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Negotiations under way to buy water rights

Monterey County: Fewer restrictions on pre-1914 laws could ease transfer

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Looking for ways to supply future development and stanch seawater intrusion, the Marina Coast Water District is negotiating with a 100-year-old water company in Greenfield to buy water rights that predate 1914 California water laws.

As proposed, the Clark Colony Water Co. would stop or reduce its rightful pumping on the Arroyo Seco River and let the unused water flow down the Salinas River, where it could be pumped to Marina before flowing out to sea.

A transfer of the rights could be eased because they predate 1914 changes to California law requiring that water users get a state permit and use the water for beneficial purposes. One local water lawyer said pre-1914 water rights supercede most other state water rights, and may not be subject to the same environmental considerations.

The Clark Colony Water Co. was incorporated in 1905 as a real estate promotion by John Clark, who built a series of canals to supply dozens of 20-acre lots he bought in the Salinas Valley, said Walter Griva, current president of the company. The Greenfield Canal, built by the company, still flows into Elm Avenue in Greenfield.

The real estate scheme eventually failed and most of the land was converted to agricultural use, but not before the post office named the small town Greenfield after Clark Colony's first president.

"All these settlers went broke and now asphalt is taking over all that land," said Griva.

Resource engineer hired

In recent years, Clark Colony sold Greenfield properties to Creekbridge Homes and the Community Housing Improvement Systems and Planning Association. Clark has retained much of its water rights, however.

The amount of the rights is "yet to be determined," according to company spokeswoman Nancy Isakson, but historic use has been between 6,000 acre-feet and 13,500 acre-feet of water a year.

Lloyd Lowery, Marina Coast's counsel, said negotiations about water rights are in the earliest stages and were initiated by Clark Colony officials.

Griva refuted the idea that Clark Colony marketed its water rights.

"We're in the driver's seat," he said. "They see all this water and they figure instead of rubber dams and a bunch of other junk down there, if we turn it loose, it'll go down the river. If they come across with a lot of money, we'll see."

A rubber dam to catch excess winter flows on the Salinas River is the key element of the proposed Salinas Valley Water Project.

The district's board met in closed session twice since November regarding the water rights, and has hired well-known Sacramento water-resource engineer Bill Dendy to guide negotiations.

Lowery said Dendy would help the district decide the logistics and feasibility of the idea and determine the effect of state and federal water and environmental regulations.

"There's a lot of potential questions involving transactions of this nature, and (environmental complications are) one of the things he's been engaged to help the district work through," said Lowrey.

Arroyo Seco and Salinas River have been declared habitats for threatened southern steelhead trout. In addition, the U.S. Forest Service recently proposed declaring Arroyo Seco a "wild and scenic river" as part of Los Padres National Forest's management plan.

Point-of-diversion question |

Clark Colony has "pretty solid pre-1914 water rights," Lowrey said. "They've been in continuous use since forever, so I don't see how the declaration of the Arroyo Seco would have any implications for this."

Marc del Piero, a former member of the State Water Resources Control Board and a water-issues attorney, said pre-1914 water rights are in a class by themselves that are excepted from other rigorous state laws.

"I have not seen (Clark Colony's) water rights, but normally, in pre-1914 water rights, there is a less-defined place of use," he said. "The question that immediately comes to mind is what the point of diversion was at the time the water right was identified and secured and whether or not it's possible to move that point of diversion further north in order to allow them to deliver water to Marina.

"Additionally, the water right, because it's a superior water right, may not be subject to the same environmental considerations," he said.

Dendy said an environmental impact review would still be required, but that the water rights will be more easily transferred because it pre-dates the 1914 requirement that a state permit be obtained before a water diversion.

"The way by which you appropriated from a stream in California changed in 1914 or 1915," he said. After the change, "you had to apply to the state to divert water. Prior to that, you could just tack up a notice on a tree or something and file a paper with the county saying you intend to appropriate water. Over time, you got the water right."

Marc Lucca, Marina Coast Water District's interim general manager, declined to discuss details of the district's negotiations, noting that they are being conducted in closed session. An agenda from the board's Dec. 14 meeting indicates the two parties are negotiating "price and terms of payment" of the water rights.

It is unclear whether the water would be used for development in the city of Marina or on Fort Ord.

Board member Kenneth Nishi stressed that the idea was as much about saltwater intrusion as development.

"We're part of the Salinas basin and we're impacted the quickest because of seawater intrusion," he said. "Everybody pumps out of the basin, but it's the people who live along the coast who are affected the quickest."

Fellow board member Howard Gustafson said the district is a long way from closing a deal.

"This, I think, is a pie-in-the-sky thing for five years down the road," he said. "For the short term we're developing our water needs.... We have plenty of water."

The district has approved a water augmentation plan that includes use of desalinated and recycled water.

"Down the road, in the future, if development got so massive, the idea might be viable," Gustafson said. "You never know what the county has planned. If history is any indication, San Jose looked like us at one time."

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