



Monterey County

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Board Report

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- a. Consider options for short-term and long-term actions in response to Board of Supervisors' Referral No. 2017.25 for Action Plan on Salt Water Intrusion in the Salinas River Basin; and
- b. Provide direction to staff.

Proposed CEQA Action: This report is statutorily exempt per CEQA Guidelines section 15262.

RECOMMENDATION:

It is recommended that the Board of Supervisors of the County of Monterey and Monterey County Water Resources Agency:

- a. Consider options for short-term and long-term actions in response to Board of Supervisors' Referral No. 2017.25 for Action Plan on Salt Water Intrusion in the Salinas River Basin; and
- b. Provide direction to County and Water Resources Agency staff.

SUMMARY:

The Board of Supervisors' Referral No. 2017.25, issued on November 14, 2017, requests the Board to consider initiating short and long-term actions "to address the increasing salt water intrusion in the Salinas River Basin," including an urgency ordinance on new wells, in response to the Monterey County Water Resources Agency's (MCWRA) October 2017 special report addressing seawater intrusion in the Salinas Valley Groundwater Basin. Per Board direction on November 14, County Counsel is returning to the Board with this joint report to the County and MCWRA to outline the framework and authority respectively of the County of Monterey, the Monterey County Water Resources Agency, and the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) to take action in response to the MCWRA recommendations. Options for near term actions include the following:

1. The Board of Supervisors sitting as the governing body of the County of Monterey could direct County staff to return to the Board with an urgency interim ordinance to prohibit new wells in a defined area of impact and/or at a defined depth, pending study of development of County regulations addressing the subject matter.
2. The Board of Supervisors sitting as the governing body of the Monterey County Water Resources Agency could direct MCWRA staff to return to the Board with an ordinance prohibiting the further extraction of groundwater from a given area and depth.
3. The Board of Supervisors for County and MCWRA could make advisory recommendations to Salinas Valley Basin Groundwater Sustainability Agency.

DISCUSSION:

The MCWRA special report included six recommendations to slow or halt seawater intrusion

in the Salinas Valley Groundwater Basin, including a recommendation for “an immediate moratorium on groundwater extractions from new wells in the Pressure 400-Foot Aquifer within an identified Area of Impact,” excepting wells operating under the auspices of the Castroville Seawater Intrusion Project (CSIP) and monitoring wells. (MCWRA, *Recommendations to Address Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin*, Special Reports Series 17-01, dated October 2017, p. 2.) The report also recommends an immediate moratorium on groundwater extractions from new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin, pending investigation of hydraulic properties and long term viability of the Deep Aquifers. (*Id.*, pp. 2-3.)

As outlined below, the County of Monterey, the Monterey County Water Resources Agency, and the Salinas Valley Basin Groundwater Sustainability Agency each have different legal authority over the subject matter and can take different actions to implement the MCWRA recommendations.

1. Authority of County of Monterey

The County has authority pursuant to California Government Code section 65858 to adopt an interim ordinance as urgency measure to prohibit certain land uses temporarily, such as the drilling of new wells in the area of impact or depth identified by MCWRA, if those land uses may be in conflict with the development of permanent regulations governing those uses. The interim ordinance must contain legislative findings, supported by substantial evidence, that “there is a current and immediate threat to the public health, safety, or welfare,” and that the approval of additional entitlements “would result in that threat to public health, safety, or welfare.” (Gov’t Code §65858(c).) If the ordinance would have the effect of denying projects with a significant component of multifamily housing, additional findings must be made.

Interim ordinances adopted pursuant to Government Code section 65858 are required to be limited in duration. The term of the initial interim ordinance cannot exceed 45 days. If the initial ordinance is adopted without a noticed public hearing, the Board can extend the ordinance, following notice and public hearing, for 10 months, 15 days, and then, following another noticed public hearing, the Board can subsequently extend the ordinance for one additional year. If the initial ordinance is adopted at a noticed public hearing, the ordinance can subsequently be extended following a noticed public hearing for up to 22 months, 15 days. (Gov’t Code §65858(b).) In either case, the land use prohibition enacted by the interim ordinance cannot exceed more than a total of two years, and each extension requires the same legislative findings as the adoption. Adopting and extending the interim ordinance require a four-fifths vote.

