



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: July 15, 2008

SUBJECT: Proposed Yolo County Groundwater Ordinance - City of Woodland
Response

Report in Brief

The Yolo County Board of Supervisors (BOS) directed county staff to draft a groundwater ordinance (Attached) and present it to the Board at their April 22, 2008 meeting. This draft ordinance was intended to address the concerns of export and loss of groundwater resources to users outside the county and a perceived lack of groundwater resource protection. The initial draft ordinance generated significant concern in the agricultural community and others. Because of the initial response from the community, the BOS had directed staff begin a public collaborative process with the Water Resource Association (WRA) and others to guide the Yolo County in both the formulation of a draft ordinance and the examination of a county-wide water agency. This process is expected to begin sometime in August or September. The BOS has not officially abandoned the idea of a Yolo County Groundwater Ordinance or a Yolo County Water Agency. It appears that the BOS is gauging how to develop these ideas in a less contentious environment.

The City asked a water rights attorney, Alan Lilly, to evaluate the draft ordinance and its potential effects on the City of Woodland's ability to manage its groundwater basin, wells, and obtain surface water rights in the future. Mr. Lilly's response is attached to this document.

Staff recommends that the City Council transmit to the Yolo County Board of Supervisors that the County first seek to solve any deficiencies in the management of groundwater resources it has identified through the WRA. The WRA is respected by water entities within Yolo County and has institutional cooperation and relationships that have developed between those agencies over the last 20 years.

Background

The City of Woodland has been a participant in the WRA since its inception over 20 years ago, when it became apparent that some form of cooperation of was necessary for management of water resources in Yolo County. Water issues are becoming more complex and cooperation and

information sharing between member agencies is important for successful management of the water resources in Yolo County.

In 2007, the WRA and its member agencies published the Integrated Regional Water Management Plan (IRWMP) which was partially funded by a \$500,000 grant from the California Department of Water Resources and from WRA member contributions of funds and staff resources. The IRWMP relates the relationships between member agencies (including Yolo County) and the management of water resources in the county and within the region. The IRWMP also identifies and prioritizes projects in the county and provides an ongoing forum for project prioritization and support for members seeking grant funding from State of Federal agencies. During the process of preparing the IRWMP Yolo County had and continues to have the opportunity to submit action items into the IRWMP process to address any concerns it has on groundwater supplies, monitoring or water quality issues.

The Yolo County Flood Control and Water Conservation District and the WRA and its members have developed the Subsidence Monitoring Program that served as a model for DWR in developing is Subsidence Monitoring Program for the Sacramento Valley. The collaboration between the WRA and the District is an example of the WRA's ability to work effectively with the county's water interests.

Based on community reaction to the proposed groundwater ordinance, it is apparent that Yolo County did not seek any input from the WRA or its member agencies in developing the initial draft. It is also apparent that the county did not identify how the present WRA system or its member agencies were not meeting the needs of the county and its residents. As an example, the proposed draft ordinance states that fees or taxes would need to be implemented to fund the requirements of the ordinance yet does not articulate if the current providers and managers of groundwater resources would be expected to pay or how much these fees or taxes would be for these entities except that the cost of implementation of the ordinance would need to be meant by the fees or taxes.

The draft ordinance also appears to add an additional layer of control over the City of Woodland's management of its groundwater resource, well installation, future water development to meet the needs of the City of Woodland and its residents. Staff cannot identify any benefits to the City of Woodland and is residents from implementation of this ordinance. While there is language in the ordinance that appears to exempt the City from the ordinance, the exemption is tied to conditions that may not apply. In any case, discussion of whether or not the ordinance applies to the City could be a consuming factor in City/Yolo County relations. The City could expect financial impacts if the ordinance is approved as written which would impact water rates.

Discussion

The WRA and its member agencies have worked collaboratively on water resource issues in the past and shared their expertise and consulting expenses in a cost effective manner. Yolo County never identified the problems that generated the draft ordinance to the WRA, or sought to solve those problems using the WRA. The WRA successfully developed the IRWMP which is used by DWR for part of the funding evaluation for the DWR grant programs. Staff believes that the unilateral passage of this ordinance demonstrates to DWR that entities in the county are not following the IRWMP and not working together and as a result could jeopardize funding requests from the WRA member agencies with DWR.

The ordinance could jeopardize strategies for obtaining surface water using groundwater exchanges or at the very least add a layer of complexity to an already complex process. This would have an adverse impact on the Woodland-Davis water supply project and could increase the cost of this already very expensive project.

Staff believes the county would have been better served in the public discussion of groundwater resource management by using the WRA to first identify the issues and then develop collaborative strategies to address the problems or deficiencies. Unfortunately, the process used by the county up to this point has strained the collaborative relationships that have been developed over the last 20 years through the WRA.

The county's more recent actions to delay implementation of the proposed ordinance and conduct public discussions are an encouraging sign. In order to generate a positive outcome for these discussions, staff believes the county should work closely with the WRA and other water interests within the county. Staff believes that the City's position should be formally stated through a letter from the Mayor and City Council to the Board of Supervisors.

Fiscal Impact

Financial impacts are anticipated for the City of Woodland; however these impacts cannot be quantified at this time because the ordinance does not identify a fee or tax schedule. The staff expenses and legal expenses associated with any City opposition to the ordinance are also undefined.

