

Exhibit 5**MATERIALS REGARDING DECLARATION OF
GROUNDWATER EMERGENCY**

- November 17, 1998 letter from Law Office of Antonio Rossmann to Santa Cruz County Counsel regarding groundwater regulation options
- May 6, 1999 letter from PVWMA Counsel to PVWMA Board regarding authority of local agencies to regulate groundwater
- May 19, 1999 letter from PVWMA Counsel to PVWMA Board regarding case law update concerning authority of local agencies to regulate groundwater
- Criteria from Santa Cruz County Code regarding declaring groundwater emergency
- Setting letter for June 12, 1998 Board Hearing pertaining to groundwater emergency in the Pajaro Valley
- April 20, 1999 Minute Order, Board of Supervisors

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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., § 123-5 16), 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

EXHIBIT 5

0971

**AGENCY COUNSEL'S OFFICE
PAJARO VALLEY WATER MANAGEMENT AGENCY**

INTER-OFFICE MEMORANDUM

DATE: May 6, 1999

TO: Honorable Chairman and Board members

FROM: Steven T. Mattas, General Counsel

SUBJECT: Authority of Local Agencies to Regulate Groundwater

INTRODUCTION

The purpose of this memorandum is to inform the Board of the implications of groundwater regulations imposed by other local agencies, particularly Santa Cruz County. This memorandum will explain the authority of local agencies to enact groundwater regulations and will **discuss the consequences** of such regulations for the PVWMA.

BACKGROUND AND DISCUSSION

The **Board of Supervisors for Santa Cruz County** has demonstrated an interest in regulating groundwater in the Pajaro basin. The **Board of Supervisors** will discuss this matter at an upcoming meeting which should further reveal the County's intentions. Antonio Rossman, an attorney hired by Santa Cruz County, and County Counsel Dwight Herr have **issued** the opinion that the County has the power to regulate groundwater in the Pajaro **basin.**¹

Pursuant to Article XI, Section 7 of the California Constitution, each county and city is authorized to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." These "police powers" authorize the County to enact regulations within its boundaries as long as they are not in conflict with the general laws of the state.

The County's police powers extend to groundwater management. In the

¹ See letter dated November 17, 1998 from Dwight Herr to the Board of Supervisors.

Honorable Chairman and Board members

May 6, 1999

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A legitimate argument could be made that a Santa Cruz County ordinance that conflicts with a PVWMA regulation would be invalid. The PVWMA enabling statutes provide that PVWMA, not the County, shall manage groundwater within its boundaries to meet the future needs of the Pajaro basin.⁸ Allowing the County to regulate groundwater in the basin would interfere with the legislative directive for PVWMA to manage groundwater supplies "efficiently and economically."⁹ Furthermore, PVWMA has "the *sole* right to store, recapture, distribute, and sell supplemental water in the groundwater basin..."¹⁰ Additionally, PVWMA has the power to prosecute and enjoin uses of water within and outside of PVWMA's boundaries to the extent those uses affect the groundwater supply within the agency.¹¹ If any person, including another government agency, fails to comply with a PVWMA ordinance, PVWMA may obtain a restraining order or injunction against that person.¹² Thus, conflicting County ordinances could interfere with the Legislature's purpose of creating a single agency to efficiently manage groundwater in the Pajaro basin.¹³

Therefore, if the County proposes an ordinance concerning groundwater in the Pajaro basin, the ordinance will have to be analyzed to determine whether it conflicts with the intent of the Legislature and PVWMA regulations.

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⁸ Water Code App. §§124-201(f) and (g), and 124-501.

⁹ Id.

¹⁰ Water Code App. § 124-704.

¹¹ Water Code App. § 124-705.

¹² Water Code App. § 124-1101. See §124-3 13 defining "person" as including "any state or local governmental agency."

¹³ Local legislation conflicts with state law when it "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." Sherwin-Williams Co. v. City of Los Angeles (1393) 4 Cal.4th 893, 897-98, 16 Cal.Rptr.2d 215.

