

Salinas Valley Water Coalition



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Supervisor Fernando Armenta, Chair
Monterey County Board of Supervisors
240 Church Street
Salinas, Ca 93901

3 June, 2003

Dear Chair Armenta and Members of the Board;

Re: General Plan Update Rewrite

The Salinas Valley Water Coalition (SVWC) and its members have actively participated in the various General Plan Update processes with a particular focus on the 'water' issues to ensure a General Plan is developed that does not adversely affect the water needs, availability and/or rights of its members.

The Public Service Element is very confusing. It is difficult to tell where and on what basis you can drill a well. When these policies are read with water related policies in other elements, it becomes more confusing. It fairly clear however, that this document as written has the ability to take away a property's individual water rights. **Is this your intent?**

Another confusing part of the discussion in the Public Service Element is the Comprehensive Integrated Water Management Plan (Plan). While the concept may be supportable, this Plan has not been written. Much of the Public Service Element policies rely on this Plan, a document that hasn't been written, and therefore a meaningful review of the GPU can't be completed.

Many individuals have worked very hard these last several years in an attempt to resolve our water problems and move a solution forward. The success of the Salinas Valley Water Project's 218 Ballot with an 85% yes vote, is proof that it can work -- if the varied interests are committed to doing so. The GPU policies as drafted are unacceptable to the Salinas Valley Water Coalition. We are, however, committed to working with the County and others to ensure the adoption of a General Plan that can be supported by the community at large, rather than special interest groups.

Public Services Element

General Comments: It is very difficult to tell when and where you can drill a well and under what circumstances within the GPU as drafted. Policies affecting wells and overall water use are strewn throughout various elements within the General Plan--and then you must consider the definitions very carefully to understand what the policies are really saying. There appears to be many inconsistencies among the various policies, which compound the confusion and difficulty. Our comments are made based on certain assumptions derived from our review of the GPU. If these 'assumptions', and therefore our conclusions, are in error, we welcome that determination.

As an example, the chart located on page 183 for Domestic Water Requirements is inconsistent with Table PS-1 located on page 200. Table PS-1 states that "this table is not intended to limit the construction of a

single family home, on-site employee housing and caretaker units, on an existing legal lot of record. The policies within the Public Services Element do not make this distinction, nor does the chart on page 183. **Is this your intent?** According to the chart on page 183 no new domestic wells are allowed in Community Areas, Rural Centers, Rural Lands and Ag Lands if the subject parcel is located within a public water system service area. Table PS-1 states that individual wells are permitted in areas 'with a proven long term water supply' within Public Lands, Agricultural Lands and Rural Lands. Another inconsistency is that Table PS-1 states that individual wells are allowed in limited situations in Rural Centers with two footnotes attached. The two footnotes are either inconsistent with each other, and/or not stated clearly, as when read individually could mean that "all new development, including construction of homes on existing lots of record, shall be required to connect with any existing small private water system in the area." And Table PS-1 further states, "new well construction is prohibited for domestic use in areas (including spheres of influence) served by existing public water systems." This latter statement appears to prohibit any new wells within an area served by a public system, even a well for a single-family home on an existing legal lot of record. **Is this your intent?** This chart and table need to be consistent with each other, and the footnotes need to be clear as to what can and cannot be completed.

We also believe that much of the confusion is derived by the GPU's definition of 'development', which is:

"Development means any activity which occurs on land or water that involves the placement of any structure, the discharge or disposal of any waste....."

There is no definition for 'activity'. As written above, 'activity' could mean the construction of a well --- ag or domestic, including replacement wells. **Is this your intent?**

Key Concepts, page 179, Existing Legal Lots of Record: States that "issues of equity and property rights can be presented by general policies that make development on existing legal lots of record problematic." It further states that "this General Plan allows one single family home or its equivalent on existing legal lots of record, where their status as separate parcels can be verified, without regard to other policies which would otherwise apply....This right to develop is also subject to compliance with public health requirements in the provision of water supply." **Is this your intent?**

The above statements are inconsistent with the policies that are set forth within the Draft GPU, including those policies within the Public Services Element pertaining to water. In fact, we believe the draft policies as written will greatly discourage the development of single family homes on existing legal lots of record. The GPU rewrite does not allow any new wells within Community Areas, Rural Centers, Rural Lands and Ag lands if the lands are located within a public water system service area. If the public water system has 'no' water to provide, the single family home will not be built. Where is the assurance that water will be provided by a public water system to parcels located within their boundary or sphere of influence? Whose responsibility is it to provide these assurances? If there are not assurances provided, then the policy not allowing new wells for a single family dwelling in these areas could be a taking of that individual's right to exercise their water right.

