



# Santa Clara Valley Water District

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**File No.:** 17-0431

**Agenda Date:** 6/27/2017

**Item No.:** \*7.1.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Recommended Position on State Legislation: SB 705 (Allen) Solid Waste: Expanded Polystyrene Food Service Containers, \*AB 388 (Mullin) Greenhouse Gas Reduction Fund: Wetland Restoration Projects \*AB 646 (Kalra) Rental Property Disclosures: Flood Hazard Areas, \*SB 252 (Dodd) Water Wells, and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

### **RECOMMENDATION:**

- A. Adopt a position of "Support" on: SB 705 (Allen) Solid Waste: Expanded Polystyrene Food Service Containers.
- B. \* Adopt a position of "Support" on: AB 388 (Mullin) Greenhouse Gas Reduction Fund: Wetland Restoration Projects.
- C. \*Adopt a position of "Support" on: AB 646 (Kalra) Rental Property Disclosures: Flood Hazard Areas.
- D. \*Adopt a position of "Oppose unless Amended" on: SB 252 (Dodd) Water Wells.

### **SUMMARY:**

#### **SB 705 (Allen) Solid Waste: Expanded Polystyrene Food Service Containers**

**(A-5/26/2017)**

**Position Recommended: Support**

**Position Priority: 3**

SB 705 enacts the Ocean Pollution Reduction Act of 2017, which prohibits a food vendor from dispensing prepared food to a customer in an expanded polystyrene food service container. The bill defines food vendor in a manner intended to cover most types of food service establishments, except for state hospitals, correctional facilities, and K-12 school campuses, as these facilities are captive environments from which littering is unlikely to occur.

The bill bans chain restaurants from providing polystyrene food service containers beginning January 1, 2020. The ban would then be applied to all other vendors such as food trucks, small family owner

restaurants, and street vendors, on January 1, 2022.

The bill would allow a city or county to grant an exemption from the ban to a food vendor who demonstrates that the ban will impose an undue economic hardship for one year increments. The bill also requires the California Department of Resources Recycling and Recovery to post information on their internet website on how to comply with the act and on the process to file a complaint for a violation by a food vendor.

A person or entity found to be violating the act would be subject to civil penalties of \$1,000 a day for the first violation, \$2,000 a day for the second violations, and \$5,000 a day for the third violation and subsequent violations.

### **Importance to the District**

The District Act authorizes the District "to enhance, protect, and restore streams, riparian corridors, and natural resources..." and to "to prevent contamination, pollution, or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in the district..." As such, the District has a compelling interest in protecting the waterways of Santa Clara County, San Francisco Bay, and the Pacific Ocean from the impacts of materials found in trash that may degrade water quality and cause harm to species. Of great concern are commonly littered plastics, such as expanded polystyrene (Styrofoam®), that degrade very slowly, are transited by storm water, break into small pieces that often are consumed by marine animals and are very difficult to collect.

Santa Clara County includes more than 800 miles of creeks and rivers which must be managed and protected from pollution. To that end, the Board has approved Legislative Guiding Principles which instruct the District to support legislative efforts to eliminate or reduce wastes entering our waterways, including plastic bags and expanded polystyrene.

In the last few years the District has supported various efforts to reduce waste, such as SB 270 (Padilla) in 2014 which created the statewide plastic bag ban, and Proposition 67 in the 2016 general election which approved the plastic bag ban through a voter referendum.

Just like plastic bags, expanded polystyrene food containers make their way into the environment in numerous ways, but mainly through littering. These waste items have an affinity for chemical pollutants and serve to concentrate and transport pollutants into bodies of water where they are ingested by birds, fish, and other species. Beyond the visual impacts of litter, expanded polystyrene items pollute waterways and the ocean, kill animal life after ingestion, and transport more harmful substances into the food chain.

In addition, littered expanded polystyrene impacts the District's compliance with the Regional Water Quality Control Board's municipal runoff permit. The municipal runoff permit requires the District and other entities to reduce waste discharges that flow into the San Francisco Bay to protect water quality. Expanded polystyrene litter, transported by storm water, accumulates in creeks and streams in the county, leaving the District and other entities required by the permit to collect and prevent it from entering San Francisco Bay.

Staff recommends the Board adopt a position of “support” on SB 705.

*Pros*

- Reduces waste that pollutes District managed waterways.
- Removes a non-biodegradable waste product from the waste stream.
- Reduces harm to fish, birds, and other species.

*Cons*

- Exposes local persons and entities to hefty civil penalties.
- Excludes several entities that may produce significant amounts of expanded polystyrene waste.

