



# Santa Clara Valley Water District

**File No.:** 22-0600

**Agenda Date:** 5/24/2022

**Item No.:** 2.10.

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## SUPPLEMENTAL BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Public Hearing - Consider Adoption of an Ordinance to Enforce Valley Water's Mandatory Water Use Restrictions.

### **REASON FOR SUPPLEMENTAL MEMORANDUM:**

This report conveys additional information received after the initial report was released, consistent with Executive Limitations Policy EL-7-10-5.

### **RECOMMENDATION:**

- A. Conduct a Public Hearing to allow members of the public to provide comments on the need to consider adoption of an Ordinance to enforce Valley Water's mandatory water use restrictions;
- B. Close the Public Hearing; and
- \*C. Discuss, make a finding, and adopt the Ordinance ADOPTING DROUGHT OUTDOOR WATER CONSERVATION AND ENFORCEMENT MEASURES as recommended by the Water Conservation and Demand Management Committee on May 19, 2022.

### **SUMMARY:**

Due to the record drought, historically low imported water allocations from the State Water Project (SWP) and Central Valley Project (CVP), and little progress towards meeting the Santa Clara Valley Water District (Valley Water) June 2021 call for 15 percent conservation compared to 2019, additional action is needed to ensure sufficient water supply for in Santa Clara County (County). The proposed Ordinance (Attachment 1) would allow Valley Water to enforce restrictions that limit outdoor irrigation of ornamental landscapes consistent with Board Resolution 22-20, amending Valley Water Resolution 21-68, to help increase countywide water savings. On May 19, 2022, Valley Water's Water Conservation and Demand Management Committee unanimously approved recommending that the Board consider adopting the Ordinance "Adopting Drought Outdoor Water Conservation and Enforcement Measures."

### **Drought Conditions Impacting Santa Clara County**

The County is in its third consecutive year of drought. The first three months of Calendar Year 2022 were the driest on record for Santa Clara County, and Valley Water's Federal and State imported

water allocations have been reduced to historic lows. The Valley Water Board (Board) took early action in 2021 and declared a Water Shortage Emergency Condition on June 9 of that year. Valley Water implemented aggressive steps to reduce demands by 15 percent compared to 2019 levels, including doubling its water-efficient landscape rebate rate, reducing scheduled water deliveries under its treated water contract, and undertaking extensive public outreach. Despite unprecedented participation in Valley Water's conservation programs and some early progress in achieving the 15 percent reduction, due to the exceptionally dry conditions, no savings were achieved in 2022, and March 2022 actually saw an increase in water use of 30% compared to 2019. Compared to the Governor's baseline of 2020, the county saw an increase of 5% in March 2022 compared to March 2020.

In addition to low reservoir storage and imported water allocations due to persistent drought, Valley Water is impacted by the unavailability of Anderson Reservoir as a surface water storage facility for the duration of the Anderson Dam Seismic Retrofit Project (Anderson Project), which is expected to last 10 years. Anderson Reservoir, which was ordered drained by the Federal Energy Regulatory Commission due to seismic concerns, is Valley Water's largest surface water reservoir and holds approximately 89,278 acre-feet (AF) of water, more than all of Valley Water's other nine surface water reservoirs combined. Further, the storage of water in Coyote Reservoir, Valley Water's second largest reservoir, is limited because of California Department of Water Resources Division of Safety of Dams storage limits. The unavailability of Anderson Reservoir and limited storage availability of Coyote Reservoir due to regulatory restrictions significantly constrains Valley Water's ability to store water locally for groundwater recharge and use at Valley Water's three water treatment plants, and to buffer and mitigate against current and future water shortages.

### **Findings of Necessity**

Findings to support adoption of the Ordinance, include, but are not limited to, the following:

