

County of Santa Cruz

PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

May 10, 2001

AGENDA: May 22, 2001

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

PROGRESS REPORT ON ONGOING ACTIVITIES TO MITIGATE OVERDRAFT IN THE PAJARO VALLEY

Members of the Board:

On December 5, 2000, your Board directed staff to provide a comprehensive progress report on activities to mitigate overdraft in the Pajaro Valley. It can readily be stated that progress is being made on many fronts. This report presents updated information on the State of the Basin Report, the Basin Management Plan 2000 Update, water conservation activities and planning, a joint City of Watsonville/Pajaro Valley Water Management Agency (PVWMA) reclaimed water feasibility study, other issues of interest, and outstanding issues which County staff suggests need attention. Recommendations offered for your Board's consideration include supporting ongoing PVWMA activities and engaging the PVWMA to address some outstanding issues.

State of the Basin Report and Basin Management Plan Update

In February of this year PVWMA released a draft of their State of the Basin Report. Staff is presently conducting a detailed review of this document and will be providing written comments to the PVWMA. The 2001 State of the Basin report summarizes previous basin studies, updates data collected since the preparation of the 1993 Basin Management Plan, and compiles this new data with the historic data into a comprehensive document. The 2001 report confirms the earlier findings of : 1) significant seawater intrusion along the coast that reaches over two miles inland in the area of the Pajaro River, 2) approximately 35% of wells in the basin have nitrate levels that exceed drinking water standards and nitrate levels continue to rise, and 3) groundwater levels and useable groundwater storage in the basin continue to decline.

Your Board has also expressed an interest to stay informed on the progress and content of the Basin Management Plan Update. The Basin Management Plan (BMP) Update which originally only recommended an imported and local supply alternative is being revised to include a new "local-only" alternative. This approach was developed through the efforts of the Action Pajaro Valley's (APV) Agriculture and Water Committee over a nine month period. PVWMA worked closely with this committee process. The APV Board

unanimously endorsed both the Local-Only and the Local-Import Approaches on February 22, 2001, and recommended the PVWMA Board evaluate and compare the two approaches in the BMP environmental review process. The PVWMA is complying with the APV recommendation.

The revised BMP Update is to be published later this month. The PVWMA is also in the process of preparing an Environmental Impact Report (EIR) for the Basin Management Plan Update. Presently in the scoping phase, the draft EIR is expected to be released in summer of 2001. The two alternatives to solving the Pajaro Valley's groundwater basin overdraft and seawater intrusion problems will be equally evaluated in the EIR,

Each approach is briefly described below. Further details and a comparison of the alternatives are provided in Attachment 1.

Alternative #1. Local-Import Water Approach

The Local-Import approach relies on constructing the Harkins Slough Recharge Project, a coastal distribution system, wastewater recycling, an import pipeline to transfer water from the Central Valley Project (CVP) system into the Pajaro Valley, and use of the groundwater basin for storage. This approach factors in 5,000 acre-feet/year of conservation to achieve balance.

Sources of supply for transfer include an existing contract for 6,260 acre-feet/year of CVP supply obtained from Mercy Springs and the direct contract with the Bureau of Reclamation for PVWMA's entitlement of 19,900 acre-feet/year. If such a contract cannot be obtained, additional water supplies will need to be acquired. PVWMA is negotiating a purchase agreement with Lower Tule River/Pixley for the assignment of 20,000 acre-feet/year of CVP entitlement to PVWMA. In addition, PVWMA is pursuing long-term cooperative agreements with the Santa Clara and San Benito County Water Districts for the delivery of a combination of CVP, recycled water and other supplies. The current CVP reliability factor is estimated to range between 60 to 65 percent of entitlement, which is why the PVWMA is seeking so much supplemental water.

Alternative #2. Local-Only Water Approach

The Local-Only approach maximizes the use of local water supplies from three main sources: College Lake (including diversion from Pinto Lake and Corralitos Creek), Harkins and Watsonville Sloughs, and the Watsonville Wastewater Treatment Plant (recycled water). This approach provides for less water than the Local-Import Approach and therefore requires intensified water conservation of 10,000 acre-feet/year in order to balance supply and needs.

Harkins Slough Recharge and Water Distribution Project

Construction of the Harkins Slough Recharge Project was just completed in late April. The project consists of a water intake and treatment facility at the existing pump station (near San Andreas Road), a recharge basin and appurtenant production wells, and approximately 26,000 lineal feet of distribution pipeline. The distribution pipeline route is located on San Andreas and Dairy Roads between both the intake station and recharge basin and along Beach Road north and south of the San Andrea&each Road intersection.