Public Contact

Posting of the City Council agenda. A copy of this report has been sent to the Yolo County Administrator's Office.

Alternative Courses of Action

1. Transmit to the Yolo County Board of Supervisors that the county first seek to solve any deficiencies in the management of groundwater resources it has identified through the WRA. The WRA is respected by water entities within Yolo County and has institutional cooperation and relationships that have developed between those agencies over the last 20 years.
2. Consider legal actions to protect the City of Woodland interests if an ordinance is passed that does not address the City's concerns.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Prepared by: Mark Cocke
Senior Civil Engineer

Reviewed by: Doug Baxter
Senior Civil Engineer

Reviewed by: Greg Meyer
Public works Director

Mark G. Deven
City Manager

Enclosure: Draft ordinance, letter from Alan Lilly

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June 30, 2008

PRIVILEGED AND CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION

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Re: Proposed Yolo County Groundwater Ordinance

Dear Doug, Jacques and Sid:

Doug asked me to make a preliminary review of the draft Yolo County ordinance that would amend Chapter 7 of Title 10 of the Yolo County Code, and to prepare a short letter discussing the results of this review. This letter responds to that request. For reference, a copy of the draft Yolo County ordinance is enclosed.

If enacted, this ordinance would, among other things, require owners and operators of existing and future groundwater wells in Yolo County to apply for and obtain permits from the County for their wells and to provide pumping, water-quality and related data to the County. This ordinance also would authorize the County to limit or prohibit the pumping of wells in the County, to the extent that the County concludes is necessary to prevent groundwater overdraft conditions.

Section 10.7.402 of the draft ordinance would exempt from the ordinance any district or other governmental entity that has: (1) adopted a groundwater management plan that addresses “safe yield” and “aquifer health,” which are defined in the draft ordinance; (2) instituted a groundwater monitoring and mitigation program; and (3) executed a memorandum of understanding with the County regarding the sharing of groundwater monitoring information and data, coordination of

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groundwater monitoring efforts and participation in the development of a groundwater management plan by the County. My understanding is that Woodland, Davis and UC Davis have not taken any of these actions. Accordingly, at this time, this exemption would not apply to Woodland, Davis and UC Davis and this ordinance, if authorized by law, therefore would apply to these entities.

For the proposed Davis-Woodland Water Supply Project, this ordinance, if authorized by law, would regulate the operations of wells in Yolo County that would be owned and operated by others for groundwater-substitution programs for the Project. This ordinance could affect such wells through: (1) fees for permits for the wells; (2) requirements for the well operators to provide well-pumping, water-quality and other data to the County; and (3) potential limits of the amounts of permissible pumping by any well. The potential limits on groundwater pumping are of particular concern, because they could limit the amounts of Sacramento River water that could be made available to the Project through the groundwater-substitution programs, particularly during drought conditions when the Project would need the largest amounts of water from groundwater-substitution programs.

However, Yolo County may not have the authority to impose its proposed groundwater ordinance on this groundwater pumping. Article 11, section 9, subdivision (a) of the California Constitution authorizes municipal corporations to establish and operate public works to furnish their inhabitants with various utility services, including water services, and subdivision (b) of this section provides that “[p]ersons or corporations may establish and operate works for supplying these services upon conditions and under regulations that the city may prescribe.” Although there are no reported court decisions on the issue of a county’s authority under this constitutional provision to regulate a city water system or privately owned and operated works for such a system, courts interpreting this constitutional provision might conclude that it prevents a county from independently regulating such a system or associated works like wells that are part of a necessary groundwater-substitution program.

Moreover, under general principles of municipal law, a county normally may not regulate a water system owned and operated by a city or the University, and the courts may hold that these general principles prohibit Yolo County from regulating either the Davis-Woodland Project or wells that are used in a groundwater-substitution program for this project.

Per Doug’s request, this letter contains only a preliminary review of the potential effects of the draft Yolo County groundwater ordinance on the Davis-Woodland Project. I would need to conduct more research to determine the specific details of Yolo County’s authority, if any, to regulate groundwater pumping for groundwater-substitution programs for the Davis-Woodland Water Supply Project. If Woodland, Davis and UC Davis decide to discuss the draft Yolo County ordinance with the County, then such research should be conducted before these discussions occur.

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Please let me know if you would like me to conduct this more-detailed research or if you have any questions regarding this letter.¹

Very truly yours,



ALAN B. LILLY

ABL:tmo
Encl.

¹Another legal question is whether Yolo County has the authority to regulate the wells that are owned and operated by Woodland, Davis or UC Davis for their own municipal and domestic water systems. While Water Code sections 10750-10755.4 authorize local agencies like the County to adopt and implement groundwater management plans, Water Code sections 10750.7 and 10750.8 prohibit a local agency like the County from regulating groundwater within the service area of another local agency without the agreement of that other local agency. Also, the County's general police-power authority normally does not extend to incorporated cities or University properties within the County, and article 11, section 9 may limit the County's authority to regulate these water systems. For these reasons, it appears that the draft ordinance would be an improper exercise of the County's authority over such wells. Because this issue does not directly concern the Davis-Woodland Project, I will leave it to the City attorneys for Davis and Woodland and the University's attorneys to analyze this question in more detail and to answer it specifically for each entity.