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JAN 06 2012

ALEX CALVO, CLERK
BY: 
DEPUTY, SANTA CRUZ COUNTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

HAROLD GRIFFITH,

Plaintiff,

vs.

PAJARO VALLEY WATER
MANAGEMENT AGENCY,

Defendant's.

NO. CV 168936

(Consolidated with CV 169080)

PROPOSED STATEMENT
OF DECISION AFTER
COURT TRIAL

JOSEPH P. PENDRY, YUET-MING CHU,
WILLIAM J. McGRATH and HENRY
SCHIMPELER,

Plaintiffs,

vs.

THE PAJARO VALLEY WATER
MANAGEMENT AGENCY, ALL PERSONS
INTERESTED IN THE MATTER OF THE
VALIDITY OF PAJARO VALLEY WATER
MANAGEMENT AGENCY ORDINANCE
2010-02, and DOES 1-20,

Defendant's.

1 These cases came on regularly for Court Trial and Hearing on Writ of Mandate on
2 November 18, 2011, and were submitted to this Court for Decision on November 21, 2011, in
3 Department 4, the Honorable Timothy R. Volkmann presiding. Petitioner/Plaintiff Harold
4 Griffith (hereinafter referred to as Griffith) proceeded in Pro Per. Robert K. Johnson and
5 Omar F. James represented Plaintiffs Joseph Pendry, James Spain, Yuet-Ming Chu, William J.
6 McGrath and Henry Schimpeler (hereinafter referred to as Pendry). Michael G. Colantuono,
7 George J. Kovacevich and Anthony P. Condotti represented Respondent/ Defendant Pajaro
8 Valley Water Management Agency (hereinafter referred to as Pajaro).
9

10 The Court has reviewed and considered all the evidence, including the hundreds
11 of pages of the Administrative Record, the stipulated testimony and proffered deposition
12 transcripts, the submitted documents of which the Court was requested to take Judicial Notice,
13 the numerous trial briefs, as well as the applicable law, and hereby rules as follows:
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15 **HISTORICAL BACKGROUND**
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17 These consolidated matters are the latest in a series of cases challenging various
18 assessments imposed by the Pajaro Valley Water Management Agency. The Pajaro Valley
19 Groundwater Basin supplies most of the water used in the Pajaro Valley. The water is being
20 extracted faster than it is being replenished by natural forces, which leads to saltwater
21 intrusion, especially near the coast. Once the water table drops below sea level, seawater
22 seeps into the groundwater basin. The Pajaro Valley Water Management Agency was created
23 to deal with this issue. At present, the strategy is to use recycled wastewater, supplemental
24 wells, captured storm runoff, and a coastal distribution system. The purpose is to reduce the
25 amount of water taken from the groundwater basin (for example, the amount taken from
26 wells), by supplying water to some users. The cost of this process is borne by all users, on the
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1 theory that even those taking water from wells benefit from the delivery of water to others, as
2 that reduces the amount of groundwater those others will extract, thereby keeping the water in
3 the wells from becoming too salty.

4
5 These consolidated actions challenge a number of fees: the management fee imposed
6 in 1993, an \$80 per acre foot augmentation charge imposed in 2002, and an increase to the
7 augmentation charge imposed in 2010. Petitioner/Plaintiff Griffith's Writ of Mandate focuses
8 upon the 2010 increase. The Pendry parties also challenge the 1993 management fee and the
9 2002 augmentation charge, in addition to the 2010 augmentation charge. The Court's analysis
10 is as follows:

11
12 **\$80 AUGMENTATION CHARGE AND \$18-20 MANAGEMENT FEE**

13 The Pendry parties assert that these fees violate the provisions of the Pajaro
14 Valley Water Management Act, the California Constitution, and/or California statutes,
15 including Proposition 13, Proposition 218, and Proposition 62. This Court took judicial notice
16 of the ordinance which set the management fee at a basic charge of \$18, with a \$2 additional
17 charge for commercial properties, in 1993. As to the augmentation charge, this Court took
18 judicial notice of a Stipulated Judgment resulting from a previous challenge to this charge.
19 The Stipulation states, in part, that this charge was set at \$80 per acre foot, effective July 1,
20 2002. The Stipulation also recited the history of the prior litigation. After extensive
21 litigation, including Appellate review, the prior litigation was resolved through the Stipulated
22 Judgment with Pajaro resetting the augmentation fee to \$80 and the payment of the then
23 Plaintiffs attorneys' fees. The Stipulated Judgment was entered into in February, 2008. As
24 the Pendry action was filed on October 12, 2010, Pajaro argues that the Pendry claims are
25 barred by the statute of limitations.
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1 **STATUTE OF LIMITATIONS**

