



County of Santa Cruz

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November 17, 1998

Agenda: November 24, 1998

Board of Supervisors
 County of Santa Cruz
 701 Ocean Street, Room 500
 Santa Cruz, California 95060

Re: County Groundwater Regulatory Authority

Dear Members of the Board:

In response to the Board's prior direction, this is to provide a further analysis of the County's groundwater regulatory authority. Please find enclosed a memorandum prepared by Attorney Antonio Rossman reviewing the County's regulatory options regarding groundwater management.

IT IS THEREFORE RECOMMENDED that your Board accept and file this report on the County's groundwater regulatory authority.

Very Truly Yours,
 DWIGHT L. HERR, COUNTY COUNSEL

Dwight L. Herr

RECOMMENDED:

Susan A. Mauriello

SUSAN A. MAURIELLO
 County Administrative Officer

cc: Diane Evans, Environmental Health; Alvin James, Planning Director

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17 November 1998

MEMORANDUM FOR: Dwight Herr, County Counsel
 County of Santa Cruz

Subject: Groundwater Regulation Options

This memorandum will briefly summarize the options available to the County of Santa Cruz either on its own or in concert with other public agencies to regulate groundwater extraction from the Pajaro Valley groundwater basin.

Overview

In general, as decreed by the Court of Appeal in *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, California counties can exercise their constitutional police power authority to regulate groundwater extraction, and have not been preempted in that exercise by state law. The court expressly held that the Legislature's enactment of A.B. 3030 (Water Code, §§ 10750 et seq.), and its authorization for other local agencies to regulate groundwater, did not preempt the county's authority.

An especially relevant aspect of the *Baldwin* case lies in the court's comparison of county police power granted by the California Constitution, with the more specific powers granted to special districts by the Legislature. The court suggests that the powers of local districts established by statute should not be construed to void what the court regards as the more exalted power of cities and counties:

Local districts established by statute inherently differ in kind from municipal corporations. They draw their authority from the enactments which create them. They are created for limited purposes, exercising limited powers, and far less visible and significant in the political scheme of things than municipal

corporations, and are less likely to accurately reflect the will of the populace. The fact that the Legislature limits the power assigned to them suggests little or nothing about the exercise of power by municipalities, which draw their powers from the California Constitution.

(31 Cal.App.4th at p. 178.)

The court repeats this theme of the superiority of county or city regulation in expressly holding that A.B. 3030 does not preempt county groundwater regulation:

Since many of these [A.B. 3030] agencies are not municipalities and have no reservoir of police power, they are limited to powers specifically conferred by statute. The limitations imposed on the grant of such a generally conferred power are drawn to satisfy concerns that could arise about the least democratic, representative, and responsive of the group.

(31 Cal.App.4th at p. 181.)

These passages suggest more than that county groundwater regulation can be tolerated in California; they suggest that in a conflict between county and special district groundwater regulation, the county regulation would prevail as founded in constitutional authority and deriving from a broader and more accountable base than special district rules.

The County of Santa Cruz includes within its borders several special districts also empowered to regulate groundwater. Foremost among these is the Pajaro Valley Water Management Agency, expressly created to adopt a groundwater management plan and regulate groundwater extraction within its boundaries. (Water Code app., ch 124.) PVWMA's boundaries include territory within Santa Cruz County, Monterey County, and even a portion of Santa Clara County; the agency also includes the area of the City of Watsonville. (Water Code app., § 124-201.)

Secondly, the County Board of Supervisors itself forms the governing board of the Santa Cruz County Flood Control and Water Conservation District. (Water Code app., ch. 77.) This district includes all the incorporated and unincorporated territory of the county (Water Code app., § 77-2) and is expressly authorized to provide flood control (Id., § 77-33), operate water works (Id., § 77-34), and acquire water for sale (Id., § 77-35). These powers qualify the county FC&WCD to act as a groundwater management authority pursuant to A.B. 3030, even in an area subject to another agency's groundwater authority, if that other agency consents to county FC&WCD regulation. (Water Code, § 10753, subd. (bj).)

Finally, though not a district, the City of Watsonville must be noted, like the County of Santa Cruz, as a beneficiary of the *Baldwin* decision. Watsonville could



exercise within its borders the same authority over groundwater that the County of Santa Cruz can exercise within its boundaries.

Options

From these judicial and statutory premises, the County has several options.

First, the county could exercise its constitutional police power. No special proceedings as required by A.B. 3030 need be followed. Some limitations exist, however. The county could not regulate within the City of Watsonville, whose own power over groundwater flows from the same constitutional mandate as the county's. Secondly, the county could not reach groundwater extraction in Monterey County, which apparently contributes to the critical conditions in the Pajaro Valley groundwater basin that overlies both counties. The county could presumably regulate within the PVWMA without its consent, because of the county's constitutional authority. Although the Legislature did expressly grant authority to PVWMA to deal with groundwater overdraft and to regulate the resource within all the territory of its borders, the Legislature did not expressly preempt county regulation while it was preempting other special district regulation that conflicts with a PVWMA mandate (Water Code app., § 124-516), implying that the county could exercise its constitutional authority. Finally, the enactment by the PVWMA constituency of an initiative measure that effectively disables the agency from carrying out its legislatively-assigned mission reinforces the *Baldwin* court's apprehension that an agency such as PVWMA and its narrower constituency should not preclude county regulation in behalf of the entire electorate.

Second: the county through its board of supervisors could regulate as an A.B. 3030 district through the Santa Cruz FC&WCD. The district's boundaries include the City of Watsonville, thus affording a possible advantage. Watsonville's consent, however, would appear necessary if Watsonville is supplying water within its jurisdiction; Watsonville moreover could assert constitutional superiority over the FC&WCD. PVWMA would need to consent and withhold its own regulation. The supervisors would still be unable to reach Monterey County extractions.

Third, the County could seek to form a joint powers- agency to regulate the resource. This option could include the counties of Monterey and Santa Cruz, the City of Watsonville, and PVWMA. It would thus cut across county and city lines and reach more broadly than any one of its members could. If PVWMA declined to enter into this joint venture, then the two counties and Watsonville could form a joint powers agency asserting the same authority over the same territory.

Respectfully,

Special Counsel