

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # B-9

Urgent

Routine

AGENDA DATE November 25, 2014

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Accept an Update on Groundwater Management from the Stanislaus Water Advisory Committee; Introduce and Waive the First Reading of An Ordinance Amending the Existing Stanislaus County Groundwater Ordinance; Approval to Issue a Request for Proposals for Hydrological California Environmental Quality Act (CEQA) Consultant Services and to Hire a Consultant to perform Groundwater Mapping and Database Development; Authorize the use of Appropriations for Contingencies, and Adjust the Budget

STAFF RECOMMENDATIONS:

- 1. Accept the update from the Stanislaus Water Advisory Committee regarding the current and planned activities related to groundwater management planning.
2. Introduce and waive the first reading of an ordinance amending the existing Stanislaus County Groundwater Mining and Export Prevention Ordinance; find that the ordinance is categorically exempt from the California Environmental Quality Act under CEQA Guidelines section 15308; and direct staff to post a Notice of Categorical Exemption with the Clerk Recorder.

(Continued on Page 2)

FISCAL IMPACT:

The cost related to the electronic mapping and database development for large industrial and agricultural water supply wells in unincorporated areas of the County is estimated to not exceed \$72,000. In addition, the cost to hire a consultant to provide hydrological CEQA services is estimated not to exceed \$50,000. Funding is available from a transfer from Appropriations for Contingencies, which has an available budget of \$4,420,864. Staff will evaluate the cost of CEQA services for water well-permitting and return with a recommended fee structure.

BOARD ACTION AS FOLLOWS:

No. 2014-586

On motion of Supervisor Withrow, Seconded by Supervisor Chiesa, and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) X Approved as amended

4) Other: INTRODUCED AND WAIVED THE FIRST READING OF ORDINANCE C.S. 1155

MOTION: The Board amended the item to add Staff Recommendations Nos. 6 and 7 as follows: (6) if a court should order the County to disclose private well log data as required under Stanislaus County Code Section 9.37.065, staff shall return to the Board for it to consider whether to repeal Section 9.37.065 or to continue collecting data subject to its disclosure under the Public Records Act; and, (7) directed staff to return the Groundwater Ordinance to the Board for review if the requirements change regarding unimpaired flows of surface water; and, approved Staff Recommendations No. 1-7 as amended

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. ORD-55-T-2

Approval to Accept an Update on Groundwater Management from the Stanislaus Water Advisory Committee; Introduce and Waive the First Reading of An Ordinance Amending the Existing Stanislaus County Groundwater Ordinance; Approval to Issue a Request for Proposals for Hydrological California Environmental Quality Act (CEQA) Consultant Services and to Hire a Consultant to perform Groundwater Mapping and Database Development; Authorize the use of Appropriations for Contingencies, and Adjust the Budget
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STAFF RECOMMENDATIONS (Continued):

3. Authorize staff to issue Request for Proposals (RFP) and award a contract for hydrological CEQA services to review well-permitting applications in determining CEQA compliance per the revised Stanislaus County Groundwater Mining Export Prevention Ordinance; and a contract for Groundwater Mapping and Database Development.
4. Authorize the use of \$122,000 in Appropriations for Contingencies by a 4/5 vote of the Board of Supervisors to hire a consultant to perform groundwater mapping and database development, and to hire a consultant to provide hydrological CEQA services.
5. Direct the Auditor-Controller to increase operating transfers in for the Department of Environmental Resources and operating transfers out for the Chief Executive Office-General Fund Contributions to Other Programs budget in the amount of \$122,000, as detailed in the attached budget journal.

FISCAL IMPACT (Continued):

The cost to the County for the continuing work related to the Water Advisory Committee will be borne by the salary paid to the Water Resources Manager position within the Department of Environmental Resources.

DISCUSSION:

On June 10, 2014, the Stanislaus County Board of Supervisors adopted the Groundwater Management Action Plan (GMAP) developed by the Stanislaus County Water Advisory Committee (WAC). The specific details of the GMAP can be found at: <http://www.stancounty.com/er/pdf/groundwater/groundwater-management-action-plan.pdf>.

On September 16, 2014, the Sustainable Groundwater Management Act was enacted into law by Governor Brown to address state-wide groundwater management issues. This legislation has now become the driving force behind groundwater management in our region. The development of sustainable groundwater management plans, their implementation, compliance requirements (data collection), and reporting will now dictate local efforts. Fortunately, all of the elements included in the GMAP are incorporated into the legislation in one form or another in a way that no time has been

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lost nor any efforts wasted. The GMAP can be generally described by the following five primary program elements.

Governance

- Develop and adopt groundwater management plans; and
- Develop an integrated County-wide, comprehensive water resources management plan that addresses agricultural, urban and environmental needs and sources.

Enforcement

- Revise the existing County groundwater ordinance to address the issue of unsustainable groundwater extraction (“mining”).

Funding

- Explore and identify all available private, local government, and state and federal sources of grants and loans to assist sustainable groundwater management practices in Stanislaus County.

Thresholds

- Establish acceptable ranges of fluctuation of aquifer water levels reflecting dry and wet year cycles; and
- Evaluate and analyze reported domestic water well impacts (“dry well” issue).

Monitoring

- Improve groundwater level monitoring networks by expanding existing collection to include private well owner information;
- Collect and compile groundwater usage data (from both public and private sources), while protecting its confidentiality;
- Initiate the development of a centralized database to serve as a repository for regional groundwater information; and
- Electronically map the location of large private industrial and agricultural water well supply facilities.

The Water Advisory Committee (WAC) serves in an advisory capacity to the Board of Supervisors, and over this past summer focused its efforts on the implementation of specific near-term elements of the GMAP. These include the following:

- Adopting the East Stanislaus Integrated Regional Water Management Plan (IRWMP);
- Exploring the nexus between land use planning and groundwater management, specifically as it relates to groundwater recharge areas;

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- Performing a technical analysis of rural domestic “dry well” impacts and potential relief mechanisms;
- Funding near-term, high-priority GMAP elements;
- Amending the existing Stanislaus County Groundwater Ordinance to address unsustainable groundwater extraction (“mining”); and
- Alternative Groundwater Governance Structures.

Each of these elements are further discussed below.

East Stanislaus IRWMP

In general, the East Stanislaus IRWMP is an existing, region-wide comprehensive management and planning document that identifies specific projects that make the best use of the area’s water, wastewater, and storm water resources. Adoption of the East Stanislaus IRWMP meets the various grant funding requirements necessary for obtaining state and/or federal funding for regional water resource projects. Such funding will be critical to minimizing the various projects’ costs to existing rate payers and future customers.

The East Stanislaus IRWMP was prepared by (the cities of Modesto, Ceres, Turlock and Hughson), in accordance with the Integrated Regional Water Management Act, to develop a broader regional understanding to:

- Identify water resources solutions;
- Reflect the regional needs;
- Maximize benefits through integration of water management strategies; and
- Leverage regional resources through partnerships.

It is recognized that the water resources issues facing our communities are regional in nature and can only be addressed through regional solutions, such as through this IRWMP that will enhance the area’s eligibility for State grants and promote regional water sustainability. The Board adopted the East Stanislaus IRWMP on July 29, 2014.

Groundwater Planning and Land Use

Staff from the Environmental Resources and Planning Departments have met to review the recent groundwater legislation insofar as it addresses matters related to the nexus between groundwater management and land use planning. This will be an ongoing item of discussion with the land use agencies within the County as well, especially as it relates to specific requirements included in the groundwater legislation that will require their input into the sustainable groundwater management planning process and the

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implementation going forward of such plans. The County Planning Department will begin to take this topic up with the planning directors of the various local land use agencies. There will be more to come on this subject as we move into the active development stage of the various groundwater management plans especially in light of the recent passage of the Sustainable Groundwater Management Planning Act.

Rural Domestic “Dry” Water Wells

There have been many reports and media coverage of rural domestic wells that have gone dry due to a combination of a number of factors primarily driven by the severity of the drought (both in terms magnitude and duration) and due to increases in large industrial, agricultural, and public water supply well pumping due to the reduced availability of surface water. Domestic households that rely on groundwater can face problems during a drought, especially if the facilities are shallow, aged, and not well maintained. In an effort to collect this information in a more systematic manner and to map the location of the reported impacted dry wells, staff created the “Report A Well Problem” form and made it available on-line at the following address: [//www.stancounty.com/er/pdf/report-well-problem-form.pdf](http://www.stancounty.com/er/pdf/report-well-problem-form.pdf).