2 For this evaluation, the management fee was last amended in 1993 and the
3 augmentation fee was set in 2002, though one could argue that it was set as of the stipulated
4 judgment in February, 2008. The Pendry action was filed on October 12, 2010. Government
5 Code 66022(a) requires that a judicial proceeding be commenced within 120 days of the
6 effective date of the ordinance. Pajaro contends that the augmentation fee is a capacity charge
7 pursuant to Government Code 66013 to the extent that it is for facilities that are of
8 proportional benefit to the person or property being charged. The stated purpose of the fee is
9 to build and maintain facilities to deliver water to farms closest to the ocean. Plaintiffs argue
10 that there is a disproportionate benefit provided to these property owners. This Court
11 disagrees. Those property owners are subject to saltwater intrusion much faster than those
12 properties further from the coast. They are the properties most directly damaged by saltwater
13 intrusion and, as such, benefit the most from the project. However, they are also the
14 properties paying the highest augmentation charge and proportionality is, therefore, satisfied.
15 Thus, the challenge to the augmentation fee is subject to the 120 day limitations period.

16 Conversely, the management fee does not appear to fall within Government Codes
17 66013, 66014, and/or 66016. Thus, this fee is not subject to the 120 day limitations period.

18 Pajaro also asserted that California Code of Civil Procedure 338(a) should serve as
19 a basis for a Statute of Limitations defense. But, since the management fee is still being
20 collected, that charge is not barred by that provision. (*Howard Jarvis Taxpayers Assn. v. City*
21 *of La Habra* (2001) 25 Cal. 4th 809,821).

22 In conclusion, this Court finds that the challenges to the augmentation fee are
23 barred by the Statute of Limitations per Government Code 66022(a), as the augmentation fee
24 is a capacity charge falling within Government Code 66013.

25 **LACHES**

26 Laches may serve as a defense to a Writ of Mandate where the delay in bringing
27 the petition has caused undue prejudice. However, as the Petitioners are not praying for a
28 refunding of any monies collected under the subject assessments, this Court found this

1 argument not persuasive and proceeded to evaluate to the Defendants' assertion of the Res
2 Judicata defense.

3
4 **RES JUDICATA**

5 Pajaro argues that the challenges to the augmentation charge and the management
6 fee are barred by res judicata, as they were within the terms of the settlement agreement in the
7 prior litigation. The Plaintiffs contend they are not bound by the agreement as they were not
8 parties to it.

9 The stipulated judgment/settlement agreement in the previous litigation
10 extinguished all claims arising from the litigation, including all claims as to the validity of the
11 augmentation charge or the management fee, which are being challenged, again, in the Pendry
12 matters. While a judgment will, normally, have a res judicata effect only on the parties to the
13 judgment, such a stipulated judgment can bind individuals in privity with the parties. In this
14 context, privity refers to one so identified in interest with the parties that he/she represents the
15 same legal right. The purpose of this broader effect is to protect against vexatious litigation
16 and to further the finality of litigation within which public interests are involved. The prior
17 litigation was extensive and comprehensive. Competent counsel represented all parties. To
18 allow a different group of water users to bring challenges to the same augmentation charge
19 and/or management fee would defeat the purpose of furthering the finality of litigation
20 involving the public interest. This Court finds that the challenges to those charges and/or fees
21 are barred by res judicata.

22 **CONCLUSION**

23 The challenges to the 1993 management fee and the 2002 augmentation charge are
24 barred by res judicata based upon the stipulated judgment in the prior actions.

25
26 **2010 INCREASE TO AUGMENTATION CHARGE**

27 Propositions 13, 62 and 218. The Pendry action raises all three of these propositions.
28 The Griffith and Pendry matters contend a failure to comply with the requirements of

1 Proposition 218. Proposition 13 pertains to property taxes and Proposition 62 applies to
2 general and special taxes. As the augmentation charge and the management fee are only
3 levied against direct customers of Pajaro, or those who are drawing water from the basin, this
4 Court considers those as assessments, rather than taxes, and does not find that Propositions 13
5 and 62 are applicable.

6
7 **PROPOSITION 218**

8 Counsel discussed various substantive requirements, which the Court will describe,
9 as follows:

10 1) Revenues not to exceed cost – Per Article XIII Section 6(b)(1), revenues are not
11 to exceed the costs of providing the property related service. Based upon this Court’s review
12 of the budget and income figures, along with the report from the accounting firm, the Court
13 finds that this ordinance does not violate this requirement.

14 2) Revenues not to be used for other purposes – Per Article XIII Section 6(b)(2),
15 revenues shall not be used for any purpose other than that for which the fee or charge was
16 imposed. The stated purpose of the augmentation charge is to fund the provision of
17 “supplemental water service” to coastal growers for the benefit of all users of water from the
18 basin. The efforts of Pajaro including monitoring the groundwater to insure the system is
19 working, along with the delivery of water all fall within the concept of administering the
20 supplemental water service program. All identified costs complained of by the Plaintiffs are
21 for that purpose and this provision is not violated.

