



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Counsel
Department No.: 0013
For Agenda Of: 3/25/08
Placement: Administrative
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: No Vote Required

TO: Board of Supervisors

FROM: Department Daniel J. Wallace, County Counsel
Contact Info: Kevin E. Ready Sr., Senior Deputy
x-2950

SUBJECT: Santa Maria Groundwater Basin Litigation

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form: No

Recommended Actions:

Receive and file report on outcome of Santa Maria Groundwater Basin Litigation

Summary Text:

The multi-year litigation regarding determination of groundwater rights in the Santa Maria Basin has concluded and your Board had requested a brief report on the outcome and impacts.

Background:

The Santa Clara Superior Court has issued a final judgment and order in the longstanding litigation over adjudication of groundwater rights within the Santa Maria groundwater basin. The final order is the result of ten years of multi-phased trial and numerous stipulations by hundreds of parties. Santa Barbara County chose to take an inactive role in the litigation and stipulating to the eventual judgment, although we were a named party. This was decided by your Board since the County and its integral entities have very little direct interest in water rights, re-use rights or imported water credits in the groundwater basin. However, the litigation does have a long term impact on the county and its residents, particularly to the public and private water purveyors and to property owners who are reliant on the water supplies available. The purpose of this report is to briefly outline the impact of this case on the county.

The Judgment provides a mechanism to protect and preserve the Santa Maria Basin's groundwater supplies and ensure that the Basin continues to enjoy a reliable source of water for many years to come. Among other things, the Judgment approves and incorporates the June 30, 2005 Stipulation that was signed by the majority of active parties and orders the Stipulating parties to comply with its terms.

The Stipulation, as incorporated by the Judgment, provides a detailed and comprehensive management structure for the Basin and confirms and protects the water rights of the water purveyor's, including Santa Maria City. With respect to the parties that did not sign the Stipulation, the Judgment orders those parties to participate in the monitoring and reporting provisions contained in the Stipulation. Importantly, while not finding that the Basin was in overdraft, it did find that the potential for overdraft existed in the future and the Judgment provides the Court with continuing jurisdiction to enforce the provisions of the Judgment and to ensure that conditions in the Basin remain sustainable both now and in the future.

Specifically, the Court's order provides for the establishment of the "Twitchell Project Authority" comprising local agencies and land owners to assure the long term yield of the reservoir through its stipulated role in "extraordinary operations," and capital projects. The Santa Barbara County Water Agency is the contractor with the United States for the Twitchell Project on behalf of the Santa Maria Valley Water Conservation District. The Court provided no formal role for the County Water Agency in the TPA, but staff will cooperate in the establishment of the TPA and will bring to the Board any recommendations relating to potential County role, expenditures, or commitment of staff time. Another aspect of County operations which was a factor in the litigation was that Laguna Sanitation District's re-injection of reclaimed water into the Basin's groundwater played a decisive role in supporting the adjudication of re-use rights by entities importing water into the basin, such as the members of the Central Coast Water Authority (CCWA).

In anticipation of the eventual resolution of the groundwater litigation, the Orcutt Community Plan referred to the results of the court case as a method of determining future water supplies available to new discretionary development approved subsequent to the judgment. Orcutt Community Plan Policy WAT-O-2 reads as follows:

In order to be found consistent with Land Use Development Policy No. 4 (LUDP#4), the water demand of new discretionary development must be offset by long-term* supplemental** water supplies that do not result in further overdraft of the local groundwater basin and that are adequate to meet the project's net water demand as determined by the County considering appropriate reliability factors as determined by County Water Agency. To demonstrate an adequate long-term supplemental water supply, projects must comply with the following development standards:

* "long-term" means permanent source of water for development.

** "supplemental" water means a source of water other than groundwater, unless: 1. the groundwater basin has been determined to be no longer in overdraft, or 2. The use of groundwater is consistent with the final water rights judgment entered in the Santa Maria Groundwater Basin adjudication (Santa Maria Valley Water Conservation District v. City of Santa Maria, et al., Santa Clara County Superior Court Case No. CV 770214).

The policy provides that long term supplemental water (i.e. a permanent source of water other than groundwater) is required to offset the water demand of new discretionary development projects unless: 1. the groundwater has been determined to be no longer in overdraft, or 2. *the use of groundwater is consistent with the final water rights judgment entered in the Santa Maria Groundwater Basin adjudication.* As discussed above a final water rights judgment has been entered in the Santa Maria

Groundwater Basin adjudication. Because the court has found that the groundwater basin is not in a state of overdraft, **Policy WAT-O-2 and Development Standards WAT-O-2.1, 2.2, and 2.3 are therefore not currently applicable to new discretionary development projects in the Orcutt Planning Area.** The court has retained equitable jurisdiction over the matter and can in the future determine whether overdraft has occurred and reevaluate the rights. Should a future determination be made that the basin is in overdraft, it would, under the WAT-0-2 policy, require supplemental water. This would impact new development to an extent indeterminable at this time. Finally, County Counsel and Planning and Development are reviewing the County’s CEQA Thresholds of Significance for ground water use to assure consistency with the final judgment. We expect to bring any appropriate changes to your Board within 3 months.

