

## MEMORANDUM ON HISTORY, INTENT AND ENFORCEMENT OF THE SAFE WATER SUPPLIES ORDINANCE.

### I.

#### HISTORY OF THE GOLETA WATER DISTRICT'S OBTAINING RIGHTS TO STATE WATER ALLOCATIONS.

1. In 1979 a bond issue was placed before local voters to secure funds to construct a local delivery system to distribute State Water throughout the county. Fear of growth, environmental concerns, and opposition to high water costs caused a majority of voters to vote against the bond measures.
2. In 1991, after 4 years of extremely dry conditions, and with the endorsement of the Goleta Water District, The Safe Water Supplies Ordinance was placed on the June 4<sup>th</sup> ballot. The voters approved the measure authorizing the Water District to issue revenue bonds and to join in the State Water Project.
3. In 1994, the voters per a ballot measure approved the amendment of the Safe Water Supplies Ordinance in order for the Goleta Water District to acquire an additional 2,500 acre feet of State Water. The 1994 Ordinance specifically states all of the 1991 provisions of the Ordinance remain unchanged and only section 6 of the 1991 Ordinance was being amended and superseded by the current proposed Ordinance. It stated from the 1991 that the Ordinance if adopted may not be modified except pursuant to a vote of the electorate of the District.
4. There have been no other ballot measures since 1994 submitted to the voters concerning the acquisition of State Water, the drought buffer or the release of water for new or additional water service connections.
5. The Goleta Water District obtained its first allocation of State Water in 1997. The customers of the District have been paying, through increased water rates, over \$7,000,000.00 each year for the right to obtain the approved allocations of State Water.

## II.

THE EXPRESSED INTENT AND PURPOSES IN SEEKING VOTERS' APPROVAL OF THE SAFE WATER SUPPLIES ORDINANCE (MEASURE H91) WAS TO OBTAIN STATE WATER IN ORDER TO CREATE A GREATER RELIABILITY OF THE DISTRICT'S WATER SUPPLY BY REQUIRING A "DROUGHT BUFFER" SO THAT STATE WATER CAN STORED AND ONLY BE USED WHEN IT IS DRY TO AVOID SEVERE WATER RATIONING .STATE WATER WAS NOT TO BE USED FOR NEW DEVELOPMENTS!

1 The June 4, 1991 election was hotly contested on whether the voters should adopt the Safe Water Supplies Ordinance. The Goleta Water District, through Katy Crawford, President and Goleta Water Board Member, advocated that the voters adopt the Ordinance. She signed the statement of arguments for approval of the Ordinance which was part of the actual ballot given to each voter. One of the several arguments in favor of the Ordinance stated as follows:

"MEASURE H91'S DROUGHT BUFFER MAKES STATE WATER RELIABLE!

It requires Coastal Aqueduct water to be used as a drought buffer! Measure H91 water must be banked when it rains by recharging groundwater supplies so that it can be used when it's dry to avoid severe water rationing."

The next argument advanced on the actual ballot document in support of the Ordinance reads as follows:

"MEASURE H91 ENACTS TOUGH GROWTH CONTROLS!

Measure H91 puts new, permanent restrictions on water meters for new development"

2. The voters approved H91 (the Safe Water Supplies Ordinance) in the June election and then in 1994 were asked to approved the Water District's acquisition of additional State Water. This ballot measure was a limited amendment of the original H91 Measure. This amendment was also approved by the voters.

3. The Goleta Water District, in November of 1994, pursuant to State law under the Public Resources Code, had to prepare and file a "Negative Declaration for the Goleta Water District's Acquisition of additional State Water Entitlement". This Declaration arose out of the voters amending the Safe Water Supplies Ordinance.

4. The Board of the Goleta Water District at its meeting on November 22, 1994 specifically approved the Declaration after a review of all submitted comments and the actual language of the Declaration. The Declaration contains the following statements of intent:

“It is not intended to create an additional supply to meet new demands. As such, the proposed project would not be growth inducing “. Page 16 of Reply to comments.

“The draft ND provides a full review of the potential growth-inducing impacts of the proposed project, and concludes that the proposed project “is not considered growth inducing....” No mitigation measures are required.” Page 19 of Reply to Comments.

