



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: 18-121

February 13, 2018

Introduced: 2/5/2018

Current Status: Scheduled PM

Version: 1

Matter Type: General Agenda Item

- a. Conduct a public hearing to consider an appeal filed by General Farm Investment (Chris Bunn) of the denial by the Monterey County Department of Health of General Farm Investment's application for a Water Well Construction Permit (#17-12916) for Assessor's Parcel Number 414-011-001, at Cooper Road and McFadden Road; and
- b. Provide direction to staff; and
- c. Continue the hearing to a later date for staff to return with a resolution with findings and evidence pursuant to the Board of Supervisors' direction.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Conduct a public hearing to consider an appeal filed by General Farm Investment of the denial by Monterey County Department of Health of General Farm Investment's application for a Water Well Construction Permit (#17-12916) for Assessor's Parcel Number 414-011-001, Cooper Road and McFadden Road; and
- b. Provide direction to staff; and
- c. Continue the hearing to a later date for staff to return with a resolution pursuant to the Board of Supervisor's direction with findings and evidence.

SUMMARY:

The Monterey County Health Department seeks direction from the Board of Supervisors in consideration of three options in response to the appeal filed by General Farm Investment (GFI) of the denial of GFI's application for a well permit. Options for consideration are to:

1. Deny the appeal and affirm the denial of the permit application; or
2. Grant the appeal and approve the well as a replacement well with conditions; or
3. Continue the hearing to a later date to allow the Board to consider the recommendations of the groundwater sustainability working group prior to acting on the appeal.

DISCUSSION

The Monterey County Health Department received an application on October 13, 2017 from General Farm Investment (Chris Bunn) for a water well construction permit to construct a new well for property located at Cooper Road and McFadden Road (Assessor's Parcel Number 414-011-001). Monterey County Environmental Health well permit applications are handled ministerially unless the well application indicates the well will pump water greater than 1000 gallons per minute (high capacity well). The protocol for processing a high capacity well permit application is to obtain review by the Monterey County Water Resources Agency. The application was forwarded to the Water Resources

Agency on October 13, 2017.

On December 6, 2017, the Monterey County Water Resources Agency made their recommendation to deny the well permit based on their analysis of the application and these components:

- The potential to increase approximately 6% in total annual pumping from wells in the Deep Aquifers in the Areas of Impact;
- Documented seawater intrusion in the proposed well site;
- The predominant source of recharge to the deep aquifers is due to leakage from the overlying aquifers;
- Analysis of the water from the deep aquifer and continued pumping of ‘old water’ represents mining of a groundwater resource; and
- Insufficient data exists for long term viability of the deep aquifers to allow for knowledge-based water resource planning.

On December 7, 2017, the Monterey County Health Department, based on the recommendation by the Monterey County Water Resources Agency and a review of the potential public health impacts to groundwater supply with the Monterey County Health Officer under authority of Monterey County Code, Chapter 15.08, sections 15.08.010 and 15.08.060, denied the application due to documented seawater intrusion and the anticipated expansion of seawater intrusion that would occur as a result of additional pumping from the proposed well.

On December 17, 2017, General Farm Investment filed a Notice of Appeal of the Denial. The following summarizes the appellant’s contentions, staff responses, and options for Board action on the permit in light of the contentions and responses.

1. Appellant contention: The Monterey County Health Department and Monterey County Water Resources Agency are attempting to impose a moratorium on the drilling of wells and are depriving Cooper Ranch the ability to have an adequate supply of irrigation water.

Staff response: The Health Department and the Water Resources Agency are following established criteria in consideration of high capacity well construction. These countywide criteria are applied on a case by case basis. The denial was based on the particular facts of this well application, not a moratorium.

2. Appellant contention: The Monterey County Health Department exceeded its authority by denying the permit rather than setting conditions to the permit.

Staff response: Section 15.08.060 of Chapter 15.08 of the Monterey County Code expressly states that the health officer “*may* condition the permit in any manner he or she deems necessary...” and “The Health Officer shall deny an application for a permit if, in his or her judgment, its issuance would tend to defeat the purpose of this Chapter.” Section 15.08.010 states that the “purpose” of Chapter 15.08 is “to provide for the construction, repair, and reconstruction of all wells ... to the end that the groundwater of this County will not be polluted or contaminated and that water obtained from such wells will be suitable for the purpose for which used and will not jeopardize the health, safety or

welfare of the people of this County.” The Monterey County Health officer made such a finding based on the WRA analysis and its recommendations.

