



Santa Clara Valley Water District

File No.: 18-0516

Agenda Date: 8/14/2018

Item No.: 5.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Cannabis Cultivation and Water Charges (Responding to Board Member Request R-18-0011).

RECOMMENDATION:

Receive information on cannabis cultivation and water charges.

SUMMARY:

This memorandum is in response to Board Member Request R-18-0011 from the April 24, 2018 Board meeting. The Board requested that staff look into whether the District could charge an “excessive use” charge for water used to grow cannabis, with the revenue going toward the Open Space Credit. Staff reviewed the District Act regarding water charges and state and local laws regarding cannabis cultivation. Based on that review, staff does not believe the District can impose a separate “excessive use” charge on water used to grow cannabis.

District Act Section 26.7.(a)(3)(A) requires that the groundwater “charge shall be computed at a fixed and uniform rate or rates per acre-foot for agricultural water, and at a fixed and uniform rate or rates per acre-foot for all water other than agricultural water.” Different rates can be charged in different zones, but the charge for agricultural water or non-agricultural water within a zone needs to be fixed and uniform. In other words, under the District Act, the District must charge the same rate regardless of crop, in the case of agricultural use, or business, in the case of non-agricultural use.

The Sustainable Groundwater Management Act (SGMA) generally provides greater latitude than the District Act to impose fees to fund groundwater management activities. However, even under SGMA, the imposition of fees on a particular water user type would likely be problematic. The District would need to demonstrate a specific unique impact attributable to that water use. Furthermore, the District’s SGMA implementation framework calls for working with groundwater users on a voluntary basis to implement action plans to address specific problems, to the extent possible.

The District should continue to partner with and support local and state agencies on efforts to protect the quality and quantity of our water resources through water use efficiency, water quality protection, and stream stewardship. The State Water Resources Control Board (State Water Board) has developed a Cannabis Cultivation Policy and associated permits to protect water quality and beneficial uses of water. The California Department of Food and Agriculture (CDFA) is responsible for licensing the cultivation of cannabis and does so through the CalCannabis regulatory program.

There are 35 active cultivation licenses for Santa Clara County, all of which are in the City of San Jose. The City of San Jose Municipal Code explicitly requires that “all water used in the cultivation of cannabis shall be legally obtained and shall be applied in accordance with state and local laws.”

The District should also continue to partner with growers, including cannabis growers, to maximize water use efficiency. This helps manage agricultural water use and minimize increases to the Open Space Credit.

FINANCIAL IMPACT:

There is no financial impact associated with discussing this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

Garth Hall, 408-630-2750