- (a) Per the Water Supply Master Plan and Ends Policies, it is in the interest of Valley Water and the community to reduce the severity and occurrences of water shortages through water use reduction measures so that available water supplies can meet at least 80 percent of average annual demand in drought years.
- (b) Due to persistent statewide drought, on January 4, 2022, the State Water Resources Control Board adopted an emergency regulation by Resolution No. 2022-0002, which contains restrictions to prevent the wasteful and unreasonable use of water, promote water conservation, and sets forth monetary penalties for its violation. In addition, Governor Newsom has issued an Executive Order calling on Urban Water Suppliers to pursue at least Stage 2 actions of their Water Shortage Contingency Plans. Valley Water is proactively pursuing Stage 3 actions beginning in June 2021.
- (c) The County is in its third year of drought. The first three months of Calendar Year 2022 were the driest on record for the County, and Valley Water's Federal and State imported water allocations have been reduced to historic lows.
- (d) Valley Water's local water supplies are exceptionally low due to persistent drought. Valley Water's largest reservoir, Anderson Reservoir, is not available as a surface water storage facility for the duration of the 10-year Anderson Dam Seismic Retrofit Project required by the

Federal Energy Regulatory Commission.

- (e) Storage availability of Valley Water's second largest reservoir, Coyote Reservoir, is limited due to regulatory restrictions.
- (f) The Board seeks to conserve Valley Water's limited water supply for the greatest public benefit with particular regard to public health, fire protection, and domestic use without threatening local land subsidence, by ensuring the conservation of water, by avoiding the waste of water, and to the extent necessary and by reason of the existing water shortage emergency condition, by reducing water use in the County in a manner that is fair and equitable.
- (g) Despite aggressive steps to reduce demands by 15 percent compared to 2019 and unprecedented participation in water conservation programs, water use in the County is significantly higher in the early part of 2022 than 2019 due to dry conditions and resulting outdoor watering.
- (h) The Board of Directors determines that this conservation program is a fundamental and necessary step in its on-going efforts to reduce overall water use countywide, especially discretionary spring and summer water use for irrigation.
- (i) Half of home water use may be for irrigation and excess irrigation is a typical form of water waste. The water conservation and enforcement measures required by the proposed Ordinance are focused on limiting outdoor watering of ornamental landscapes, which is necessary to conserve additional water for beneficial use and to preserve Valley Water's limited water supply.
- (j) Given typical significant increases in outdoor irrigation, particularly during spring and summer months, it is reasonable and necessary to expand Valley Water's outdoor conservation efforts.
- (k) The District Act provides authority to implement the ordinance. It states that Valley Water may "do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district."
- (l) In addition, Article X Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use to the fullest extent of which they are capable and that the waste, unreasonable use or unreasonable method of use of water be prevented, and that conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare. What constitutes reasonable use is dependent on exigent circumstances, and may change during periods of drought.
- (m) Water Code Section 350 et seq. requires the distributor of a public water supply to declare that a water shortage emergency condition exists "whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply needed for human consumption, sanitation, and fire protection." Upon making such a declaration, the water supplier is authorized to adopt such regulations and restrictions as will, in its sound discretion, "conserve the water supply for the greatest public benefit with

particular regard to domestic use, sanitation, and fire protection.”

- (n) California Water Code section 375 et seq. provides public water retailers and wholesalers, including Valley Water, with authority to adopt and enforce a water conservation program to reduce water consumption and conserve water supplies. Public water retailers and wholesalers may impose civil and criminal penalties for violating the requirements of such programs and/or may enforce water-use limitations.

In summary, with half of home water use typically used outdoors, enforcement measures focused outdoor irrigation of ornamental landscapes is necessary to preserve Valley Water’s limited water supply. The ordinance is needed as soon as possible, because outdoor water use tends to increase in the summer months and no savings were achieved during the first three months of 2022.

### **Ordinance Overview**

Valley Water worked with water retailers in the County to ensure that the enforcement program is complementary to their existing enforcement programs and builds on Valley Water’s existing complaint-based water waste reporting program. The Water Conservation and Demand Management Committee discussed the Ordinance’s concepts at its May 19, 2022 meeting. The Ordinance provides a framework for an enforcement program of outdoor water waste restrictions related to irrigation of ornamental landscapes during times the Board calls for mandatory water use reductions. Specific restrictions enforced by this Ordinance include:

- Restricting watering of lawn and ornamental landscape to two days per week
- Prohibiting runoff and mid-day watering
- Prohibiting watering within 48 hours of rain

The Ordinance includes procedures for escalating enforcement actions, working with water retailers to coordinate enforcement, and increasing financial penalties up to \$10,000 per violation in extraordinary circumstances. The adoption and enforcement of the restrictions specified in the Ordinance are necessary to manage and conserve Valley Water’s limited water supply and ensure the sustainability and reliability of the same by preventing water waste.