Operational planning for Phase 1 of this project calls for the pumping of 600 acre-feet/year of winter storm water from Harkins Slough. The timing for implementing Phase 2 of the project (maximum extraction of 2,000 acre-feet/year) is dependent on the implementation of all of the conditions and mitigation measures to the water rights, coastal zone, development and riparian exception permits. PVWMA is required to prepare

an implementation progress report for review by the relevant agencies before proceeding to Phase 2.

Water Conservation Activities and Planning

As your Board may recall, the PVWMA adopted a Water Conservation Plan (WCP) in 2000. This plan contains both agricultural and urban programs. The implementation plan for the calendar year 2001 includes the following major elements of the WCP: Farm Water Conservation Plans; Agricultural Water Conservation Demonstration Projects; Mobile Laboratory Irrigation Evaluations; Irrigation Scheduling Technology Assistance; and Education and Outreach

Farm Water Conservation Plans

This is the first year of the mandatory requirement for the submittal of Farm Water Conservation Plans. Data reported in the plans include crop types and acreage, methods of irrigations, total and unit water use, estimated consumption by crop type and area, and conservation practices employed. Reporting forms were sent out to all of PVWMA's agricultural accounts (both landowners and/or private operators). As of this date approximately 70% have been returned, representing 75% of the total acreage in production within PVWMA's jurisdiction. The quality of the submitted reports have been very good. The PVWMA plans to release a report summarizing the data to their Board of Directors on May 16th. However, trends from the analysis of this data will not be apparent until this type of information has been collected over a larger number of years.

Mobile Laboratory Irrigation Evaluations

Up to 40 mobile lab irrigation evaluations were budgeted for 2001, reflecting a cost to PVWMA of \$17,500. At this time 30 individuals have signed up for this water use efficiency program. As many of these individuals operate on multiple properties, it is assumed this program will realize 100 percent participation over the 2001 growing season.

In a related effort, PVWMA has received word of tentative approval of a grant from the Bureau of Reclamation for \$15,000. Grant funds would purchase dedicated computer equipment, software, and staff training. This would allow PVWMA to provide education, training and access to irrigation scheduling technologies. The training would include training in the use of California Irrigation Management Information Service (CIMIS) data, irrigation scheduling software and alternative methods of irrigation scheduling.

Presently there are four CIMIS station located in the Pajaro Valley and one in the Castroville area.

Agricultural Water Conservation Demonstration Projects

Four projects were again budgeted for 2001. Funds are used to pay for technical consulting costs, grower outreach, field tours and other direct or associated project costs. This year's projects include the evaluation of different types of soil moisture sensors and irrigation scheduling programs on strawberry crops; the use of tensiometers with flower crops on sandy soils; drip irrigation versus improved sprinkler spray patterns on Romaine lettuce and water usage evaluation of raspberry crops grown using "hoop" greenhouses.

Joint City of Watsonville/PVWMA Reclaimed Water Study

The City of Watsonville and PVWMA are working cooperatively on a joint reclaimed water project. A

feasibility study is underway to evaluate upgrading the Watsonville Wastewater Treatment Plant to tertiary treatment and using the treated effluent as recycled water for agricultural irrigation. The City and PVWMA have secured a \$400,000 grant from the U.S. Bureau of Reclamation (USBR) for the feasibility study and related environmental review. The USBR has also made available 25 percent in matching grant funds (up to a total of \$20 million) for the construction costs if the recycling project is found to be feasible.

The recycled water will need to be blended with another source of fresh water to bring salinity concentrations to levels within the tolerance of specific crops. Both the recycled water and blending water will require connecting pipelines to the Coastal Distribution System.

Supplemental Wells and Coastal Distribution System

PVWMA is investigating the feasibility of developing a supplemental well field to provide groundwater as the source of blending water. Additionally, an analysis of ground water versus potential injection water is needed to evaluate the chemical compatibility of the two blended sources. Incompatible waters may result in screen corrosion, mineralization and well deterioration.

A coastal distribution system is required to deliver locally derived supplies to the coastal area. Only the portion of the distribution system required to distribute water from the Harkins Slough project has been constructed at this time. The entire distribution system for locally derived water will bring project water to approximately 2,000 acres of farmland.