Other useful information regarding water conservation and how to obtain a copy of a Well Completion Report from the California Department of Water Resources was also included on this site. As information began to be collected, a prevailing trend was revealed in that the great majority of the impacted domestic wells shared two common characteristics: they were less than 100 feet in total depth and greater than 50 years in age.

In addition, it was reported that the lead time needed to replace or repair a private domestic well commonly was two to three months, but could be up to six months because of the tremendous workload in the water well drilling community caused by the drought. The local well drilling community was conferred with regarding the long lead times. County staff were assured that they were doing everything within their control to address this situation and that they were not “cherry picking” the market to only go after the big jobs and ignoring the needs of the smaller domestic wells.

Furthermore, a factor that may have been contributing to the long lead times are air emission regulations that limit the type (and age) of drilling equipment that can be used. These air standards restrict the ability for water well drillers to keep up with the demand because of limitations on how many hours the equipment can be operated. The California Air Resources Board (ARB) was contacted and a number of conference calls were held to discuss these concerns. Initially it was believed that single engine water well drilling rigs did not have any relief under the ARB regulations. This is significant

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because the single engine water well drilling rigs are the primary type of equipment used in our area. Through these discussions the ARB made the following findings:

- Two-Engine Water-Well Drilling Rigs

Two-engine water-well drilling rigs may operate in California during the Governor's declared State of Emergency (regardless of engine tier level and State of origin), provided owners or operators comply with the recordkeeping, reporting, and notification requirements.

- One-Engine Water-Well Drilling Rigs

One-engine water-well drilling rigs may operate in California during the Governor's declared State of Emergency (regardless of engine year and State of origin), provided owners or operators comply with the recordkeeping, reporting, and notification requirements.

This information was shared with the well drilling community both inside and outside the State. Many out-of-state water well contractors that would otherwise not consider doing any work in California due to the restrictive air emission standards, were pleased to learn that these restrictions are exempt during the drought. A major international drilling company is currently evaluating the economics of mobilizing drilling equipment into the Central Valley.

While these measures are critically important, they do nothing to provide financial assistance to those persons on fixed incomes that can't afford the \$12,000 to \$15,000 price tag to have a deeper well drilled and new pump system installed. In response, staff was directed to develop an Emergency Domestic Water Well Financial Assistance Pilot Program. Such a program would be targeted to those residential citizens within Stanislaus County's unincorporated areas to assist with defraying the cost of repairing or replacing a "dry" domestic well.

The Board of Supervisors adopted the Emergency Domestic Water Well Financial Assistance Pilot Program on August 26, 2014. The loan application was posted on the Stanislaus County website, in English and Spanish, on September 12, 2014. Subsequently, the Stanislaus County Housing Authority (HA) approved an agreement with the County on September 18, 2014 to assist the County in processing the loan applications, a process that was very similar to other work the HA is currently performing.

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The program is targeted to those residential citizens residing within the unincorporated areas of Stanislaus County. The program only applies to verifiable rural domestic well failure situations and cannot be used for unreasonable well upgrades or that is beyond what is reasonably necessary to maintain a domestic household water supply. The County approved its first loan on September 30, 2014, and to date a total of four applications have been received and approved.

Water Well Facilities Mapping

The primary purpose of this project is to develop and populate a centralized Data Management System (DMS) that primarily consists of a groundwater well inventory of large private agricultural and industrial wells that extract moderate to large quantities of groundwater located in unincorporated areas of the County, outside the service area of any irrigation or water district or municipality.

In general, the DMS will be used for both short- and long-range planning. In particular, the short- and long-range uses of the DMS include general groundwater management planning, groundwater level monitoring networks, enhanced understanding of the subsurface geology and future gathering of extraction data. Such information will also be included in the longer term groundwater planning processes that are occurring in the region. For the most part, existing water management entities (municipalities & irrigation districts) have already compiled such groundwater data but have very little data, if any, from certain "white areas" located within Stanislaus County jurisdiction. "White areas" refer to the unincorporated areas of Stanislaus County that are outside the boundary or service area of any municipality or water district.

Funding for this work was originally contemplated to be done under the umbrella of a local cost-share agreement. The concept was to evenly divide the estimated \$180,000 needed for outside services during the first year of implementation of the GMAP among the four sectors: (1) the County, (2) the Cities, (3) the Water Districts, and (4) Private business. Under this model the County would have contributed \$45,000 to the collective effort.

As the cost-share model concept was being discussed with the four sectors, it became apparent that the notion of the Cities and Water Districts making a financial contribution to fund an effort that many felt was the County's obligation alone – i.e., filling in the "white areas" on the map – seemed premature. The concern was not the dollar amount the other sectors would contribute, but the fact that the Cities and the Water Districts had made substantial financial and infrastructural investments over the years related to groundwater resources management and the County had not made a similar investment. The approach that emerged was for the County to now make its investment and then

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return with a plan for contributions from the other sectors once water well data from the “white areas” had been mapped and pertinent data stored in an electronic database.

Although County staff could perform such work, it could not be done in a timely manner given other existing priorities and programs. Staff proposes that a professional engineering or geological consulting firm that has the necessary skills, tools and resources be hired to perform this work. It is anticipated that such work could be accomplished in less than six months. Based on a review of similar work conducted by others in the region, it is estimated that this first level of data gathering and mapping will cost approximately \$72,000. Staff is requesting that funds be made available so that this critically important, first-phase work can be conducted.

Groundwater Ordinance – Revision

When the Groundwater Mining and Export Prevention Ordinance was adopted by the Board on October 29, 2013, it was clearly recognized that such action was only a first step, and that the matter of the definition of the term groundwater “mining” would need to be re-visited.

One of the recommended actions in the GMAP related to amending the existing groundwater ordinance to address the concept of groundwater “mining.” The WAC and the Technical Advisory Committee (TAC) have spent considerable time and effort working on this item over the last few months. The process of revising the ordinance involved the early engagement of the County Counsel’s office.

The principal changes to the revised ordinance are the following:

1. The term “unsustainable groundwater extraction” replaces “groundwater mining” This change aligns with the recently enacted legislative concepts of “sustainable groundwater management” and avoidance of “undesirable results” that could occur as a result of certain groundwater extraction activities. The focus of the long-term groundwater management planning efforts will focus on the development of sustainable groundwater management programs, practices and policies.
2. The revised ordinance also more clearly defines the geographic scope of the ordinance to be applicable only in the unincorporated area of the County.
3. Furthermore, the application of the ordinance would be triggered by the submittal of a well construction permit for a new water well located in an area of the unincorporated County that is not within the service area of a public water

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purveyor or exemption eligible, and clarifies that the ordinance is retroactive to November 25, 2014 to prevent a race to obtain permits before the effective date of the ordinance.

4. The revised ordinance further provides authorization to collect pertinent groundwater monitoring information from all persons and entities within the County. This information is presumed to be exempt from any public records request and will be treated as privileged information and held in confidentiality. Concern remains, however, that a court could order the County to disclose individual private well production data rather than aggregated data. If a court should order disclosure of such data, staff will return to the Board for it to consider whether to repeal the monitoring section of the ordinance or to continue collecting data subject to its disclosure under the Public Records Act.
5. The ordinance also clarifies the role of the California Environmental Quality Act (CEQA) in the County's permitting process. It is envisioned that a consultant will be hired to provide the specialized CEQA services required by the ordinance. A Request for Proposals (RFP) and an accompanying Scope of Work (SOW) will be prepared and sent to various professional vendors to facilitate the selection process. Staff is requesting funds in the amount of \$50,000 to fund a consultant and will return with a recommended fee structure to pay for these services.

Numerous drafts and re-writes of the revised groundwater ordinance have been reviewed with the WAC and TAC. Public comments and responses to these comments have been compiled into a summary matrix (Attachment 3). This work has been accomplished and conducted in a transparent and open public manner. The WAC formally voted on the revised Groundwater Ordinance on October 29, 2014 and it was approved by a 10 – 6 vote to move it forward to the Board for their consideration of adoption. Concerns raised by the public and some of the WAC members are included in Attachment 3.

Alternative Groundwater Governance Structure

The Sustainable Groundwater Management Act provides a framework for the creation of Groundwater Sustainability Agencies (GSA) that are given broad powers to develop, implement and enforce Groundwater Sustainability Plans (GSP). Specific timelines for creating the GSAs and developing/implementing the GSPs are provided in the legislation, as well as reporting requirements to demonstrate compliance. The plan must include monitoring and management of the basin over a 50-year planning time period, and plans must articulate measurable objectives to be achieved every five years.

