

Law Offices of Matthew Emrick

A Professional Corporation
6520 Lonetree Blvd., #1009
Rocklin CA 95765
(916) 337-0361 (direct/cell)
matthew@mlclaw.com

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LAFCO of Monterey County
132 W Gabilan St #102
Salinas, CA 93901
Via e-mail: wysockik@monterey.lafco.ca.gov

Re: Water Supply for proposed Vista Lucia project annexation to the City of Gonzales.

Dear LAFCO Commissioners:

On behalf of LandWatch Monterey County, please accept these comments on the proposed Vista Lucia project annexation to the City of Gonzales.

After reviewing the facts, evidence, and analysis in support of the proposed annexation, LAFCO cannot find that the project has a legally feasible water supply or that the application is complete without identifying a feasible supply of water.

As explained *infra*, there is no surplus supply of available groundwater for the City to appropriate in either the 180/400 or Eastside basins because they are both in overdraft and will remain so for the foreseeable future, well after the City plans to begin supplying water. The analysis presented by the City as to sustainable or increased yield is based on the mistaken assumption that some portion of existing agricultural pumping that is discontinued at the site would be available to the project. This is a critical mistake in the analysis because the availability of surplus water for appropriation must be determined on a basin-wide basis and not at the parcel level – and, as explained below, both overdrafted basins proposed for new appropriations have no available surplus water. Further, an increase in yield within an overdrafted basin does not equate to water being available for appropriation by the City.

Any attempt to acquire rights by prescription in an overdrafted basin would create uncertainty which is an invalid unreasonable use of water, in part because it would adversely impact the efforts to achieve the recovery and sustainability of the basins.

Finally, an alternative water supply such as recycling or conservation is required, but LAFCO cannot approve the annexation without environmental review of an alternative water supply in lieu of the proposed illegal provision of groundwater.

Specific comments on these issues are set forth in detail below.

I. Factual background

A. Acting as an urban water supplier, the City intends to provide water to the Vista Lucia project by appropriating additional groundwater.

The plan for providing services for the Vista Lucia project annexation submitted to LAFCO by the City of Gonzales calls for water service to be provided by the City itself through a potable water distribution system that the City “owns, operates, and maintains.”¹ The Plan for Services states that the “Gonzales Water supply is provided 100% through groundwater in the Salinas Valley Groundwater.”² The Plan for Services states that the “Vista Lucia project proposes to connect the existing distribution system at Fanoie Road to the project site with an eventual extension out to Iverson Road and the existing storage tanks at Johnson Canyon Road.”³ Citing the City’s 2019 Water Master Plan, the Plan for Services explains that water is provided by groundwater wells, which it identifies as Wells 4, 5, and 6, and a then-planned Well 7.⁴ Well 7 was in fact completed in 2022.⁵

Both the EIR and its appended Water Supply Analysis confirm that the Vista Lucia project will be served by the City’s water system pumping water from the 180/400 Foot Aquifer and Eastside subbasins. The draft EIR [DEIR] explains that the “City of Gonzales provides water through wells and storage tanks” and references the Water Master Plan.⁶ The DEIR explains “Table 5 in the City’s water master plan shows that three groundwater wells (now expanded to four wells) serve as the existing domestic water source of supply. Based on the locations of the wells, groundwater is extracted from both the 180/400-Foot Subbasin and the Eastside Subbasin.”⁷ The EIR’s Water Supply Analysis states that the “Proposed Project anticipates being served by the City of Gonzales. The Proposed Project is explicitly anticipated by the City of Gonzales’ current Water Master Plan.”⁸

¹ City of Gonzales, Vista Lucia Project, Annexation Proposal, February 2026, Attachment 12, City of Gonzales, Plan For Providing Services, Vista Lucia Specific Plan Annexation, February, 2025 [“Plan for Services”], p. 26.

² Id.

³ Id.

⁴ Id. at 27; see Kimley Horn, Existing City Plus Sphere Of Influence Water Master Plan, June 2019, available at <https://gonzalesca.gov/sites/default/files/2019-11/City%20of%20Gonzales%20Water%20Master%20Plan%20FINAL%207.1.19.pdf> [Water Master Plan].

⁵ City of Gonzales, Fiscal Year 2022-2023 City & Successor Agency Recommended Budget, June 6, 2022, pp. 15, 148, 201, available at <https://gonzalesca.gov/sites/default/files/2022-06/Budget%20FY%202022-2023.pdf>; see also DEIR, p. 17-3 [acknowledging the fourth well was completed].

⁶ EMC Planning Group, Draft EIR, Vista Lucia Project, January 30, 2024 [DEIR], p. 17-3.

⁷ DEIR, p. 17-3.

⁸ DEIR Appendix G, Zanjero, Vista Lucia Specific Plan Project SB 610 Water Supply Assessment, February 2023 [WSA], p. 4-20.

In addition, the Development Agreement provides that the City itself is to supply groundwater.⁹ Section 6.4 of the Development Agreement provides that the City shall be responsible for constructing Water Supply Tanks and Wells. Section 6.4.2.1 provides that the Master Developer must convey any needed well sites to the City. Section 7.2 provides that the Mello-Roos financing will be used to pay for the construction of water supply infrastructure and wells.

B. The City assumes the right to pump as much groundwater for new urban development on former agricultural sites as the prorated sustainable yield available to the former overlying agricultural uses.

The Water Supply Analysis for the Vista Lucia EIR relies on the assumption that the City may appropriate the sustainable yield of the agricultural land that is converted to urban uses. As discussed in the legal analysis in Section II below, this assumption is mistaken for several reasons. Pumping a basin at sustainable yield would not ensure the existence of a surplus available for appropriative urban uses as long as demand from all overlying users remains unmet. Furthermore, any analysis to show an available surplus for appropriation must be undertaken at the basin level, not the parcel level as the City has done here. Finally, all of the evidence here shows that the basins from which the City proposes to supply water lack the available surplus needed to supply the project because they are in overdraft and will remain so for the foreseeable future, well after the City proposes to begin appropriating water for the project.

The facts are set out in the remainder of Section I before the legal analyses are set out in Sections II, II, and IV.

1. The WSA assumes future urbanization of agricultural land.

The WSA assesses long term water supply and demand for the City of Gonzales based on the expectation that “the vast majority of new development will occur as specific planned projects on land currently used for agriculture within the current City limit and in the City’s SOI,” citing the City’s 2019 Water Master Plan.¹⁰ The WSA identifies these “major new developments” as “the Proposed Project (Vista Lucia community, see Section 2) and the Puente Del Monte, Rianda Cooler, D’Arrigo, and Franscioni developments (see Section 3.2, below).”¹¹

2. Vista Lucia is to be served by City through the City water system.

The WSA explains that “[t]he Proposed Project anticipates being served by the City of Gonzales. The Proposed Project is explicitly anticipated by the City of Gonzales’ current Water Master Plan.”¹² The WSA explains that the upgraded City water system “will serve all planned developments in the City’s Sphere of Influence, including other planned developments not

⁹ Development Agreement by and between the City of Gonzales and Cielo Grande Ranch, LLC, relative to the Development known as Vista Lucia, available at [Vista Lucia Specific Plan | City of Gonzales](#)

¹⁰ WSA, p. 3-6.

¹¹ Id.

¹² WSA, p. 4-20.

included in the Proposed Project.”¹³ The WSA states that “[n]ew wells and other related infrastructure will be constructed by either the developers of new projects or the City of Gonzales.”¹⁴

3. Assumed water supply is identified as the prorated sustainable yield now used by agriculture on development sites.

The WSA assumes that the available water supply for future urban development of agricultural land would be equal to the sustainable yield available to the agricultural parcels if they were not converted to urban uses. As explained in the legal analysis below, this assumption is mistaken. Any discontinued agricultural pumping, or any increase in yield from urban conversion, would not be available to appropriative users such as the City as long as the basin itself remains in overdraft. Indeed, even if the agricultural users did confine their pumping to sustainable yield, there would not be any surplus available to appropriate for urban uses as long as overlying agricultural uses remained unsatisfied. Furthermore, the City cannot somehow pre-establish a future prescriptive right because prescriptive rights are established only by actual pumping.

