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THOMAS S. VIRSIK

June 29, 2015

Via email to:

"Comment Letter: Conservation Pricing" at commentletters@waterboards.ca.gov

Dear Chair Marcus:

This comment letter is submitted in response to the questions posed in the June 10, 2015 Notice regarding the State Water Resources Control Board's (SWRCB) approach to and assistance with the fiscally limiting aspects of Proposition 218 and other fiscal constraints on public water suppliers during the drought. This comment letter presumes a certain familiarity with the terminology of Proposition 218.

These comments are based on the following experiences:

- a. Active participation in the Proposition 218 process in different parts of the State (Proposition 218)
- b. Active participation in the garbage industry (Garbage Industry)
- c. Active participation in Annexations by Water Agency (Annexations)
- d. Development of new Technology for the water industry (Technology)
- e. Controlling water efficiency through Pricing (Water Pricing)

Proposition 218

The Proposition 218 process should be considered a tool that the (local) government can use to educate the public on the need for a public water project. It should not be considered a win/lose situation by the government entity proposing the action, much less a "battle" to be waged "against" anyone. The government should work hard to gain consensus and to achieve overwhelming support from the water users. In its first Proposition 218 "section 4" landowner vote, the Monterey County Water Resources Agency's failed to obtain sufficient support for its water project. The second time, however, the water project obtained support reflecting 85% of the landowners' assessed land value. When the public is presented with reasonable water projects, it will vote in favor of the project. The public is not stupid.

It is of no value to the affected community when a public agency "wins" a Proposition 218 vote but alienates the public and prevents any future solutions. See e.g., Morgan v.

Imperial Irrigation District (2014) 223 Cal.App.4th 892 (section six process in which farming interests using over 90% of the water “outvoted” by non-farming interests included in “voting pool” by the water agency)(counsel for plaintiff). The water agency could have obtained the increase it wanted by working with the interests that were most affected, instead of crafting a “voting” process that reduced their ability to influence the outcome. The water agency poisoned its good will, when it had the opportunity to advance it instead. See also below at In re Quantification Settlement Cases for criticism of same water agency’s approach to other water management issue.

There is a fundamental problem with “section 6” (quantity charges) v. “section 4” (assessments) processes. The section 6 process is popular with water agencies because the water agency does not have to disclose the “voters” and it is difficult to politically fight the rate increase. Section 4 elections are perceived as more difficult for the water agencies to win because the landowners’ vote weight is based on benefit, the identities of the landowner are available to the public, and thereby opponents can run a campaign against the proposed assessment. The limitation of a section 6 process is that major water users are denied control over the government expenditure for which they may receive the principal benefits and incur the principal cost. We submit that the using a section 4 process is better in the long run because the benefits are tied to the major users of the water, who will be motivated to support a project based on optimizing water (and hence their own benefits).

Garbage Industry

Almost twenty years ago because of landfill issues, the State Government modified the public’s behavior around the waste stream. In most places now the homeowner and businesses separate their waste steam (e.g., separate landfill, recycling, and compostable collection and streams) and this has had an impact on the need for landfills. Better management of the waste stream occurred due to the long-term education of the public for the need to behave differently with waste. Any discussion of how to respond to the drought should recognize that the public is not stupid and will choose to change its behaviors when it is properly educated.

Annexations

We have been involved with annexations by major Water Districts over the years. It has always been fascinating to see the Districts much more interested in selling water and obtaining connection fees than working with the developer to develop plans that would reduce the amount of water any new project would need. There is an inherent motivation to not optimize water use because greater use is perceived to be in the economic interest of the water purveyor.

Technology

We discussed in detail and provided examples in our comment letters dated October 14, 2014 (see pages 5 et seq) and February 12, 2015 (entire letter) of water agencies’

rejections of innovative and technology based approaches. The comment letters were – as here -- in response to Notices by the SWRCB seeking input about matters of substantial public concern.

In Monterey County we are finding that the vineyard industry and certain segments of the row crop industry are adopting technology to improve their optimization of water. Responsible farmers are interested in improving the quality of their production and the government should not get in the way of this process. See “Why California Farmers Are Conflicted About Using less Water” May 11, 2015 (NPR), attached. Monterey County and its Water Resources Agency have encouraged such innovation, including projects in which a variety of government and other entities cooperate (such as regional water recycling project for agricultural use).

In contrast, in a recent published opinion, Justice Robie criticized a certain segment of government involved in an important public water controversy, chiding them for wasting the “public fisc” for the past decade or more, strongly implying that the “time and money wasted” could have been better spent on solving the actual challenges – specifically the Salton Sea.

After nearly 12 years of legal fisticuffs—at trial and on appeal in both state and federal court []—the Imperial County agencies have apparently decided that cooperation will serve better than contention to address the continuing deterioration of the Salton Sea, which faces a sharp decrease in water inflow two years from now under the terms of the Quantification Settlement Agreement. . . . In the decade and more that has passed since the Quantification Settlement Agreement was finalized in 2003, it is likely that untold millions of dollars have been poured into litigation that has now come to naught. . . . Still, lamenting the time and money wasted will not turn back the clock or refill the public coffers, so we take what small comfort we can in the fact that this belated settlement did not come even later, when yet more time and more money would have been irretrievably lost.

In re Quantification Settlement Cases (2015) 237 Cal.App.4th 72. We applaud Justice Robie and sincerely hope for the good of the public and the State that the water industry has learned its lesson and ceases its Luddite-like behavior.

Water Pricing

We have serious reservations about using money to control water conservation. There are three issues of particular concern:

1. There is an assumption that conservation is created or facilitated with the installation of water meters. We are not sure this is true with the smaller domestic

water user. It may be a better use of capital and maintenance resources to use the funds spent on metering to build grey water systems and educate the public. See above at Garbage Industry.