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It seems to resonate with most of the WAC members that a broader, more regional governance structure may provide greater benefits in the long-term, and represent a significantly stronger political position in response to seeking funding opportunities and responding to future water resources challenges. To properly determine the appropriate GSA structure for Stanislaus County, significant stakeholder input and public outreach will be critical to cost-effectively resolve potential groundwater disputes. Implementing an appropriate management structure, that is responsive to local interests, is also a very important consideration. The WAC and TAC has sought additional input into the governance discussion by expanding the outreach and noticing effort to a broader group of stakeholders. A letter was mailed to a list of agencies and special districts provided by the Stanislaus County Local Agency Formation Commission (LAFCO) inviting participation in these discussions which will begin and continue through this winter and spring.

The WAC and the TAC have made good progress since their formation back in February. However, significant work remains to be accomplished, especially in light of the recent passage of the Sustainable Groundwater Management Act. This legislation, in all of its various forms of administration, implementation, and onerous compliance requirements will be the dominant driver related to local groundwater management issues for the next couple of decades (and beyond) in California and in Stanislaus County.

POLICY ISSUE:

The recommended actions support the Boards' priorities of A Safe Community, A Healthy Community, the Efficient Delivery of Public Services, A Well Planned Infrastructure System, A Strong Agricultural Economy and Heritage, and a Strong Local Economy by providing adequate protection of one of the County's most valuable natural resources: groundwater.

STAFFING IMPACT:

Existing staff within the Department of Environmental Resources and the Chief Executive Office will continue to oversee and implement the activities related to the Water Advisory Committee and the developing Stanislaus County Groundwater Policy.

CONTACT INFORMATION:

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Jami Aggers, Director of Environmental Resources
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ATTACHMENTS:

1. Ordinance Amending Chapter 9.37 Groundwater
2. Groundwater Ordinance revise (red-line changes)
3. Groundwater Ordinance comments matrix

Database FMSDBPRD.CO.STANISLAUS.CA.US.PROD
 Balance Type Budget
 Data Access Set County of Stanislaus

Ledger * List - Text County of Stanislaus
 Budget List - Text LEGAL BUDGET
 Category * List - Text Budget
 Source * List - Text DER AJH
 Currency * List - Text USD
 Period List - Text NOV-14
 Batch Name Text
 Journal Name Text ER AJH JV20935 11/18/14
 Journal Description Text WAC Request for Consultant
 Journal Reference Text
 Organization List - Text Stanislaus Budget Org
 Chart Of Accounts Accounting Flexfield

Upl	Fund (4 char)	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc. (6 char)	Other (5 char)	Debit incr appropriations decr est revenue * Number	Credit decr appropriations incr est revenue * Number	Line Description Text	
		0100	0016071	89000	0000000	000000	000000		122,000	Decrease contingencies	
		1001	0034110	63280	0011377	000000	000000	122,000		Inc Contracts	
		0100	0016401	85980	0000000	000000	000000	122,000		Inc County Match	
		1001	0034110	46620	0000000	000000	000000		122,000	Inc Revenue Match	
Totals:									244000	244000	

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Explanation: Increase revenue and appropriations in DER budget for consultant services to map the location of certain groundwater supply wells in Stanislaus County and to create a database for storing pertinent well information, funded by a transfer from Appropriations for Contignecies.

Requesting Department		CEO	Data Entry	Auditors Office Only	
Arlene Hamrick	Jami Aggers	<i>[Signature]</i>			
Prepared by	Approved By	CEO	Keyed by	Prepared By	Approved By
11/18/2014	11/18/2014	11/19/14			11/18/14
Date	Date	Date	Date	Date	Date

**AN ORDINANCE AMENDING CHAPTER 9.37
RELATING TO GROUNDWATER**

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1. The title of Chapter 9.37 of the Stanislaus County Code is amended to read as follows: "Groundwater."

Section 2. Section 9.37.010 of the Stanislaus County Code is amended to read as follows:

"The ordinance codified in this Chapter may be cited as the Stanislaus County 'Groundwater Ordinance.'"

Section 3. Section 9.37.020 of the Stanislaus County Code is amended to read as follows:

"The Stanislaus County Board of Supervisors hereby finds:

"1. The protection of the health, welfare, and safety of the residents of the County require that the groundwater resources of Stanislaus County be protected from adverse impacts resulting from the specific acts of unsustainable groundwater extraction within the County and the export of water outside of the County; and

"2. Groundwater is an essential resource for continued agricultural production within the County which production includes, but is not limited to, field crops, nut and fruit crops, vegetable crops, seed crops, poultry and livestock and products which significantly contribute to the gross value of the total agricultural production of the County; and

"3. Groundwater is an essential resource for municipal, industrial and domestic uses within the County; and

"4. The unsustainable extraction of groundwater resources within the County and the export of water outside of the County each could have adverse environmental impacts on the County, including but not limited to increased groundwater overdraft, land subsidence, uncontrolled movement of inferior quality groundwater, the lowering of groundwater levels, and increased groundwater degradation; and

"5. The unsustainable extraction of groundwater resources within the County and the export of water outside of the County each could have adverse economic

impacts on the County, including but not limited to, loss of arable land, a decline in property values, increased pumping costs due to the lowering of groundwater levels, increased groundwater quality treatment costs, and replacement of wells due to declining groundwater levels, replacement of damaged wells, conveyance infrastructure, roads, bridges and other appurtenances, structures, or facilities due to land subsidence; and

“6. California Constitution, Article X, Section 2, as well as Water Code Section 100 prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The County finds that the unsustainable extraction of groundwater and the export of water outside of the County are presumptively inconsistent with the California Constitution and the California Water Code.

“7. Nothing in this Chapter 9.37 determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

“8. There is a critical need for water well extraction data to analyze and understand the degree of groundwater depletion or recharge, to establish water budgets, and to balance conjunctive use of groundwater resources. The County finds and determines that such data is critical to the implementation of groundwater regulation under this Chapter 9.37. The County finds and determines that such data from Persons is presumptively confidential and proprietary information, including geological and geophysical data, plant production data, or trade secrets. The County further finds and determines that the need to receive or obtain such data, and to maintain its confidentiality, outweighs the public need for site specific private information and that the public will have access to the aggregate of such information which is a better measure of the cumulative status of groundwater resources.”

Section 4. Section 9.37.030 of the Stanislaus County Code is amended to read as follows:

“The following words and phrases shall have the following meanings when used in this Chapter:

“1. ‘County’ means the County of Stanislaus.

“2. ‘Board’ means the Board of Supervisors of Stanislaus County.

“3. ‘Person’ means and includes natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons, and public entities.

“4. ‘Groundwater’ means water that occurs beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with

water, but does not include water that flows in known and definite channels.

“5. ‘Public water agency’ means any local public agency, mutual water company, or nonprofit tax-exempt unincorporated association within, or partially within, Stanislaus County that has authority to undertake water-related activities.

“6. ‘Unsustainable extraction of groundwater’ means the extraction of groundwater in a manner that is not sustainable groundwater management as defined in Chapter 9.37 or State law.

“7. ‘Export of water’ means the act of conveying groundwater, or surface water for which groundwater has been substituted, out of the County.

“8. ‘Sustainable groundwater management’ means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon as defined in subdivision (q) of Water Code section 10721 without causing or substantially contributing to undesirable results.

“9. ‘Undesirable result’ means one or more of the following:

“a. Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.

“b. Significant and unreasonable reduction of groundwater storage.

“c. Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.

“d. Significant and unreasonable land subsidence that substantially interferes with surface land uses.

“e. Surface water depletions that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

“10. ‘De minimis extractor’ means a Person who extracts two (2) acre-feet or less per year.

“11. ‘Groundwater sustainability plan’ means a plan adopted pursuant to Water Code section 10727 et seq.”

Section 5. Section 9.37.040 of the Stanislaus County Code is amended to read as follows:

“Except as otherwise provided in this Chapter, the following actions are prohibited:

“A. The unsustainable extraction of groundwater within the unincorporated areas of the County.

“B. The export of water.”

Section 6. Section 9.37.045 is added to the Stanislaus County Code to read as follows:

“9.37.045 Application.