Nonetheless, the WSA calculates the purported sustainable yield available for the project site based on the per acre sustainable yield from the water budgets in the adopted Groundwater Sustainability Plans [GSPs] for the Eastside, 180/400 Foot Aquifer, and Forebay Subbasins.¹⁵ The EIR also determines the City’s available consumptive sustainable yield for existing urban uses to be 874 AFY, based on the 2021-2021 average net water consumption reported in the GSPs.¹⁶

The EIR concludes that the City has a total consumptive sustainable yield of 3,072 AFY for new development based on the assumed 1.37 AF per acre sustainable yield for the 180/400 Aquifer Subbasin times the 2,239 acres of agricultural land to be annexed for new urban development.¹⁷ For new development plus the existing urban uses, the WSA concludes that net consumptive use would be 3,946 AFY (3,072 AFY for new development plus 874 AFY for the existing urban uses.)

For the Vista Lucia project, the WSA finds there would be an available “net consumptive sustainable yield” of 1,054 AFY based on its 768 acre site and conservatively assumed sustainable yield of 1.37 AF per acre.¹⁸

¹³ Id.

¹⁴ Id.

¹⁵ WSA, pp. 4-13 to 4-19.

¹⁶ WSA, p. 4-17.

¹⁷ WSA, p. 4-19, Table 4-2 [Net Consumptive Sustainable Yield Conclusions], pp. 5-4 to 5.5 [“With a total acreage of 2,239, the total sustainable consumptive groundwater supply available to the Proposed Project and the City’s other planned developments is estimated to be 3,072 acre-feet per year (Table 4-2)”].

¹⁸ WSA, p. 4-19, Table 4-2.

4. Assumed demand and pacing.

The WSA calculates total combined gross demand for the City at build-out, including existing urban uses, Vista Lucia, and other future annexations, to be 6,493 AFY.¹⁹ This figure represents gross water demand, not net consumptive use, i.e., the amount that would be supplied by groundwater pumping.

The WSA projects new demand pacing at 5-year increments.²⁰ This projection shows that Vista Lucia's gross demand, i.e., the amount to be supplied by groundwater extraction, will be 527 AFY by 2030, 917 AFY by 2035, 1,312 AFY by 2040, and 1,501 AFY by 2050.²¹

The WSA projects that total groundwater extractions for all urban uses, including Vista Lucia and other future projects, will rise dramatically, from 2,599 AFY in 2025 to 3,798 AFY in 2030, 4,731 AFY in 2035, and 6,493 AFY in 2050.²²

5. Because net consumptive use will decline with urbanization, the EIR finds no significant impact under CEQA.

The WSA calculates *net* consumptive use by subtracting system losses and planned recharge using treated wastewater from new development. The WSA assumes that 3,995 AFY of wastewater produced by new development will be treated and 3,480 AFY will be returned to the Basin.²³ The WSA also assumes recharge of 615 AFY through system losses.²⁴ The WSA calculates net consumptive use for existing and future urban development as 2,398 AFY, representing the difference between total demand (6,493 AFY) and recharge (4,095 AFY, based on 3,480 AFY of treated wastewater recharge and 615 AFY of system losses). The WSA finds that supplies are sufficient because that 2,398 AFY net consumptive use is less than the 3,946 AFY of sustainable yield it assumes the City could pump to support development on land previously used for agriculture.

Based on the WSA, the EIR sizes the Vista Lucia project gross demand at 1,501 AFY.²⁵ Noting that some wastewater is planned to be treated and percolated into the groundwater basin, the EIR projects Vista Lucia's net consumptive water use to be 414 AFY.²⁶ The EIR reports that the project would reduce consumptive demand on the project site by 686 to 866 AFY compared to existing agricultural water use on the site.²⁷ Because implementation of the project would reduce water use, the EIR finds no significant impact in terms of impeding sustainable groundwater

¹⁹ WSA, p. 5-1, Table 5-1.

²⁰ WSA, p. 5-2, Table 5-2.

²¹ *Id.*

²² *Id.* [data is for normal years].

²³ WSA, p. 5-6, Table 5-4.

²⁴ WSA, p. 5-6.

²⁵ DEIR, p. 17-8.

²⁶ *Id.*

²⁷ *Id.*

management.^{28,29} However, as discussed in Section II below, this analysis does not establish that surplus water will be available for appropriation by the City for project purposes.

C. The wells the City plans to use to serve Vista Lucia are in the Eastside Subbasin and the 180/400 Foot Aquifer Subbasin.

The Plan for Services locates Well 6 in the 180/400 Foot Aquifer Subbasin and Well 5 in the Eastside Subbasin.³⁰ The Plan for Services locates well 4 on the line dividing these two subbasins.³¹ However, comparison of DWR Bulletin 118 to the well location maps in the Water Master Plan indicates that Well 4 is in the Eastside Subbasin.³² Well 7 is also located in the Eastside Subbasin.³³ The Plan for Services indicates that additional wells will eventually be located on the Vista Lucia site to accommodate growth.³⁴ All of the Vista Lucia site is within the Eastside Subbasin.³⁵

D. Both the 180/400 Foot Aquifer Subbasin and the Eastside Subbasin are in overdraft.

1. Overdraft condition – Eastside

The Vista Lucia EIR acknowledges that the groundwater basin is in overdraft.³⁶ The EIR reports that “the greatest historic declines [in groundwater levels] have occurred in the Eastside Subbasin.”³⁷ “From 1944 to 2021, the Eastside Subbasin declined by almost 60 feet, or a long-term average rate of approximately 9.3 inches per year.”³⁸ The EIR also acknowledges that “current groundwater extraction rates within the basin will likely continue for the foreseeable future.”³⁹

The Groundwater Sustainability Plan (GSP) for the Eastside Subbasin identifies it to be in overdraft: “[a]veraged over the historical period, the preliminary SVIHM [Salinas Valley Integrated Hydrological Model] estimates that the Eastside Subbasin is in overdraft by 21,700

²⁸ DEIR, pp. 17-11, 17-13.

²⁹ The EIR fails to consider whether discontinuance of agricultural use on the site will cause conversion of unirrigated land elsewhere to replace the displaced agricultural production.)

³⁰ Plan For Services, Figure 14, p. 30.)

³¹ Id.

³² Water Master Plan, Figure 10 [locating Well 4 north and east of South Alta Street; Salinas Valley Basin Groundwater Sustainability Agency, Salinas Valley Web Map [locating South Alta Street as the line separating the subbasins].

³³ Water Master Plan, Figure 10 [Well 7 to replace Well 3]; Salinas Valley Basin Groundwater Sustainability Agency, Salinas Valley Web Map

³⁴ Plan for Services, p. 28.

³⁵ Plan for Services, Figure 14, p. 30.

³⁶ DEIR, p. 20-23

³⁷ Id., p. 17-10.

³⁸ Id., p. 17-10.

³⁹ Id., p. 17-10.

AF/yr.”⁴⁰ In addition to this *modeled* overdraft conclusion, the GSP explains that *measured* results also indicate overdraft:

The decline in groundwater storage based on measured groundwater elevations from 1944 through 2019 is estimated to be 3,400 AF/yr. in the Subbasin, as described in Section 5.2.2. Furthermore, the State of the Basin report (Brown and Caldwell, 2015) reports that groundwater storage in the Eastside Subarea decreased at an average rate of 5,000 AF/yr. from 1944 through 2013, based on analysis of measured groundwater elevations. During the drought years of 1984 through 1991, the State of the Basin report states that groundwater storage in the Eastside Subarea is estimated to have declined by 25,000 to 35,000 AF/yr.⁴¹

Because the modeled and the measured results differ, while both showing the basin to be in overdraft, the Eastside GSP uses an average of their values, concluding the basin is in overdraft by 10,000 AFY, as follows:

The SVIHM simulated change in groundwater storage is more consistent with drought year estimates than the long-term historical average estimates. These reported values are not fully comparable with SVIHM estimates because the 2 studies use slightly different study areas, this GSP representing the Eastside Subbasin and the State of the Basin study encompassing the Eastside Subarea, which includes both the Eastside and Langley Subbasins delineated in DWR Bulletin 118. Uncertainties exist in groundwater storage estimates from both the SVIHM and the analyses using groundwater level measurements. The more reliable estimate is unclear at this time. Therefore, based on the average of these reported values, this GSP considers 10,000 AF as the average annual decline in storage.⁴²

The Eastside GSP acknowledges that “the Eastside Subbasin has historically been in overdraft, and is projected to still be in overdraft throughout the GSP planning horizon unless projects and management actions bring extraction and the sustainable yield in line.”⁴³ From a groundwater rights perspective, this indicates a lack of surplus water available for appropriation by the City and likely no surplus available for years into the future from this basin.