Other Issues of Interest

The Pajaro Valley Water Management Agency has two other issues of interest to move forward. The two items under discussion are: 1) a Water Rate Study to implement a preferred rate structure for both the long-term water supply project and the Hansen Slough local recharge project; and 2) a possible legislative amendment to their Agency Act to allow expanded use of augmentation fee revenues. The water rate study is predicated upon general acceptance of a tiered rate structure with some form of fixed revenue based on a land assessment. There are four objectives to the study which are getting addressed in phases. The four objectives are:

- 1) Develop a legal, practical, and publicly acceptable rate structure for financing a long-term water supply project.
- 2) Develop a consistent rate structure for the Harkins Slough Project.
- 3) Provide accurate projections of water user costs.
- 4) Determine the legal, financial, institutional, and other actions necessary to implement the preferred rate structure

The first three objectives have been achieved. The fourth objective has yet to be completed.

With respect to a possible legislative amendment, PVWMA's Counsel has concluded that augmentation fees may not be used for funding water conservation activities or wastewater recycling projects. The Agency is still exploring a possible amendment to the Agency Act to broaden the allowable uses of the augmentation fee. Agency staff has submitted proposed language and has discussed possible sponsorship with local legislators. The PVWMA staff report, including the proposed amendment language and their Counsel's memo is included as Attachment 2. The Agency has decided not to pursue such a legislative solution at this time, largely due to continuing opposition from the Santa Cruz County Farm Bureau.

Outstanding Issues

County staff identified several issues, in comments to the 1993 and the 2000 Basin Management Plan, that have not been addressed by the PVWMA. These issues include coordination with other agencies, the increasing presence of nitrates in groundwater, the impact of groundwater pumping to stream baseflow conditions and /or dry reaches in Corralitos Creek, the deepening of wells into different aquifer units and the CEQA ramifications, and the identification and protection of recharge areas. Staff has since been encouraged by the PVWMA's action to coordinate with adjacent water agencies, however, PVWMA has not yet acted on the other issues. Staff feels strongly about the need for the PVWMA to address the remaining issues and a recommendation for action has been prepared for your Board's consideration.

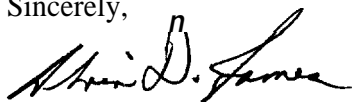
Concluding Remarks

The Pajaro Valley Water Management Agency is making progress on many fronts. Draft copies of the State of the Basin Report and the Basin Management Plan Update have been released for public review and are being revised with new information. An EIR/S for the Basin Management Plan Update is in the scoping phase and is now considering two potential long-term solution alternatives. The local recharge project has been constructed. Water conservation activities are in place with plans for expanding programs providing irrigation system evaluations. The City of Watsonville and the PVWMA continue to evaluate the feasibility of a joint wastewater recycling project, a prominent in either of the two long-term alternative solutions proposed. Plans to establish a water rate structure for project water is moving forward. The Agency is considering amending their Agency Act to allow use of augmentation fees for both conserving and recycling water. While acknowledging the progress which has been made, County staff have identified several outstanding issues and are seeking Board direction to influence the PVWMA to address the remaining outstanding issues.

It is therefore RECOMMENDED that your Board:

- 1) Accept and file this Progress Report On Ongoing Activities To Mitigate Overdraft In The Pajaro Valley; and
- 2) Direct the Water Resources Manager to prepare a draft letter for the Chairman of the Board to transmit to the PVWMA Board and request that their staff address the outstanding issues identified by County staff in both the 1993 Basin Management Plan and the 2000 Basin Management Plan Update; and
- 3) Direct the Water Resources Manager to wrap the next and all subsequent progress reports on Ongoing Activities To Mitigate Overdraft In the Pajaro Valley into subsequent progress reports on Water Resources Management, the next of which is scheduled to be submitted to your Board in September 2001.

Sincerely,



ALVIND. JAMBS
Planning Director

RECOMMENDED ,



SUSAN A. MAURIELLO
County Administrative Officer

Blc/WRM01-05

Attachments: 1) Action Pajaro Valley Ag/Water Committee Recommendation.
2) PVWMA Staff report and General Counsel memorandum on the authority to use augmentation fees for conservation purposes.

cc: Pajaro Valley Water Management Agency
City of Watsonville
County of Monterey
County of San Benito
Environmental Health Services

**ACTION PAJARO VALLEY
ADVISORY BOARD MEETING**

*Presentation and Discussion of
Ag/Water Committee Recommendation*

February 22, 2001

**LOCAL-ONLY
APPROACH**

Also known as the “Gardiner Plan,” this concept was developed and refined over nine months of study by the Action Pajaro Valley Ag/Water Committee as the best possible local-only supply approach. The plan consists of the following components.

