



Santa Clara Valley Water District

File No.: 17-0106

Agenda Date: 3/14/2017

Item No.: 7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Position on State Legislation: SB 492 (Beall) Upper Guadalupe and Los Gatos Creek Watersheds.

RECOMMENDATION:

Adopt a position of "Support" on: SB 492 (Beall) Upper Guadalupe and Los Gatos Creek Watersheds.

SUMMARY:

SB 492 (Beall) Upper Guadalupe and Los Gatos Creek Watersheds (I-02/16/17)

Position Recommendation: Support

Priority Recommendation: 2

The Upper Guadalupe and Los Gatos Creek watersheds are located in the Santa Cruz Mountains. The Midpeninsula Regional Open Space District (MROSD) owns and manages over 20,000 acres of public land within these watersheds. Adjacent to these public lands are 96 parcels totaling almost 6,500 acres that are owned by the San Jose Water Company. MROSD would like to acquire these parcels for wildlife conservation, open space, and public access. SB 492 would authorize the San Jose Water Company to sell the 96 parcels to MROSD and would require the water company to invest the net proceeds from the sale in water system infrastructure, plant, facilities, and properties that are necessary or useful in the performance of its public duties, as determined by the California Public Utilities Commission.

In 2008, the Association of Bay Area Governments (ABAG) designated a portion of the described lands as a Priority Conservation Area, and in 2013 this and other Priority Conservation Areas were incorporated into Plan Bay Area, a regional, long-range transportation, land use, and housing plan adopted by ABAG and the Metropolitan Transportation Commission. The Upper Guadalupe and Los Gatos Creek watersheds provide habitat for several species that are listed as threatened or endangered, including the bay checkerspot butterfly and the California red-legged frog. Serpentine derived soils in the area are inhospitable to invasive plant species and support a diversity of native plants adapted to the environment, such as a unique chaparral/shrubland series and other rare plant species. The lands also serve as a natural wildlife corridor connecting the Peninsula to lands further inland and are traversed by mountain lions and other species.

SB 492 makes findings and declares that the sale of private lands owned by the San Jose Water Company in the Upper Guadalupe and Los Gatos Creek watersheds will benefit the public and wildlife, and that land conservation priorities will be addressed by MROSD's active land management practices. The bill authorizes the water company to sell the described lands under the following conditions.

1. MROSD shall commit, in perpetuity, to improve trail connectivity, maintain wildland fire safety, encourage forest management practices to promote old-growth habitat conditions, preserve open space, and protect downstream beneficial uses of water, including critical elements of the public drinking water supply.
2. San Jose Water Company shall retain, in perpetuity, all its existing water rights and a necessary easement to ensure that water company customers have access to safe and reliable drinking water. The easement shall include all facilities owned and operated by the water company, including treatment plants, delivery systems, reservoirs, and main tributaries.
3. If a sale authorized by the bill occurs, the water company is required to invest the net proceeds from the sale in water system infrastructure, plant, facilities, and properties necessary and useful in the performance of the water company's duties to the public, as determined by the California Public Utilities Commission (CPUC).
4. San Jose Water Company shall also maintain records necessary to document investment properties that benefit ratepayers and shall be authorized by the CPUC to earn a reasonable rate of return. Any net proceeds from the sale of the lands authorized by the bill that is not invested after eight years shall be allocated solely to water company ratepayers.
5. The sale of the described lands is exempted from California Public Utilities Code Section 851, which requires approval from the CPUC for the transfer by a public utility of property necessary or useful in the performance of its duties to the public.

This bill also includes a sunset date of January 1, 2023, such that after that date the law is repealed. This date appears to conflict with the requirement that, after eight years, the water company allocate any net proceeds from the sale to its ratepayers. This is a drafting error that will be addressed by the bill author.

Importance to the District

The Regional Water Quality Control Board's San Francisco Bay Water Quality Control Plan regulates the Guadalupe River and Los Gatos Creek which discharge into South San Francisco Bay through Alviso Slough. As a National Pollutant Discharge Elimination System (NPDES) co-permittee for storm water, the District is a responsible party charged with protecting these waterways from contamination. The Upper Guadalupe and Los Gatos Creek watersheds constitute the mountainous upper portion of the Guadalupe River and are the headwaters of the river and creek system discharging into the Bay.

Los Gatos Creek feeds percolation ponds operated by the District for groundwater recharge which, supplemented by imported water, prevents subsidence and is a water source for municipal water systems in Santa Clara County.

The Santa Clara Valley Water District Act defines the duties and responsibilities of the District. In Section 4 of the Act, the State of California authorizes the District to “Enhance, protect, and restore streams, riparian corridors, and natural resources...” and to “Preserve open space in Santa Clara County...” The enactment of SB 492, and the subsequent acquisition of the Upper Guadalupe and Los Gatos Creek watersheds by MROSD, would serve the purpose of better protecting natural resources and preserving open space.

Staff recommends that the Board adopt a position of “Support” on SB 492.

Pros

- If the lands are acquired by MROSD, plant and animal habitat could be better protected, including habitat for threatened and endangered species.
- The acquisition could enable MROSD to use its core competency in land management to promote old-growth habitat, improve wildland fire safety, and protect downstream beneficial uses of water, including use by the District.
- The water company would be required to invest net proceeds from the sale of the property to benefit their ratepayers.

Cons

- The bill exempts the sale of the property from California Public Utilities Commission approval, but leaves intact the Commission’s authority to enforce the conditions set forth in the legislation.
- The funding for the purchase is not yet identified and would likely include both state and local sources.

FINANCIAL IMPACT:

There is no financial impact associated with 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:

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None

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