Consistent with the Eastside GSP overdraft finding, DWR designates the Eastside Subbasin as a high priority basin for the purposes of the Sustainable Groundwater Management Act [SGMA].⁴⁴

⁴⁰ Salinas Valley Basin Groundwater Sustainability Agency, Salinas Valley Groundwater Basin Eastside Aquifer Subbasin Groundwater Sustainability Plan, Jan. 13, 2022, p 6-19, available at <https://svbgsa.org/wp-content/uploads/2022/04/Eastside-Whole-GSP-Report-Only-20220414.pdf>.

⁴¹ Id.

⁴² Id. pp. 6-19 to 6-20; see also 6-21.

⁴³ Id., p. 9-95 [Section 9.7, Mitigation of Overdraft].)

⁴⁴ California Groundwater: Bulletin 118 – Update 2025 Full Report (Chapters 1-7 – at p 7-39, available at https://data.cnra.ca.gov/dataset/calgw_update2025/resource/888cc330-a01c-4f5d-8a10-d1ffab86db36.

2. Overdraft condition – 180/400 Foot Aquifer Subbasin

DWR designates the 180/400 Foot Aquifer Subbasin to be in a “critical condition of overdraft.”⁴⁵

The modeling for the Groundwater Sustainability Plan Amendment for the 180/400 Foot Aquifer Subbasin identifies it as in overdraft: “[a]veraged over the historical period, the preliminary SVIHM estimates that the 180/400-Foot Aquifer Subbasin is in overdraft by 14,800 AF/yr.”⁴⁶

In addition to this modeled overdraft conclusion, the 180/400 GSP explains that measured results also indicate overdraft: “The decline in groundwater storage based on measured groundwater elevations from 1995 through 2019 is estimated to be about 800 AF/yr in the Subbasin, as described in Section 5.2.2. . . . However, the storage loss estimate from Section 5.2.2 is likely underestimated because it does not account for conditions in the Deep Aquifers, due to lack of data.”⁴⁷

Because of uncertainty “in groundwater storage estimates from both the SVIHM and the analyses using groundwater level measurements,” the 180/400 “GSP considers 800 AF as the historical average annual decline in storage due to change in groundwater elevation,” doing so “based on the average of groundwater level measurements reported in Section 5.2.2.”⁴⁸

The loss of groundwater storage due to seawater intrusion is an additional component in calculating overdraft, because that intrusion is caused by overdraft that lowers groundwater levels below sea level, inducing seawater to flow inland. Based on historic mapping of chloride concentrations, the 180/400 GSP Amendment concludes that the “loss of groundwater storage due to seawater intrusion in the 180/400-Foot Aquifer Subbasin is estimated to be 12,600 AF/yr.”⁴⁹

Adding both overdraft factors, the GSP concludes that total overdraft is 13,400 AFY: “[h]istorical average decline in usable storage (overdraft) is 13,400 AF/yr, which is the sum of seawater intrusion (12,600 AF/yr loss) and net storage loss due to groundwater level changes (800 AF/yr).”⁵⁰

⁴⁵ California Groundwater: Bulletin 118 – Update 2025 Full Report (Chapters 1-7), p. 2-43 [Figure 2-4, Groundwater Basins Subject to Critical Conditions of Overdraft listing the 180/400 Foot Aquifer Subbasins], available at https://data.cnra.ca.gov/dataset/calgw_update2025/resource/888cc330-a01c-4f5d-8a10-d1ffab86db36.

⁴⁶ Salinas Valley Basin Groundwater Sustainability Agency, Salinas Valley Groundwater Basin 180/400 Foot Aquifer Subbasin 2022 GSP Amendment, Sept. 8, 2022, p 6-22, available at https://svbgsa.org/wp-content/uploads/2025/01/180-400-GSP-Amendment-1-Document_compressed.pdf.

⁴⁷ Id.

⁴⁸ Id., p. 6-23.

⁴⁹ Id.

⁵⁰ Id., p. 6-25.

The 180/400 GSP Amendment concludes that the 180/400 Foot Aquifer Subbasin “has historically been in overdraft, and is projected to still be in overdraft throughout the GSP planning horizon unless projects and management actions bring extraction and the sustainable yield in line. The long-term overdraft in the Subbasin is projected to be 13,400 AF/yr after sustainability is met.”⁵¹ Again, from a groundwater rights perspective, this analysis indicates a lack of surplus water available for appropriation as discussed further in this letter.

E. Prior to approving the project and applying for annexation, the City’s consideration of its right to appropriate groundwater was cursory and legally incorrect.

The WSA’s two paragraph discussion of water rights assumes that the City as water supplier to the project has, or may establish, rights to use the groundwater now being used by overlying agricultural water users. As noted above, and explained in the legal analysis below, this is mistaken because there is no surplus water for new appropriations.

The WSA also claims that Vista Lucia project landowner will have continuing rights to produce water for use on the site. The assumption that the project landowner would have the right to produce water is inconsistent with the express plans that the City, not the landowner, supply water.⁵²

The discussion then confusingly implies that *both* the project landowners and the City would have rights to appropriate water for urban uses. However, nowhere does the discussion acknowledge the overdraft condition of the groundwater basin or address the legal consequence of that overdraft.

The WSA’s entire discussion of water rights is as follows:

4.3 WATER RIGHTS, FINANCING, AND REGULATORY APPROVALS

Upon construction of the Proposed Project, ownership and operation of all water utility systems will be transferred to the City of Gonzales. It is anticipated the Proposed Project will be annexed into the City prior to Project construction. The City of Gonzales will then be responsible for the continued operation and maintenance of all utility systems. However, the City assuming responsibility for water delivery will not have any impact on the Proposed Project’s estimated water demand or the availability of the groundwater resources available to serve the Proposed Project, as described later in Section 5.

Absent an adjudication of a groundwater basin, California common law governs the right to use and extract percolating groundwater from a basin. The Salinas Valley Basin and all of its subbasins are unadjudicated groundwater basins and therefore subject to these

⁵¹ Id, p. 9-130.

⁵² For example, the Master Plan assumes and Section 6.4.2.1 of the Development Agreement both call for the City to own and operate the well sites.

common law rules. The owner of real property overlying a groundwater aquifer possesses a right as part and parcel of the land to extract groundwater from beneath the property for use on overlying land within the watershed. The Proposed Project applicants are, or will become as a result of approval of the Proposed Project, landowners overlying the Basin. Accordingly, both the current owner of the property and the proposed applicant of the Proposed Project are overlying owners and are entitled to produce groundwater to serve their reasonable and beneficial uses within the watershed or drainage area of the basin. The City, as a municipal water supplier, also has the opportunity to establish appropriative rights on this same groundwater resource as the Proposed Project and other planned future uses are established – consistent with the appropriative rights to groundwater it has already established through service to existing customers. These rights, however, are subject to the County’s oversight and management, and as may be required to conform to SGMA.⁵³

The annexation application section on “Groundwater Standards” does not consider water rights or acknowledge that the lack of water rights is an impediment to supplying water.⁵⁴ Instead it merely recites that, because the WSA “concludes that sufficient groundwater *physically* exists in the Salinas Valley Groundwater Basin to meet the needs of the proposed project,” the EIR finds the project would have a less than significant impact “regarding the sufficiency of its water supply.”⁵⁵ The annexation application’s discussion of compliance with LAFCO’s groundwater standards also claims that the project will not contribute to the cumulative adverse impact on the groundwater basin because it would use less water than the agricultural use it displaces.⁵⁶ Neither of these conclusions address the legal right to appropriate water for the project.