- Existing Harkins Slough Project
- Additional diversions from Watsonville Slough, Corralitos Creek, and Pinto Lake drainage
- Irrigation reuse of reclaimed wastewater during growing season
- Groundwater storage of reclaimed wastewater during winter
- Construction of a College Lake berm and impoundment
- Coastal distribution system to serve coastal farmers
- Injection/extraction wells

Annual storage. The Local-Only Approach relies on surface and groundwater storage of local supplies for annual storage, in order to retain this water from the winter when it is available to the irrigation season when it is needed. Storage components would consist of percolation basins in the San Andreas Road area, a surface impoundment at College Lake, and a field of injection/extraction wells. The stored water would be withdrawn during the irrigation season and distributed to coastal farmers.

(continued)

**IMPORT-BANKING
APPROACH**

0426

This approach was identified as the preferred alternative in the Pajaro Valley Water Management Agency’s Draft Basin Management Plan 2000, published in May of last year. This Import-Banking Approach consists of the following components.

- Existing Harkins Slough Project
- Diversion from Pajaro River at Murphy Crossing
- Irrigation reuse of reclaimed wastewater during growing season
- Construction of import pipeline to connect to statewide system
- Purchase of import water supplies
- Coastal distribution system to serve coastal farmers
- Inland distribution system for groundwater banking

Annual storage. The Import-Banking Approach has a lesser requirement for annual storage, since annual storage for the import component would be provided at San Luis Reservoir as part of the statewide water system. The existing Harkins Slough Project uses a percolation basin for annual storage.

(continued)

**LOCAL-ONLY
APPROACH**
(continued)

Banking. The Local-Only Approach also assumes banking water underground to carry surplus water over from wet years to dry years. It differs from the Import-Banking Approach in that less yield is developed, so that the opportunity for banking is more limited.

Conservation. The Local-Only Approach requires achieving significantly higher levels of water conservation in order to balance basin-wide water supply and demand. This approach assumes tiered water rates intended to lower water usage.

Cost. The Local-Only Approach has a slightly lower annual cost than the Import-Banking Alternative, but it develops less water.

**IMPORT-BANKING
APPROACH**
(continued)

Banking. “Banking” means storing surplus water underground during wet years so that it can be withdrawn safely during subsequent dry years. In wet years, plentiful imported and local supplies would be delivered to both coastal and inland farmers. Wells would be rested, and groundwater reserves would build up. Then, in droughts, the banked reserves would be pumped and used. By matching deposits and withdrawals, long-term balance of the groundwater basin and protection against seawater intrusion should be achieved.

Conservation. The Import-Banking Approach includes conservation as an offset against future increased water demand, rather than a necessary supply component. Achievement of conservation goals would allow scaling down required capital facilities. Tiered pricing is an option to help achieve conservation goals.

Cost. The Import-Banking Approach has a slightly higher annual cost than the Local-Only Alternative, but it develops more water.