**\*AB 388 (Mullin) Greenhouse Gas Reduction Fund: Wetland Restoration Projects (A-3/23/17)**  
**Position Recommended: Support**  
**Position Priority: 3**

AB 388 would authorize the use of Green House Gas Reduction Funds (GGRF) for the reuse of dredge material for wetland restoration projects.

The funding for the GGRF is derived from the State Air Resources Board market-based mechanisms which auctions emission carbon credits. The Department of Finance is required to establish a 3-year investment plan the GGRF. The Governor has proposed in his 2017-2018 State Budget an appropriation of \$2.155 billion in GGRF funding, including \$127.5 million for carbon sequestration. Wetland restoration projects that use dredge fill material would likely qualify for carbon sequestration grants.

**Importance to the District**

As a flood control agency, the District is responsible for reducing the risk of flooding throughout Santa Clara County, including coastal flooding along the southern shore of San Francisco Bay. To that end, the District is pursuing several projects to restore salt ponds in San Francisco Bay to their original state as wetlands.

Currently the sediment for South Bay salt pond restoration comes from various sources. One source is sediment washed down from a creek’s upper watershed. This sediment is deposited along the creek’s waterway as it makes its way to the Bay. In improved creek areas, the sediment is removed to maintain channel capacity and if this sediment meets the applicable soil criteria it is used as a source of fill for salt ponds. Another source of fill is material from construction projects that is sourced by dirt brokers and placed in salt ponds if the dirt meets the applicable soil criteria.

Past modeling has illustrated that dredge materials from the Bay could work well for mudflat

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augmentation, but the cost benefit ratios were cost prohibitive. AB 388 would provide funding to fill the gap to make dredge fill material an option for salt pond restoration.

Staff recommends the Board adopt a position of "Support" on AB 388.

*Pros:*

- Authorizes potential funding for District projects.

*Cons:*

- Creates increased demand and competition for the funds from the GGRF.

**\* AB 646 (Kalra) Rental Property: Disclosures Flood Hazard Areas (A-5/31/17)**

**Position Recommendation: Support**

**Priority Recommendation: 2**

AB 646 would require that landlords disclose to their tenants, in any lease or rental agreement, information that the rental property is in a flood hazard area if the landlord has "actual knowledge" of this information. The bill would make the new disclosure requirements effective July 1, 2018.

Current law requires a real estate agent or the owner who is transferring a property that is located within a special flood hazard area as designated by the Federal Emergency Management Agency, to disclose to the buyer the fact that the property is located within a special flood hazard area.

For the purposes of this bill, "actual knowledge" includes, but is not limited to, the following:

- The owner has received written notice from any public agency stating that the property is located in a special flood hazard area or an area of potential flooding.
- The property is located in an area in which the owner's mortgage holder requires the owner to carry flood insurance.
- The owner currently carries flood insurance.

The bill would also require the landlord to provide the following.

- Disclose to a tenant that they may obtain information about hazards, including flood hazards, from the Office of Emergency Services website.
- That the tenant should consider renter's insurance or flood insurance to cover their losses in the event of a flood because the landlord's insurance does not cover such loss.
- That the landlord is not required to provide additional information concerning flood hazards to the property and that the information provided by this bill is deemed adequate to inform the

tenant.

### **Importance to the District**

As the primary flood control agency in Santa Clara County, the District undertakes several actions to inform the public of the potential flood danger for properties that have been identified as located in a flood plain. Every year in November the District mails a floodplain mailer to all property parcels and residents living in a flood plain. The mailer contains information for families on what to do prior, during, and after a flood, and information on flood insurance. Similar flood preparedness information is available on the District website, along with current creek, reservoir and precipitation gauge measurements. The website also has a map of all sandbag locations as well as information on how to use them properly. In addition, the District conducts an annual flood preparedness media campaign that is usually launched in January.

The District sends the mailer as part of the Federal Emergency Management Agency's (FEMA) flood insurance Community Rating System program which provides residents in participating jurisdictions discounts on flood insurance. The mailer goes out to every property in or near an Army Corps of Engineers designated floodplain.

In 2016, the District sent out 48,057 notifications, of those 19,787 mailers were distributed in the City of San Jose. The notification goes out to businesses and private residences, including apartment tenants. The District also mails the notifications to property owners who live outside of the county, but have provided the County Recorder an alternative address.