The Plan for Services section on water supply also fails to consider water rights or acknowledge that the lack of water rights is an impediment to supplying water.⁵⁷ See further discussion below.

F. The City has not adequately answered LandWatch’s objections that it lacks the right to supply groundwater to the project.

LandWatch objected that the annexation application does not establish that the project has a feasible water supply because the City does not have the right to appropriate additional water from a groundwater basin in overdraft.⁵⁸

⁵³ WSA, p. 4-19.

⁵⁴ Annexation Application, pp. 14-16.

⁵⁵ Id., p. 15, emphasis added.

⁵⁶ Id. p. 16.

⁵⁷ Plan for Services, pp. 26-33.

⁵⁸ Michael DeLapa, letter to Monterey County LAFCO, March 26, 2026, available as attachment 5 to letter from Kate McKenna to Carmel Gill, March 26, 2026 re 30-day application completeness review, pdf pages 27-29 of <https://www.countyofmonterey.gov/home/showpublisheddocument/145295/639102034484800000>.

The comments on the annexation application by the SGMA Groundwater Sustainability Agency [GSA] for the Salinas Valley acknowledged that “appropriative rights are subordinate to overlying rights in conditions of overdraft” but did not substantively address the lack of groundwater rights. Instead, the GSA stated it “defers to the lead agency’s analysis on these matters,” as follows:

SVBGSA has obtained preliminary legal review regarding the recent Las Posas Valley Water Rights Coalition v. Ventura County Waterworks District No. 1 decision and its potential applicability to the Salinas Valley. As concluded by SVBGSA special legal counsel, the case does not establish new legal principles regarding groundwater rights but rather applies longstanding California law that appropriative rights are subordinate to overlying rights in conditions of overdraft. Importantly, the circumstances in the Las Posas case differ materially from those in the Salinas Valley. The Salinas Valley subbasins, including those underlying the proposed annexation area, have not been adjudicated, and no court has determined groundwater rights, safe yield, or the existence of surplus water. Additionally, SGMA and the applicable GSPs do not define or alter groundwater rights. Based on available information, including the Water Supply Assessment and CEQA analysis prepared by the City of Gonzales, the proposed project is expected to result in a net reduction in groundwater use compared to existing agricultural conditions. SVBGSA therefore defers to the lead agency’s analysis on these matters while continuing to monitor legal developments.⁵⁹

Critically, the GSA letter acknowledges that “not all subbasins are currently operating under sustainable conditions. Specifically, four subbasins—the 180/400-Foot Aquifer, Langley, Eastside, and Monterey Subbasins—are not yet sustainable, as they do not currently meet all applicable Sustainable Management Criteria. This is consistent with existing basin conditions described in project-related environmental documentation, which recognizes ongoing groundwater management challenges in the Salinas Valley.”⁶⁰

In response to LandWatch’s objections, the City cited just two facts that it said should make “further discussion concerning this matter unnecessary.”⁶¹ First, it argued that the EIR concludes the project would use less water than currently being used on the site for agriculture. Second, it claimed that the GSA letter is “deferring to the City’s adopted findings concerning water supply.”⁶² It is unclear that the City has ever adopted express findings regarding water rights.

⁵⁹ Piret Harmon, letter to Jonathan Brinkman, March 18, 2026, p. 2, available as attachment 3 to letter from Kate McKenna to Camel Gill, March 26, 2026 re 30-day application completeness review, pdf pages 17-18 of

<https://www.countyofmonterey.gov/home/showpublisheddocument/145295/639102034484800000>.

⁶⁰ Id., p. 1.

⁶¹ Carmen Gill, letter to Kate McKenna, Ken Wysoki, and Jonathan Brinkman, July 2, 2026, pp. 5-6, available at

<https://www.countyofmonterey.gov/home/showpublisheddocument/147065/639192795684630000>.

⁶² Id., p. 6.

The City's only mention of water rights is the two paragraph discussion in the WSA.⁶³ The insufficient water rights analysis appears to have given the City the false understanding that it can somehow establish new or expanded appropriative water rights in an overdrafted basin.

G. Even though SGMA mandates sustainable groundwater conditions for the 180/400 Foot Aquifer Subbasin by 2040 and for the Eastside Subbasin by 2042, there is no current committed plan to eliminate overdraft conditions in these subbasins before 2040.

Although the GSA has issued GSPs for each of the Salinas Valley subbasins subject to SGMA, it has not yet committed itself to a portfolio of projects and management actions that are projected to meet SGMA's goals for sustainable groundwater management by the 2040 deadline for basins in critical overdraft (e.g., the 180/400) or by 2042 for other basins (e.g., the Eastside).

Because it was concerned about the lack of an identified strategy to address overdraft and seawater intrusion in the 180/400, in December 2025, the DWR asked that the GSA identify the projects and management actions it intended to implement to do this. DWR asked the GSA to "[p]rovide clear path of implementing projects and management actions necessary to halt and mitigate seawater intrusion, declining groundwater levels, and overdraft, to achieve sustainability by 2040."⁶⁴ DWR objected that the GSA had not implemented the projects and management actions (PMAs) identified in the 2020 GSP for the 180/400 Subbasin and that "no significant progress has been made moving forward with implementing the new PMAs."⁶⁵ DWR objected that the PMA's are "still conceptual/under feasibility study," that they "[H]ave no firm commitment of being implemented," and that there are "no clear schedules of when PMAs will be fully in place."⁶⁶ DWR objected that without definitive PMAs, complete schedules, and a timeline of the accrual of expected benefits, DWR and staff could not assess "whether the sustainability goal for the basin will be achieved by the 2040 deadline."⁶⁷ DWR demanded that the GSA identify the PMAs that it would move forward for implementation, including initiation and completing dates and the timeline for accrual of expected benefits."⁶⁸

The GSA has been developing, and plans to continue developing, an "Integrated Implementation Strategy," that includes PMAs that are expected to benefit multiple subbasins, primarily the Eastside and 180/400.⁶⁹ The GSA describes the Integrated Implementation Strategy as "a process for evaluating combinations of projects and management actions across the Salinas Valley. Rather than assessing individual projects in isolation, the IIS evaluates scenarios that

⁶³ WSA, p. 4-19.

⁶⁴ Monica Salais, letter to Piret Harmon, Dec. 1, 2025, p. 1, available at https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/3961863/6.3_Letter_DWR_2025_PE_180-400_2025-12-01.pdf.

⁶⁵ Id, attached presentation, p. 10.

⁶⁶ Id.

⁶⁷ Id, p. 13.

⁶⁸ Id., p. 14.

⁶⁹ GSA website, Integrated Implementation Strategy, available at <https://svbgsa.org/integrated-implementation-strategy/>.

reflect the hydraulic connectivity of the subbasins and the need for coordinated solutions.”⁷⁰ The GSA explains that in “August 2026, the SVBGSA Board of Directors will select a preferred implementation pathway to guide the Salinas Valley toward long-term groundwater sustainability.”⁷¹

The GSA Board met on August 13 to select the “preferred PMA Portfolio” and to approve a letter responding to DWR’s requests for information as to the PMA’s to address overdraft conditions in the 180/400.⁷² The staff report recommended “Portfolio 3A (Small BGRP [Brackish Groundwater Recharge Project] with Direct Delivery and Injection).” The portfolio “features a smaller BGRP with partial direct delivery to Salinas and partial injection, paired with C&E recharge basins in the Eastside (100 cfs), CSIP optimization, and 10% agricultural demand management.”⁷³ Capital cost is approximately \$1.07 billion with annual O&M of approximately \$74.3 million.⁷⁴

Staff analyzed various portfolios in terms of their efficacy at meeting SGMA minimum thresholds for seawater intrusion and groundwater level declines. The PMAs in Portfolio 3a “addresses seawater intrusion nearly — but not fully to — the current minimum threshold and does not address Monterey Subbasin seawater intrusion.”⁷⁵ Portfolio 3A was projected to meet the groundwater level thresholds for the Eastside Subbasin no sooner than 2040 and for the 180 foot aquifer no sooner than 2041.⁷⁶ It was projected to meet the groundwater level minimum

⁷⁰ Id.