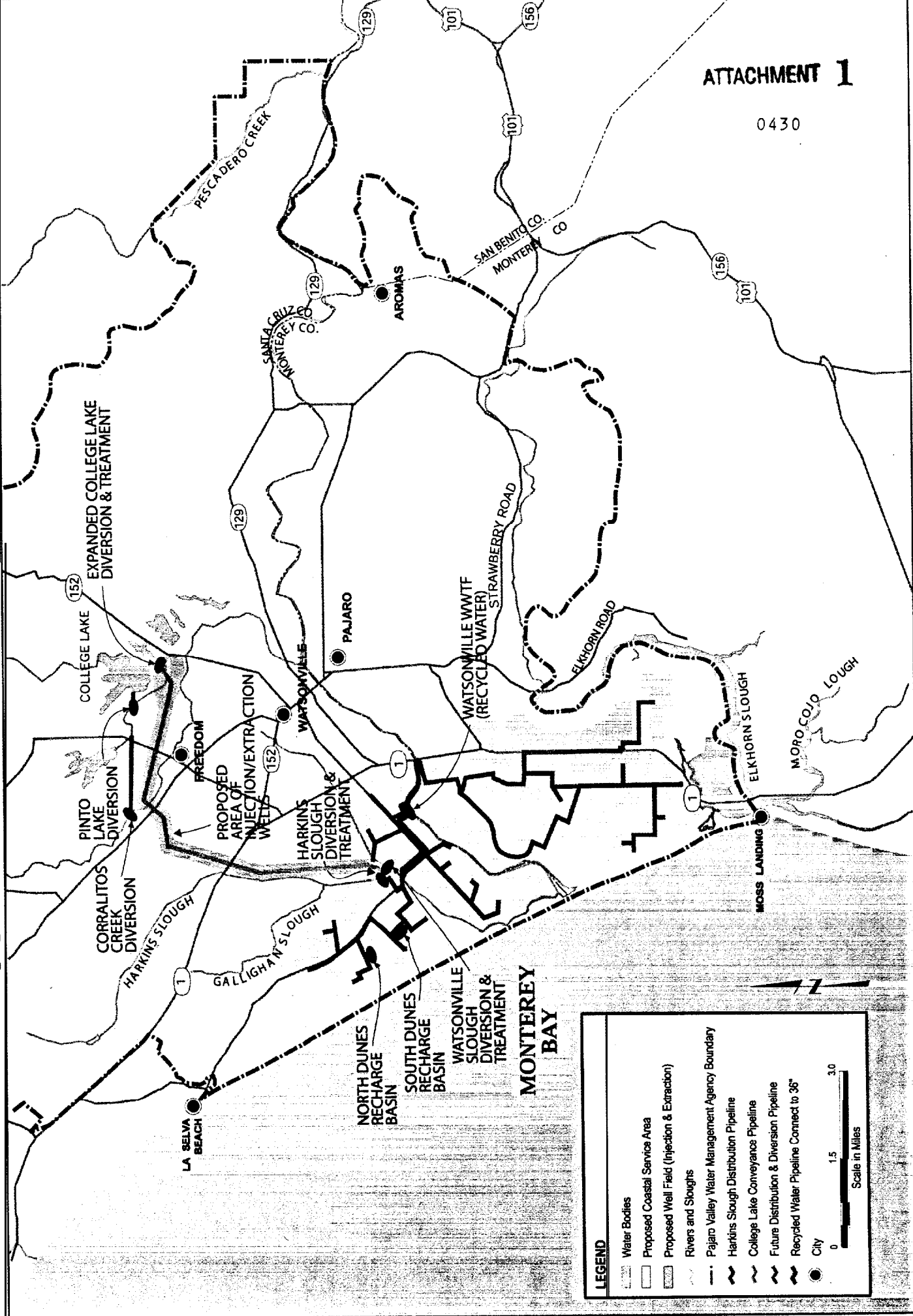
COMPARISON OF LOCAL-ONLY AND IMPORT-BANKING ALTERNATIVES

	Local-Only Alternative	Import-Banking Alternative
Avg. project yield	14,000 af/yr	23,000 af/yr
Current water supply shortfall is 20,000 acre-feet per year (af/yr)	Requires successful conservation to meet current needs	Provides for both current and future needs
Conservation requirement	10,000 af/yr Successful conservation is essential project component	5,000 af/yr Successful conservation allows scaling down capital facilities construction
Water quality Water quality of 500 parts per million (ppm) of total dissolved solids (TDS) is desirable for irrigating salt-sensitive crops such as strawberries	TDS = 500-600 ppm	TDS = 40-500 ppm
Cost of capital facilities	\$110.0 million	\$137.6 million Includes \$18.2 million for purchase of import supply
Cost of annual operations and maintenance (O&M)	\$3.4 million	\$3.5 million Includes \$1.4 million for import water delivery costs
Total annual cost Total annual cost is the sum of amortized capital facilities costs plus annual O&M costs	\$11.4 million	\$13.5 million
Opportunities for cost savings	1) Shared construction of College Lake impoundment with Army Corps flood project	1) Regional participation and cost-sharing of import component 2) Elimination of Murphy Crossing, wastewater reuse, and/or inland distribution components

COMPARISON OF LOCAL-ONLY AND
IMPORT-BANKING ALTERNATIVES
(continued)

