

SANTA MARIA GROUNDWATER From Water to Police and Fire Personnel

SUMMARY

The 2007-2008 Santa Barbara Civil Grand Jury investigated the legal right of the City of Santa Maria to sell excess groundwater and state water return flows and to use the proceeds to fund police and fire personnel. State water return flows represent excess water collected from both state water and state water used in a residence, which then is reprocessed and flows into the groundwater. The state water, then, augments the groundwater. The Grand Jury concluded that the City of Santa Maria is well within its rights to sell excess water and to apply the proceeds of sales to its general fund. No laws have been violated, and the proceeds are used for the benefit of all residents of Santa Maria. If anything, the City Council and administration should be commended for their innovative approach to managing their water resources, and for finding a creative way to generate additional revenue for the city.

INTRODUCTION

The City of Santa Maria manages its water resources through a water board, composed of the members of the City Council. This water board sets the water rates in the City. These rates are designed to cover the costs for the receipt of state water, the City's share of the infrastructure required to deliver the state water, "maintenance and repair expenses, capital outlays, right-of-way acquisition, debt service, administration and legal expenses, reasonable charges for use of City facilities, repayment of loans to other City funds, and billing and accounting costs." (Section 8-10.01 waterworks fund) In short, the general concept is that water rates are set to cover all costs associated with the collection and use of water. Excess funds, if any, may be reserved for future expenses. There is no law or rule that states excess funds must be rebated to ratepayers.

Historically, the City pumped water from the Santa Maria Valley Groundwater Basin as its primary water source. In 1996, the City began using state water. Currently, the source of water is from local groundwater, purchased state water with its associated return flows recaptured as groundwater, and a share of the yield of the Twitchell Reservoir. The City Council acting as the water board determines any excess return flow, and sells that water to third parties, who generally are developers. Sale proceeds are then put into the general fund. The right to use the groundwater has been the subject of a ten-year litigation in Santa Clara County Superior Court, *Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.* The costs of this litigation have largely been paid for by the water fund.

METHODOLOGY

The Grand Jury interviewed the Santa Maria Director of Administrative Services who described the operation of both the water board and the use of the water fund. The Santa Maria City Attorney provided much of the background for the legal analysis, explaining

that the issues regarding the City's use of groundwater would rest with existing court cases and the applicability, if any, of Articles XIII C and XIII D of the California Constitution and California Proposition 218.. The Grand Jury also contacted the County Counsel's office for an independent legal opinion.

OBSERVATIONS AND ANALYSIS

The focus of the Grand Jury's investigation was whether the City of Santa Maria and its water board had acted legally with the ratepayers' fees. The Santa Maria City Attorney provided his legal interpretation of how the water fund has been used. The Grand Jury requested the County Counsel's office to independently research four critical questions.

1. Is ground water considered a real property right?

Answer: Yes. The issue was concluded definitively in four California Supreme Court decisions.

2. Does the groundwater belong to the City of Santa Maria or to the ratepayers who paid for the water?

Answer: Again, the issue has been definitively resolved in California court decisions. The City owns the groundwater and makes it available to ratepayers. Title to the water never passes to the citizens. Likewise, state water return flows belong to the City. Because ratepayers constitute over 95% of the city's population, the public benefits from the sale of water, since the proceeds are returned to the City's general fund.

3. Do Articles XIII C and XIII D of the California Constitution, and California Proposition 218 require that the city take a vote of the citizens before selling any excess state water returns?

Answer: Articles XIII C and XIII D of the Constitution and Proposition 218 describe voting requirements in the event taxes are raised, or assessments, fees or charges are imposed. The sale of excess state water return flow does not fall into any of these categories. According to the law, the city is selling a real property asset, which it owns, and no taxes, assessments or fees are involved in that sale. Therefore, Proposition 218 and the California Constitution are not applicable to these sales.

4. Since the water ratepayers are paying for all water, and the City owns the groundwater, then should it not be the obligation of the City to pay for the *Santa Maria Valley Water Conservation District vs. City of Santa Maria, et. al.* litigation costs?

Answer: The litigation protects the City's right to the groundwater and the state water return flows. Since this same groundwater and return flows are available

and used by the ratepayers in Santa Maria, these ratepayers are the ultimate beneficiaries of the lawsuit. Therefore it is appropriate that the water fund bear the costs.

The above notwithstanding, the City prorates the legal costs based on water use. The general fund then pays a portion of the legal fees. From the inception of the lawsuit in 1997, total legal fees have been \$5,127,731. For the first six years no excess water was sold; therefore, the water fund paid all legal fees. In the remaining four years, through June 2007, the general fund has paid \$7,381, while the water fund has paid \$3,321,479. While this payment from the general fund appears small, the amount of water sold has always been less than one third of 1% of the ground water available in each year.

CONCLUSION

The 2007-2008 Grand Jury, therefore, has concluded that the Santa Maria City Council has acted properly in managing the water fund and in using the sale of excess state water return flow to supplement the general fund. Neither the California Constitution nor Proposition 218 limits the water board's authority to use its funds for water-related litigation. The Jury has also concluded that the City should be commended for having established a creative and cost-effective method of generating new revenue for the City of Santa Maria, thereby providing funds for public safety.

FINDINGS AND RECOMMENDATIONS

Finding 1:

The selling of excess state water return flow and groundwater is legally sound, and the transfer of funds received to the general fund is a proper use of the money. The City of Santa Maria City Council acting as the water board has acted properly and in the best interests of the citizens of Santa Maria.

There are no recommendations.

REQUEST FOR RESPONSE

In accordance with Section 933(c) of the California Penal Code, each agency and government body affected by or named in this report is requested to respond in writing to the findings and recommendations in a timely manner. The following are the affected agencies for this report, with the mandated response period for each:

Santa Maria City Council – 90 days

Finding 1

Santa Maria Water Board – 90 days

Finding 1