⁷¹ Id.

⁷² GSA, Agenda Report, Aug. 13, 2026, https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4289115/6.3_AR_IIS_PMA_Portfolio_Selection.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMMEOCN XD2W%2F20260812%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20260812T224014Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=3b2fab212fdce2a466431e35694d7220fb5978af93df640d50cf81a8a659a9c3.

⁷³ Id.

⁷⁴ Id.

⁷⁵ GSA, Agenda Report, Aug. 13, 2026.

⁷⁶ Montgomery & Associates, DWR Response 2: 180/400 GSP Amendment 1 & 2025 Periodic Evaluation Additional Information Request, Aug. 6, 2026, pdf page 21, available at https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4273921/Presentation_180-400_DWR_Response_2_2026-08.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMMEOCN XD2W%2F20260812%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20260812T225341Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=f682f1f6092a6b76e4afeb4029757e354f153f07133275a2e3837b10c5b71ced.

threshold for the 400 foot Aquifer no sooner than 2038.⁷⁷ As noted, Portfolio 3a does not meet the seawater intrusion minimum threshold by 2040.⁷⁸

At its August 13, 2026 meeting, the GSA Board directed staff to return with a letter to DWR indicating that the GSA intends to pursue Portfolio 3a. GSA staff and Board members were clear that this letter would not constitute approval of, or commitment to, the Portfolio 3a projects for several reasons. First, Board members reserved the right to pursue alternative projects if they seem more promising. Second, no commitment could be made to any project without CEQA review, a funding plan, cost allocation, and a Proposition 218 vote, none of which are expected to be completed in the near term.⁷⁹

The GSA's evaluation of its currently proposed portfolio of PMAs does not directly address overdraft conditions. However, the evidence is that Portfolio 3a will not avoid overdraft before 2040. First, although the Eastside Subbasin GSP concluded that the *complete* list of 12 projects and 3 management actions "are sufficient to mitigate existing overdraft, as presented in Table 9-7,"⁸⁰ the portfolios considered by the GSA, including Portfolio 3a, do not include all of the projects and management actions set out in the Eastside GSP's Table 9-7.

Second, the GSP for the Eastside Subbasin uses the groundwater level minimum threshold as a proxy for the minimum threshold for loss of groundwater storage.⁸¹ As noted, the minimum threshold for groundwater elevations in the Eastside is not projected to be reached before 2040.

Third, as the GSP for the 180/400 Foot Aquifer Subbasin explains, the volume of seawater intrusion is one component (the largest) of the metric for overdraft. Accordingly, since Portfolio 3a will not avoid seawater intrusion before 2040, it will not avoid overdraft.

⁷⁷ Id.

⁷⁸ See also, Montgomery and Associates, Final Portfolios Groundwater Modeling Results, July 16, 2026, pdf page 3, available at https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4239315/3.2_Presentation_Final_Portfolios_GW_Modeling_Results_HT.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMEOCNXD2W%2F20260812%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20260812T224811Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=e9b87f5e313462276216d0f1fa789630483ef47130808958bfa467467727451c

⁷⁹ See video of GSA Board Meeting, Aug. 13, 2026, available at https://us02web.zoom.us/j/9Nscz9NH_Ue5TuB5ph6CfRodIHrhYnVfMT0EEfNCteD6BnM__YE39RQvnqbiFNFpe3UVGxtYNwaedv.RXxUNYf2NR9Bw5xR?accessLevel=meeting&canPlayFromShare=true&from=share_recording_detail&continueMode=true&oldStyle=true&componentName=rec-play&originRequestUrl=https%3A%2F%2Fus02web.zoom.us%2Frec%2Fshare%2F72OBjBL3ux57BwUBL_wZ5CuD-pZSIEJHZAMoFGnEILY7zj4ky_5rmJvqyEzmzEFw.vWYqQUdoCKrIg9Q.

⁸⁰ Eastside GSP, p. 9-95.

⁸¹ Eastside GSP, pp. 8-6, 8-24, 8-26.

In sum, even if the PMAs in Portfolio 3a, when fully implemented, were sufficient to avoid overdraft in the Eastside and 180/400 Subbasins, they will not do so before 2040. In the meantime, as explained below, the Plan for Services, the EIR's WSA, and the Water Master Plan indicate that the City would be pumping hundreds of acre-feet of groundwater for the Vista Lucia project under overdraft conditions.

Part of Portfolio 3a is a proposal for a 10% reduction in agricultural pumping.⁸² However, this would not be sufficient to avoid overdraft in either the Eastside or the 180/400 subbasin.

The Eastside GSP indicates 2030 pumping is 90,400 AFY, of which 81,000 is agricultural and 9,400 is urban.⁸³ The GSP indicates a 10,000 AFY overdraft.⁸⁴ A 10% reduction in total pumping would amount only to 9,040 AFY, and would not eliminate the 10,000 AFY overdraft. Furthermore, the proposed 10% reduction in Portfolio 3a is only for *agricultural* pumping.⁸⁵ A 10% reduction in agricultural pumping would come to only 8,100 AFY, again less than the 10,000 AFY overdraft.

The 180/400 GSP indicates 2030 pumping is 124,600 of which 113,600 is agricultural and 11,000 is urban.⁸⁶ The overdraft is 13,400 AFY.⁸⁷ A 10% cut in total pumping would not eliminate the 13,400 AFY overdraft. A 10% cut in *agricultural* pumping would amount to only 11,360 AFY, again failing to eliminate the 13,400 AFY overdraft.

Furthermore the implementation of a demand management program, for which the GSA has not developed allocations, procedures, or incentives, will require several years of planning and program development. The GSA does not anticipate that the 10% reduction will be achieved before 2030.⁸⁸ As explained below, prior to 2030, the Plan for Services calls for the City of Gonzales to appropriate groundwater for the new Vista Lucia project.

⁸² GSA, Advisory Committee Memorandum, Integrated Implementation Strategy PMA Final Portfolios, July 16, 2026, p. 2, available at https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4238120/3.2_Memo_AC_IIS_PMA_Final_Portfolios.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMMEOCNXD2W%2F20260813%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20260813T043818Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=88c1fd3c3d82386d6dc862ecb122028fd7867b96ed2fdf71500e3334dc33a146.

⁸³ Eastside GSP, p. 6-26, Table 6-14.

⁸⁴ Id., p. 6-27.

⁸⁵ GSA, Advisory Committee Memorandum, Integrated Implementation Strategy PMA Final Portfolios, July 16, 2026, p. 2.

⁸⁶ 180/400 GSP, p. 6-34, Table 6-14.

⁸⁷ 180/400 GSP, p. 6-35, Table 6-15.

⁸⁸ GSA, draft 180/400-Foot Aquifer Subbasin 5-Year Evaluation and GSP Amendment 1, Response 2 to DWR Additional Information Request, p. 3-19, available at [https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4289136/6.4_180-400_SVBGSA_Response_2_to_DWR_Draft.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMMEOCNXD2W%2F20260813%2Fus-east-](https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4289136/6.4_180-400_SVBGSA_Response_2_to_DWR_Draft.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMMEOCNXD2W%2F20260813%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20260813T043818Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=88c1fd3c3d82386d6dc862ecb122028fd7867b96ed2fdf71500e3334dc33a146)

H. The City plans to supply hundreds of acre-feet per year to the Vista Lucia project before 2030 and 2040.

The City intends that the Vista Lucia project proceed in four phases. The incremental demand for the Vista Lucia project phases is set out in the Plan for Services and in the Water Supply Analysis. Both show that the City plans to supply hundreds of acre-feet to the project before 2030 and before 2040 in its first two phases.

The Plan for Services indicates that the initial phase of the Vista Lucia project will include a new well, Well 8, near Herold Parkway.⁸⁹ That phase will include up to 455 dwelling units and require 0.25 million gallons per day.⁹⁰ This would amount to 280 AFY of groundwater pumping. (1 AF = 325,851 gallons.)