The Chief Executive Officer (CEO) will establish procedures to ensure a fair and equitable enforcement process, including a hearing process that provides violators an opportunity to contest fines. If the Ordinance is adopted by the Board, enforcement will be added as a category in the monthly drought report and will be reviewed as needed with the Water Conservation and Demand Management Committee and Board of Directors during monthly drought updates. In addition, enforcement coordination and procedures for working with retailers will be established.

The Ordinance will become effective on June 1, 2022 if adopted by the Board.

### **Water Shortage Risk to Valley Water**

The primary trigger for Valley Water’s Water Shortage Contingency Plan is the projected countywide end-of-year groundwater storage. The water supply outlook depends on various factors, such as future drought severity, availability of imported water supplies and emergency transfers, as well as whether the 15 percent demand reduction is met. This year’s end-of-year groundwater storage may

be in the alert level (Stage 2) if Valley Water does not achieve water savings. If critically dry conditions persist, next year's end of year groundwater storage may drop rapidly and significantly to the severe (Stage 3) level. At this level, there is risk of resumed irreversible subsidence in North County, and dry wells, particularly in South County where groundwater is the only drinking water source.

Given the alarming increasing trend in water use in the first three months of 2022, enforcement of water use restrictions is needed as an additional tool to increase water savings.

### **Valley Water's Drought Response**

Valley Water has invested in a resilient water supply system to increase our water supply portfolio and ensure operational flexibility and has also increased water conservation. Per the Board's policy, Valley Water will deliver 80 percent of normal water demand during drought years. Despite implementing an aggressive drought response program, which has included a doubling of the landscape rebate, development of the new E-cart conservation program, and increased outreach and education, the unprecedented dry conditions are resulting in substantial outdoor irrigation of ornamental landscapes in the County. Therefore, due to the severity of the current drought, Valley Water, is recommending implementing the Ordinance to protect limited water supplies.

### **ENVIRONMENTAL JUSTICE IMPACT:**

Valley Water acknowledges that disadvantaged communities are disproportionately impacted by the effects of drought. To address these impacts, Valley Water promotes access to equitable and affordable water supplies (Water Supply Goal 2.6). Valley Water offers the Lawn Busters program to provide water-efficient landscapes to low-income, elderly, disabled or veteran homeowners and schools within disadvantaged communities. Valley Water currently provides the Low-Income Residential Water Rate Assistance Program to help low-income households impacted by the COVID-19 pandemic pay their water bills. To enable meaningful engagement in the decision-making process, Valley Water provides drought and conservation information in multiple languages, answers questions, and accepts feedback through Valley Water's BeHeard webpage, conservation and drought webpages, Speakers Bureau presentations, media outreach, public outreach presentations, hotlines, and email.

### **FINANCIAL IMPACT:**

The implementation of a new water use reduction enforcement plan may require additional funding for which a budget adjustment will be brought to the Board for approval.

### **CEQA:**

The recommended action is exempt from the requirements of the California Environmental Quality Act (CEQA). The proposed water conservation and enforcement measures (Proposed Actions) are being adopted in accordance with Valley Water Resolution 22-20, amending Valley Water Resolution 21-68, to address a water shortage emergency condition in Valley Water's service area. Accordingly,

the Proposed Actions are intended to conserve scarce water supplies to ensure that near-term human health and safety needs can be met. Furthermore, the Proposed Actions are necessary to prevent or mitigate an immediate emergency and are not subject to the California Environmental Quality Act (CEQA) in accordance with Section 21080(b)(4) of the Public Resources Code and Section 15269(c) of the State CEQA Guidelines. In addition, the Proposed Actions are being taken in accordance with Executive Order N-7-22 issued by Governor Newsom on March 28, 2022, which directs that all specific actions be taken in response to the extreme drought conditions in California. Lastly, as the Proposed Actions would be enacted in accordance with Stage 3 of Valley Water's Water Shortage Contingency Plan (WSCP), the Proposed Actions would be statutorily exempt per Water Code Section 10652, which exempts implementation of actions listed in and taken pursuant to an agency's WSCP.

**ATTACHMENTS:**

Attachment 1: Ordinance  
Attachment 2: PowerPoint

**UNCLASSIFIED MANAGER:**

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