The General Plan Update needs to clearly state which policies would NOT apply to the development of a single-family home on an existing legal lot of record. Further, the GPU does not clearly state that replacement wells are exempt from specific policies.

Policy Choice PS2, page 181: Public Services Policy Discussion item #3 states, "If no community support, new development on vacant lots must not change service levels."

Development is defined as “any activity” which occurs on land or water that involves the placement of “any structure”, the discharge or disposal of any waste material, grading, dredging or mineral extraction. **As defined, development means the construction of a well.** When read with the above ‘policy choice PS2’, it could be interpreted to mean the construction of a well for a single family dwelling on an existing legal lot of record must not change service levels. **Is this your intent?**

Policy Choice PS3, page 182: “Decide how the County will ensure that there is a proven long-term water supply for all new housing development.”

Does “all new housing development” include the development of a single-family home on an existing legal lot of record? Does this mean that anyone building a single family home on an existing legal lot of record will be required to prove long-term water supply? **It is not clear.**

The third paragraph on page 182 states that “policy revisions have been made, however to clarify that environmental review requirements will be required on domestic wells for drinking water supplies and not on agricultural wells for agricultural production.

This statement appears inconsistent with the ‘policy exemption’ for single-family homes on existing legal lots of record. **Please clarify your intent**---do you mean to exempt the construction of a well for a single family dwelling on an existing legal lot of record from these policies or not? The burden of the CEQA process on an individual single-family dwelling is significant. The policy needs to be written to develop criteria and standards by which the CEQA process would apply to wells for single family dwellings --- I.e. in areas where there is the likelihood to create significant environmental impacts.

The above paragraph states that agricultural wells for agricultural production are exempt from the environmental review policies, yet the policies themselves do not clearly make this exemption.

The fourth paragraph of Policy Choice PS3 makes the following statement: “...metering requirements proposed in the initial draft Plan for the Salinas Valley have been eliminated in favor of the existing groundwater management program. Successful implementation of these programs is needed to ensure that further restrictions such as meters and water extraction limitations are not needed.”

The GPU rewrite is not clear as to which areas are considered to be in ‘overdraft’ --- there is no definition of ‘overdrafted areas’. If implementation of various water projects & programs are not successful, it appears that the GPU will *allow* the County to require meters and pumping limitations potentially throughout the Salinas Valley. The Salinas Valley Water Coalition strongly opposes requiring metering of wells. Alternatives to metering exist that can provide the same information. The County is required to consider alternatives to meters. The Pajaro Valley Water Management Agency required all of the wells within their boundaries to be metered in 1993-95. They are now in the process of replacing most of the meters because of the high level of inaccuracy in the reporting---all at a very high cost to the landowners. The Board and the public must be fully informed prior to making your final decision.

Page 183, Domestic Water Requirements chart: This chart states that new wells are not allowed in areas that are located within a public water system. While not stated, it is clear that this includes no new wells for single-family homes on existing legal lots of records if they are located within a public water system area. **Is this your intent?** Individual landowners generally have overlying or riparian water rights.

The common law doctrine of riparian rights has been established in this State by decisions of the Courts and confirmed by the provisions of Section 3, Article XIV of the California Constitution. A riparian right exists by reason of ownership, with some exceptions and limitations. However, a riparian landowner has

the right to its correlative share in the reasonable and beneficial use of the water which passes his land. The riparian right is neither created by use nor lost by nonuse.

Owners whose lands overlie percolating groundwater have an overlying right. All property owners above a common aquifer possess a shared right to reasonable use of the groundwater aquifer. *Overlying rights*, which are paramount to other rights, are based on ownership and are analogous to riparian use rights--- their use must be reasonable and beneficial.