The Plan for Services indicates that the second phase would also include a new well, Well 9, on the northwest side of the site, and would include up to 1,238 dwelling units with a total demand of 465,000 gallons per day or 521 AFY.⁹¹ Based on the City's annexation application, LAFCO has determined that Phase 1 would commence in three to six years of annexation approval and Phase 2 would commence in eight to ten years.⁹²

Separately, the WSA projects new demand pacing at 5-year increments.⁹³ This projection shows that Vista Lucia will demand 527 AFY by 2030, 917 AFY by 2035, 1,312 AFY by 2040, and 1,501 AFY by 2050.⁹⁴

In sum, the project would rely on pumped groundwater for more than a decade before SGMA's sustainability deadlines for the subbasins from which the City intends to appropriate water even though those subbasins are in overdraft.

[1%2Fs3%2Faws4_request&X-Amz-Date=20260813T174846Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=2e59d55da81faf104de5641455e8e2ccfd7f315c01d642268fb05456285df90f](https://www.countyofmonterey.gov/home/showpublisheddocument/145295/639102034484800000)

⁸⁹ Plan for Services, p. 28.

⁹⁰ Id.

⁹¹ Id.

⁹² Kate McKenna, letter to Carmen Gil, "30-day application completeness review," March 26, 2026, p. 3, available at <https://www.countyofmonterey.gov/home/showpublisheddocument/145295/639102034484800000>.

⁹³ WSA, p. 5-2, Table 5-2.

⁹⁴ Id.

II. The City does not have the right to increase its groundwater pumping to supply water to the Vista Lucia project because the groundwater basins from which it would pump that water are in overdraft.

The water supply analysis with respect to the proposed annexation fails to sufficiently evaluate the City's rights to use groundwater from the relevant basins. In fact, the City does not have the right to increase its groundwater pumping to supply water to Vista Lucia because the groundwater basins the City plans to use are in overdraft.

A. Relevant groundwater rights

There are two primary types of groundwater rights established by the courts in California: overlying rights and appropriative rights. *City of Santa Maria v. Adam*, (2012) 211 Cal. App. 4th 266, 278-279.⁹⁵ With respect to the proposed annexation and the Vista Lucia project, the City will be a groundwater appropriator. However, based on present overdrafted condition of the basins, there is no surplus groundwater legally available for any new or increased appropriations by the City. *City of Santa Maria, supra*, 211 Cal.App.4th 291-293.

1. Overlying Groundwater Rights

Overlying groundwater rights attach to lands that overlie a percolating groundwater basin such as the basins in and adjacent to the lands proposed for annexation. Overlying landowners perfect their groundwater rights by extracting the water from the aquifer beneath their property, and then applying that groundwater to a reasonable and beneficial use upon their property (e.g. for irrigation purposes).⁹⁶ *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1240-1241, 1251-1252. Overlying owners collectively have "first right" to the available groundwater in a basin with priority over appropriative groundwater users such as municipalities. *Barstow, supra*, 23 Cal.4th 1240-1241.⁹⁷ This right includes a right of future use and expansion of the overlying groundwater right.

⁹⁵ There are also prescriptive rights to groundwater, which may potentially be obtained by adverse pumping and use during periods of overdraft provided all of the conditions for prescription are met. *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 925-927.

⁹⁶ See categories of beneficial uses at Water Code 106; Calif. Code of Regs, Title 23 Sec. 659 et seq.

⁹⁷ "We repeat the guiding principle: 'Under California law, "[p]roper overlying use ... is paramount, and the right of an appropriator, being limited to the amount of the surplus. . . **must yield** to that of the overlying owner in the event of a shortage. . .'" *Barstow, supra*, 23 Cal.4th 1240-1241 (emphasis added).)

Overlying rights are “correlative.” *Katz v. Walkinshaw* (1902) 141 Cal. 116, 134-137. This means that all overlying users have an equal right to take sufficient groundwater to meet their needs, but during times of shortage all overlying users must share the common groundwater proportionately. *Tehachapi-Cummings County Water District v. Armstrong* (1975) 49 Cal.App.3d, 992, 1001-1002. Generally, groundwater extracted under a claim of an overlying right must be used within the basin from which it was extracted. *City of Barstow, supra*, 23 Cal.4th 1224, 1240-1241. **If the water is used on non-overlying property, or for a municipal purpose, the water loses its characterization as an overlying right.** *City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 15-16, 29-31.

2. Appropriative Groundwater Rights (Municipal Uses)

Unlike overlying groundwater rights, appropriative groundwater rights are not acquired by the ownership of property overlying a basin. Instead, these rights are acquired by the pumping of water from one parcel of property overlying a groundwater basin for use on another property outside of the groundwater basin and applying the water to a reasonable beneficial use. *City of Barstow, supra*, 23 Cal.4th 1224, 1240-1241. The right is one of use rather than one of property ownership. *Kat, supra*, 141 Cal. 134-135. The courts have long determined that all municipal uses of groundwater are appropriative because water is being distributed for use on properties not owned by the municipality (e.g. private residential and commercial uses). *City of San Bernardino, supra*, 186 Cal. 15-16, 29-31.

A groundwater appropriator’s right to use water is subordinate to all of the overlying users in a basin. *Pasadena, supra*, 33 Cal.2d 908, 920, 925-927; *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 434-436. Among groundwater appropriators, the right to pump water is not based on correlative rights as it is for overlying users. Instead, appropriators’ rights to pump water from a particular basin are subject to a “first in time, first in right” time-based priority system similar to surface water appropriators.

As between appropriators, however, the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any.

City of Barstow, supra, 23 Cal.4th 1224, 1241.

Significantly, appropriators are only entitled to divert and use water that is in “surplus” of the needs of all the overlying users in the basin. *Id.* Surplus water is that quantity of groundwater in excess of the water needed to meet the present and future needs of all overlying users. *City of Santa Maria, supra*, 211 Cal.App.4th 291-293. If there is no surplus water within the groundwater basin, there is no water available for appropriation – both existing and new appropriations. *Corona Foothill Lemon Co. v. Lillibridge* 8 Cal.2d 522, 530-531. Generally, there is no surplus water available in an overdrafted or declining basin for present or for planned future appropriative uses. *Phelan Pinon Hills Community Services District v. California Water Service Company, et al.* (2020) 58 Cal.App.5th 243, 258–261, fn 23; Water Code Section 10735 [defining long-term overdraft]. In *City of Santa Maria, supra*, 211 Cal.App.4th 291-293, the

court held that, on the commencement of overdraft, no surplus water is available for appropriation:

Overdraft commences whenever extractions increase, or the withdrawable maximum decreases, or both, to the point where the surplus ends. Thus, on the commencement of overdraft there is no surplus available for the acquisition or enlargement of appropriative right.

Critically, even reducing pumping toward sustainable yield does not ensure surplus water for use by appropriators in a basin already in decline or overdraft. *Id.* Until a basin is no longer in overdraft, any additional yield, including water “saved” by replacing agricultural land use with urban use, is not surplus water. Even attaining sustainable yield does not ensure a surplus if overlying users choose to pump all of that yield for reasonable beneficial uses.

Any analysis purporting to demonstrate a surplus must consider all uses within the basin and cannot be restricted to uses on a particular parcel. Importantly, with respect to the City’s planned annexation and proposed new wells and pumping, the burden of proving the availability of surplus water is on the City as an appropriator. *Peabody v Vallejo* (1935) 2 Cal.2d 351, 382. From the evidence, the City has failed to meet its burden to demonstrate surplus water available for appropriation because all of the evidence shows that the Eastside and 180/400 subbasins are in overdraft and will remain in overdraft for the foreseeable future. The City certainly cannot demonstrate a surplus by restricting its analysis to uses on a particular parcel.