**AGENCY COUNSEL'S OFFICE
PAJARO VALLEY WATER MANAGEMENT AGENCY**

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INTER-OFFICE MEMORANDUM

DATE: May 19, 1999

TO: Honorable Chairman and Board members

FROM: Steven T. Mattas, General Counsel

SUBJECT: Case Law Update Regarding Authority of Local Agencies to Regulate Groundwater

This office recently provided the Board of Directors with a memorandum concerning Santa Cruz County's authority to regulate groundwater extraction in the Pajaro water basin. The purpose of this memorandum is to provide the Board with an update of this matter pursuant to a case recently decided by the California Court of Appeals. This case supports our conclusion that the County's regulations would not prevail over the PVWMA's regulations when those laws conflict.

In the case of Rodeo Sanitary District v. Contra Costa County,¹ the Rodeo Sanitary District and the Mountain View Sanitary District collected and disposed of garbage within unincorporated areas of Contra Costa County. The Districts were established pursuant to the Sanitary District Act of 1923 and were granted with the legal authority to collect and dispose of garbage within their jurisdictional boundaries.²

In response to the Legislature's adoption of AB 939, the California Integrated Waste Management Act of 1989, the County adopted an ordinance which required any person providing solid waste services in the County to enter into a franchise with the County. Pursuant to this ordinance and through its police powers, the County began operating garbage collection and disposal services in the Districts' respective jurisdictions, thereby displacing the Districts' major function.

¹ (Decided May 10, 1999) 99 C.D.O.S. 3424; 99 DAR 4389. Please note that this case has not yet been published and that the decision is expected to be appealed to the Supreme Court.

² Health and Safety Code §§6400 *et seq.*

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The court held that the County's police powers did not prevail over the statutory authority granted to the Districts to carry out those functions they were designed to provide. The court stated that because the Districts were "creatures of state law," they were authorized to exercise a portion of the police power of the state within their district boundaries, independent of the police power of a city or a county over unincorporated areas, in the event of a direct conflict of laws.³ Thus, where a legislative enactment has granted certain powers to a district, a county or city may not exercise its police powers to override the district's powers because such action would be in conflict with the general laws of the state.

As you recall, Mr. Rossman alleged on the behalf of Santa Cruz County that the Baldwin v. Tehama County⁴ decision provides that the County's police powers are superior to the PVWMA's legislative authority because the County's police powers derive from the constitution.⁵ However, Mr. Rossman's opinion was issued before the Rodeo court handed down its inconsistent holding. Mr. Rossman's letter was based upon the Baldwin COW-C's statement that special district legislation does not preempt the field of groundwater regulation and allows the possibility of concurrent regulation by both a district and a county. The Baldwin court stopped short of deciding whether a county ordinance or district regulation would prevail in case of a direct conflict and left this issue open for future interpretation. The Rodeo court makes this next step and concludes that, in case of a direct conflict between the legislative authority granted to a district and the police powers granted to a county, the district's powers would prevail.

This office will continue to provide the Board with updates of this case as information becomes available. Please contact me if you have any questions,

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³ 99 D.A.R. at 4389.

⁴ (1995) 31 Cal.App.4th 166, 36 Cal.Rptr.2d 886.

⁵ On page 2 of Mr. Rossman's letter, he states that the County's powers are "founded in constitutional authority deriving from a broader and more accountable base than special district rules."

C. New Well Construction--Exceptions. The following new well construction shall not be subject to the prohibition of this section:

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1. Replacement of existing wells;
2. Construction of a well for agricultural use, monitoring and observation purposes, or cathodic protection; and
3. Well construction on parcels which cannot be served by the Soquel Creek County Water District, as determined by the Environmental Health Director based on a written statement from the District clearly demonstrating their inability to provide service.
4. Construction of a well by any public water purveyor.