“A. The prohibition set forth in Paragraph A of Section 9.37.040 is applicable to the extraction from any groundwater well for which an application for a new Well Construction Permit pursuant to Chapter 9.36 is filed after November 25, 2014. Applications for a Well Construction Permit submitted after that date shall demonstrate, based on substantial evidence, that either (1) one or more of the exemptions set forth in Section 9.37.050 apply, or (2) that extraction of groundwater from the proposed well will not constitute unsustainable extraction of groundwater. This paragraph shall not apply to a well designed to replace an existing well that has been permitted under Chapter 9.36 prior to November 25, 2014 if the replacement well has no greater capacity than the well it is replacing.

“B. Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall be applicable to the extraction from any groundwater well for which the County reasonably concludes that the extraction of groundwater constitutes unsustainable extraction of groundwater. In the event of such determination by the County, the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

“C. This Section does not limit the application of Paragraph B of Section 9.37.040.

“D. The regulations and prohibitions set forth in this Chapter 9.37 apply only to the unincorporated areas of Stanislaus County.”

Section 7. Section 9.37.050 of the Stanislaus County Code is amended to read as follows:

“A. The following water management practices are exempt from the prohibitions in Section 9.37.040:

“1. Water resources management practices of public water agencies that have jurisdictional authority within the County, and their water rate payers, that are in compliance with and included in groundwater management plans and policies adopted

by that agency in accordance with applicable state law and regulations, as may be amended, including but not limited to the California Groundwater Management Act (Water Code Sections 10750 et seq.), or that are in compliance with an approved Groundwater Sustainability Plan.

“2. De minimis extractions as set forth in Section 9.37.030 (10) of this Chapter.

“3. Groundwater extraction or the export of water in compliance with a permit issued by the Stanislaus County Department of Environmental Resources pursuant to this Chapter.

“B. The following water management practices are exempt from the prohibition against export of water in this Chapter:

“1. De-watering of shallow water tables where the net benefits of the removal of subsurface water substantially outweighs the loss of water because of damage the high water table reasonably may cause to agriculture, industry, commerce and other property uses. The groundwater in some areas of the County is very near the surface and if not removed by interceptor ditches or subsurface tile drains, the water can seriously impact crop root zones for agricultural production or destroy foundations, equipment, materials, buildings and infrastructure used for residences, industry, utilities or commerce. This groundwater may or may not be reused for other purposes and at times may leave the County and its groundwater system.

“2. Reasonable use of groundwater resources to supplement or replace surface water released for other reasonable and beneficial purposes, including but not limited to fisheries, ecosystem habitat or downstream water quality or quantity needs, when required pursuant to federal and state law, regulations, licenses or permit conditions.

“3. Conservation of water in compliance with applicable state law that authorizes public water agencies to transfer water outside its usual place of use. Conservation investments may include, but are not limited to, irrigation practices in agricultural areas where the crops grown use less water, or communities that produce recycled water, fix leaks or promote other water saving devices and methods to conserve water on a temporary or permanent basis.

“4. Recharge of groundwater in locations in the County that are capable of improving groundwater conditions in order to meet total water demands of beneficial uses in the hydrologic and groundwater basin area including but not limited to the following sources: surface water, treated municipal drinking water, recycled water and stormwater. The amount of recaptured groundwater transferred out of the area should not exceed the amount of water used to recharge the aquifer. The transfer can be accomplished by either direct or indirect transfer, that is, a public water agency can leave the water in the ground and transfer other supplies in lieu of pumping out the

recharge water.

“5. Remediation of contaminated groundwater that is pumped and treated to remove contaminants that are in violation of standards for beneficial uses. The extracted and treated water may be released out of the County, resulting in a net loss to the groundwater basin, if the release complies with discharge permits issued by the federal, state or state resource agencies.

“6. Export of water that reasonably supports agricultural operations on property outside the County that is contiguous with property within the County and is under common ownership.

“7. Export of water from a private water source that is bottled in compliance with a private water source operator license issued by the state pursuant to Health and Safety Code Section 111120.

“C. The exemptions set forth in Paragraphs A and B above do not exempt the activities described in those subsections from paragraph B of Section 9.37.045.”

Section 8. Section 9.37.060 of the Stanislaus County Code is amended to read as follows:

“A. The Stanislaus County Department of Environmental Resources shall have the primary responsibility for implementation of this Chapter and regulations adopted by the Board of Supervisors. That responsibility shall include any preparation, approval, and/or certification of any environmental document pursuant to the California Environmental Quality Act (CEQA) for issuance of any permit for a groundwater well, to the extent required by CEQA, or a determination that such permit is not subject to, or is exempt from, CEQA.

“B. The Department of Environmental Resources shall establish a system of permits to authorize water management practices otherwise prohibited by this Chapter. The Department may issue a permit for a water management practice to the extent that such practice is consistent with the statements of County policy set forth in Section 9.37.020 of this Chapter, and provided that such practice is for a reasonable and beneficial use of groundwater resources, supports sustainable groundwater management, and promotes the public interest. The term of a groundwater extraction permit issued by the Department pursuant to this Paragraph shall not exceed the remaining term of any applicable groundwater sustainability plan.

“C. The Department of Environmental Resources shall have authority to investigate any activity subject to this Chapter. Compliance with this Chapter will be determined based on the submission of a technical report to the Department of Environmental Resources on a form provided by the County. The Department is authorized to enforce the prohibition of any activity that is determined to be in violation of this Chapter or regulations adopted by the Board of Supervisors.

“D. Any interested person or entity may appeal an administrative determination made by the Department under this Chapter which (1) finds that an application is complete or incomplete; (2) establishes or modifies operating conditions; (3) grants or denies a permit; or (4) suspends or revokes a permit. Administrative appeals under this section must be made in writing, must clearly set forth the reasons why the appeal ought to be granted, and must be received by the Chief Executive Officer within fifteen days of the postmark date on the envelope that transmits the administrative determination. Any appeal that is not timely filed, or that is not accompanied by the required fee, will be deemed ineffective and the administrative determination that is being appealed will become final. The Chief Executive Officer shall fix a reasonable time for the hearing of an appeal of an administrative determination, and shall provide written notice of the appeal hearing to the appellant and all interested parties, and to all landowners within one-quarter mile of the parcel where operations will occur. An appeal review committee comprised of the Chief Executive Officer or designee, the Chairman and Vice Chairman of the Board of Supervisors shall hear the appeal and issue a decision within thirty days after the hearing. The appeal review committee may take any appropriate action upon the original administrative action that was appealed, including granting or denying the appeal in whole or in part, or imposing, deleting or modifying operating conditions of the permit. The decision of the appeal review committee shall be final.

“E. Any interested person or entity may appeal to the Board of Supervisors the following decisions and determinations of the Department regarding a groundwater well permit: (1) a decision to approve or deny a negative declaration, (2) a decision to certify or refuse to certify an environmental impact report, or (3) a determination that a permit is not subject to, or is exempt from, CEQA.”

Section 9. Section 9.37.065 is added to the Stanislaus County Code to read as follows:

“9.37.065 Groundwater Monitoring.

“A. All Persons, including Public Water Agencies that extract groundwater within the County shall cause to be prepared and submitted to the County Department of Environmental Resources periodic reports of groundwater information that are reasonably necessary to monitor the existing condition of groundwater resources within the County, to determine trends, or to develop effective sustainable groundwater management plans and policies. A ‘De minimis extractor’ shall not be required to submit such information.

“B. The Department shall develop and recommend regulations to be adopted by the Board that establish the frequency and timing of required reports, and the required information to be monitored, including without limitation water level and pumping data, or other data necessary for any other method to determine groundwater production.

“C. The county presumes that information submitted pursuant to this Section will be exempt from disclosure under the California Public Records Act. The regulations developed under paragraph B of this Section shall include a process for submitters to confirm that their information is exempt from disclosure. Any document that aggregates information submitted under this section shall not be treated as exempt from disclosure if such document neither identifies the sources of that information nor permits the reader to otherwise determine the sources of that information.