Actual diversion and application of groundwater to a beneficial use is required to vest the appropriative right. *City of Barstow, supra*, 23 Cal.4th 1224, 1240-1241. There is no right to a future appropriative groundwater right. *City of San Bernardino, supra* 186 Cal. 15-16. 29-32. The scope of the appropriative right is not defined by identifying an allegedly available sustainable yield, or a demand for water, or capacity of a well, but rather by actual beneficial use. In the context of the proposed annexation, this means that identifying alleged safe yield in an overdrafted basin does not create a right to any groundwater for the City, nor does building a well, or increasing the capacity of an existing well.

B. Conclusions as to the City’s Water Rights to Provide Water to Annexed Lands

First, there is no evidence of surplus water in the basins being proposed for new wells to serve the annexed land and proposed project. To the contrary, the evidence shows that there is no surplus because the basins are in overdraft.⁹⁸ The evidence also shows that the basins will *remain* in overdraft for the foreseeable future. The project EIR admits that “current groundwater extraction rates within the basin will likely continue for the foreseeable future.”⁹⁹ The GSA future water balances assume that urban uses will remain unchanged.¹⁰⁰ Even complete

⁹⁸ See Sections I.D.1 and I.D.2 above.

⁹⁹ DEIR, p. 17-10.

¹⁰⁰ Eastside GSP, p. 6-12 [assuming no change in urban use and noting that urban infill may increase overdraft and that conversion of agricultural land would have only a minimal impact on pumping[]; 180/400 GSP Amendment, p. 6-28 [same]. There is no analysis in the evidence

discontinuance of all urban pumping in the two subbasins would not cure the overdraft.¹⁰¹ Indeed, not even the proposed 10% reduction in agricultural pumping would cure the overdrafts in the 180/400 or the Eastside subbasins.¹⁰² As a result, there is no water now or in the foreseeable future for new or increased appropriations by the City to meet the water supply demands in the proposed annexed lands, including the Vista Lucia project.

Second, converting lands presently used for agricultural purposes to residential uses does not in itself create a surplus water supply unless and until the basins are no longer overdrafted. The City claims conversion of the Vista Lucia site would reduce water use by 686 to 866 AFY, but that savings would not cure the 13,400 AFY overdraft in the 180/400 Foot Subbasin or the 10,000 AFY overdraft in the Eastside Subbasin. Again, the analysis must be based on the basin, not on uses for one particular parcel.

Third, any proposal involving a developer potentially supplying water to the City via private wells would not change the situation.¹⁰³ Water supplied by an overlying user for municipal purposes is an appropriative use of water, and, as indicated, there is no evidence of any surplus groundwater supply within the presently overdrafted basins. Again, the evidence is to the contrary.

Fourth, the City appears to be proposing to acquire adverse rights to groundwater in the overdrafted basins by way of prescription. *Pasadena, supra*, 33 Cal.2d 908, 920, 925-927 [adverse pumping in an overdrafted basin can develop into a prescriptive right if all the required conditions are met]. The City cannot, however, somehow pre-establish a future prescriptive right because prescriptive rights are established only by actual adverse pumping and use. *Id.* Significantly, efforts to establish or increase a prescriptive use in an overdrafted basin create uncertainty. *Id.* The courts have long determined that water uses that create uncertainty as to the respective rights to water are unreasonable uses of water. *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339. Under applicable law, there is no right to an unreasonable

supporting the annexation and proposed Vista Lucia project of any competing appropriative uses of water in the basins. While the City arguably does not need to identify each competing prior groundwater appropriation, some analysis of present use and demand among appropriators would be needed to meet the City's burden to determine the existence of surplus water availability.

¹⁰¹ The 13,400 AFY overdraft in the 180/400 Foot Aquifer Subbasin exceeds the total 11,000 AFY appropriation for urban uses, and the 10,000 AFY overdraft in the Eastside Subbasin exceeds the total 9,400 AFY appropriation for urban uses. Eastside GSP, p. 6-26, Table 6-14; 180/400 GSP p. 6-34, Table 6-14.

¹⁰² As set out in Section I.G above, a 10% cut in agricultural pumping in the Eastside would reduce pumping only by 9,040 AFY, which would not cure the 10,000 AFY overdraft. A 10% cut in pumping in agricultural pumping in the 180/400 would reduce pumping by only 11,360 AFY, which would not cure the 13,400 AFY overdraft.

¹⁰³ The Plan for Services, the Development Agreement, and the annexation application assume that the City, not the developer, will act as the urban water supplier. Furthermore, none of these documents address the requirement for, or provide a plan for, an overlying user supplying water to the City for municipal use becoming a regulated public utility Public Utilities Code Sections 240, 241, 2701 et seq.

use of water. *Joslin v. Marin Municipal Water District* (1967) 67 Cal. 2d 132. 135.

Here, prescriptive rights, or claims to such rights, in an overdrafted basin would create uncertainty, and would therefore be an impermissible unreasonable use, on several levels including the validity of such rights, the amount of water vested under the right, and the priority of the rights. *Pasadena, supra*, 33 Cal.2d 908, 920, 925-927; *City of Los Angeles v. City of San Fernando*, (1975) 914 Cal. 3d 199. Thus, even if such uncertain prescriptive groundwater rights were found to be established at some future point (e.g., after five years of open pumping of water for which there is no current right to appropriate) such rights are not valid now and so there would be no right to supply water to the project from inception.

Furthermore, such uncertainty makes achieving sustainability even more difficult because such rights are undefined and unresolved, and may be challenged by adverse claims by other users opposing any such prescription. The likely outcome of the City's new wells and increased pumping as part of the proposed annexation is not sustainable cooperation among groundwater users, or more groundwater availability, but rather expensive and lengthy litigation including possible basin-wide adjudication as well as increased uncertainty as to water supply availability within the lands proposed for annexation. *Phelan Pinon Hills Community Services District* 58 Cal.App.5th 258–261, fn. 23. Regardless, the City has no current right to supply the project with groundwater either under a claim of appropriation or prescription.

III. LAFCO cannot find that the annexation application is complete or that the City can feasibly supply water to the project. Without making these findings, LAFCO cannot approve the annexation.

LAFCO is required by statute and by its adopted Policies and Procedures Manual to make findings regarding the availability of a water supply for the project. LAFCO cannot make the required findings.

A. Statutory Requirements:

Pursuant to its duties under the Cortese-Knox-Hertzberg Act, when evaluating an annexation proposal, Monterey County LAFCO must consider the factors enumerated in Section 56668. (Gov. Code, § 56668.) These factors include:

- the need for organized community services¹⁰⁴
- the ability of the newly formed or receiving entity to provide the services¹⁰⁵
- timely availability of water supplies adequate for projected needs as specified in [Section 65352.5](#) [informational requirements re water sources].¹⁰⁶

¹⁰⁴ Gov. Code, § 56668(b)(1).

¹⁰⁵ Gov. Code, § 56668(k).

¹⁰⁶ Gov. Code, § 56668 (l).

B. Requirements adopted in Monterey County LAFCO Policy And Procedures Manual:

The Cortese-Knox-Hertzberg law authorizes Monterey County LAFCO to “adopt written procedures for the evaluation of proposals, including written definitions consistent with existing state law. The commission may adopt standards for any of the factors enumerated in Section 56668. Any standards adopted by the commission shall be written.”¹⁰⁷ LAFCO is also authorized to “adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653 and the initiation of a change of organization or reorganization pursuant to subdivision (a),” which includes annexations.¹⁰⁸ Accordingly, LAFCO has adopted procedures and standards in its Policy and Procedures Manual.¹⁰⁹

Monterey County LAFCO Policies and Procedures mandate both the content of annexation applications and the adequacy of proposals for water service. LAFCO cannot find the application complete or approve the annexation if the service plan in the application is incomplete or inadequate.

First, LAFCO requires that “Applications must indicate that the affected agencies have the capability to provide service. Territory shall be annexed to a city or special district only if such agency has or soon will have the capability to provide service. (Section 56668 b.)”¹¹⁰

Second, LAFCO requires that a local agency seeking annexation approval “shall submit with the resolution of application a plan for providing services within the affected territory.”¹¹¹ That plan shall include, inter alia,

- “An indication of when those services can feasibly be extended to the affected territory.”¹¹²
- An indication of improvements to water systems that may be required.¹¹³
- “Any conditions which would be imposed or required within the affected territory such as, but not limited to, improvement or upgrading of structures, roads, and sewer or water facilities.”¹¹⁴

¹⁰⁷ Gov. Code, § 56375(g).

