



County of Santa Cruz

HEALTH SERVICES AGENCY

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HEALTH SERVICES AGENCY ADMINISTRATION

March 16, 2010

AGENDA: March 22, 2010

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: Groundwater Management Alternatives for the Pajaro Basin

Dear Members of the Board:

On February 23, 2010, your Board scheduled a study session on March 22 to consider the possible implications of a groundwater adjudication and/or increased County involvement in management of the Pajaro Groundwater Basin, particularly if the Pajaro Valley Water Management Agency (PVWMA) is unable to obtain voter approval for additional funding of their management efforts. We have invited agency representatives and an outside legal expert to make presentations. Following are the topics which are discussed in this report and which will be further discussed at the Study Session:

1. Brief background on overdraft of the groundwater basin
2. Current and anticipated actions of PVWMA to manage the basin, and anticipated actions by PVWMA if the effort to establish increased augmentation fees fails
3. Potential action by the State of California
4. Potential implications of groundwater adjudication: process, expected outcomes and costs; other potential alternatives to adjudication
5. Possible actions by the County, including declaration of groundwater emergency
6. Questions and comments from Board members and members of the public

Background

The Pajaro Groundwater Basin is experiencing significant overdraft of 40,000 acre-feet per year (afy), resulting in groundwater levels below sea level under 68% of the basin and seawater intrusion extending 1-2 miles inland. The Pajaro Valley Water Management Agency (PVWMA) was created in 1984 to take necessary steps to secure additional water supplies and manage the basin in order to bring water use into balance with sustainable supply and stop the overdraft and seawater intrusion. PVWMA adopted an updated Basin Management Plan in 2002, and has implemented a number of actions to address the situation. PVWMA has been seeking to finance these efforts through a combination of state and federal grants and water augmentation charges paid by all users of water in the basin. However, in 2007 the courts deemed a portion of the

augmentation charges to be invalid under Proposition 218, and the charges were cut in half. This leaves the agency without adequate funding to maintain current programs or implement the additional measures needed to bring the basin into balance.

Your Board previously expressed concern that the overdraft could not be adequately addressed by the PVWMA due to the loss of funding and that the County may need to take steps to address the overdraft. The County Well Ordinance, Chapter 7.70, provides for declaration of a groundwater emergency in areas subject to groundwater overdraft, where adequate measures are not being taken. On August 19, 2008, your Board held a public hearing to consider declaring a groundwater emergency, which could include a number of County actions to promote short-term reduction of water use and long-term reduction of the overdraft. Testimony provided by agency representatives and members of the public was divided on whether or not to declare an emergency. Your Board directed staff to work with PVWMA on a number of efforts toward mitigating the overdraft, including establishing a new source of financing for PVWMA consistent with Proposition 218. Your Board has been provided with status reports on October 7, 2008; April 21, 2009; October 27, 2009; December 8, 2009; and February 23, 2010.

PVWMA Efforts

PVWMA formed an Ad Hoc Funding Committee and hired a special counsel and an engineering firm to consider various alternatives and develop the recommendations for increasing groundwater pumping fees and delivered water fees pursuant to Proposition 218. A draft service charge report was presented to the PVWMA Board and the public on February 3, 2010, and February 17, 2010. The Board also considered a draft resolution establishing the procedures for property owner approval of the augmentation fees and delivered water fees. The proposed fees are \$273/af for delivered water (35 users), \$162/af for groundwater pumped outside the delivered water zone (803 users), and \$195/af for groundwater pumped inside the delivered water zone along the coast (92 users). There are also 2,354 rural residential unmetered users that would be charged approximately \$93/yr, assuming they use an average of 0.59 af/yr. Although the balloting procedure is yet to be adopted by the PVWMA Board, it is proposed that the voting will be done by landowners with wells, with the voting weighted according to how much groundwater was pumped from the property in the last 5 years.