Section 10. This ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor _____, seconded by Supervisor _____, the foregoing resolution was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, the _____ day of _____, 2014, by the following called vote:

AYES: Supervisors:

NOES: Supervisors:


ABSENT: Supervisors:

Jim DeMartini, Chair of the Board of
Supervisors of the County of Stanislaus,
State of California

ATTEST:
Christine Ferraro Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By _____
Deputy

APPROVED AS TO FORM:

By 
John P. Doering
County Counsel

V:\CO\pdf\Documents\ORDINANCE\MISC\Groundwater\Chapter 9.37 Amendment Ordinance

Chapter 9.37
GROUNDWATER ~~MINING AND EXPORT PREVENTION~~

9.37.010 Title.

The ordinance codified in this Chapter may be cited as the Stanislaus County "Groundwater ~~Mining and Export Prevention Ordinance of Stanislaus County.~~"

9.37.020 Findings.

The Stanislaus County Board of Supervisors hereby finds:

1. The protection of the health, welfare, and safety of the residents of the County require that the groundwater resources of Stanislaus County be protected from adverse impacts resulting from the specific acts of ~~mining~~unsustainable groundwater ~~resources~~extraction within the County and the export of water outside of the County; and
2. Groundwater is an essential resource for continued agricultural production within the County which production includes, but is not limited to, field crops, nut and fruit crops, vegetable crops, seed crops, poultry and livestock and products which significantly contribute to the gross value of the total agricultural production of the County; and
3. Groundwater is an essential resource for municipal, industrial and domestic uses within the County; and
4. The ~~mining~~unsustainable extraction of groundwater resources ~~from~~ within the County and the export of water outside of the County each could ~~each~~ have adverse environmental impacts on the County, including but not limited to; increased groundwater overdraft, land subsidence, uncontrolled movement of inferior quality groundwater, the lowering of groundwater levels, and increased groundwater degradation; and
5. The ~~mining~~unsustainable extraction of groundwater resources ~~from~~ within the County and the export of water outside of the County each could ~~each~~ have adverse economic impacts on the County, including but not limited to, loss of arable land, a decline in property values, increased pumping costs due to the lowering of groundwater levels, increased groundwater quality treatment costs, and replacement of wells due to declining groundwater levels, replacement of damaged wells, conveyance infrastructure, roads, bridges and other appurtenances, structures, or facilities due to land subsidence; and

6. California Constitution, Article X, Section 2, as well as Water Code Section 100 prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. -The County finds that the mining unsustainable extraction of groundwater and the export of water outside of ~~the County are presumptively unsustainable uses of groundwater and not reasonable or beneficial uses to the citizens of Stanislaus County and, therefore, the mining of groundwater and the export of water~~ from the County are presumptively inconsistent with the California Constitution and the California Water Code.

7. Nothing in this Chapter 9.37 determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

8. There is a critical need for water well extraction data to analyze and understand the degree of groundwater depletion or recharge, to establish water budgets, and to balance conjunctive use of groundwater resources. The County finds and determines that such data is critical to the implementation of groundwater regulation under this Chapter 9.37. The County finds and determines that such data from Persons is presumptively confidential and proprietary information, including geological and geophysical data, plant production data, or trade secrets. The County further finds and determines that the need to receive or obtain such data, and to maintain its confidentiality, outweighs the public need for site specific private information and that the public will have access to the aggregate of such information which is a better measure of the cumulative status of groundwater resources.

9.37.030 Definitions.

The following words and phrases shall have the following meanings when used in this Chapter:

1. "County" means the County of Stanislaus.
2. "Board" means the Board of Supervisors of Stanislaus County.
3. "Person" means and includes natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons, and public entities.
4. "Groundwater" means water that occurs beneath the ~~land surface and fills the pore spaces of the alluvium, soil or rock formation~~ earth within the zone below the water table in which ~~the soil is situated~~ completely saturated with water, but does not include water that flows in known and definite channels.

5. "Public water agency" means any local public agency, mutual water company, or ~~non-profit~~nonprofit tax-exempt unincorporated association within, or partially within, Stanislaus County that has authority to undertake water-related activities.

6. ~~"Mining"~~"Unsustainable extraction of groundwater" means the extraction of groundwater in a manner that ~~constitutes a waste, unreasonable use, or unreasonable method of use within the County, as interpreted under California law.~~ is not sustainable groundwater management as defined in Chapter 9.37 or State law.

7. "Export of water" means the act of conveying groundwater, or surface water for which groundwater has been substituted ~~with groundwater~~, out of the County.

8. "Sustainable groundwater management" means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon as defined in subdivision (g) of Water Code section 10721 without causing or substantially contributing to undesirable results.

9. "Undesirable result" means one or more of the following:

a. Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.

b. Significant and unreasonable reduction of groundwater storage.

c. Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.

d. Significant and unreasonable land subsidence that substantially interferes with surface land uses.

e. Surface water depletions that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

10. "De minimis extractor" means a Person who extracts two (2) acre-feet or less per year.

11. "Groundwater sustainability plan" means a plan adopted pursuant to Water Code section 10727 et seq.

9.37.040 Prohibition.

Except as otherwise provided in this Chapter, the following actions are prohibited:

A. The ~~mining~~unsustainable extraction of groundwater within the unincorporated areas of the County.

B. The export of water.

9.37.045 Application.

A. The prohibition set forth in Paragraph A of Section 9.37.040 is applicable to the extraction from any groundwater well for which an application for a new Well Construction Permit pursuant to Chapter 9.36 is filed after November 25, 2014. Applications for a Well Construction Permit submitted after that date shall demonstrate, based on substantial evidence, that either (1) one or more of the exemptions set forth in Section 9.37.050 apply, or (2) that extraction of groundwater from the proposed well will not constitute unsustainable extraction of groundwater. This paragraph shall not apply to a well designed to replace an existing well that has been permitted under Chapter 9.36 prior to November 25, 2014 if the replacement well has no greater capacity than the well it is replacing.

B. Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall be applicable to the extraction from any groundwater well for which the County reasonably concludes that the extraction of groundwater constitutes unsustainable extraction of groundwater. In the event of such determination by the County, the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

C. This Section does not limit the application of Paragraph B of Section 9.37.040.

D. The regulations and prohibitions set forth in this Chapter 9.37 apply only to the unincorporated areas of Stanislaus County.

9.37.050 Exemptions.

A. The following water management practices are exempt from the prohibitions in ~~this Chapter~~Section 9.37.040:

1. Water resources management practices of public water agencies that have jurisdictional authority within the County, and their water rate payers, that are in compliance with and included in groundwater management plans and policies adopted by that agency in accordance with applicable state law and regulations, as may be

amended, including but not limited to the California Groundwater Management Act (Water Code Sections 10750 et seq.), or that are in compliance with an approved Groundwater Sustainability Plan.

~~1. Water wells delivering 100 gallons per minute or less to uses and property under the same ownership where the well is located.~~

2. De minimis extractions as set forth in Section 9.37.030 (10) of this Chapter.

2.3. Groundwater ~~mining and extraction or~~ the export of water ~~done~~ in compliance with a permit issued by the Stanislaus County Department of Environmental Resources pursuant to this Chapter.

B. The following water management practices are exempt from the prohibition against export of water in this Chapter:

1. De-watering of shallow water tables where the net benefits of the removal of subsurface water substantially outweighs the loss of water because of damage the high water table reasonably may cause to agriculture, industry, commerce and other property uses. The groundwater in some areas of the County is very near the surface and if not removed by interceptor ditches or subsurface tile drains, the water can seriously impact crop root zones for agricultural production or destroy foundations, equipment, materials, buildings and infrastructure used for residences, industry, utilities or commerce. This groundwater may or may not be reused for other purposes and at times may leave the County and its groundwater system.

2. Reasonable use of groundwater resources to supplement or replace surface water released for other reasonable and beneficial purposes, including but not limited to fisheries, ecosystem habitat or downstream water quality or quantity needs, when required pursuant to federal and state law, regulations, licenses or permit conditions.

3. Conservation of water in compliance with applicable state law that authorizes public water agencies to transfer water outside its usual place of use. Conservation investments may include, but are not limited to, irrigation practices in agricultural areas where the crops grown use less water, or communities that produce recycled water, fix leaks or promote other water saving devices and methods to conserve water on a temporary or permanent basis.

4. Recharge of groundwater in locations in the County that are capable of improving groundwater conditions in order to meet total water demands of beneficial uses in the hydrologic and groundwater basin area including but not limited to the following sources: surface water, treated municipal drinking water, recycled water and

stormwater. The amount of recaptured groundwater transferred out of the area should not exceed the amount of water used to recharge the aquifer. The transfer can be accomplished by either direct or indirect transfer, that is, a public water agency can leave the water in the ground and transfer other supplies in lieu of pumping out the recharge water.

5. Remediation of contaminated groundwater that is pumped and treated to remove contaminants that are in violation of standards for beneficial uses. The extracted and treated water may be released out of the County, resulting in a net loss to the groundwater basin, if the release complies with discharge permits issued by the federal, state or state resource agencies.

6. Export of water that reasonably supports agricultural operations on property outside the County that is contiguous with property within the County and is under common ownership.

7. Export of water from a private water source that is bottled in compliance with a private water source operator license issued by the state pursuant to Health and Safety Code Section 111120.