	Local-Only Alternative	Import-Banking Alternative
<p>Permit Issues</p> <p>Either project would also require multiple County and Coastal Zone permits</p>	<ul style="list-style-type: none"> • Water rights permits for College Lake, Corralitos Creek, Pinto Lake drainage, and Watsonville Slough diversions (potential impacts of steelhead and other protected species) • Regional Water Quality Control Board (RWQCB) permit to allow surface water injection into drinking water aquifer • RWQCB permit to allow percolation of reclaimed wastewater into shallow aquifer in San Andreas Road area • State dam safety permit for College Lake berm 	<ul style="list-style-type: none"> • Federal water rights amendment to allow import deliveries to Pajaro Valley • Water rights permit for Murphy Crossing diversion (potential impacts on steelhead and other protected species)

Local Water Supply Project Alternative

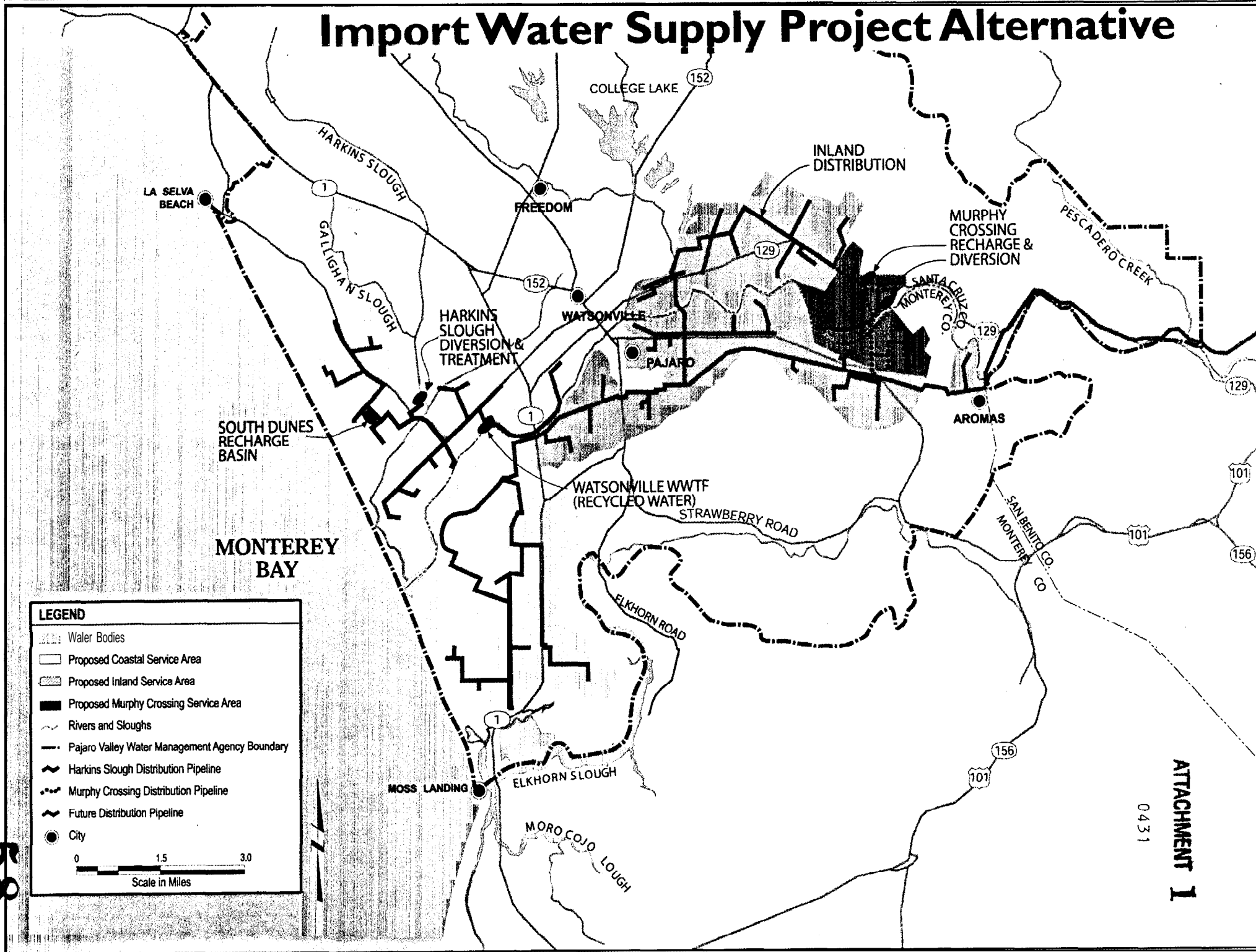


LEGEND

- Water Bodies
- Proposed Coastal Service Area
- Proposed Well Field (Injection & Extraction)
- Rivers and Sloughs
- Pajaro Valley Water Management Agency Boundary
- Harkins Slough Distribution Pipeline
- College Lake Conveyance Pipeline
- Future Distribution & Diversion Pipeline
- Recycled Water Pipeline Connect to 36"
- City