The Agency Board was scheduled to adopt the service charge report and initiate the public decision-making process on March 3, 2010. However, the Board requested staff and consultants to further evaluate an alternative approach that would involve not charging the unmetered, smaller users, and potentially not charging metered users for the first 0.5af/ac/yr used. Under this proposal, the unmetered users would not be voting because they would not be subject to charges. It is now anticipated that the PVWMA Board could adopt the service charge report and formally start the public notice and balloting process when the matter is brought back to them on March 31. A 45 day public notice process will ensue, with a public hearing to consider protests to be held not sooner than May 15. Unless a majority protest is received, ballots will then be mailed out for 45 days, with a conclusion of the balloting process expected at the end of June. Balloting would not be required for the delivered water charges and those would go into effect if there is not a majority protest and would only go into effect when and if the ballot process is successful.

Community approval of the proposed augmentation and water delivery fees is a critical step that would maintain the ability for PVWMA to maintain the programs accomplished to date and provide funding for the next steps to ultimately bring the basin into balance. These efforts will likely include:

- Maintain and expand use of recycled water and the coastal distribution system. This system can deliver up to 6000 af/yr of water to the coastal areas, including 4000 af of recycled water. The proposed fee schedule should help incentivize greater use of this system. The Agency is exploring options to make use of additional recycled water during the winter and to increase yield of the Harkins Slough aquifer storage and recovery project..
- Substantially increase efforts for water conservation. This will be funded by PVWMA's general fund. Although the Agency act does not currently allow conservation to be funded by the augmentation fees, modification to the Agency act to allow this is under consideration.
- Update the 2002 Basin Management Plan. This effort will be funded by the increase in augmentation fees. The PVWMA Board recently voted to remove the import pipeline from the preferred alternative of the Basin Management Plan due to fiscal realities. However, this leaves them with no plan or obvious mechanism to bring in the large amount of supplemental water needed to maintain current levels of water use. It still remains to be seen how much supplemental water can be provided by less costly efforts. Various options must be considered under the BMP update, and a firm plan must be reestablished that will bring the basin into balance.
- Implement new projects that are identified in the Basin Plan update to provide supplemental water. These could include local capture and storage of surface water, delivery of surplus water from Santa Clara and San Benito Counties down the Pajaro River, enhancements of groundwater recharge, land fallowing, or reconsideration of the import pipeline. As the debt for the recycled water treatment plant and coastal distribution system is paid off, funds from the currently proposed augmentation fee would become available to implement new projects. The Agency could also return to the property owners for an increase in the augmentation fees to fund the additional projects.
- Establish mechanisms to reduce groundwater pumping. If the Agency and the community determines that it is not cost-effective to bring in enough supplemental water to meet current water demands, mechanisms will need to be established and managed to provide for the equitable reduction of groundwater pumping to stay within the sustainable yield. This might include the establishment and trading of water use credits.

County staff will continue to support and encourage PVWMA's efforts to move toward the long term goal balancing water use with sustainable supplies in the Pajaro Basin. However, staff is investigating the actions that would need to be taken if PVWMA is unable to accomplish their mission.

Possible Consequences of a Negative Vote

Although PVWMA is taking strong measures to inform the public, respond to concerns raised, and encourage approval of the increased fees, it is important for your Board and the community to be aware of the possible outcomes of a negative vote on the proposed water charges. If the vote is not successful, PVWMA will not likely attempt another vote. The Agency will not have enough revenue to pay its debts or maintain current operations past January or June of 2011 and may need to seriously consider bankruptcy and/or dissolution. Some of the likely or possible outcomes are indicated below and described in subsequent sections:

1. Dissolution of PVWMA and transfer of debt and authority to the City of Watsonville, a Joint Powers Authority, or other successor entity.
2. Initiation of a groundwater adjudication by the State of California.
3. Initiation of a groundwater adjudication by a local groundwater user.
4. Declaration of a groundwater emergency by Santa Cruz County, with restrictions on pumping and new development and other measures.