7.70.130 Groundwater emergencies

A groundwater emergency shall be declared in areas demonstrated to be experiencing a groundwater overdraft exceeding the safe yield in order to prevent further depletion and degradation of water resources where such degradation threatens the public health, safety and welfare of the community. The emergency shall have no effect on drilling of monitoring or cathodic protection wells.

A. Declaration. A declaration of a groundwater emergency shall be made by the Board of Supervisors only after a public hearing. Such an emergency shall be declared by resolution of the Board after the public hearing to consider all relevant information such as, but not limited to, the most current groundwater study, recommendations of water purveyors and the Water Advisory Commission and only after the following findings can be made:

1. The designated area is experiencing a groundwater overdraft exceeding the long-term average annual recharge of groundwater resource;
2. The creation of new wells or the expansion of existing wells will significantly increase the demand on the affected aquifer and thereby increase the overdraft; and
3. The continuation of the overdraft will result in further depletion and degradation of the water resource that can lead to, but is not limited to, impairment of the aquifer or allowing the ingress of low-quality or saline waters.

B. Immediate Measure to Alleviate. In areas where a groundwater emergency is declared, the Board of Supervisors shall take action to establish water conservation measures, to limit construction of new wells, to regulate pumping from or expansion of existing wells, and in order to prevent further depletion and degradation of the affected aquifer. In taking these actions, the Board shall give consideration to the seasonal needs of agriculture including, but not limited to, the following factors.

1. Agriculture's need to repair, maintain and replace existing wells serving existing agricultural use acreage;
2. Well construction for agricultural use to serve existing agricultural acreage when new parcels are created due to change in legal ownership, split parcels or parcels created by change in zoning laws or other governmental regulations; and
3. The different water requirements of agricultural crops.

C. Long-term Measures to Alleviate. The Board shall initiate actions such as, but not limited to, joint power agreements with other agencies with the goal of finding permanent solutions to the groundwater problem.

D. Duration. A groundwater emergency and the measures enacted to alleviate the emergency shall remain in effect until rescinded as established in Subsection F of this Section.

E. Annual Review. The establishment of a groundwater emergency and all actions to alleviate the emergency shall be reviewed by the Board of Supervisors within one year of the date of enactment of the measures at a public hearing to decide whether the declaration of emergency shall remain in effect.

F. Rescinding. A groundwater emergency shall be rescinded by resolution of the Board of Supervisors after a public hearing when one of the following findings are made:

1. Alternative water sources which compensate for the existing overdraft and supply the affected area are developed;
2. A groundwater management program is implemented which will allow for additional development without contribution to groundwater overdraft; or
3. The Board of Supervisors determines that new information is available which indicates that the technical data upon which the original findings were based is no longer valid.

7.70.140 Abatement--Investigation.

The Health Officer may, upon reasonable cause to believe that an abandoned well, a cathodic protection well, or any other well, may potentially either contaminate or pollute groundwater, investigate the situation to determine whether such potential threat to groundwater quality or present nuisance, does, in fact exist. The Health Officer shall have the power upon presenting identification to any person apparently in control of the premises to enter upon any such premises between the hours of 8:00 a.m. and 6:00 p.m., to discover or inspect any thing or condition which may indicate such a nuisance or threat to groundwater quality. The Health Officer may examine such premises, things or conditions, take such samples and make such tests as needed and take other steps reasonably necessary for the proper investigation and determination of whether a nuisance or threat to groundwater quality exists.

7.70.150 Abatement generally.

Whenever the Health Officer determines that an abandoned well, a cathodic protection well, or any other well or is presently polluting or contaminating groundwater, or poses a substantial threat to groundwater quality, or is otherwise not in compliance with the provisions of this Chapter, the Health Officer may abate the well as a nuisance in accordance with the provisions of Chapter 1.14 of this Code.

7.70.160 Nuisance--Abatement of safety hazard.

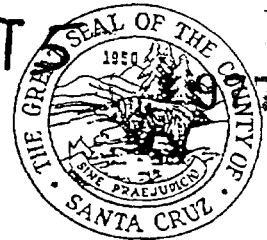
This chapter shall not affect the right of the county to abate as a public nuisance pursuant to Article 9, Chapter 1, Division 1, Title 5, of the Government Code (commencing with Section 50230) any abandoned well, or cathodic protection well, or other well which presents a safety hazard.