“There is no additional inducement to growth related to the proposed project”. Page 22 of Reply to Comments.

“Acquisition of the additional SWP entitlement is designed to enhance the firm yield of the SWP for the District, not create new supplies for growth.” Page 8 of ENVIRONMENTAL ANALYSIS attached to Negative Declaration.

### III.

#### THE LANGUAGE OF THE SAFE WATER SUPPLIES ORDINANCE CAN ONLY BE MODIFIED OR CHANGED BY A VOTE OF THE ELECTORATE OF THE GOLETA WATER DISTRICT

1. The specific language of the Safe Water Supplies Ordinance states: This Ordinance may not be MODIFIED except pursuant to a vote of the electorate of the District.( emphasis added)

2. The word modify is defined in the following ways per the Webster Dictionary:

“To change the external qualities of; to give a new form or exterior character to; to vary, to alter in some respect”

3. In spite of the specific language stating only the voters of the District may make any changes to the language of the Safe Ordinance, the Directors of the Water District have done the following modifications as to the language of the Ordinance which had been approved by the voters in 1991 and 1994:

A. Deleted all of the Recitals from the text of the 1991 Ordinance. The recitals set forth facts in the clearly specify the purposes And the reasons for the Ordinance and what is the voters’ intent to be accomplished by adopting the proposed Ordinance.

The key deletions from the language as presented to the voters read as follows:

“Whereas, the Goleta Water District(“District”) faces a significant shortage of water to meet current long-term water demands of its customers as determined by the State Department of Water Resources and the Santa Barbara County Flood Control and Water Conservation District in their 1985 Santa Barbara County Water Project Alternatives study: and

Whereas, a drought emergency was declared in Santa Barbara County in 1990 following four years of below normal precipitation within Santa Barbara County and, in the future, the District will continue to be subject to recurring drought cycles which will threaten the ability of the District to meet the health and safety needs of its customers unless new and diversified, long term water projects are developed; and

Whereas, the District relies exclusively on local water supplies to meet its current water demands, which supplies are all subject to the same climatic conditions: and

Whereas, in the absence of a system limiting the District’s authority to provide near and /or additional water connections without first mandating ground-water storage of water in wet years for use in dry years( a “drought buffer program”) District customers may face severe water shortage in the future;....( additional recitals omitted from the above quotations which were purposefully dropped by the Board of the GWD in setting forth the language of the Ordinance as later circulated to the public.)

THE OMISSION OF THE ABOVE QUOTED RECITALS IN THE LANGUAGE PRESENTED TO THE VOTERS WAS NO ACCIDENT! THE PLAIN AND CLEAR LANGUAGE OF THE RECITALS LEAVES NO ROOM FOR AN ARGUMENT THAT THE ORDINANCE COULD BE LATER MANIPULATED BY FUTURE BOARDS OF THE DISTRICT TO USE STATE WATER TO FUEL NEW GROWTH TO THE LONG TERM DETRIMENT OF THE DISTRICT’S CUSTOMERS WHO APPROVED THE TERMS OF THE SAFE ORDINANCE IN 1991.THESE CUSTOMERS ASSUMED A DEBT BURDEN OF OVER \$42,000,000 AND HAVE BEN PAYING OF THE COSTS FOR WELL OVER A DECADE.

B. Added a completely new provision under the District's Water Code sections for the enforcement of the terms of Safe Water Supplies Ordinance that provides if any of the 1% release of the District's total potable water supply for new or additional service connections authorized for that year is not used, then the unused amount is carried over to later years for new water service connections. The consequences of this modification of The Ordinance is as of 2007 the District is alleging that it has an amount of authorized water which is approximately 10 times the amount allowed for new connections in 1997, Which was the first year the Ordinance became operative. This modification clearly fosters new growth and only increases the future hardship concerning lack of water in the future for the District's customers. Fortunately, by a 3 to 2 vote the Board at

Its July 17<sup>th</sup> meeting abolished this vile corruption of the terms  
And clear meaning of the Ordinance. Hopefully this issue will  
Not be resurrected by the staff and the two losing Directors.