The GPU's statement that 'no new wells' are allowed seems to be a "taking" of that water right. Rather than encourage water rights adjudication, it would be in the County's best interest to develop criteria and standards by which a landowner shall be allowed to construct a well on their property, rather than to simply disallow it.

The Domestic Water Requirement Chart also states that all wells [if outside public water system service area] in "non-alluvial aquifers" require a 72-hour pump test or other Health Department requirements, and subject to CEQA. This means that all domestic wells on lands that overlie percolating groundwater will be subject to these requirements -- including a well for a single family home on an existing legal lot of record. **Is this your intent?**

Again, the burden of the CEQA process on an individual single-family dwelling is significant. The policy needs to be written to develop criteria and standards by which the CEQA process would apply to wells for single family dwellings --- i.e. in areas where there is the likelihood to create significant adverse environmental impacts. The cost of a 72-hour pump test to an individual well for a single-family dwelling is significant. What is the basis for requiring this in "all" areas? Is this needed in 'all' areas?

Goal PS-3 Domestic Water

There needs to be clarification if these policies apply to all wells for domestic water including the drilling of an individual well for a single family home on an existing legal lot of record -- or is a well for a single family home exempt from these policies?

Policy PS-3.1: Who will prepare the Comprehensive Integrated Water Management Plan? When will the plan be completed? Will there be public participation in the development of this plan? There is no distinction made as to which areas within the County, the 'County shall take a leadership role....to protect domestic water quality, allocate water usage and manage water resources to ensure that groundwater storage systems do not lose permanent capacity..."

On what basis will the County 'allocate water usage' and where within the County? On what basis and where within the County will the County determine that groundwater storage systems have lost 'permanent capacity'?

Policy PS-3.2: Does this policy apply to wells for a single-family home developed on an existing legal lot of record?

Demonstration of a Long-Term Water Supply Required for New Development

According to the definition of development in the GPU, the term 'new development' means the construction of a single well. Is this your intent? The following comments are based on the assumption that it is.

Policy PS-3.5: This policy requires that ‘all’ new residential lots created through subdivision within Rural Centers and Community Areas shall be served by existing public water systems or a new public water system-----and further states that a mutual water company shall not constitute public water systems. Mutual water companies can be very efficient, both in terms of operations and economics, particularly with regards to small subdivisions. The County needs to develop criteria and standards by which Mutual Water Companies may be allowed, rather than simply not allowing them.

Policy PS-3.9: In an effort to avoid confusion, it would be helpful if this policy stated that it refers only to those properties within the Monterey Peninsula Water Management District, if this is your intent-- rather than refer to Map PS-2B and leave the readers to figure it out on their own.

Policy PS-3.10 Well Testing and Design and Construction Criteria for Public Water Systems: By the GPU’s definition, a Public Water System includes “a system that supplies water to at least two, but not more than four service connections.” The definition further states that it “does not include two or more service connections, which supply dwelling units occupied by members of the same family, on one parcel. [local small water system]”

As read, a Public Water System could include a system that supplies water to at least two connections to supply dwelling units occupied by members of the same family on ‘*separate*’ but adjacent parcels. **Is this your intent?** The standards that need to be met for a public water system are very cumbersome and would be a significant cost to landowners who provide water to two connections on two separate parcels. It seems a mutual water company would be more applicable. We suggest that you work with the Monterey County Water Resources Agency to develop a more ‘user-friendly’ process for individual parcels and ‘local small water systems’.

Policy PS-3.12: This policy requires individual landowners, lessor’s or property managers of residential property to provide notice to “prospective purchasers or lessees of such property stating that the County does not guarantee that a long-term water supply will continue to be available to serve uses of the property. The notice required by this Policy shall be recorded.”

Does this notice extend to all areas in the County or specific areas? On what basis and in what specific areas, will such notice be required to be provided? Who will enforce this policy, and how will it be enforced? The purpose of this policy PS-3.12 is unclear.

Regulation of Groundwater

Policy PS-3.13: This policy states that the construction of a private well that will serve residential uses, including outdoor irrigation, shall require a permit from Division of Environmental Health. This is current policy. However, this policy further states that “such a permit shall be discretionary...” --- this is a significant change to existing policy and creates an increased burden to the individual who wants to install any well on their property [with the exception of ag production well (I believe this is correct, although not clearly stated)]. Generally well permits are ministerial in nature and the policy change to a “discretionary action” has the potential to take a property owner’s ability to exercise their overlying water right.