7.70.170 Variances.

The Health Officer shall, have the power to allow minor variances from the standards referred to in Section 7.70.090 so as to prevent unnecessary hardship or injustice and at the same time accomplish the general purpose and intent of the standards and the resource protection policies of the County's General Plan and the Local Coastal Program Land Use Plan. In no case may a variance be granted that constitutes a special privilege.

7.70.186 Amendments

Any revision to this chapter which applies to the coastal zone shall be reviewed by the Executive Director of the California Coastal Commission to determine whether it constitutes an amendment to the Local Coastal Program. When an ordinance revision constitutes an amendment to the Local Coastal Program, such revision shall be processed pursuant to, the hearing and notification provisions of Chapter 13.03 of the Santa Cruz County Code, and shall be subject to approval, by the California Coastal Commission.



THE BOARD OF SUPERVISORS MEETING

On the Date of April 20, 1999

REGULAR AGENDA Item No. 045.3

(CONSIDERED report on ongoing activities to mitigate overdraft in the Pajaro Valley; directed the Planning Department to return June 15, 1999 with a report that includes updated (1998) numbers on agricultural and residential-water use and to consider looking at the flat projection for agricultural use given in the Water Resources Management Summary; directed that the assumptions on the numbers for residential growth be based on actual population growth and not on AMBAG projections; directed the Chairperson to write a letter to the Pajaro Valley Water Management Agency, requesting, for the June 15, 1999 meeting, a timeline for conservation measures as well as projections on how many acre feet could be saved -with those measures over time; and further directed that the Board consider on June 15, 1999 all of this information in future actions to deal with what appears to be a very real crisis and to agendize this matter giving the Board the option of declaring a groundwater emergency...

Considered report on ongoing activities to mitigate overdraft in the Pajaro Valley;

Upon the motion of Supervisor Wormhoudt, duly seconded by Supervisor Beautz, the Board, by unanimous vote, directed the Planning Department to return June 15, 1999 with a report that includes updated (1998) numbers on agricultural and residential water use and to consider looking at the flat projection for agricultural use given in the Water Resources Management Summary; directed that the assumptions on the numbers for residential growth be based on actual population growth and not on AMBAG projections; directed the Chairperson to write a letter to the Pajaro Valley Water Management Agency requesting, for the June 15, 1999 meeting, a timeline for conservation measures as well as projections on how many acre feet could be saved with those measures over time; and further directed that the Board consider on June 15, 1999 all of this information in future actions to deal with what appears to be a very real crisis and to agendize this matter giving the Board the option of declaring a groundwater emergency

cc: CAO, PVWMA, Environmental Health Services, Planning

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, &-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

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by _____, Deputy Clerk, on April 23, 1999.

BOARD OF SUPERVISORS

COUNTY OF SANTA CRUZ
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GOVERNMENTAL CENTER

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FIRST DISTRICTWALTER J. SYMONS
SECOND DISTRICTMARDI WORMHOUDT
THIRD DISTRICTRAY BELGARD
FOURTH DISTRICTJEFF ALMQUIST
FIFTH DISTRICT

AGENDA: 6/16/98

June 12, 1998

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: SETTING PUBLIC HEARING TO CONSIDER DECLARATION
OF GROUNDWATER EMERGENCY IN THE PAJARO VALLEY

Dear Members of the Board:

There has been considerable public discussion about the status of the groundwater resources in the Pajaro Valley. On June 2, 1998, the voters in the Pajaro Valley Water Management Agency's (PVWMA) jurisdiction adopted Measure D which mandates, for a period of 10 years, that the PVWMA shall postpone design or construction of a pipeline to import water into the Pajaro Valley, imposed a 10 year moratorium on the purchase by the PVWMA of water from any source outside of its boundaries, and also mandated a reduction in the augmentation fees charged to water users in the Pajaro Valley, fees which are used as a means of supporting projects to improve or develop water resources.

