

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
105 East Anapamu Street, Room 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Agenda Number:**  
**Prepared on:** 10/27/04  
**Department Name:** P&D  
**Department No.:** 053  
**Agenda Date:** 11/9/04  
**Placement:** Departmental  
**Estimate Time:** 1.5 hours  
**Continued Item:** NO  
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**TO:** Board of Supervisors

**FROM:** Valentin Alexeeff, Director  
Planning & Development

Alan Seltzer, Chief Deputy  
County Counsel

**STAFF CONTACTS:** Brian R. Baca, Engineering Geologist  
Planning and Development, 568-2004

**SUBJECT:** Hearing to discuss Orcutt Community Plan Policy WAT-O-2 and status of Santa Maria Groundwater Basin litigation.

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## **Recommendation:**

That the Board of Supervisors receive a report on the status of the ongoing Santa Maria Groundwater Basin litigation as it relates to implementation of Orcutt Community Plan Policy WAT-O-2.

## **Alignment with Board Strategic Plan:**

The recommendation is primarily aligned with Goal No. 1, *An Efficient Government Able to Respond Effectively to the Needs of the Community*, and is required by law or routine business necessity.

## **Executive Summary and Discussion:**

### Background:

The Orcutt Community Plan (OCP) was adopted by the Board of Supervisors in July of 1997. Based on information available at that time that the Santa Maria Groundwater Basin was in a state of overdraft at an estimated 20,000 acre-feet per year (AFY), Policy WAT-O-2 was adopted as part of the OCP. This policy

requires the use of supplemental water supplies to support new development projects in order to prevent further overdraft of the groundwater basin. The policy, as amended in 2001, reads as follows:

***Policy WAT-O-2: In order to be found consistent with Land Use Development Policy No. 4 (LUDP#4), the water demand of new discretionary development must be offset by long-term\* supplemental\*\* water supplies that do not result in further overdraft of the local groundwater basin and that are adequate to meet the project's net water demand as determined by the County considering appropriate reliability factors as determined by County Water Agency. To demonstrate an adequate long-term supplemental water supply, projects must comply with the following development standards:***

\* "long-term" means permanent source of water for development.

\*\* "supplemental" water means a source of water other than groundwater, unless: 1. the groundwater basin has been determined to be no longer in overdraft, or 2. The use of groundwater is consistent with the final water rights judgment entered in the Santa Maria Groundwater Basin adjudication (Santa Maria Valley Water Conservation District v. City of Santa Maria, et al., Santa Clara County Superior Court Case No. CV 770214).

Until the Board of Supervisors finds that the basin is no longer in overdraft or a final judgment is entered in the Santa Maria Groundwater Basin adjudication, supplemental water supplies would be required to support new development in the Orcutt planning area.

#### Update on the Santa Maria Groundwater Basin Litigation:

The Santa Maria Groundwater Basin Litigation was filed by the SMWCD and, as a result of numerous cross-claims, it has become the forum in which adjudication of basin water rights and water management plans are likely to be determined. The Santa Clara County Superior Court, the Hon. Jack Komar presiding, has filed a partial statement of decision in Phase III of this water rights lawsuit, concluding based on the evidence presented that the Santa Maria Groundwater Basin is "not presently and has not historically been in a state of hydrologic overdraft." Although this Phase III partial statement of decision does not represent a final water rights judgment entered by the court, it has raised questions by landowners regarding the requirement of Policy WAT-O-2 that supplemental water supplies serve new development.

In the Phase III Statement of Decision, although the Court held that the basin was not in overdraft, Judge Komar recognized that future extractions from the Basin may exceed safe yield. Therefore, he stated that safe yield had to be calculated in order to fashion relief in subsequent phases of the litigation. On August 10, 2004, the Court held a hearing at which it was anticipated that he would appoint referees to make findings of fact on the quantitative components of recharge and discharge from which the determination of safe yield would be made. At that hearing, Judge Komar made clear that his Phase III statement of decision regarding the finding that the basin is not in overdraft remains subject to modification. Staff has been provided a portion of the transcript in which Judge Komar stated with respect to the process of determining safe yield:

"And in the process of doing that I suppose anything is possible. But it's very possible that a determination of safe yield is going to tell us that as of the date that the determination is made that the basin is in overdraft. That could happen. If that happens the court does have jurisdiction to then make appropriate determinations of the priorities of the right to use both native and non-native water."

At the August 10, 2004 hearing, the Court did not appoint the referees. Instead, Judge Komar vacated the Phase 4 trial, at which the Court anticipated determining priority rights to non-native or supplemental water supplies (e.g. State water, Twitchell and Lopez supplies), and ordered the parties to appear for a settlement conference that he personally supervised from October 5-8, 2004. The parties continued settlement discussions on October 12-13, 2004, and again on October 25-26, 2004. Another settlement conference is scheduled for November 10, 2004, at which the Court has requested the attendance of all principals.