Agency Dissolution and Succession

If a public agency such as PVWMA declares bankruptcy, its debt does not go away: it may be restructured or delayed, but it must ultimately be paid off, pursuant to Chapter 9 of the Bankruptcy Code. If PVWMA is dissolved, pursuant to the Government Code, the Agency assets and liabilities are transferred to the successor agency with the greatest assessed property value, which in this case would be the City of Watsonville. The successor agency has the authority to continue to collect the assessments or other obligations from the property owners within the territory of the dissolved district. The City of Watsonville would likely seek to recover the debt from groundwater users throughout the basin. Beyond the provisions of the Government Code, the fees could also be collected from property owners outside the City under the auspices of a joint powers authority.

If PVWMA is unable to provide groundwater management and address the groundwater overdraft, the basin could be managed by a Joint Powers Authority consisting of the City of Watsonville, County of Santa Cruz, and County of Monterey. Under their police powers and other authorities, those agencies could impose groundwater pumping restrictions and potentially levy regulatory fees to support efforts to mitigate over-pumping. The League of California Cities Guide to Proposition 218 suggests that regulatory fees do not seem to be subject to Proposition 218. Those entities could also form an AB 3030 groundwater management district. As an alternative, the state legislature could enact new legislation that would reconfigure PVWMA or create a wholly new agency with potentially different authority and composition.

Possible State Water Board Action

If local agencies are not taking adequate steps to address the overdraft and degradation of the groundwater basin, the State Water Resources Control Board can initiate regulatory action under Section 2100 of the Water Code to restrict pumping and/or impose a physical solution through a groundwater adjudication process. The State Board previously initiated this process in the Oxnard Plain and the Salinas Valley, but in those cases the local agencies ultimately took the actions needed to forestall the State's regulatory action.

At the time the State Board issued a formal warning letter for the Salinas Valley in 1996, they also put PVWMA on notice that they needed to move more firmly to address the overdraft in the Pajaro Valley. As a result, PVWMA was required to provide annual reports to the State Water Resources Control Board to demonstrate adequate progress toward addressing the overdraft. These reports were discontinued once PVWMA adopted the 2003 Basin Management Plan and commenced implementation of the Plan. Now that PVWMA's future and ability to address the overdraft have been called into question, the State Water Board is again concerned about the need to take action regarding the Pajaro Basin. Although the State Water Board will be meeting

to address Delta water rights issues on March 22, they will send a staff representative to the March 22 study session to hear local concerns.

Groundwater Adjudication

A groundwater adjudication is an expensive and lengthy process whereby the courts establish water rights and either impose reduced water use by all users to stay within the basin's sustainable yield or impose a physical and financial solution to provide supplemental water to balance demand and sustainable supply. An adjudication can be initiated at any time by the State, the County, or any individual well owner. The litigants pay for their own consultants and attorneys and all parties also pay their share of the court-directed studies needed to establish the safe yield and an equitable distribution of pumping rights. Most adjudications are resolved by the major parties negotiating a settlement agreement, which is approved by the courts and generally imposed on all parties. Ongoing oversight and implementation of the terms of adjudication is provided by a court-designated watermaster and all parties are directed by the courts to pay their share of the costs of the watermaster and any implementation costs. Many adjudications include a "physical solution" to bring supplemental water into a basin to meet the needs of all users. The court specifies the physical solution and the allocation of costs for developing and maintaining that solution. Some adjudications result in a determination that the basin is in overdraft and that pumping must be reduced according to an adopted time-table, which specifies the amount allowed to be used by each user.

There are 22 adjudicated groundwater basins in California. The two most recently completed adjudications were completed in the Santa Maria and Seaside basins. The Santa Maria basin is similar to the Pajaro basin in that it is a coastal basin with substantial agricultural and municipal use. The total cost of the adjudication has been estimated at over \$15 million, and after ten years, it is still in the courts under appeal. Kevin O'Brien, an attorney who was involved in both the Santa Maria and the Seaside adjudications will be present at the March 22 study session to provide more information to your Board on the adjudication process.

In the absence of basin management and/or a supplemental water supply, an adjudication of the Pajaro Basin would likely result in more than a 50% cut in existing agricultural water use to be consistent with the sustainable yield. It would also result in fees imposed by the courts on well owners to complete and implement the adjudication.