Even with such robust efforts to inform those living in a flood plain, many residents renting property may still not be aware of their flood exposure and the availability of renter's flood insurance. AB 646 seeks to change state law to require that tenants be provided sufficient information when signing a new lease agreement in hopes that tenants will protect themselves and purchase flood insurance.

Staff recommends the Board adopt a position of "Support" on AB 646.

#### *Pros:*

- Creates a program to inform tenants of potential flooding.
- Creates a new requirement for landlords to provide information on renter's flood insurance.

#### *Cons:*

- There is no requirement that the tenant purchase insurance.

### **\*SB 252 (Dodd) Water Wells (A-05/02/17)**

**Position Recommendation: Oppose unless amended**

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**Priority Recommendation: 2**

SB 252 would create new state law establishing a list of principles to be taken into consideration by a court of law when deciding a groundwater well interference complaint. The bill would require cities and counties to establish a permitting program for new groundwater wells in critically overdrafted basins.

The well permitting program in critically overdrafted basins would require an applicant to undertake all the following as part of the application for the permit.

- a) Verify that the applicant has read Water Code Section 10720.5 (a) which establishes that that the extraction of groundwater between January 1, 2015, and the date of adoption of a groundwater sustainability plan, pursuant to the Sustainable Groundwater Management Act, may be used as evidence of, or to establish or defend against, any claim of groundwater rights.
- b) Notify any lenders for the new well of Section 10720.5 (a).
- c) Agree that if the Groundwater Management Agency finds, through the creation of the Sustainable Groundwater Management Plan, that the new well contributes to the undesirable result, the new well will cease production unless the applicant can contribute to an offset or other course of action determined by the groundwater sustainability agency.
- d) Notify all adjacent landowners of the application for the well permit, where to find the permit for review, the time and location of the public hearing, and any opportunity for public comment, pursuant to Section 13808.2.
- e) Disclose information about the well, including coordinates, depth, capacity, pumping rate, etc.
- f) Verify that the applicant has complied with all requirements of this section and include a list of all notified parties pursuant to subdivisions (b) and (d).

Cities and counties receiving the information regarding the well permit would be required to make the information publicly available, and provide for a public comment period on the application for a new well.

**Importance to the District**

The District currently manages the groundwater basins in Santa Clara County pursuant to authority granted by the District Act. In addition, the District is statutorily authorized as the exclusive local groundwater management agency for Santa Clara County pursuant to the Sustainable Groundwater Management Act (SGMA) enacted in 2014.

As the groundwater basins in Santa Clara County are not in a critically overdrafted state, most of the provisions in SB 252 do not impact the District. However, staff is concerned with one provision of the bill, proposed Section 106.1 of the Water Code, which creates a set of principles that must be considered by a court of law when resolving a groundwater well interference claim.

While the author's office has stated that proposed Section 106.1 is a restatement of common

law, the principles have not been fully adopted or applied in California groundwater law and associated case law. Staff believes that adding Section 106.1 to the California Water Code would have unforeseen and unintended consequences in future well interference cases.

For example, staff is concerned that proposed Section 106.1 would impact, interfere with, or overlap with SGMA. Adding another layer of law codifying principles to settle an action between two or more groundwater users just as SGMA compliance is getting started, will likely increase confusion. The unintended consequences may have impacts on all groundwater well owners.

Additionally, Section 106.1 could be used by existing well owners to challenge other well owners for a perceived impact to their well. Currently, a court would have to adjudicate a groundwater basin to determine groundwater rights. The rights in a groundwater basin are correlative and are generally the reasonable share of the groundwater for use on each user's land that overlies the basin. The proposed Section 106.1 creates a new set of principles that determine what is a reasonable use of groundwater in well interference cases. Well owners may interpret the new principles as providing them a priority right over their neighbors perceived lower priority use (i.e., a more reasonable use of water). As such, the new Water Code Section 106.1 could lead to an increase in groundwater rights cases and adjudications.

Staff recommends the Board to adopt a position of "Oppose unless Amended" on SB 252.

#### *Amendments Recommended*

- Remove Section 106.1 from the bill.

#### *Pros:*

- Requires that cities and counties overlaying critically overdrafted basins create a permitting process for new wells.
- Protects critical infrastructure from further impacts from subsidence.

#### *Cons:*

- Creates new state law which would establish a "priority of use" for determining groundwater rights in cases where a well owner experiences impacts from a neighboring groundwater well.
- Modifies the carefully crafted agreements made to enact SGMA.
- Intrudes on the SGMA process.

#### **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:**

\*Supplemental Agenda Memo

\*Supplemental Attachment 1: Resolution

**UNCLASSIFIED MANAGER:**

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