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July 31, 2001
Agenda: August 7,2001

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

Re: WATER SERVICE CONNECTION POLICY FOR UNINCORPORATED AREA SERVED BY CITY OF WATSONVILLE

Dear Members of the Board:

On May 22,2001, your Board received a report prepared by the County Planning Department which evaluated the effect of the water policy changes implemented by the City of Watsonville in the Fall of 2000. After considering this information, your Board directed that County Counsel return on August 7, 2001, with a report on the legal issues presented by the City's new water policy. This letter will analyze the City's action for your Board's consideration.

WATER POLICY CHANGES ADOPTED BY THE CITY OF WATSONVILLE

On October 10, 2000, the Watsonville City Council adopted Resolutions No, 279-00, and 280-00, establishing revised goals, objectives and policies regulating water service provided by the City to properties located outside of its incorporated boundaries but within its service area. See copy included as Attachment "1". These revisions resulted from the City's review of its existing General Plan provisions concerning its growth, and in particular, whether the provision of water service to unincorporated areas

was a "hindrance to the City's city-centered growth policies."

At the direction of the Council, City staff prepared policies establishing conditions under which the City would provide water service to projects outside the City but within its service area. The intent of these changes was to: (a) encourage an increase in urban densities within the service area; (b) result in the provision of affordable housing; (c) discourage low density sprawl; and (d) meet the need for day care and school facilities.

The actual policies adopted limited the granting of new water service connections to projects meeting one of the following criteria:

1. Having a minimum density of 12 units per acre with at least 25% of the units being affordable (This provision only applies to projects proposed for territory designated by the County as an "Urban Area"); or

2. An agricultural workers project that is 100% affordable; or

3. An accessory dwelling unit located on a parcel fronting an existing water main with a presently served single-family residence if the accessory unit is restricted by deed to limit the income of the occupant to 60% of the County Median Income; or

4. A public or private school, or a day care facilities with 25 or more students.

The County requires that parcels with residential land use designations of Urban Very Low, Urban Low, Urban Medium, Urban High and Suburban residential parcels less than 2.5 acres in size, may only be developed if connected to a public water system. Santa Cruz County General Plan/LCP, Policy 2.2.1. The County's policy, in conjunction with the City's new water service connection policies, would limit the development options on many parcels located within the water service area of the City of Watsonville. See Report of Alvin D. James, Planning Director, Item 57, Board of Supervisors Agenda for May 22, 2001.

LEGAL AUTHORITY FOR CITY'S ACTIONS

The City of Watsonville is a charter city authorized under the California Constitution to provide water for persons located both within and outside of the City:

> A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries... (Cal.Const. Art XI, Sec. 9(a); see also Government Code Sections 38730-38742; and Public Utilities Code Section *10005)* (Emphasis added.)

The supplying of water to its inhabitants has been held to be a municipal affair subject to control by its charters (in a charter city) and ordinances. *City of Pasadena v. Charleville (1932)215* Cal. *384.* Publicly owned municipal utilities are not regulated by the State Public Utilities Commission or any other supervising agency while privately owned utilities are, *American Microsystems, Inc. v. City of Santa Clara (1982) 137* Cal. App.3d *1037, 1042-1043.* Courts have repeatedly held that no statutory or constitutional right requires that prospective water users be allowed to tie into a public water supply system. *Lockary v. Kayfetz* (9th Cir. *1990) 917* F.2d *1150, 1155; Lukrawka v. Spring Valley Water Co.* (1915) *169* Cal. *318, 332-333; Swanson v. Marin Municipal Water District (1976)56* Cal.App.3d *512,* 522. Conversely, privately owned public utilities regulated by the State Public Utilities Commission or franchised under the Constitution have a statutory obligation to meet the prospective needs of persons within their service area. Public Utilities Code Section *1501.*

POSSIBLE BASIS FOR LEGAL CHALLENGE OF THE CITY'S WATER CONNECTION POLICIES

If a water connection policy unjustifiably discriminates between different segments of a population so as to benefit one class of people at the expense of another, a Equal Protection and or Substantive Due Process challenge could be raised. However, only if the alleged discrimination is based on a "suspect classification" (i.e., race or ethnicity) or it impermissibly interferes with a Constitutionally protected right would a court strictly scrutinize the policy.' Unless a classification trammels fundamental personal rights or implicates a suspect classification, to meet constitutional challenge the law in question needs only some rational relation to a legitimate state interest. ("rational basis" test).