2. The revenue stream for the water purveyor has to be tied to an availability or other benefit rate -- the operation of the water purveyor cannot be dependent on selling more water. A fiscal incentive to sell more water is the absolutely wrong signal in our time.

3. The entire concept of rewarding a historically inefficient water user because he or she has chosen not to optimize the water resources is inconsistent with the Constitutional provision on reasonable and beneficial use of water.¹ Cal. Const., art. X, § 2; see also June 5, 2015 letter to Chief Justice Tani G. Cantil-Sakauye by Deputy Attorney General William Jenkins at pages 5 – 7 (“Even uses of water that are ‘beneficial’ under some circumstances may become wasteful and unreasonable when those circumstances change.”)

Conclusion

Although this comment letter does not respond to the specific three questions as phrased in the Notice, we hope the experience and observations provided will assist the SWRCB nonetheless. Thank you for the opportunity to comment on a matter of public concern.

Sincerely,

/s/ Patrick J. Maloney

Patrick J. Maloney

Encl.

NPR 5-11-15 article: “Why California Farmers Are Conflicted About Using Less Water”

¹ Water transfers have their place in the optimization of water resources, but not those that rewards a transferor’s choice to engage in less than optimal water management.



Why California Farmers Are Conflicted About Using Less Water

MAY 11, 2015 4:42 PM ET

AARTI SHAHANI



Farmers lay drip tape into a lettuce field in California's Salinas Valley.

Aarti Shahani/NPR

The drought across much of the Western U.S. is now in its fourth year. In California — where it's the most intense — farms are [not under the same strict orders to conserve](#) as cities are.

And inside the agriculture industry, farmers are quietly debating how best to respond to the drought. Given uncertainty around pending state regulations, some say there may be an incentive to not invest in water-saving technologies right now.

In the world of water conservation, there are a few no-brainer solutions. Take drip irrigation.

In the Salinas Valley — known as the Salad Bowl of the World — a big green, creaky tractor rolls over the acres of empty fields. It's not planting seeds. It's laying down a long thin rubber tube — called drip tape.

Michael Antle, farm manager with [Tanimura & Antle](#), points to the levers that pull the tape, like a sewing machine pulls thread from a wheel, and inject it into the ground. "The weight of the soil on top of the tape holds it in," he explains.

Drip irrigation is not new tech; it's just tried and true tech. The co-founder of Antle's grandfather's farm, George Tanimura, introduced this method for lettuce decades ago. (The drip method was used as far back as [1st century B.C. China](#).)



Tanimura & Antle workers use tractors to install drip tape into fields that will be used to grow lettuce and other crops in California's Salinas Valley.

Aarti Shahani/NPR

The tape has little slits. Turn on the faucet and water seeps out, gradually, close to the seeds. It's the farmer's version of a low-flow toilet — and a nice way to save water in windy Salinas Valley.

Scott Rossi, another manager here, says regular sprinklers are constantly missing their mark in this wind. "It's blowing pretty good, I'd say 12 miles an hour," he says. "We're pretty much slaves to the weather."

Drill Versus Drip

Tanimura & Antle uses drip in nearly all its fields. But about 40 percent of farmland in Salinas doesn't do any drip irrigation at all, according to the Monterey County Farm Bureau. And a [recent statewide survey](#) found that farmland using drip (and another water-conserving technique called micro-irrigation) increased by just 5 percent in the decade ended in 2010.

Rossi says many farmers have decided to drill instead of drip — to go deeper into their wells, even if it hurts the overall supply of groundwater — because in the short term it's cheaper. That bugs him.

"You're saving, and then your neighbor's well next door to you is pumping and there's the sprinkler again," Rossi says. "But they'll follow suit here soon or they're gonna have to follow suit soon."

Incentive To Not Conserve

What farms will have to do is actually a matter of huge debate — and some say there is an incentive to not conserve.

As part of the implementation of California's 2014 Sustainable Groundwater Management Act, new agencies are being formed across California to set baselines. Norm Groot, director of the [Monterey County Farm Bureau](#), says many farmers fear if they take less groundwater now, the baselines set for them will be smaller.

"It is very much a tricky situation," he says. "You're asking people to conserve. And then you're establishing a further number that they have to conserve. And that's where the pain starts, is that they do the easy parts first, and then they don't get credit for that later on."

It's that economics problem, game theory. In a zero-sum game, where there's only so much to go around, you don't want to lose your piece of the pie.

Groot adds that farms have already taken steps to conserve, investing in drip irrigation where it's practicable for the crops being grown, installing soil moisture sensors, and even using weather station data to determine when a plant is most receptive to watering.

While giant farms like Tanimura & Antle can afford to lose a crop because of reduced water supplies, Groot says the small, family-owned farms will shut down. So they're fighting for survival. "What choice do they have but to say, 'No, don't take my water, because it takes water to grow my crops'?"

A Bigger Pie?

Local optimists say one choice is to make the pie bigger.

At a water recycling plant in Monterey County, Gary Petersen, the head of public works for the city of Salinas, explains how sewer water is purified into a source that isn't quite potable, but can be used for crops.

Last year, his team realized it could take the water used to wash lettuce in the factories — hundreds of millions of gallons — and divert it here, to be recycled. Otherwise, it was just going into a pool that evaporated.

Petersen says while water from the operation can't feed an entire valley, it matters because the farmers, who often work on their own, joined hands to make it happen.

"What we're seeing, especially with the continued drought, is that if we don't get together on this, there's going to be some really big losers," he says.