There seems to be little doubt that the water resources available to the PVWMA and its users are in a state of overdraft. Last week, in considering Item 53 on our Board agenda related to creation of positions in the County government to help focus the development of County water policies, we also accepted a document entitled 'An Evaluation of Water Resources Monitoring and Management Efforts in Santa Cruz County.' The summary of that document, made a part of the agenda item as Attachment 6, in the section entitled "Issues Specific to South County/Pajaro," made, the following factual findings:

2. Annual pumpage in the Pajaro Basin is 68,000 acre-feet/year. The safe yield of the basin is cited in the Basin Management Plan as 31,000 acre-feet/year. Overdraft is approximately half of demand. The PVWMA is planning to develop an additional 28,000 acre-feet/year to meet demands through the year 2040.

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- "3 . The rate of seawater intrusion ranges from 10,000 to 15,000 acre-feet/year. This volume of annual seawater intrusion is greater than water use in mid-County, San Lorenzo Valley and Scotts Valley.
- "4 . This area is the most significant water supply imbalance in the County. The State has threatened adjudication. Mechanisms to address the problem are in the planning stages but are not presently in place. There exists a lack of local consensus on problem solutions."

Similar findings have been made by the Pajaro Valley Water Management Agency and its consultants. In a document entitled "Water Supply Project Summary Report" dated May 19, 1998, prepared by the firm of Montgomery Watson, consultants to the Water Management Agency, it is stated as follows:

"The primary water supply for the Pajaro Valley is water pumped from the underlying groundwater aquifer. This aquifer is recharged by rainfall on the adjacent mountains and from recharge through the Pajaro River and creeks that flow across the coastal valley. The water needs of this coastal valley have exceeded the natural recharge of the underlying aquifer. The result is that, based on the long-term average, the amount of groundwater pumped from the basin has exceeded the amount of water that has recharged to the basin during the same period of time. This condition, when the rate of pumping exceeds the rate of recharge, is referred to as overdraft. The overdraft conditions in the Pajaro Valley have resulted in a general, long-term decline in groundwater elevations....

"The long-term decline in groundwater levels has resulted in seawater intruding into the groundwater aquifer...Seawater intrusion results in a lowering of groundwater quality. Seawater contains chlorides at concentrations of approximately 19,000 parts per million (ppm). The California State drinking water standard for chlorides is 250 ppm, and it is generally recognized that high levels of chlorides (approximately 100 ppm for strawberries) can be detrimental to agricultural crops. Continued intrusion of seawater into the groundwater aquifer will result in greater portion of the aquifer not being suitable for municipal or agricultural use." (Montgomery Watson, ES-1)

The Water Supply Project report concludes that there is an existing deficit of approximately 18,000 acre-feet/year and a future deficit of 28,000 acre-feet/year, indicating a critical need for the development of additional water supplies either

through conservation or capture of new resources. The study concludes that up to 5,000 acre-feet/year could be developed through diversion and capture of local surface water supplies and up to 9,000 acre-feet/year could be saved through adoption of conservation measures. This still leaves a substantial shortfall, particularly with regard to estimated future water needs in the Pajaro Valley.

Proponents of the pipeline project believe that this is the best solution to make up this difference, but the PVWMA was barred by the voters on June 2 from pursuing that project. This leaves a substantial unresolved problem and a situation in which the Pajaro Valley Water Management Agency has had its options substantially constrained by the voters in the Pajaro Valley.

Our County ordinances on water wells contain provisions governing the process by which we may declare a groundwater emergency.

The ordinance, Section 7.70.130, provides, in pertinent part, as follows:

'A groundwater emergency ~~shall be declared~~ in areas demonstrated to be experiencing a groundwater overdraft exceeding the safe yield in order to prevent further depletion and degradation of water resources where such degradation threatens the public health, safety and welfare of the community....