¹⁰⁸ Gov. Code, § 56375(h).

¹⁰⁹ LAFCO of Monterey County, Policy and Procedures Manual, as amended March 23, 2026, available at <https://www.countyofmonterey.gov/home/showpublisheddocument/145364/639106359309500000>.

¹¹⁰ Id., § 4.4.6(3), p. 107.

¹¹¹ Id., § 4.4.6(4), p. 107.

¹¹² Id., § 4.4.6(4) (c).

¹¹³ Id., § 4.4.6(4)(d).

¹¹⁴ Id., § 4.4.6(4)(e).

The plan for services may consist of a “master plan for providing services throughout all or a portion of a city or distinct Sphere of Influence for use in evaluating all proposals affecting the area covered in the master plan.”¹¹⁵

C. LAFCO requirements applied here

The Plan for Services in the application incorporates the relevant master plan, which is the June 2019 Existing City Plus Sphere Of Influence Water Master Plan.¹¹⁶ The Water Master Plan relies exclusively on pumped groundwater in its discussion of plans to provide water for future demand growth.¹¹⁷

As explained in section II above, the City does not have the right to increase its groundwater pumping to supply water to the Vista Lucia project because the groundwater basins from which it would pump that water are in overdraft. However, the Water Master Plan entirely fails to address the City’s water rights or to acknowledge the City’s lack of water rights to increase its appropriation of groundwater.

Because additional groundwater cannot be pumped for the Vista Lucia project, the City must find some other way to supply water, e.g., through a program of conservation by existing water users or through a program of recycling. The Water Master Plan recites the General Plan policy to “Develop the capacity to recycle wastewater at the Gonzales Wastewater Treatment Plant and/or employ other conservation measures and best practices to meet the demand for water supply in the city.”¹¹⁸ The Water Master Plan and the Wastewater Master Plan discuss options for recycling, but do not discuss a plan to implement conservation measures.¹¹⁹ Nor does either plan quantify the availability of conserved or recycled water or include conserved or recycled water in the plan for serving the annexation areas.

Because the annexation proposal relies exclusively on groundwater that is not legally available, LAFCO cannot make findings based on substantial evidence as required by statute and by LAFCO’s Policy and Procedure Manual as follows:

- It cannot find that the City can provide services, one of the factors it must consider under Gov. Code, § 56668(k)
- It cannot find that there would be “timely availability of water supplies adequate for projected needs,” one of the factors it must consider under Gov. Code, § 56668(l)

¹¹⁵ Id. § 4.4.6(5)(a), p. 107.

¹¹⁶ Kimley Horn, Existing City Plus Sphere Of Influence Water Master Plan, June 2019, <https://gonzalesca.gov/sites/default/files/2019-11/City%20of%20Gonzales%20Water%20Master%20Plan%20FINAL%207.1.19.pdf>

¹¹⁷ Water Master Plan, §§ 2.1 [Existing City Water System], 3.3 [“Water Supply . . . Water supply for the SOI Area and planned City buildout will continue to be provided via groundwater wells.”], 4.5.1 [“Future Systems... The proposed improvements include a new 1,500-gpm well will be provided in the Vista Lucia development...”].

¹¹⁸ Water Master Plan, § 5.0, p. 18.

¹¹⁹ Water Master Plan, § 5.0, pp. 18-19; Wastewater Master Plan, § 6.0, p 17.

- It cannot find the City “has capability to provide service,” as required by LAFCO Policy and Procedures Manual, § 4.4.6(3).

Furthermore, because the Vista Lucia project cannot rely on groundwater and would have to rely on conservation or recycled water for which there is no committed plan, LAFCO cannot make the findings required by its Policy and Procedures Manual that the annexation proposal contains required information, including

- “An indication of when those services can feasibly be extended to the affected territory.” (§ 4.4.6(4)(c).)
- An indication of improvements to water systems that may be required. (§ 4.4.6(4)(d).)
- “Any conditions which would be imposed or required within the affected territory such as, but not limited to, improvement or upgrading of structures, roads, and sewer or water facilities.” (§ 4.4.6(4)(e).)

In sum, LAFCO cannot make findings needed to approve the annexation. Instead, it should find that the application is incomplete because it does not provide a legally feasible plan to provide water supplies.

IV. As a responsible agency under CEQA, LAFCO cannot approve the annexation without environmental review of an alternative water supply in lieu of the proposed illegal provision of groundwater.

LAFCO acknowledges it is subject to CEQA and the CEQA Guidelines, and it requires that “potential environmental impacts of proposals involving changes of organization or reorganization shall be reviewed by LAFCO environmental staff and the appropriate environmental determination shall be considered by LAFCO in accordance with state law and the State’s “Guidelines for Implementation of the California Environmental Quality Act.[“].”¹²⁰

As a responsible agency under CEQA, Monterey County LAFCO must be able to identify a legally available long-term water supply.¹²¹

CEQA requires that if there are more severe significant impacts due to changes in the project or changes in circumstances, or based on significant new information becoming available after the lead agency certified the EIR for the project, the responsible agency must prepare a subsequent or supplemental EIR before making a new discretionary approval.¹²² Here, it is apparent that the City will need to find some alternative means to supply water to the project. This will constitute

¹²⁰ LAFCO Policy and Procedures Manual, § 4.4.5(2) p. 107.

¹²¹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 [CEQA requires agency to identify long term supply]; *Madera Oversight Coalition, Inc. v County of Madera* (2011) 199 CalApp.4th 48, 104 [abuse of discretion where EIR fails to disclose that supply is legally uncertain]; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723 [abuse of discretion where EIR fails to disclose supply “cannot be taken at face value”].

¹²² CEQA, § 21166; 14 Cal Code Regs §§ 15052(a)(2), 15096(e)(3), 15162.

a change in the project and its circumstances with the potential to cause significant impacts, triggering LAFCO's obligation to conduct supplemental or subsequent environmental review.

Furthermore, while CEQA does not demand certainty as to a project's water supply, where "it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, *and of the environmental consequences of those contingencies.*"¹²³ *Vineyard Area Citizens* is clear that the "ultimate question" is whether the EIR "adequately addresses the reasonably foreseeable *impacts* of supplying water to the project."¹²⁴

Here, the EIR for the Vista Lucia project neither identifies an alternative supply to groundwater nor provides any assessment of the environmental consequences of providing alternative supplies. If, for example, the City chooses to supply the project by implementing a water recycling program or a conservation program, a CEQA analysis is required to assess the impacts of these alternatives. Because the City's EIR has not done so, LAFCO cannot approve annexation on the basis of an alternative water supply proposal without further environmental review.

Conclusion

The City has not shown, and based on the evidence it cannot show, that the Vista Lucia project has a legal water supply because the water supply plan the City offers relies on impermissible appropriation of groundwater in an overdrafted basin. LAFCO cannot approve the annexation without a legal water supply and must instead deem the annexation application incomplete.

I invite the City or LAFCO to contact me or LandWatch Monterey County with questions or to discuss potential resolutions, including conservation or furnishing recycled water to the project.

Sincerely,

Matthew Emrick

MATTHEW EMRICK
Law Offices of Matthew Emrick
For LandWatch Monterey County

Cc: Michael DeLapa, Executive Director, LandWatch Monterey County,
execdir@landwatch.org
Ken Wysocki, Executive Director, Monterey County LAFCO,
wysockik@monterey.lafco.ca.gov

¹²³ *Vineyard, supra*, 40 Cal.4th 412 at 432, emphasis added; see also *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373 [where supply is uncertain, "County should be informed if other sources exist, and be informed, in at least general terms, of the environmental consequences of tapping such resources"].)

¹²⁴ *Vinyard, supra*, at 434, italics in original.

Jonathan Brinkman, Principal Analysis, Monterey County LAFCO,
brinkmannj@monterey.lafco.ca.gov

Carmen Gill, City Manager, City of Gonzales, cgil@ci.gonzales.ca.us