The purpose of the interim ordinance is to prohibit uses that may be in conflict with “a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission, or the planning department is considering or studying or intends to study within a reasonable time.” (Gov’t Code §65858(a).) Accordingly, if the Board were to choose this route, it would be predicated on County studying the development of County regulations relating to drilling of wells in specified areas of seawater intrusion. Pursuant to Article XI, section 7 of the California Constitution, the County has authority to adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare, known as the “police power.” The police power includes the authority to adopt land use regulations regarding water use, including use of wells that impact groundwater basins where seawater intrusion is present. The Monterey County 2010 General Plan includes policies governing wells, including Policy PS-3.5 which specifically authorizes the Monterey County Health Department not to allow construction of new wells, with some exceptions,

“in known areas of saltwater intrusion as identified by Monterey County Water Resources Agency.” Accordingly, in conjunction with adoption of an interim ordinance, County staff could be directed to study development of permanent regulations to address well use in areas of known seawater intrusion.

2. Authority of the Monterey County Water Resources Agency

MCWRA does not have the authority to declare a land use “moratorium” under Government Code § 65858 because it is not a local governmental entity with general governmental powers. Instead, the Agency is a dependent special district and water resources agency whose powers flow from the special legislative act that created it. (California Water Code Appendix, Chap. 52 (Stats. 1990, c. 1159) the “MCWRA (or Agency) Act.”) The Agency Act does authorize the Agency to take steps to limit or stop pumping.

Under the Agency Act, the Agency is authorized to take these steps to implement the MCWRA October 2017 Sea Water Intrusion Recommendations:

1. Prohibit the further extraction of groundwater from a specified area and depth within Agency territory, after certain conditions are met.
2. Make available a substitute surface water supply adequate to replace the water supply previously available to the lands served from a well for which the Agency requires cessation of pumping.

The Monterey County Water Resources Agency may take these steps through the adoption of an ordinance, which would require the following process:

1. Give notice of a public hearing under California Government Code § 6065.
2. Hold a public hearing, take evidence, and consider appropriate studies conducted by the Agency.
3. Adopt an ordinance with appropriate findings, including that:
 - a. A portion of a groundwater basin underlying the Agency is threatened with the loss of a usable water supply as a result of seawater intrusion into that portion of the groundwater basin;
 - b. Appropriate steps should be taken to prevent or deter the further intrusion of underground seawater within an area and depth which the Agency establishes and defines;
 - c. Evidence was accepted showing the nature and extent of the threat of seawater intrusion and the facilities proposed in order to provide to the threatened area a substitute surface water supply; and
 - d. A determination that the threat of seawater intrusion exists which will be aggravated by continued groundwater extraction within the given area;
4. The ordinance may prohibit the further extraction of groundwater from the given area and depth.
5. The ordinance may make the prohibition effective as to any existing groundwater well extractions from the area and depth prohibited only if there is made available to the lands served from that well a substitute surface water supply adequate to replace the water supply

previously available from that well.

The substitute water supply may be paid from any legally available source, including water tolls or charges, ad valorem taxes or assessments charged or levied by the Agency under the Agency Act. *Id* § § 23-24.

The Agency has differentiated between action stopping groundwater pumping from existing wells in contrast to future wells. In 1993, the Agency Board prohibited groundwater extractions from and the construction of new wells in portions of the Pressure 180-foot aquifer after January 1, 1995. Agency Ordinance No. 3709. This Board did so as a result of the threat of sea water intrusion to the municipal water supply and to farming operations. *Id* at 1.01.01 D. In 1994, this Board prohibited and restricted groundwater wells in Zone 2B in relation to the Castroville Seawater Intrusion Project (CSIP). Agency Ordinance No. 3790. Ordinance 3790 also established a procedure for the Agency destruction of wells.