0 1.5 3.0
Scale in Miles

Import Water Supply Project Alternative



LEGEND

- Water Bodies
- Proposed Coastal Service Area
- Proposed Inland Service Area
- Proposed Murphy Crossing Service Area
- Rivers and Sloughs
- Pajaro Valley Water Management Agency Boundary
- Harkins Slough Distribution Pipeline
- Murphy Crossing Distribution Pipeline
- Future Distribution Pipeline
- City

0 1.5 3.0
Scale in Miles

MEMORANDUM

ATTACHMENT 2

0432

DATE: February 7, 2001
TO: Board of Directors
FROM: General Manager
RE: **DISCUSSION ITEM 6F:** Discuss proposed legislative amendment to Agency Act to allow expanded use of augmentation fee revenues

Agency Counsel has reviewed the Agency Act and concluded that augmentation fees may not be used for funding water conservation activities or wastewater recycling projects. Expenses in these budget areas are paid from current management fee revenues and management fee reserves. This is a short-term fix, as significant management fee reserves have been tapped each year for the past several years in order to balance the Agency budget. Moreover, the Agency is looking at substantial new expenses over the next few years for wastewater recycling feasibility analysis and design.

The Agency has identified several options for a long-term solution, including possible amendment of the Agency Act to broaden the allowable uses of the augmentation fee. The Board discussed this issue in September 2000 and directed staff to submit proposed language to the ACWA State Legislative Committee and to discuss possible sponsorship with our local legislators. These actions have been taken. ACWA has been supportive, and local legislators have been contacted. While the legislators' interest appears sincere, concerns have also been expressed due to continuing opposition from the Santa Cruz County Farm Bureau.

At today's meeting, staff will provide a status report on this issue and seek Board direction on next steps.

ATTACHMENTS:

- Proposed legislative amendment
- Memorandum from Agency Counsel dated September 13, 1999

§124-1001

The agency may, by ordinance, levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities within the agency for the purposes of **conserving** any **water within the** boundaries of the **agency**, **or** for paying the costs of purchasing, capturing, storing, distributing, **and** conserving, **supplemental water** for use within the boundaries of the agency.

For purposes of this section, the term "conserving" shall mean reclaimed wafer or the use of less wafer to accomplish the same purpose as the existing use of water.

PAJARO VALLEY WATER MANAGEMENT AGENCY
GENERAL COUNSEL'S OFFICE

ATTACHMENT 2

INTER-OFFICE MEMORANDUM

TO: Honorable Chairman. and Boardmembers

FROM: Steven T. Mattas, General Counsel
By Eileen Manning-Villar, Associate Attorney

RE: Authority to use Augmentation Fees for Conservation Purposes

DATE: September 13, 1999

ISSUE

Whether the Pajaro Valley Water Management Act or the Agency's status as a Central Valley Water Project water service contractor allows the Agency to use augmentation charges for water conservation activities within the Pajaro River Basin.

BACKGROUND

As provided in the enabling Act and mandated by Measure D, Measure K, the terms of the Mercy Springs assignment contract, and the Federal Reclamation Act, the Agency has an obligation to implement water conservation programs. Currently, the Agency is examining ways to finance its water conservation activities. Since the Act caps management fees at \$500,000 per year, the Agency hopes to utilize augmentation charge funds to support its conservation efforts.

SUMMARY

The PVWMA enabling statute provides that the Agency may impose augmentation charges for the purchase, capture, storage, and distribution of supplemental water for use within the Agency's boundaries. Currently, the Agency does not have the authority to use augmentation fees to fund conservation activities. To address this limitation, the Agency may want to consider asking the California Legislature to amend Section 100 1 to allow the Agency to use augmentation fees for conservation purposes.

TO: Honorable Chairman and Boardmembers
From: Steven T. Mattas, General Counsel
By: Eileen Manning-Villar
Re: Authority to Use Augmentation Fees for Conservation Purposes
Date: September 13, 1999
Page: 2

ATTACHMENT 2

DISCUSSION

The Pajaro Valley Water Management Agency was established in 1984 to protect, replenish, and enhance the water supplies in the Pajaro-basin in order to prevent long-term overdraft and seawater intrusion. The Agency is authorized to levy augmentation charges in order to provide supplemental water to the basin, either by the importation of water or by developing local water supplies. In preparing this memorandum, we reviewed the PVWMA enabling Act, legislative history documents for the Act, the Mercy Springs assignment contract, and the Federal Reclamation Act.