C. The exemptions set forth in Paragraphs A and B above do not exempt the activities described in those subsections from paragraph B of Section 9.37.045.

9.37.060 Implementation.

A. The Stanislaus County Department of Environmental Resources shall have the primary responsibility for implementation of this Chapter and regulations adopted by the Board of Supervisors. That responsibility shall include any preparation, approval, and/or certification of any environmental document pursuant to the California Environmental Quality Act (CEQA) for issuance of any permit for a groundwater well, to the extent required by CEQA, or a determination that such permit is not subject to, or is exempt from, CEQA.

B. The Department of Environmental Resources shall establish a system of permits to authorize water management practices otherwise prohibited by this Chapter. The Department may issue a permit for a water management practice to the extent that such practice is consistent with the statements of County policy set forth in Section 9.37.020 of this Chapter, and provided that such practice is for a reasonable and beneficial use of groundwater resources, supports sustainable groundwater management, and promotes the public interest. The term of a groundwater extraction permit issued by the Department pursuant to this Paragraph shall not exceed the remaining term of any applicable groundwater sustainability plan.

C. The Department of Environmental Resources shall have authority to investigate any activity subject to this ~~ordinance~~Chapter. Compliance with this Chapter will be determined based on the submission of a technical report ~~submitted~~to the Department of Environmental Resources on a form provided by the County.- The Department is authorized to enforce the prohibition of any activity that is determined to be in violation of this Chapter or regulations adopted by the Board of Supervisors.

D. ~~The applicant, permit holder or other~~Any interested person or entity may appeal an administrative determination made by the Department under this Chapter which (1) finds that an application is complete or incomplete; (2) establishes or modifies operating conditions; (3) grants or denies a permit; or (4) suspends or revokes a permit. Administrative appeals under this section must be made in writing, must clearly set forth the reasons why the appeal ought to be granted, and must be received by the Chief Executive Officer within fifteen days of the postmark date on the envelope that transmits the administrative determination. Any appeal that is not timely filed, or that is not accompanied by the required fee, will be deemed ineffective and the administrative determination that is being appealed will become final. The Chief Executive Officer shall fix a reasonable time for the hearing of an appeal of an administrative determination, and shall provide written notice of the appeal hearing to the appellant and all interested parties, and to all landowners within ~~0.25~~one-quarter mile of the parcel where operations will occur. An appeal review committee comprised of the Chief Executive Officer or designee, the Chairman and Vice Chairman of the Board of Supervisors shall hear the appeal and issue a decision within ~~30~~thirty days after the hearing. The appeal review committee may take any appropriate action upon the original administrative action that was appealed, including granting or denying the appeal in whole or in part, or imposing, deleting or modifying operating conditions of the permit. The decision of the appeal review committee shall be final.

E. Any interested person or entity may appeal to the Board of Supervisors the following decisions and determinations of the Department regarding a groundwater well permit: (1) a decision to approve or deny a negative declaration, (2) a decision to certify or refuse to certify an environmental impact report, or (3) a determination that a permit is not subject to, or is exempt from, CEQA.

9.37.065 Groundwater Monitoring

A. All Persons, including Public Water Agencies that extract groundwater within the County shall cause to be prepared and submitted to the County Department of Environmental Resources periodic reports of groundwater information that are reasonably necessary to monitor the existing condition of groundwater resources within the County, to determine trends, or to develop effective sustainable groundwater management plans and policies. A "De minimis extractor" shall not be required to submit such information.

B. The Department shall develop and recommend regulations to be adopted by the Board that establish the frequency and timing of required reports, and the required information to be monitored, including without limitation water level and pumping data, or other data necessary for any other method to determine groundwater production.

C. The county presumes that information submitted pursuant to this Section will be exempt from disclosure under the California Public Records Act. The regulations developed under paragraph B of this Section shall include a process for submitters to confirm that their information is exempt from disclosure. Any document that aggregates information submitted under this section shall not be treated as exempt from disclosure if such document neither identifies the sources of that information nor permits the reader to otherwise determine the sources of that information.

9.37.070 Penalty for Violation.

A. Any Person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in Stanislaus County Code Section 1.36.010. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter is committed, continued or allowed and shall be punishable accordingly.

B. In addition to or in lieu of the penalty provisions or remedies set forth in this Chapter, any violation may be abated in any manner set forth in Chapter 2.92 of the Stanislaus County Code, including, but not limited to, abatement or issuance of administrative citations.

C. In addition to or in lieu of the penalty provisions or remedies set forth in this Chapter, any violation of any of the provisions of this Chapter, and any condition caused or allowed to exist in violation of any of the provisions of this Chapter, shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for injunctive relief, including but not limited to any remedy under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

9.37.080 Severability and Effect.

A. The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this Chapter or the application thereof to any Person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter.

B. The prohibitions of this Chapter shall not be applicable to the extent that their application would result in a violation of the Constitution or other laws of the United States or the state of California. The Department of Environmental Resources shall issue a permit to authorize conduct otherwise prohibited under this Chapter if the applicant demonstrates that such permit is necessary to avoid such a violation of State or federal law.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
9/3/14	Farm Bureau	<p><u>Questions:</u> What is the intended interaction with irrigation districts that already have groundwater management plans? Is this ordinance intended to leave them alone?</p>	<p>Current and future compliant groundwater management plan areas will continue to have an exemption. The analysis of "compliant" may have to be technically and institutionally analyzed by the Water Advisory Committee and the Technical Advisory Committee so the BOS is comfortable the areas meet the exemption criteria.</p>
	"	<p><u>Concerns:</u> The ordinance fails to reference or attempt to protect groundwater rights. Given that the ordinance uses terms that are not consistent with existing water law, it could give the appearance of attempting to supersede groundwater rights and replace them with some county defined allocation generally described as "sustainable groundwater management." This concern also exists to a degree with the state legislation, but there is clear language in that legislation providing that this is not the intent, and structurally the legislation does not function that way. This ordinance is not so structured and could be interpreted to be a very broad assertion of County police power.</p>	<p>The ordinance is inherently designed <u>to protect the groundwater rights of all groundwater users</u> in the County. The implementation process involves comparing and contrasting those uses within the County to determine if some users are unreasonably harming other users. The exemption for existing plan areas allows that process to be done by those entities in their area. The BOS is responsible for the areas where there is no clear existing organization to conduct that analysis. If it would be useful to declare that the intent of the ordinance is <u>to protect our citizens' groundwater rights and reasonable uses</u> we would appreciate some constructive wording to that effect.</p>
	"	<p>It is not clear why the ordinance declares "unsustainable extraction of groundwater" is "presumptively unreasonable." The effect of this is to try and shift the burden of proof against the water user. Since reasonableness is a legal term with huge legal implications, it warrants consideration of whether this is needed to achieve the desired outcome.</p>	<p>We could alternately say it is "constitutionally unreasonable" which it is. The proof will be the reliably available water over an agreed upon time frame divided by the total use over that time; that is not a calculation solely dependent on the users, it will take other professional examination that has to pass the test of scientific rigor. The user data is just a component of the analysis, to say the entire burden is therefore on the users is not correct.</p>

