloud resident for the past 58 years, said the ruling, if it stands, will affect businesses all over California.

"If the mere signing of the contract constituted a project and should have undergone an EIR, California may as well forget itself as a business friendly state," Berryman said.

"Businesses are analyzed on a cost/benefit ratio. I can't imagine anyone spending half a million dollars for an EIR for the mere possibility of a business project," he commented.

McCloud resident and business owner Richard McFarland said he thinks the ruling confirms the concerns a number of citizens have expressed about being left out of the process when the district was negotiating with Nestle.

"I think it also confirms that the board abused its discretion by signing the contract before complying with CEQA," McFarland said. "That's just one court's opinion, but it is a court's opinion."

McCloud Chamber of Commerce president Ray Angle said, "We have a system of checks and balances. The court ruled that the district skipped a step according to CEQA law, so they overturned the contract. The ruling makes sense from a jurisprudence point of view."

Penny Heil, who owns a business on historic Main Street, indicated she felt the appeal process will be helpful overall.

"This takes it out of the county and into appellate court where a lot of case law is established," Heil said. "It will provide guidance not only for this case and for county cases, but also for the state."

The McCloud Watershed Council, formed as a grassroots response to the proposed Nestle project, issued a press release, indicating the group was pleased with the ruling.

The group's statement pledged they will "continue to work to ensure that the democratic process and state and federal law is upheld in any further action taken by the district regarding McCloud's water resources."