A. The PVWMA Act

When interpreting a statute, such as the Agency's enabling Act, a court will first look to the plain meaning of the language of the statute. The language of Section 100 1 of the Act allows the Agency to use augmentation charges for "purchasing; capturing, storing, and distributing supplemental water for use within the boundaries of the agency." However, this Section does not include conservation activities as an allowable use of augmentation charge funds. Nor does any other part of the Act state that augmentation fees may be used for conservation purposes. Thus, according to plain language of the Act, the Agency cannot use augmentation fees to fund its conservation programs,

The legislative history of the enabling Act also supports the conclusion that the Agency cannot use augmentation charges to implement conservation programs. A review of the Act's legislative history reveals that the original draft of the Act allowed the Agency to levy augmentation fees for much broader purposes than those found in the version of the Act adopted by the Legislature. Section 100 1 of the Act's original draft stated as follows:

The Agency may, by ordinance, levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities within the agency for the purposes of paying the costs of initiating, **carrying on, and completing any of the powers, purpose, and** water management **activities authorized under this act.**

TO: Honorable Chairman and Boardmembers
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 Date: September 13, 1999
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ATTACHMENT 2

Interestingly, the purposes set forth in the original language of Section 100 I are almost identical the purposes listed in Section 902 of **the** Act. Section 902 authorizes the agency to impose fees upon water users within the Agency's jurisdiction based upon the user's acreage for the purpose of carrying out any of the Agency's powers. However, on May 9, 1984 Senator Henry Mello, the bill's author, had amended Section 1001, as follows:

The agency may, by ordinance, levy groundwater augmentation charges on the extraction of groundwater from all extraction facilities within the agency for the purpose of paying the cost of ~~initiating, carrying on, and completing any of the powers, purposes, and water management activities authorized under this Act.~~ *purchasing, capturing, storing, and distributing supplemental water **for** use within the boundaries of the agency.*

This amendment significantly narrowed the allowable uses of augmentation charge funds, since the Act granted the Agency many additional powers beyond providing supplemental water to the basin. Given the author's apparently intentional reduction of the activities that the Agency could use augmentation fees to **fund, it is** very difficult to interpret Section 100 I as allowing the funding activities beyond those explicitly listed. Moreover, the fact that the Section 902 allows the Agency to use the management fees for any purpose within the Agency's authority, while Section 100 1 sets forth a finite list, further supports a narrow interpretation of Section 1001.

B. The Mercy Springs Entitlement Acquisition

As part of the Agency's recent acquisition of a 6,260 annual acre-feet entitlement from landowners within the Mercy Springs Water District, the Agency undertook a contractual obligation to develop and implement a water conservation plan that complies with Federal law. Further, Section 390jj of the Federal Reclamation Act requires each district that has water service contract under the Reclamation Act to "develop a water conservation plan which shall contain definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives."

TO: Honorable Chairman and Boardmembers
From: Steven T. Mattas, General Counsel
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Re: Authority to Use Augmentation Fees for Conservation Purposes
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ATTACHMENT 2

Although the Mercy Springs assignment contract and the Federal Reclamation Act impose water conservation requirements upon the Agency, neither the assignment contract nor the Reclamation Act expands the allowable uses of augmentation fees under the enabling Act. Generally, the provisions of a contract do not supersede state law. Although federal law can supersede state law, nothing within the Reclamation Act indicates that it would preempt (or overrule) the enabling Act on this issue. Moreover, the courts have tended to defer to state water law provisions where federal and state water laws conflict.

C. Amending the Enabling Act

Given the constraints placed upon the Agency under the enabling Act, Measures D and K, the Mercy Springs contract and Federal Reclamation law, the Agency may wish to consider asking the California Legislature to amend Section 100 1 to authorize the use of augmentation fees for conservation purposes. Since these **legal provisions** require water conservation measures without providing the Agency feasible means with which to implement such programs, legislative action would be the most effective way to provide the Agency the flexibility to carry out its mandate. Since the amendment of Section 100 1 would further the Agency's ability to implement water conservation measures, the Agency may find support to amend the enabling Act among groups who have historically supported the use of water conservation measures.