

Mount Shasta Herald

News

Overview of Nestle contract in McCloud

By Deborra Clayton
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Nestle Waters North America, Inc. entered into a contract with the McCloud Community Services District on October 1, 2003 for the exclusive right to purchase spring water for bottling.

The contract includes plans for a facility to be constructed in McCloud for the purpose of bottling spring water.

The contract does not sell water rights to Nestle. It sells the company up to 1,600 acre feet of spring water per year, allowing it to collect that amount from one or more of McCloud's three springs - Intake, Upper Elk and Lower Elk Springs.

The contract calls for the construction of spring water storage and collection systems, segregated from those used by the district, to be used exclusively for bottling by Nestle.

The contract allows Nestle up to 10 years (until October 1, 2013) to build, open and commence operations of the bottling facility.

Currently the project is in what the contract refers to as the "contingency period," a period limited to no more than five years.

The contingency period began when the contract was signed and will end when Nestle has obtained all the discretionary permits necessary to begin construction.

At any point during this period Nestle may cancel the contract agreement for any reason.

According to the contract, this period initially allowed Nestle to evaluate the feasibility of its proposed project and committed both Nestle and the district to "establish a plan and design for the testing, monitoring, collection and distribution system necessary to meet (Nestle's) standards and proposed uses."

Now Nestle is preparing to submit its construction and development proposal to Siskiyou County, which has permitting authority for the project.

As the contingency period continues, the project will be subject to an Environmental Impact Report, under the California Environmental Protection Act and an Environmental Assessment, under the National Environmental Protection Act.

The CEQA/NEPA process commences with the filing of a notice of preparation, which will open a 30 day window for written comments by the public and by other agencies, and will include one public meeting.

Public input collected during this time will help determine the scope and content of the EIR/EA analysis of the project.

When the analysis is complete and any significant impacts have been satisfactorily addressed, or "mitigated" by Nestle, the county may issue all permits necessary for construction of the bottling facility and the segregated spring collection and storage systems.

The CEQA/NEPA process can take up to a year. Any legal challenges to the analysis may protract the timeframe further.

The contract commits Nestle to paying all expenses incurred by the district during the contingency period for such services as legal and consulting fees and for any hours spent by district staff on work related to the Nestle project.

During the contingency period McCloud will receive up to \$250,000 from Nestle. This "contingency fund" in effect pays the district for keeping its water off the market until the Nestle project gets underway and long term financial agreements included in the contract come into play.

The contract committed Nestle to place the \$250,000 into an escrow account. An initial \$25,000 was released to the district last fall and the remainder will be disbursed in annual payments of \$56,250.

If the contingency period ends before the five year limit, the balance of the contingency fund will be released from escrow to the district.

If Nestle cancels the contract during the contingency period, the district keeps whatever money it has collected from the fund, but Nestle keeps the undisbursed balance.

The contingency period ends on what the contract determines as the "closing date", the date 10 days after all discretionary permits have been issued to Nestle.

After the closing date, Nestle's right to cancel the agreement is limited, and the company may begin purchasing water.

Note: This is the first in a series of articles that will incrementally review the Nestle/McCloud contract in its entirety.