22 3) Charges not to exceed the proportional cost of service - Per Article XIII
23 Section 6(b)(3), the amount of fee or charge imposed upon a parcel shall not exceed the
24 proportional cost of the service attributable to that parcel. There exist three tiers of
25 augmentation charges. Metered wells outside the delivered water zone are charged less per
26 acre-foot than those within the zone. Unmetered wells are charged less than metered wells.
27 Those within the delivered zone arguably receive more benefit. But, they pay a higher
28 amount. Additionally, the fee is based upon usage. The more water one draws from the

1 aquifer, the more one is required to pay. All of these factors support a conclusion that the
2 proportionality requirement is satisfied.

3 4) Hearing Requirements – Plaintiffs further contend that Pajaro did not comply
4 with the hearing and notice requirements. Tab 95 of the Administrative Record goes into
5 considerable detail as to the need for supplemental water projects and the use of funds to be
6 raised by the assessment. The Court concludes it is adequate.

7 5) Election Requirements - An election took place. Pajaro defined “majority vote
8 of the property owners” to be “approval by those property owners using a majority of the well
9 water.” Pajaro contends such a definition and application is allowable per Article XIII
10 Section 6(c). This Court finds that Pajaro possessed the discretion to interpret the phrase “the
11 majority of property owners” in the manner described, above, as weighted voting is allowable
12 per Article XIII Section 6(c).
13

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15 **CONFLICT OF INTEREST**

16 The final argument raised by the Pendry plaintiffs was that the 2010 increase was
17 invalid as a director of the Agency had a disqualifying conflict of interest at the time of voting
18 on the subject Ordinance. The Court has read the trial briefs concerning this issue and has
19 researched the conflict issue. Case law and statutory provisions do not support a finding of
20 conflict of interest to invalidate the 2010 Ordinance. Case law supports the view that Courts
21 should proceed with caution as what may be termed a conflict of interest should be a
22 legislative, not judicial function. (*Breakzone Billiards v. Torrance* (2000) 81 CA 4th 1205,
23 1233). Even if a conflict was determined to exist, the Court possesses discretion as to whether
24 the official action shall be set aside. (Government Code 91003(b)). This Court finds the
25 Petitioners failed to satisfy their burden of proof that a conflict of interest existed which could
26 support the voiding of the subject Ordinance.

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CONCLUSION

In conclusion, the challenges to the 2010 increase in the augmentation fee are not meritorious. The Petitions by Mr. Griffith and the Pendry Plaintiffs are denied. The Court finds in favor of the Defendants/Respondents. This Statement of Decision is submitted pursuant to California Rule of Court 3.1590. The Court thanks all interested parties for their patience concerning the receipt of this Decision. The Court took the time to review hundreds of pages of documents and numerous trial briefs, before preparing this Decision. As stated at the time of the hearing, this Court wanted all parties to present all legal and factual authority they felt was pertinent to the making of a complete record and this Court read all submissions.

IT IS SO ORDERED.

DATED: 1/6/2012


TIMOTHY R. VOLKMANN
Judge of the Superior Court

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SANTA CRUZ

3
4 HAROLD GRIFFITH,

Certificate of Mailing

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6 Plaintiff,

7
8 vs.

9 PAJARO VALLEY WATER
10 MANAGEMENT AGENCY,

11 Defendant's.

12 _____ /
13 JOSEPH P. PENDRY, YUET-MING CHU,
14 WILLIAM J. McGRATH and HENRY
15 SCHIMPELER,

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18 THE PAJARO VALLEY WATER
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20 INTERESTED IN THE MATTER OF THE
21 VALIDITY OF PAJARO VALLEY WATER
22 MANAGEMENT AGENCY ORDINANCE
23 2010-02, and DOES 1-20,

24 Defendant's.

25 I, ALEX CALVO, Clerk of the Superior Court of the State of California for the County
26 of Santa Cruz, and not a party to the within action, hereby certify that on **January 9, 2012**, I
27 served copies of the attached PROPOSED STATEMENT OF DECISION AFTER COURT
28 TRIAL by depositing the enclosed in sealed envelopes with the postage thereon fully prepaid,
in the United States Post Office at Santa Cruz, California, addressed as follows:

1 Michael G. Colantuono, Esq.
2 Brian R. Guth, Esq.
3 Michael R. Cobden
4 COLANTUONO & LEVIN, PC
5 300 S. Grand Avenue, Suite 2700
6 Los Angeles, CA 90071-3137

7 Robert K. Johnson, Esq.
8 JOHNSON & JAMES, LLP
9 311 Bonita Drive
10 P.O. Box 245
11 Aptos, CA 95001-0245

Anthony P. Condotti, Esq.
S. Adair Paterno, Esq.
ATCHISON, BARISONE, CONDOTTI &
KOVACEVICH
333 Church Street
Santa Cruz, CA 95060

Harold Griffith, Pro Per
P.O. Box 96
Freedom, CA 95019

12 DATED: 1/9/12

ALEX CALVO, Clerk

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14 By 
15 Deputy Clerk
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