3. Subsequent to the filing of this appeal, the applicant reported that the well permit is not for a New well as noted on the original application submitted but rather a replacement well for the existing well and asked that consideration be given to the application as a Replacement well.

The Monterey County Health Department recognizes that if the well qualifies as a “replacement” well, the well would not violate prohibitions to wells in “...areas of saltwater intrusion as identified by Monterey County Water Resources Agency...” as described in Policy PS 3.5 of the Monterey County General Plan; however the Health Officer considered that its placement would defeat the “Purpose” of Section 15.08.010 due to its location and analysis and recommendation of the Monterey County Water Resources Agency.

Subsequent to the initial well application by General Farm Investment for a New well permit and following the filing of the appeal from the denial, the applicant provided information to Environmental Health Bureau and Water Resources Agency regarding its contention that the well is a replacement well. The Water Resources Agency evaluated the new information and continues to recommend denial. (Monterey County Water Resources Agency Well Application Review, dated January 30, 2018, see attachment). The proposed replacement well would be constructed in the Deep Aquifers, in an area where the overlying aquifers have been identified by the Monterey County Water Resources Agency as being impacted by saltwater intrusion. Per PS-3.5 of the 2010 General Plan, A the prohibition on construction of wells in known areas of saltwater intrusion does not apply “...to deepening or replacement of existing wells...”. Nevertheless, the Monterey County Health Department contends that placement of the well would defeat the “Purpose” of Chapter 15.08.010 due to its location and the analysis and recommendation of the Monterey County Water Resources Agency.

OPTIONS FOR BOARD ACTION

Options for Board action include the following:

Option 1 is to deny the appeal and affirm the denial of the well permit application based on the Purpose of Chapter 15.08 of the Monterey County Code and the Water Resources Agency’s recommendation outlined in the Monterey County Water Resources Agency Well Application Review, dated January 30, 2018.

Option 2 is to grant the appeal and approve the well as a Replacement well with conditions. The Health Department would recommend to the Board, should the Board consider this option based on a determination that the well qualifies as a “replacement well”, that the Board require the following conditions on the permit:

- a. The well being replaced is properly destroyed under permit; and
- b. General Farm Investment will accept, implement and adhere to Board of Supervisors’ approved conditions as recommended by the groundwater sustainability working group.

If the Board is inclined to choose option 1 or 2, staff would recommend that the Board adopt a motion of intent and continue the hearing to a date certain to enable staff to return with a resolution with findings and evidence supporting the decision.

Option 3 is to continue the hearing to a later date to allow the Board to hear the recommendations of the groundwater sustainability working group prior to acting on this well application. On December 12, 2017, the Monterey County Board of Supervisors approved a motion for the General Manager of the Groundwater Sustainability Agency (GSA) , Water Resources Agency and Environmental Health Bureau to form a working group to provide an update to the Board within 45-90 days with recommendations to address saltwater intrusion. The Board of Supervisors could continue the hearing on the well permit until after receipt of those recommendations.

OTHER AGENCY INVOLVEMENT:

The Monterey County Water Resources Agency and County Counsel have reviewed the appeal and this report.

FINANCING:

There is no cost associated with this request.

While this work is not directly in support of a Health Department strategic initiative, it is in support of one or more of the ten essential public health services, specifically to enforce laws and regulations that protect health and ensure safety.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Robin Kimball, Management Analyst I, x1297

Approved by: Elsa Jimenez, Director of Health, x4526

Attachments:

Notice of Appeal of Denial of Well Permit Application No. 17-12916, on file with the Clerk of the Board

Water Well Construction Denial Permit Application No. 17-12916, on file with the Clerk of the Board

Well Application to Construct No. 17-12916, on file with the Clerk of the Board

Monterey County Water Resources Agency Well Application Review (dated January 30, 2018) on file with the Clerk of the Board