Staff is in contact with representatives of water agencies within the County that are participating in the settlement discussions and will report on information that becomes available prior to the November 9, 2004 hearing. To date, those representatives have suggested that the County take no action that would interfere with the settlement discussion. It is anticipated that representatives of some of the parties to the litigation will provide testimony before your Board on the settlement efforts.

Status of Pending Projects:

The California Cities Water Company purchased an entitlement to the State Water Project (SWP) of 500 AFY. Based upon the California Department of Water Resources analysis of the reliability of SWP supplies, this 500 AFY of entitlement provides an estimated long-term average annual yield of 413 AFY. This supply has been fully allocated to a series of development projects as indicated in the chart below.

**CURRENT WATER SUPPLY STATUS  
 OCP Development Projects**

<b>Project Name</b>	<b>Permit Status</b>	<b>Water Demand (AFY)</b>	<b>Cal Cities SWP Allocation<sup>1</sup> (AFY)</b>	<b>Remaining demand (Supp. Water requirement) (AFY)</b>	<b>Supp. Supply obtained (Y/N)</b>
<b><i>Projects with adequate water supply:</i></b>					
Oak Knolls South	Approved	4.10	4.10	--	--
Mesa Verde	Approved	45.80	33.00	12.80	Y <sup>2</sup>
Orthodox Church	Approved	1.60	1.60	--	--
Jensen's Crossing	Approved	58.52	--	58.52	Y <sup>2</sup>
Fundamental Baptist	Approved	0.60	0.60	--	--
Shared Senior Housing	Approved	4.52	--	4.52	Y <sup>2</sup>
Eskridge TPM	Approved	0.98	--	0.98	Y <sup>2</sup>
Rice Ranch	Approved	350.0	350.0	--	--
Orcutt Marketplace	Pending	Under Review	37.00	?	?
<b>Total:</b>			<b>426.30</b>		
<b><i>Projects without adequate water supply:</i></b>					
Harp Springs	Approved	26.48	--	26.48	N
Orcutt Plaza	Approved	19.74	--	19.74	N
Stonegate	Approved	10.50	--	10.50	N
Old Mill	Approved	30.08	--	30.08	N
<b>Total:</b>				<b>86.80 AFY</b>	

<sup>1</sup> The Cal Cities SWP yield is currently estimated by the California DWR to be 413 AFY. It was previously estimated to be 437 AFY. The 426.30 AFY of SWP supply sold by Cal Cities was based on the original 437 AFY yield estimate. The resulting 13.30 AFY deficit (426.30 – 413 = 13.30 AFY) is distributed over several projects and is considered to be within the range of error on the estimated water demand of these projects.

<sup>2</sup> The applicants purchased supplemental supplies (SWP yield) from the City of Santa Maria.

As indicated above, four projects approved by the County have not yet secured supplemental water supplies as required under OCP Policy WAT-O-2. These projects cannot be constructed until such supplies are obtained.

#### Options for the Implementation of OCP Policy WAT-O-2:

The staff report prepared for your Board's September 28, 2004 hearing listed the following options for Board direction to staff on the implementation of Policy WAT-O-2.

1. **No change in WAT-O-2 Implementation at this time:** Direct staff to report back to the Board upon entry of a final water rights judgment in the Santa Maria Groundwater Basin adjudication.
2. **Consider whether the Basin is no longer in overdraft pursuant to WAT-O-2:** Direct staff to notice a hearing at which the Board would consider evidence regarding the status of the Santa Maria Groundwater Basin. Upon review of this evidence, your Board may determine that the basin is no longer in overdraft for purposes of OCP Policy WAT-O-2.
3. **Consider whether to initiate an amendment to Policy WAT-O-2:** Direct Staff to initiate amendments to OCP Policy WAT-O-2 that would allow approval of new development projects supported by increased groundwater extractions up to a fixed annual limit in new water demand in acre-feet per year (AFY).

Given recent intense efforts to reach a settlement in the basin litigation, staff recommends that your Board await the conclusion of the current series of settlement meetings between the parties before providing direction to staff on WAT-O-2 implementation.

**Mandates and Service Levels:** Providing direction to staff regarding policy interpretation or potential amendment of a community plan policy is a legislative act under the jurisdiction of the Board of Supervisors.

**Fiscal and Facilities Impacts:** The minimal staff time required to date is funded by the Community Plan Program on Page D-286 of the adopted 04/05 FY Budget.

**Special Instructions:** Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, attn: Hearing Support, Cintia Mendoza.

**Concurrence:** County Counsel