- A. Declaration. A declaration of a groundwater emergency shall be made by the Board of Supervisors only after a public hearing. Such an emergency shall be declared by resolution of the Board after the public hearing to consider all relevant information such as, but not limited to, the most current groundwater study, recommendations of water purveyors and the Water Advisory Commission, and only after the following findings can be made:
1. The designated area is experiencing a groundwater overdraft exceeding the long-term average annual recharge of groundwater resources;
 2. The creation of new wells or the expansion of existing wells will significantly increase the demand on the affected aquifer and thereby increase the overdraft; and
 3. The continuation of the overdraft will result in further depletion and degradation of the water resources that can lead to, but is not limited to, impairment of the aquifer or allowing the ingress of low-quality or saline waters." (emphasis added)

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The ordinance goes on to describe the types of conservation and remedial measures that the Board of Supervisors is entitled to establish, requires us to take into account and give special consideration to the seasonal needs of agriculture, empowers the Board to enter into joint powers agreements with other agencies in order to promote the goal of finding permanent solutions to the groundwater problem, requires the Board to provide for at least an annual review of any declaration that is adopted, and provides procedures for rescinding the declaration of emergency.

I have received some input from representatives of the Farm Bureau, farmers, and elected officials in Watsonville that they would like to be given a further opportunity to work on local solutions to this problem. A local solution, if one can be achieved, would be preferable to a set of responses to this crisis mandated by the County, but to date, there is little evidence that a local consensus has formed in support of any solution that will not still leave the problem substantially unresolved. We heard testimony at our Board meeting last week from the Chairman of the PVWMA, Mr. Dutra, that he felt the declaration of a groundwater emergency was a good idea. We are in the process of considering budget supplements to permit us to create new water policy positions in the County which, if enacted, will probably require most of the summer in order to accomplish creation and filling of the positions.

With these thoughts in mind, I would recommend that the Board consider setting a public hearing on the evening of September 22, 1998, for the purpose of considering the declaration of a groundwater emergency in the Pajaro Valley area served by the Pajaro Valley Water Management Agency and request interested parties to provide us with the data we will need to guide us. It appears to me that all the prerequisites to this declaration can be factually met at this time, but this additional time will allow local officials, the agriculture community, and Water Management Agency representatives to evaluate the consequences of the passage of Measure D on June 2, give consideration to new ways of looking at this problem that may result in development of a stronger local consensus as to appropriate responses, and allow the County to be in a better position to act should no effective direction develop locally.

Accordingly, I recommend that the Board act to:

1. Set a public hearing on the evening of September 22, 1998, to consider adoption of a declaration of a groundwater emergency in the jurisdiction of the Pajaro Valley Water Management Agency.
2. Request County Counsel to prepare an opinion for the Board of Supervisors describing any limits on our authority to so act given the fact that part of the

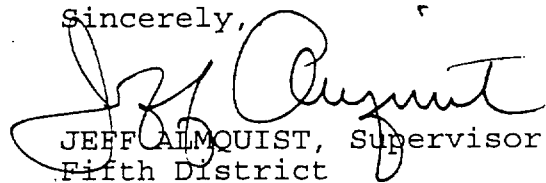
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service area is outside County boundaries, as well as to inform the Board on the nature and extent of the remedies that are available to us under this ordinance or related ordinances or statutes; and

3. Request the County Administrative Officer to solicit from interested agencies, including, without limitation, the Pajaro Valley Water Management Agency, the Farm Bureau, the City of Watsonville, Monterey and San Benito Counties and any countywide water agencies in either of said counties, the Water Advisory Commission, and the Directors of Planning, Health Services **and** Public Works, their input on both the necessity of such a declaration and the responses that the County should undertake to address the situation.

Sincerely,



JEFF ALMQUIST, Supervisor
Fifth District

JA:ted

cc: Pajaro Valley Water Management Agency
Santa Cruz County Farm Bureau
Planning Department
Water Advisory Commission
Watsonville City Council

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