County Declaration of Groundwater Emergency with Pumping Restrictions

If PVWMA is not successful in establishing a new funding mechanism needed to take the next steps for managing the basin, the Board of Supervisors would have justification to declare a groundwater emergency pursuant to County Code Section 7.70.130, which provides that the Board shall declare a groundwater emergency "where the Board of Supervisors finds that adequate measures are not already being taken to alleviate the overdraft situation." A declaration of groundwater emergency would include short term and long term measures to address the overdraft. Such a declaration could include the following actions, many of which were presented to your Board at the public hearing on August 19, 2008:

1. Establish a goal and supporting programs so that all users pumping groundwater from the

Pajaro Groundwater Basin are urged to immediately take actions to reduce their water use by at least 20%. This amount of reduction is consistent with recent state-wide targets and with local water conservation targets.

2. Urge the City of Watsonville to adopt a resolution declaring a water supply emergency and establishing Level Two water use reductions (17-20% reduction).
3. Add a new section of the county code to promote water conservation and prohibit wasteful use of water throughout the unincorporated areas of the County, with an emphasis in the Pajaro Groundwater Basin.
4. Adopt an ordinance requiring preparation and submittal of an annual agricultural water conservation plan by individual agricultural users to document and promote the use of water conservation measures, and encourage the Monterey County Water Resources Agency to require such plans within the portion of the Pajaro Basin under their jurisdiction. Such plans are already required on an annual basis of all users in Monterey County in the overdrafted zones of the Salinas groundwater basin. As an alternative, staff could work with agricultural users to develop other mechanisms to provide for more efficient agricultural water use.
5. Establish a temporary moratorium on new subdivisions and building permits for new homes within the unincorporated areas of Santa Cruz County overlying the Pajaro Basin until a water demand offset program can be developed which will require developers to implement water conservation measures to reduce water use from existing development to the extent that there would be no net increase in water use from the basin. This would be similar to the water demand offset program administered by the Soquel Creek Water District.
6. Establish a moratorium on wells serving new residences or new or expanded agricultural uses unless the user submits a water conservation plan that demonstrates maximum practicable water efficiency. A number of counties in the state, including Napa and San Mateo have adopted ordinances which restrict new pumping in overdrafted basins.
7. Consider establishing pumping limits for existing users, with a surcharge or penalty for water pumped in excess of the amount allowed.
8. Direct County staff to work with the Pajaro Valley Water Management Agency, the City of Watsonville, the Farm Bureau, Monterey County Water Resources Agency, the State Water Resources Control Board and other affected agencies, water users and land owners to promote the development of technical measures, institutional measures, and financing methods to bring water use in the Pajaro Groundwater Basin into balance with safe yield and sustainable supplies. Consider seeking new special legislation or entering into a joint powers agreement with the City of Watsonville and Monterey County to assume management of the Pajaro Basin.
9. After one year, review the status of basin management efforts and if there is not significant improvement, consider initiating an adjudication of groundwater rights whereby the courts either impose reduced water use by all users to stay within the basin's sustainable yield or impose a physical and financial solution to provide supplemental water.
10. Support efforts to fallow agricultural land to reduce overall water use, particularly in areas subject to flooding, with high natural resource value, and/or with marginal agricultural value.

Conclusion and Recommendation:

Staff will continue to closely monitor the progress of PVWMA and the process for community approval of additional funding. If the proposed augmentation fees are defeated, staff will return to your Board with a report and likely recommendation to schedule a public hearing to consider declaring a groundwater emergency including actions to restrict pumping and manage the basin.

It is, therefore, RECOMMENDED that your Board:

1. Accept and file this report, along with additional information presented at the March 22 study session.
2. Direct the Health Services Agency Director to return with a follow-up report upon completion of PVWMA process for approval of groundwater augmentation fees.

Sincerely,

Rama Khalsa, Ph.D.
Health Services Agency Director

Dana McRae
County Counsel

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

cc: Planning Director
HSA Administration
Water Resources Division/EH
Water Advisory Commission
PVWMA
City of Watsonville
Monterey County Water Resources Agency