Whether proceeding under the Agency Act, or as the County under its land use authority, or in some combination of both, County and Agency officials may collaborate. (County officials and employees are ex-officio officials and employees of the Agency and are to provide services to the Agency to the same extent as they provide services to the County.) Agency Act § 16.

3. Authority of Salinas Valley Basin Groundwater Sustainability Agency to Regulate Extractions

The Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) was created pursuant to the Sustainable Groundwater Management Act (“SGMA”), which is codified in various sections of the California Water Code (all statutory references in this portion of the report are to the Water Code unless otherwise indicated). Under SGMA, the SVBGSA may not: 1) supersede the land use authority of cities or counties (Section 10726.8 (f)); 2) issue permits for the construction, modification, or destruction of groundwater wells unless authorized by a county (Section 10726.4 (b)); or, 3) make binding determinations of water rights. In addition, the actions of SVBGSA must be consistent with the rights to use or store groundwater secured by the California Constitution (Section 10720.1 (b)). It must be noted that groundwater rights are not absolute, and are limited to reasonable and beneficial uses, but not all beneficial uses are reasonable under all circumstances.

Pursuant to Section 10726.4 (a), SGMA allows the SVBGSA to regulate groundwater extractions, in relevant part, by: 1) imposing spacing requirements on new wells and operating regulations on existing wells; and, 2) regulating, limiting or suspending a) extractions (individually or in the aggregate), b) construction of new wells, c) enlargement of existing wells, or d) reactivation of abandoned wells. Any actions authorized as described in 2) a - d, above, must be consistent with an applicable element of a general plan unless there is insufficient sustainable yield to support a designated land use. In addition, any limitation on extractions is not considered a final determination of groundwater rights.

In sum, SGMA allows the SVBGSA to limit, and even prohibit, extractions within the 180/400 foot Subbasin provided it can be demonstrated that there is insufficient sustainable yield to support the land uses in the County’s and, to the extent applicable, the City of Salinas’s and the City of Marina’s general plans.

Pursuant to 7.8 of the Joint Powers Agreement forming the SVBGSA, any action to limit groundwater well extractions is subject to a “Super Majority Plus” vote of its Board of Directors. Such a vote requires the affirmative vote of eight Directors plus the affirmative vote of three of the four

Agricultural Directors. The SVBGSA Board is considering in its Bylaws requiring such an action to be by ordinance, which would not become effective until 30 days after adoption.

Finally, the 180/400 foot Subbasin is a high priority subbasin in a critical condition of overdraft as designated by the California Department of Water Resources. Accordingly, SGMA requires that a Groundwater Sustainability Plan be adopted by the SVBGSA for that subbasin no later than January 31, 2020.

OPTIONS FOR BOARD ACTION:

The Board of Supervisors as the governing body of the County of Monterey and/or the Monterey County Water Resources Agency may direct their staffs to bring back actions for consideration, as outlined above. The Board of Supervisors does not govern the Salinas Valley Basin Groundwater Sustainability Agency but could make advisory recommendations to it.

CEQA:

This report is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15262 which exempts feasibility or planning studies for possible future actions. Future actions which the Board may take would be subject to future CEQA determinations.

OTHER AGENCY INVOLVEMENT:

The Office of County Counsel represents the County, the Monterey County Water Resources Agency, and Salinas Valley Basin Groundwater Sustainability Agency. Each of the deputies who represents these agencies participated in the preparation of this report.

FINANCING:

The financial impacts of such actions as the Board may direct would be addressed in connections with the consideration of those actions.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This report was prepared pursuant to a Board of Supervisors' referral and hence assists in the administration of the County. The subject matter of the referral potentially affects other areas, including economic development, public health, and infrastructure.

☐ Economic Development
☒ Administration
☐ Health & Human Services
☐ Infrastructure
☐ Public Safety

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