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
9/3/14	Farm Bureau (Cont.)	Very broad latitude is left to the Department of Environmental Resources (DER) to develop the substantive and procedural elements of the ordinance (see 9.37.060(B) & 9.37.065). It may be better to better define how the ordinance will be implemented and allow the DER some narrower range of flexibility. This could help avoid future conflicts with DER proposals by having the contours of their authority and water users obligations fleshed out in advance.	We concur, some process elements are not developed yet. We will consider developing a flow diagram and potential permit language to assist in understanding the entire scope of the County efforts but need a revised ordinance adopted to help establish the framework for process flow and implementation tools.
	"	Definitions 4-8 are problematic: Most troubling is "sustainable groundwater management" which includes a list of factors which are not qualified (e.g. "ecosystem degradation" and "depletions from surface water bodies"). These will likely trigger conflict and litigation.	These elements will need to be included because they are part of the evaluation process inherent in the new legislation. The "depletions from surface water bodies" is already under litigation and the resulting court cases will likely define the circumstances that surface water is under the influence of groundwater and vice versa (see the Scotts Valley case in northern CA). It would be prudent to recognize the need for our own local investigation of these matters and their impacts rather than have the State, likely the Department of Fish and Wildlife, investigate them for us as in the Scotts Valley case.
	"	9.37.060(B) appears to create a permitting system for groundwater extraction, including existing water users. If this is discretionary, which it appears to be, then CEQA will be more of a problem.	We concur that CEQA will be a process that will need careful consideration. However, recognize the County's responsibility will be focused on the areas of County responsibility. County exempted groundwater plan areas will be challenged with the same requirement as the new legislation did not offer any exemption for fully State-approved plans. The CEQA needs in the existing plan areas will be far greater than the County-responsible areas.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
9/3/14	Farm Bureau (Cont.)	The groundwater monitoring obligation is significant and may exceed what is useful or necessary for good planning.	We agree that any monitoring program has to be efficiently designed and mindful of all the existing efforts such as regulatory requirements (eg the dairy program) and other planning processes (IRWMP) so as to minimize redundancy and collect only what is needed to obtain optimum coverage. We will rely on the TAC and other experts to be vigilant and thrifty in any design by them advising us of any existing efforts that will meet long-term needs.
9/5/14	MID/TID "	<p><u>General Comments:</u></p> <p>1. Unclear what the revisions are intended to accomplish. Revisions to mining are combined with other revisions that appear to try and bring the ordinance in line with the legislation. However, there appear to be conflicts between the legislation and the draft ordinance. A thorough review of the ordinance and the legislation are needed to ensure conflicts are resolved. Our initial review identified a few, which are included in the specific comments below. Additionally, a summary page should be developed to clarify the intent of the revisions.</p> <p>2. Unclear how it would be implemented. It is unclear how one would prove sustainability or unsustainability as the ordinance is currently drafted. Additionally, sustainability seems to be tied to future Groundwater Sustainability Agencies (GSA) and the Groundwater Sustainability Plans (GSP), and as such it is unclear how the proposed revisions to the ordinance will be implemented while the GSAs and GSPs are developed. Prior to considering any revisions to the ordinance, the implementation process should be established, to ensure that it is implementable, and will not result in unintended consequences. One approach might be to develop the implementation process, and then tailor the ordinance changes to reflect that process.</p>	<p>Please help identify all the conflicts. The summary page is a good idea.</p> <p>As stated in responses 2 and 4, we recognize the processes are not all in place yet for implementing the ordinance in the areas where the County will have responsibility unless those areas are added to existing qualified, compliant, exempt plan areas. If it is useful for the remaining County areas, staff may develop both the process flow diagram and permit elements to demonstrate how the ordinance will be implemented in areas of County responsibility.</p>

