

You may have wondered... When can a water district issue a moratorium on new water service? What legal constraints are there to taking such action?

November 11, 2014

Hi Sustainable TamAlmonte Friends,

As you are most likely aware, this year the Marin Municipal Water District (MMWD) has asked customers to voluntarily reduce their water consumption by 25% and issued new conservation regulations, in compliance with the State Water Board's Emergency Regulations. Such measures indicate concern about an imbalance between our water supply and water demand. With possible drought years looming ahead, some residents have asked; "If there isn't enough water for normal water demand of current customers, then why is MMWD issuing new water hook-ups and increasing the demand? Why doesn't the water district issue a moratorium on new water service?"

Delving deeper, more questions arise... **When can a water district issue a moratorium on new water service? What legal constraints are there to taking such action?**

I have found an excellent article about this topic by Sean Sherlock and Katherine McKitterick entitled; "Time to Dust Off California Water Law on Development Moratoria". Here's the link to the article:

<http://www.swlaw.com/blog/california-land-use-developments/2014/10/01/time-to-dust-off-california-water-law-on-development-moratoria-2/>

Here are some highlights:

"Under California law, water districts have broad discretion to deny water connections and service to new applicants and to issue moratoria in the event of a declared 'water shortage emergency', but that discretion has limits."

A water district Board can only declare a '**water shortage emergency**' condition when it "finds and determines the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply to the extent that there would be insufficient water for human consumption, sanitation, and fire protection." (Water Code Section 350) "These conditions may be either immediate emergencies or threatened long-term water shortages."

Interestingly a case here in Marin, *Swanson v. Marin Municipal Water District (MMWD) (1976)*, has set precedence in the interpretation of laws related to moratoriums on water service. In the mid 1970s MMWD adopted a moratorium

on new water service (except under certain limited circumstances) based upon a finding that a threatened water shortage existed due to an imbalance between the district's water supply and demand. In response, "a property owner filed a lawsuit seeking to compel the water district to extend a pipeline and provide service to his proposed new home. The trial court granted judgment in favor of the property owner, and issued a writ compelling the water district to grant the pipeline extension and provide water service to the property. The court of appeal reversed the decision."

In *Swanson v. MMWD*, the court of appeal did, however, recognize limits to a water district's authority to deny water hook-up applications. The court's findings included the following: 1) A district is obligated to exert every reasonable effort to augment its available water supply in order to meet increasing demands; 2) A water moratorium can not be enacted with the purpose of instituting a no-growth policy within a community; and 3) A moratorium cannot be conducted in an arbitrary or discriminatory way.

Other cases have also demonstrated courts siding in the favor of the water districts being able to implement water moratoriums. Still others show the courts favoring the plaintiffs, especially when there isn't sound evidence that a water shortage emergency exists.

In the case, *Lockary v. Kayfetz (1990)*, land owners sued a public utility district in federal district court alleging that the denial of water hook-ups to their properties constituted "a regulatory taking of their property and violated their constitutional rights to due process and equal protection." The district court disagreed and dismissed the case. However, the court of appeals reversed the decision, finding that the plaintiffs proved that sufficient water existed to support additional development and therefore a 'water shortage emergency' didn't exist. The court of appeals further concluded that the utility's refusal to grant new water service equated to a "taking" of the land because it denied the owners all economically viable use of the land.

BOTTOM LINE:

"When water districts do not have enough water supply to satisfy demand they may declare water shortage emergency conditions and issue moratoria on new service connections. Denial of water service may be challenged in court, however, and is particularly vulnerable to challenge when it can be shown to be a pretext to a no-growth policy, or when it is done arbitrarily or discriminatorily" or when evidence of a 'water shortage emergency' is weak. Based on the court of appeals findings in *Swan v. MMWD*, a denial of water service may also be challenged when the water district can not demonstrate that it has exerted every reasonable effort to augment its available water supply in order to meet increasing demands.

Cheers,
Sharon

Sharon Rushton
Chairperson

Sustainable TamAlmonte

sharon@tamalmonite.org | <http://tamalmonite.org>