#### IV.

THE QUESTION OF THE LEGALITY OF THE GWD'S ACTIONS IN MODIFYING  
THE TERMS OF THE SAFE WATER SUPPLIES ORDINANCE WAS REFERRED  
TO THE DISTRICT'S WATER MANAGEMENT COMMITTEE FOR ANALYSIS  
AND A RECOMMENDATION OF ACTION BY THE FULL BOARD.

1. On June 25<sup>th</sup>, the Water Management Committee considered the objections which have been raised concerning the District's enforcement of the provisions of the Safe Water Supplies Ordinance. Mr. Wullbrandt, the District's attorney, was present to give his firm's legal advice to the Committee. His legal advice was that under section 30,000 et seq. of the State Water Code the Directors of the District had the power to establish whatever rules they deemed necessary to operate the District and the prior actions of the Directors were proper and lawful as to the enforcement of the Safe Water Supplies Ordinance even if the District's interpretations did not precisely follow the actual language set forth in provisions of the Safe Ordinance approved by the voters. In substance his legal opinion is that the duly adopted Ordinances of the GWD applying the provisions of the Safe Ordinance are law even if there is a conflict with the intent and /or specific language of the Safe Ordinance adopted by the voters. His advice was that the GWD has the independent right and power to create its own laws and rules as to the distribution of water to its customers and there is no legal requirement for an exact adherence to the provisions required by the voters. He apparently believes that in spite of the specific language in the Ordinance that the terms "may not be modified except pursuant to the vote of the electorate of the District" has no legal consequences and may be ignored when the Directors of the District believe and adopt a modification of the terms of the Ordinance which they find best serves the operations of the District in the management and

distribution of its water to both existing and future customers. The District holds the trump card to defeat any voter approved Ordinances concerning the distribution of the District's water !Mr. Wullbrandt, aside from a reference to section 30,000 of the State Water Code, cited no specific section of the code or any case in support of his legal conclusion.

During the rendering of his legal advice on June 25<sup>th</sup>, there was no mention by Mr. Wullbrandt of the provisions of the State's Constitution, Article II sections 10 or 11 or any appellate cases which might have any relevance to his legal analysis and conclusions.

A subsequent memo from Mr. Wullbrandt tries to distance him self from the oral statements he made on the 25<sup>th</sup>. However, he has not supplied any written legal advice to the entire Board as to the legal basis for the voter approved Ordinance nor responded to the legal issues raised by the public during the Board meeting on July 17<sup>th</sup>.

2. Director DeWitt at the beginning of the meeting stated he had spent several hours with Mr. Wullbrandt prior to the meeting discussing Mr. Wullbrandt's legal analysis .Director DeWitt stated that if the prior Directors had acted legally as to the modifications and enforcement of the Safe Ordinance, he would not vote to make any change as being proposed by Director Bertrando .He stated:" If anyone did not like his decision on not making any changes, they could file a lawsuit".Fortunaly Director DeWitt after listening carefully to the public comments at the July17th Board meeting ,voted yes with Directors Bertrando and Cunningham to rescind the provision allowing carryover of the 1 % water for new connections.

V.

THE CALIFORNIA CONSTITUTION AND THE ELECTIONS CODE  
SPECIFICALLY AUTHORIZES THE VOTERS TO PASS LAWS THAT ARE  
BINDING UPON LEGISLATIVE BODIES, SUCH AS THE GOLETA WATER  
DISTRICT , AND THAT SAID LAWS CAN ONLY BE MODIFIED OR REPEALED  
BY THE VOTE OF THE ELECTORATE.

1. The legal advice given to the Management Committee, and the same advice given to the full Board at its meeting on the 17<sup>th</sup>, failed to mention or consider the power of the voters to pass an Ordinance that is binding on the Goleta Water District. Only Mr. Wullbrandt can explain this lapse in his legal analysis and he as of the evening before the workshop on the SAFE ORDINANCE still maintains his strange silence of the above very important issue.
2. The relevant provisions of the California Constitution are set forth in Article II, section 11. The applicable language is as follows:

“Initiative and referendum powers may be exercised by the Electors of each city and county under procedures that the Legislature shall provide.”
2. The procedures proscribed for the elections held by the voters in Goleta in 1991 and 1994 are set forth in the California elections Code. The Elections Code specifically states that a voters’ approved Initiative can not be repealed except by a vote of the people, unless provision is otherwise made in the original initiative (Ordinance)”. The Safe Water Supplies Ordinance had the language that it could only be modified by a vote of the electorate! **THUS, THE SAFE WATER SUPPLIES ORDINANCE CAN NOT BE MODIFIED BY THE STATE LEGISLATURE, THE COUNTY BOARD OF SUPERVISORS, THE CITY COUNCIL OF THE CITY OF GOLETA, OR THE BOARD OF DIRECTORS OF THE GOLETA WATER DISTRICT!**
3. The provisions of the California Water Code, sections 30000, et seq. does not and can not grant the power to the Goleta Water District to ignore and circumvent the constitutionally guaranteed right of the voters to specify the provisions of law which they wish to have followed by the Water District. The above principal of law has been consistently affirmed by the courts when such voter approved laws have been challenged as improperly interfering with the functioning of the operations of the governing body.

## VI.

THE CALIFORNIA SUPREME COURT, IN APPLYING THE CONSTITUTIONAL PROTECTIONS TO THE VOTERS TO PASS LAWS WHICH CAN NOT BE CHANGED BY THE EFFECTED GOVERNMENTAL AGENCY, SPECIFICALLY HELD THAT IF THE VOTERS APPROVED ORDINANCE CREATED A CONFLICT WITH THE OPERATIONS OF THE GOVERNMENTAL AGENCY, THAT AGENCY HAD NO RIGHT TO MODIFY THE TERMS OF THE ORDINANCE WITHOUT VOTERS APPROVAL.

The California Supreme Court in the case entitled, DeVita v. County of Napa (1995) upheld a voters passed initiative that was passed to preserve local agricultural land in the

county of Napa. The Initiative had specific provisions requiring the county's general plan not to change agricultural land classification, except under certain specified conditions, for a period of 30 years without a vote of the people. It was argued to the court by the opponents to the initiative that the Initiative with the provision that only the voters could change was an improper frustration of the ability for the Board of Supervisors to amend the general plan in the future as various relevant conditions in the County changed. This contention was completely rejected by the court in reaffirming the power of the voters to pass laws that can not be changed by the effected governmental agency.

The constitutionally authorized, and legislatively approved, power to the people to pass legislation controlling the actions of governmental bodies was specifically reaffirmed by the court. The Court's language reads as follows:

Although we have focused in the above discussion primarily on legislative intent, it is worth recalling the probable intention of those who framed and adopted the 1911 amendments granting the rights on initiative and referendum .As is too well known to merit recounting, the major impetus behind these amendments was to enable the people of this state, on the local level and statewide , to reclaim the legislative power from the influence of what in Contemporary parlance is called the "special interests".  
9 Cal.4<sup>th</sup> 763 at 795

The Court specifically rejected the argument that the Ordinance, with its restrictions on changing the classification of agricultural land, was invalid because it inherently frustrated the fundamental objectives of the planning law. The Court stated:

"Measure J does not prevent the planning agency from proposing revisions, or the legislative body from adopting amendments incorporating those revisions, but merely provides that such amendments, if the are inconsistent with Measure J, must be approved by the voters."

9 Cal.4<sup>th</sup> 763 at 793

Per the above legal authorities, even though the Directors, the District's staff , its attorneys and the "special interests" may all believe that the Safe Water Supplies Ordinance should not require voters approval for any modification of its provisions and that it is "best" to have the Directors adopt their own Ordinances which allows for carryover of any unused 1% of the District's potable water to later years , that they should redefine what the term potable water supply means, and ignore the need to keep careful annual records concerning the "drought buffer", the power to make such changes are solely and irrevocably vested in the voters!

The past acts of the District are in clear violation of law and need to be immediately rectified. The first necessary step was accomplished by the Board on July

17th adopting the proposed resolution from the Long Range Water Management Committee to delete the carryover provision of the 1% water for new connections. The need for additional changes is now before the Board and hopefully they will adopt appropriate new language and procedures to full comply with all of the terms of Safe.

Respectively submitted for the  
Careful consideration and  
action By the Directors of the  
GWD .

Jack Ruskey