Here, there is no suspect classification that would require the application of strict

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'Under "strict scrutiny analysis, the policy would have to serve a compelling public interest and be narrowly tailored to provide a "close fit" with the intended goal.

scrutiny as the policy merely distinguishes between those potential water customers living within the city from those outside the City's boundaries. The City's staff noted a concern that excessive City resources were being devoted to the provision of utilities located outside the City to the detriment of present and future residents. See Memorandum from John Doughty and David Koch to Carlos J. Palacios dated September 26,2000. Consequently, a distinction between in-city and out-of-city users would not be arbitrary for the City's obligation to meet the water needs of its residents is greater than its duty to meet the water needs of those persons living outside the City.

Without a suspect classification or a fundamental right at stake, a legal challenge of the City's water service policy would be analyzed under the more deferential rational basis test. Under this test, the City of Watsonville has an expressed goal of encouraging "city-centered" development by increasing densities in the urban service areas and discouraging low density sprawl, with the intent of producing more affordable housing. See Memorandum from John Doughty and David Koch to Carlos J. Palacios dated September 26,2000. The City also included as policy objectives, the encouragement of school and day care facilities. Limiting urban sprawl and promoting affordable housing, schools and day care facilities are all legitimate government interests that should withstand an equal protection challenge. The policy of allowing connections for these types of projects would be rationally related to the expressed goals.

THE CITY'S AUTHORITY TO REGULATE WATER SERVICE CONNECTIONS WITHIN THE UNINCORPORATED AREA

The question of whether the City is authorized to make water policy decisions that impact the land use authority of the County was considered in *Dateline Builders, Inc. v. City of Santa Rosa* (1983) 146 Cal.App.3d 520. The County of Sonoma required that a development proposed for a location outside the City of Santa Rosa be served by the City's sewer system. When the City refused to provide sewer services because the project was inconsistent with City plans and policies discouraging urban sprawl the developer sued. In ruling in favor of the City, the Appellate Court noted that "...neither common law nor constitutional law inhibits the broad grant of power to local government to refuse to extend utility service so long as they do not act for personal gain nor in a wholly arbitrary or discriminatory manner." *Dateline Builders, Inc. v. City of Santa Rosa,* supra, 146 Cal.App.3d at 530.

A recent appellate court decision also gives some guidance in this matter. In *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, Crescent City

owned and operated a water system for the benefit of city residents, but also served private customers and several water districts located in the unincorporated area of the County. At one point, roughly two-thuds of the City's water customers lived outside of the City's boundaries.

A water shortage problem in the early 90's lead to a system-wide moratorium on new connections. A revenue sharing agreement between the City and the County allocated the City a share of the County's sales tax growth in exchange for the City's agreement to treat County and City residents the same with regard to utility connections. The City and the County began to experience increasing political differences over the terms and extent that the City would continue providing water to non-City residents. The County eventually withdrew from the revenue-sharing agreement effective in June of 1997. In July of 1997, the City enacted a policy denying new service connections for properties located outside of its incorporated territory. The City Manager had recommended this policy based on the County's action in terminating the agreement.

While the trial court concluded that the City's actions were arbitrary and thus unlawful, the Court of Appeal reversed and ruled that the City's action was proper, and further that the City had no legal duty to furnish new hook-ups to the unincorporated area of the County. The County had argued that the City was required to provide water service to the unincorporated area because the City had assumed the legal obligations of the private water company that had previously served the area.

CONCLUSION

The City of Watsonville is legally authorized to provide water service to persons located outside the boundaries of the City. Case law indicates that non-city residents have neither a statutory nor a constitutional right to demand a new water service connection. The City may establish reasonable policies concerning new water service connections, and these policies may treat out-of-city residents differently than in-city residents as long as the difference is not arbitrarily based and is reasonably related to a permissible governmental interest.

IT IS THEREFORE RECOMMENDED that your Board accept and file this report.

Very truly yours,

SAMUEL TORRES, JR., COUNTY COUNSEL

By _____
RAHN GARCIA
Chief Assistant County Counsel

RECOMMENDED:

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SUSAN A. MAURIELLO
County Administrative Officer

cc: County Administrative Office
Planning Department

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