This policy also states that it would not apply to the replacement of an existing well that will operate at the same level of production. **How will the ‘same level of production’ be determined? By whom and on what basis?**

Policy PS-3.17 Annual Production Reports of Overdrafted Areas:

This policy requires the reporting of annual well production in all areas identified in the CIWMP as overdrafted. **The CIWMP has not been written and therefore NO overdrafted areas have been identified.** Nevertheless, this policy *could* apply to *all* wells, including agricultural wells as it does not specifically exempt them. The policy states, “All other wells in overdrafted areas [other than residential serving up to four connections] *shall* be required to install water meters and report metered annual production unless other plans and programs are in place to monitor water extractions.” **Is this your intent?**

The policy does not state what other plans or programs qualify, nor, again, does it specifically exempt Ag wells or state which areas are considered overdrafted. It is difficult to evaluate these policies without this information and it certainly will be impossible to provide adequate CEQA analysis.

Policy PS-5.3 Protection of Water Quality:

This policy states that ‘all land altering activities’ shall utilize pollution prevention measures and Best Management Practices to protect groundwater and surface water quality, and that all ‘development’ shall be compatible with adopted regional water quality protection plans.

“All land altering activities” could mean leveling an agricultural field, the drilling of a well, installation of an irrigation system and many other ag related ‘activities’. Is this your intent? Who will provide the oversight to this program and who will enforce it?

Definitions pertaining to ‘water’:

California American Water Company (CalAm): As we all know, a Company’s infrastructure is generally a work in progress and subject to change. The lengthy description of the Cal-Am’s infrastructure located in Monterey seems unnecessary. The definition should simply state: “Private purveyor of water and a subsidiary of American Water, serving the Monterey Peninsula area.”

Monterey Peninsula Water Management District (MPWMD): It is not necessary to state the legislative function of the District within a definition. It should suffice to state it is a separate water district located in the Monterey Peninsula whose purpose is to augment the water supply and manage the resource.

Overdraft: This definition does not state over what period of time and on what basis the actual overdraft is determined. **Is this consistent with the manner in which MCWRA defines overdraft?**

Proven Long-Term Water Supply: This definition includes a ‘definition’ of Safe Yield which is not consistent with the definition of Safe Yield located in your Definition section of the GPU. The inconsistency makes it confusing and difficult to understand what ‘safe yield’ really means.

Public Water System (Domestic Water Supplier): Includes ‘any water system with proven long-term water supplies’----**does this mean that ‘any’ public water system must provide proof of a long-term water supply?** Your definition of a Public Water System includes ‘local small water system’ that supplies water to at least two, but not more than four, service connections—this implies that a well that provides water service to at least two connections will be required to provide proof of a long-term water supply. **Is this your intent?**

Water Wait List: The last sentence in this definition states that “The list is maintained in the order the projects approved by the County.” **This is a change from existing policy. Currently the list is maintained in the order applications are received – not in order of approval. If your intent is to**

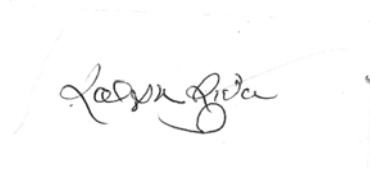
change current practice and policy, what will happen to those applicants on the current water wait list who have not receive approval? In fact, in some instances, the County will not issue approval until water is available----and the continuous circle with no end begins.

Please know that the above comments do not address all of the policies that affect water. To address all of our concerns would be overwhelming. As with many of the policies within the General Plan Update, we believe the policies pertaining to water overextend the County's authority and it appears that the Monterey County Water Resources Agency has had very little, if any, input into the development of these policies.

We believe the GPU rewrite if adopted in its current form, will put policies into effect that will affect a 'taking' of individual water rights and could force an adjudication of those rights. This would be a very costly and time-consuming process for all.

We encourage you to work with Monterey County Water Resources Agency and the public to resolve many of these issues. We ask for your careful consideration of our concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ralph Riva", enclosed in a rectangular box.

Ralph Riva, Chair
Salinas Valley Water Coalition

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