County Counsel has discussed the outcome of the groundwater litigation with the Santa Maria City Attorney’s office, which played a more active role in the litigation than the County. The two public law offices are in agreement that the result of the groundwater litigation provides important benefits to the County, the City and the entire Santa Maria Valley by ensuring that the Basin’s valuable groundwater resources are effectively managed.

No specific action is required at this time. Staff will return to the Board with any future developments or if policy decisions are needed.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis: N/A

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative: N/A

Special Instructions:

Attachments:

Authored by: Kevin Ready

cc: Water Agency
 Planning and Development

April 4th 2008 transcript on overdraft hearing:

THE MOTION TO DETERMINE THE OVERDRAFT. OKAY. THAT IS AN APPROPRIATE MOTION TO FILE IF IT'S FILED WITH SUFFICIENT SUPPORT AND JUSTIFICATION. I DON'T HAVE ANYTHING OTHER THAN SOME HEARSAY OPINIONS THAT DO NOT GIVE RISE TO A SUFFICIENT BASIS FOR THE COURT TO ORDER AN EVIDENTIARY HEARING. I CAN ASSURE YOU THAT IF THERE IS REAL EVIDENCE OF OVERDRAFT, AND I AM NOT TALKING ABOUT FIVE YEARS AFTER THE OVERDRAFT, BUT IF HERE IS EVIDENCE THAT ESTABLISHES THAT THERE IS A DROUGHT, THAT THERE IS A CURRENT OVERDRAFT, AS WE DEFINE THAT TERM, AND I THINK IT HAS BEEN ADEQUATELY DEFINED MANY TIMES, I'LL BE HAPPY TO ORDER A HEARING ON THAT. I DON'T THINK THERE IS A BASIS FOR IT IN WHAT YOU HAVE GIVEN ME. SO THAT'S DENIED WITHOUT PREJUDICE.

MR. ZIMMER: CAN I JUST BE HEARD ON THAT, YOUR HONOR.

THE COURT: YOU MAY.

MR. ZIMMER: I WON'T BELABOR AND WILL SHORTCUT THINGS. THE REASON THAT WAS BROUGHT WAS FOLLOWING THE JUDGMENT THERE IS NO INDICATION WHETHER THERE IS AN ONGOING CLAIM OF OVERDRAFT, OR AN ONGOING CLAIM OF PRESCRIPTION.

AS THE COURT WILL RECALL THE PRESCRIPTION CLAIM IN THE UNDERLYING CASE WAS BASED UPON A LOT OF HEARSAY COMMENTS MADE IN THE PRESS, COMMENTS WE ARGUED IN 18 TRIAL, PERHAPS, WOULDN'T GIVE RISE TO NOTICE. THE COURT RULED THAT DID GIVE RISE TO NOTICE, WHETHER IT WAS HEARSAY OR WHETHER IT WAS ACCURATE.

THE -- THE POINT NOW IS THAT THE LANDOWNERS DO NOT WANT TO BE IN A POSITION AT THIS POINT OF HAVING HEARSAY COMMENTS OUT THERE, OR WHETHER THEY ARE TRUE OR OTHERWISE, TO BE THE BASIS NOW FOR A CLAIM OF PRESCRIPTION AT SOME POINT IN THE FUTURE.

I SUGGESTED THAT MR. JOHNSTON SIMPLY ASK FOR A STIPULATION THAT -- THAT NOBODY IS CLAIMING THERE IS AN OVERDRAFT, AND NO ONE IS CLAIMING PRESCRIPTION. THE QUICKEST WAY TO GET TO IT, NO ONE CLAIMING PRESCRIPTION OR OVERDRAFT, I DON'T THINK WE NEED TO HAVE ANY KIND OF EVIDENTIARY HEARING.

THAT STIPULATION HAS BEEN CIRCULATED TO THE OTHER PARTIES.

NOW, I ANTICIPATE IT IS POSSIBLE THEY MIGHT NOT RESPOND TO THAT. IF THEY DON'T RESPOND TO THAT THEN I WOULD SIMPLY ASK FOR THE RIGHT TO DO SOME DISCOVERY UNDER THE CONTINUING JURISDICTION OF THE COURT TO ASK THEM TO EITHER ADMIT THERE IS NO OVERDRAFT OR ADMIT THEY ARE NOT CLAIMING PRESCRIPTION. AND THEN WE CAN DECIDE WHETHER WE NEED AN EVIDENTIARY HEARING.

THE COURT: WELL, I THINK THAT ANY ONE OF THOSE THINGS IS POSSIBLE. IF YOU HAD ASKED ME I WOULD SAY WHY DON'T YOU WRITE THEM A LETTER AND ASK IF THEY THINK THERE IS A CURRENT OVERDRAFT BECAUSE THAT CREATES NOTICE OR LACK OF IT. AND IT SEEMS TO ME THAT IF THE ENTITY SAYS WE DON'T KNOW ABOUT ANY CURRENT OVERDRAFTS I THINK YOU ARE IN PRETTY GOOD SHAPE. BUT IN THE EVENT YOU NEED SOMETHING MORE FORMAL THEN YOU SHOULD MAKE A FORMAL REQUEST.

MR. ZIMMER: THANK YOU, YOUR HONOR. I WANTED THE PARTIES TO UNDERSTAND WHAT IS HAPPENING. THERE SEEMED TO BE CONFUSION.