

**DESALINATION:**

**Showdown on desal ordinance; Monterey County: Debate expected on private vs. public ownership**

**Monterey Herald – 3/19/07**

**By Kevin Howe and Jim Johnson, staff writers**

Monterey County and those who oppose the privatizing of water systems are expected to square off Tuesday.

The Board of Supervisors has scheduled a hearing on the possible amendment of a county ordinance that may block California American Water's plans for a pilot desalination plant in Moss Landing.

The board plans to consider whether it should instruct its staff to rewrite a 1989 ordinance that requires desalination plants to be publicly owned.

That legislation -- the first such ordinance in the state -- came in response to improvements in water desalination technology, fears of a diminishing water supply and a flurry of proposals for desalination plants to serve particular development projects and, in one case, a private homeowner.

Then-county environmental health director Walter Wong argued against such private plants, noting at the time the ordinance was adopted that saltwater conversion produces a brine discharge that is "between sewage and hazardous waste." He said the disposal of that by-product should be regulated.

Wong also argued that a desalination plant failure would require the plant to be hooked up to the existing water supply, and therefore if a desalination plant is constructed, it should be turned over to a public agency.

A plea by Salinas land use attorney Brian Finegan on behalf of clients David and Vera Mayne for a permit to hook up a desalination plant for their Yankee Point home, which was not served by a water system, failed to sway the supervisors from amending the ordinance to allow individual home treatment plants.

In a June 2005 interview, Wong said he found there was no public agency in the state that regulated desalination plants. He talked with numerous state and regional agencies, identified potential environmental problems and determined to write an ordinance that would guide such projects in Monterey County.

At the same time, Wong said, there had been problems in the state with private companies abandoning rundown sewer and water systems, leaving customers in the lurch and forcing local governments to determine solutions. The Regional Water Quality Control Board had begun requiring public ownership of sewer systems because of it.

To avoid similar situations, he said, the county's ordinance required public ownership for desalination, "so you have a mechanism, in case of failure, to raise the money to fix it."

He said the ordinance also called for a backup system, and Cal Am agreed to be the backup water purveyor on the Peninsula.

"When I wrote this ordinance, I did talk to Cal Am... and they had no problems with it," Wong said.

### **Permit approved**

Last August the supervisors approved a permit for Cal Am's pilot seawater desalination plant at Moss Landing, ratifying an earlier approval by the county zoning administrator. Cal Am ultimately proposes a full-scale plant to provide water throughout its service area.

In December, the state Coastal Commission overrode the recommendations of its own staff against it and approved a coastal development permit for the experimental desalination plant.

The next month, George Riley and Manuel Fierro, advocates of publicly owned water services organized as Friends of Locally Owned Water (FLOW), filed suit in Monterey County Superior Court seeking to overturn those permits, contending that the plant's authorization is at odds with the 1989 county law that requires public ownership of water desalination facilities.

Their attorney, Robert Rosenthal, said the supervisors are trying to correct their mistake in issuing the permit in the first place "under the guise that (the ordinance) is ambiguous."

"What's really happening here is that they issued a permit to Cal Am and didn't have authority to do it," Rosenthal said.

The ordinance, he said, "is very clear that only public agencies can be issued permits for desalination plants."

If they think its language is ambiguous, Rosenthal said, then they failed to look at the minutes of the 1989 meeting when it was enacted.

That year, he said, Cal Am was pumping water out of the Carmel River aquifer and people were worried about the future of water on the Monterey Peninsula.

Wong said the ordinance was passed in response to the drought in the late 1980s. Development was at a standstill due to the scarcity of water, and developers and cities were looking to desalination for a solution.

The county enacted the desalination law as a public health and safety measure, Rosenthal said, as is its right under state law.

"It's spelled very clearly that it be owned, operated and managed by a public agency."

Now, he said, the supervisors feel they have to "figure out how to retrench and issue a permit in violation of their own ordinance."

### **Intentions**

Wong said there was no ambiguity to his or the supervisors' intentions when the ordinance was passed.

"The fear is always with a private company, if they let (the system) go, run it down and walk away with bankruptcy, that someone is left paying for it," Wong said. "So I put that in when I drafted the desal ordinance."

The supervisors propose to ask the county's legal staff to bring them amendments to the desalination ordinance that would change the public entity requirement to a requirement that owners and operators possess the technical, managerial and financial capability to operate such a plant; clarify the technical, managerial, and financial criteria, and clarify the regulatory scope of the ordinance.

That, Rosenthal said, would allow any agency, public or private, to build and operate a desalination plant. "It's a political move. It doesn't pass the sniff test."

He noted a decision in January by the 2nd District of the U.S. Court of Appeal that ruled that the U.S. Environmental Protection Agency cannot allow power plants to kill fish through their cooling water intakes.

### **Proposed plant**

Cal Am's proposed pilot plant, Rosenthal said, would use Moss Landing Power Plant's cooling water intake and outfall system as its water source. "That (court) holding is enforceable here, and is such that Cal Am's location of the pilot plant is one that can't be used."

The water company, Rosenthal said, "doesn't have a location, doesn't deserve favored treatment, it offers no benefit to the public and the pilot plant cost has to be borne by the users of Cal Am water."

Cal Am spokeswoman Catherine Bowie said of the supervisors' and commissioners' actions that "we feel the permits we were issued by the county and the Coastal Commission for the pilot plant were properly done."

"We went through a full public process, and our opinion is that this ordinance on public ownership does not apply to our pilot project."

Marc Del Piero, general counsel for the Pajaro-Sunny Mesa Community Services District, which has its own plans for a desalination plant in Moss Landing, commented that "(The ordinance amendments) won't affect us at all. We've been trying to comply with the law as opposed to doing something else."

County Environmental Health Director Allen Stroh said he and other officials have "been looking at (clarifying the ordinance) for some time. Now that these desal projects are getting closer to completion, we thought it was time to clarify some of these issues.

"We want to make sure whoever operates desal plants has the technical expertise to do so. We're not as interested in the public-private aspect of this issue."

Stroh said he understood the original intent of the ordinance was to "make sure technical expertise" was in place for any desal operator, regardless of whether it was a public or private operator and said County Counsel Charles McKee describes the ordinance language as "ambiguous" and that the definition of "public entity" is not clearly spelled out.

Cal Am is under the gun to find a new water source for its Monterey Peninsula service area.

### **Carmel River aquifer**

In 1995, the state Water Resources Control Board advised Cal Am that it was taking 14,106 acre-feet per year from the Carmel River aquifer, 10,730 acre-feet more than the state allows. The water company has rights to only 3,376 acre-feet of water from that aquifer, but the state allowed Cal Am to continue drawing water over that amount to meet public needs until it can find a new source.

In addition, a court has ordered that producers of water from the Seaside basin aquifer -- Sand City, Seaside, Cal-Am and others -- reduce their pumping from the aquifer's coastal subareas by 2,219 acre-feet and their pumping from the Laguna Seca Subarea by 381 acre-feet for a total reduction for the entire Seaside basin of 2,600 acre-feet by October 2027. #

<http://www.montereyherald.com/mld/montereyherald/news/16933694.htm>