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
9/5/14	MID/TID (Cont.)	3. Conflicts between GSA authorities and the draft ordinance. Some of the requirements included in the proposed revisions appear to be requiring actions and implementing authorities that have been given to GSAs (pursuant to the new legislation). It is premature to include those requirements in the ordinance (as a County requirement) until it is clear if the GSA wishes to take on that role. Time should be given for GSAs to form, before including that type of language into the ordinance. This would help to facilitate a more collaborative groundwater management effort between the County and the GSAs. Alternatively, language should be included such that when a GSA forms, it could take over that role.	If the GSA's do not have all the necessary elements to be fully State compliant the BOS will ask the TAC and WAC for recommendations on what role the County might need to take to assure groundwater users rights and responsibilities are adequately covered. For groundwater areas remaining under County responsibility it would be prudent to have all the compliance components even if the GSAs do not.
	"	4. Which version of the revised ordinance is correct? The TAC received two different versions of the draft revisions. While many of the changes between drafts dated 8/10/2014 and 8/13/2014 weren't significant, there were a few that were. We attempted to make comments on both versions in an effort to be responsive.	We apologize for multiple versions, we will develop a version that supersedes all others and make it plain which version is current in all future correspondence.
	"	5. Unsustainable Extraction and/or Export. Are the provisions applied to unsustainable extraction and export or unsustainable extraction or export? These are two different things. However, they are used interchangeably within the draft ordinance. We try to make note of some of those places within the specific comments. However, the draft ordinance should be reviewed thoroughly and revised as necessary with respect to this issue.	Noted.
9/5/14	MID/TID	<u>Specific Comments:</u> 1. Findings, Item 1: Refers to "specific acts" that are not defined with the ordinance. This should be clarified. This is also one of the areas where extraction and export are listed (see note 5 above).	Noted.
	"	2. Findings, Item 6: Extraction and export are not beneficial uses of water; they are actions of transporting or conveying water for eventual use. As the phrase implies, beneficial uses are simply uses of water. Agricultural irrigation and drinking water are examples of uses of water.	Noted.
	"	3. Definitions: The definitions should be revised to be in line, if not identical, with the legislation.	To the extent the definitions can be aligned with the legislation they will. Items of a specific nature and purpose for Stanislaus County will need to remain distinct and in addition to the relevant State law definitions.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
9/26/14	Frank Canela	The proposal is better than what is there now, but still has the big issue of setting up a permit system to permit what is otherwise forbidden (unsustainable groundwater use).	We agree that the permit conditions will need to be carefully thought out to meet the intent of the ordinance. The concept of the permit is that actions are prohibited <u>unless</u> they are specifically allowed under a customized permit. It is difficult to say what will be permitted at this time but some items that should not be permitted are more likely to be agreed upon by the TAC and WAC. For example, it is likely groundwater pumping that knowingly will cause irreparable subsidence would not be permitted. Similarly, activities that induce poor water quality into better quality water, a science-based investigation, would not be permitted either. The case you are making is that some of the early permit conditions need to be discussed. We concur, the permit exemption needs some early parameters to allow for certain activities that otherwise would be in violation of the ordinance and therefore ripe for third parties to take action against pumpers using commonly accepted and over the long-term, non-injurious amounts and uses of water. We would propose such ideas for the TAC and WAC as soon as the improved framework ordinance is completed. We would also remind you that such permits will only apply to areas not in GWMP's.
	"	I do not understand how this would work or how pumpers would know that they need to apply for a permit. It also seems that the County could conduct investigations of some pumpers and require permits that limit pumping in a way that contradicts groundwater rights. Because of these over-arching issues regarding the structure of the proposed ordinance. It needs major over-haul to address this problem.	See above. The ordinance only frames the process. Implementation will require what has already been mentioned above, technical rigor to the conditions for obtaining a permit.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
9/26/14	Frank Canela (Cont.) "	This ordinance needs to separate out (1) the concept of a permit for groundwater export from (2) the regulation of "unsustainable groundwater use." Then the WAC should discuss how the County would seek to control "unsustainable" pumping in a manner that is consistent with California law. Generally, if any pumping is unsustainable, then all pumping in the same basin is also unsustainable. This problem does not lend itself to resolution through an individual permit system, but rather through more global regulation. For example, cities are appropriators with pumping rights that are generally junior to any overlying landowner. How will the County control pumping by cities? These are tough issues but they must be addressed to do this right.	We don't agree that certain types of pumping cannot be identified early as clearly needing prohibition, see above. We do agree that cumulative pumping will be an ongoing process and dialog involving technical benchmarks reviewed and approved by the TAC and WAC with permits allowing such activities until it is shown that the activities need to be collectively reduced on some equal basis to meet the goal of sustainability. Once again the County's enforcement will be limited to areas not in existing or future plans. The other plan areas will have to go through the exact same process to comply with the new legislation so collaboration between and through the various plans and the County will be critical.
		The ordinance should remove the permitting system for anything other than exports of groundwater.	We disagree, the County areas will need to process those areas on an equal footing with the GWMP areas and at this time the County is the only organization with sufficient police powers to actually manage the conditions that are detrimental to the citizens of the County. It will be interesting to see if the GWMP areas will actually take on sufficient police powers under the new law to equal the County role or whether they will defer to others.
10/1/14	OID - Eric Thorburn "	Under 9.37.030; #8; where it talks about "depletions from surface water bodies", has that connectivity been legally established?	This definition has now been replaced with the definition adopted in the legislative package. The notion of "undesirable results" is related to the impacts to surface water that cause significant and unreasonable adverse impacts of beneficial uses of the surface water.
		If so, how is that measured and quantified to make a determination?	Drawdown analysis and evaluation of induced infiltration. There are many different ways for this to be analyzed using quantitative methods and numerical modeling.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
10/1/14	OID - Eric Thorburn (Cont.)	Under 9.37.050; B1; an exclusion exists if water is "very near the surface". I don't see a definition of what "near" is. Less than 5 feet? 10 feet? 25 feet?	The intent is that the high water table (near surface) is high enough to interfere with optimum soil moisture growing conditions.
	"	Under 9.37.060; B; last sentence; can the term of the gw extraction permit be extended if the term of the gwmp is extended?	Yes, they would run concurrently is the idea.
10/9/14	Stephen Carlton	After line 63 I would add the following definition: "Department" means the Stanislaus County Department of Environmental Resources. From then on you could use "the Department": as it is now, sometimes Department of Environmental Resources is capitalized and sometimes it is not.	Agreed.
	"	Line 112 I would change: "Significant and unreasonable seawater intrusion." "Significant and unreasonable brackish or saline water intrusion."	Saline water intrusion is inclusive enough for all potential water quality changes. This change will be made.
10/9/14	Stan Co Farm Bureau- Joey Gonsalves	Lacks Clarity - It is not clear what the ordinance is trying to accomplish, particularly in light of the new state groundwater law. Even more troubling is that the details of how the ordinance intends to achieve this ambiguous goal are undefined and instead very broad latitude is left to the Department of Environmental Resources (DER) to develop the substantive and procedural elements of the ordinance. (See 9.37.060[b] & 9.37.065). It would be better to provide greater clarity on the substantive elements in the text of the ordinance and allow the DER some narrower range of flexibility in the procedural aspects. This could help avoid future conflicts with DER proposals by having the contours of their authority and water users' obligations sleshed out in advance.	We disagree, the ordinance is a framework. We intend to flesh out the implementation process with our advisory groups as well. Even the Butte process split their effort into two ordinances, one on policy the other on technical goals. This is a matter of preference. Numerous existing county ordinances exist and they have various alternate constructions and this proposal is not an uncommon approach.
	"	Ignores Water Rights - The ordinance fails to reference or attempt to protect groundwater rights. Given that the ordinance uses terms that are not consistent with existing water law, it gives the appearance of attempting to supersede groundwater rights and replace them with some county defined allocation generally described as "sustainable groundwater management." The state legislation contains clear language protecting water rights.	County Counsel has proposed changes to answer this concern. See revised version.
	"	Inappropriately Applies State Law Definitions - The state law defines certain terms in the context of developing a required Groundwater Sustainability Plan. The proposed ordinance would use these same terms (9.37.030), but effectively establish them as a definition of "unreasonableness" under the California Constitution, which has the effect of declaring there is no such right. By using terms intended for planning to eliminate water rights, the ordinance would have serious, negative implications for water rights. Although it is important for the County to prepare for the new state law, the draft ordinance goes far too afield of what is appropriate.	County Counsel is also preparing changes to reflect these comments.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITIY	COMMENT	RESPONSE
10/9/14	Stan Co Farm Bureau- Joey Gonsalves (Cont.)	Universal Discretionary Permitting - Section 9.37.060(B) appears to create a permitting system for groundwater extraction that would include all existing and future groundwater pumpers other than public agencies with AB 3030/SB 1938 plans and de minimis pumpers.	The goal of ordinance is to cover areas not covered by others now and in the future. If that is what you mean, then the answer is yes.
	"	Discretionary Permits Would Trigger CEQA - By creating a discretionary permitting system, the county is setting up a situation in which CEQA compliance might be mandatory. This would likely exacerbate the risk of litigation against the county. Further, CEQA compliance to issue well permits is time-consuming, costly, and likely unnecessary inconvenience for the permit applicant in many cases. A better approach would be to create in the county ordinance a more comprehensive set of mandatory technical requirements, to in this way remove the element of discretion, yet ensure that permit approval is grounded in technical reality. (e.g. Butte County Ordinance).	County Counsel is aware of the CEQA issues. As far as the technical requirements, that will be developed under the implementation process mentioned previously under the guidance of the TAC and WAC. We expect it will rigorous but fair in determining compliance with the ordinance goals.
	"	Proprietary Information Protections are Not Adequate - The provision purporting to exempt extraction information as "proprietary information" from disclosure under the PRA does not necessarily make it so, and would appear to ignore the actual legal meaning and amorphous nature of the category of potential exempt information under the PRA itself. (See attached excerpts re: "proprietary information" within the meaning of the CA PRA).	Yes we share your concern, but ultimately it is up to the courts and how well the private interests articulate that release of the info will cause them "substantial competitive harm."
10/16/14	Letter from TAC Water Agency reps	This year marks the third consecutive dry year in California, surface water supplies have been cut dramatically and we are all actively engaged in continued water resources planning to ensure sustainability moving forward. The Technical Advisory Committee (TAC) appreciates the opportunity to actively participate in the ongoing groundwater planning activities currently being convened by Stanislaus County and looks forward to engaging in a process to develop local Groundwater Sustainability Agencies (GSA). That said, the TAC has several concerns with the ongoing process as discussed to some extent at recent TAC and Water Advisory Committee (WAC) meetings and noted below. Please note that no specific merit has been given to the order in which they appear.	Your concerns are duly noted and will be brought to the full TAC and WAC so as to be considered, deliberated and acted upon. We recognize we are operating in a challenging environment and the new groundwater law is not completely understood or mapped adequately for everyone to follow. We request your assistance in making this happen in a timely fashion so whoever does not have coverage in the future will have adequate local representation to meet the challenges. The ordinance must move forward to create the capacity for such coverage.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITY	COMMENT	RESPONSE
10/20/14	email from Garner Reynolds	Suggest an effect of extracting more groundwater than is recharged...basically a balanced water budget. May not use more water than is recharged as a means of establishing if the use is undesirable.	A balanced budget may not always be attainable and further over-extraction may have to be allowed based on health and safety issues to the extent the resource could be significantly damaged. Hopefully such circumstances will never occur but emergency declarations could over-ride the goals of this ordinance and any other plans to manage the resource.
	"	How is this defined? Similar to the LAFCO requirements on Cities?	The planning horizon is defined by the GSA or equivalent organization and based on the hydrologic record needed to establish the sustainability goals. For initial purposes the goal is likely 30 years.
	"	Are the "other periods" within the planning and implementation horizon?	Yes.
	"	Is the county proposing to have the Cities get a permit for their municipal wells?	Only if the wells are not covered by a qualified exemption and in unincorporated areas (outside the legal boundaries of the city and not covered by a qualified plan).
	"	Will this include local governmental agencies?	Ditto above.
	"	A technical report on a form provided by the county? Perhaps consider re-wording to ...Technical Reports and/or forms provided by the county.	A technical report is inclusive of sub-elements or other subordinate information needs. If you mean multiple applications at one time perhaps the wording you suggest is appropriate but for economy of words we believe the intent is clear.
	"	Does this mean the County will investigate the Cities?	See 37 above, only to the extent necessary based on the location of the activities.
10/21/14	Letter from Mason Robbins et al	Extraction is not a use. Use refers to the how the water is applied once it has been extracted. Suggest retaining extraction and deleting use.	Addressed by Counsel, see revised version.
	"	In the version dated 8/13/2014, "Water resources management practices" are replaced with "Sustainable groundwater management practices" which changes the intent of the exemption. The original language (i.e. water resources) should remain in place. Recent legislation required that water resources be managed in a sustainable way. As a result, water management practices, will inherently need to be "sustainable."	Addressed by Counsel, see revised version.

Revised StanCo GWO Comments Matrix 111414

DATE	ENTITY	COMMENT	RESPONSE
10/21/14	Letter from Mason Robbins et al (Cont.) " "	Sustainable groundwater management practices should be exempt regardless of whether the public agency has jurisdiction and a compliant groundwater management plan because only unsustainable extraction of groundwater is prohibited by this ordinance. If the extraction is sustainable then a permit is not required by this ordinance. Suggest deleting this subsection and combining all under the heading water management practices exempt from the prohibitions. This section claims to exempt certain practices from the export prohibition yet 1 and 2 don't necessarily involve export. B.3. and B.4. describe transfer water outside the place of use or out of the area, but say nothing about outside the county.	Addressed by Counsel, see revised version. Addressed by Counsel, see revised version. The revised version has a clearer distinction between the activities, specific water management activities that are exempted clearly still need a separate section.
10/29/14 - 11/13/14	WAC, et.al.	Suggest that replacement wells be exempted	Replacement wells (with no greater installed pumping capacity) are exempt from the ordinance (9.37.045, A; last sentence).
10/29/14 - 11/13/14	WAC, et.al.	De minimis definition should be broader than only domestic use purposes. The intent is on the minimal usage, not the purpose of use or beneficial use.	The "de minimis" definition now included all uses that are two acre feet or less per year.
10/29/14 - 11/13/14	WAC, et.al.	The applicability section needs to be clearer as well as the nexus with CEQA	Clarifying language has been added to Section 9.37.045, parts A and B. CEQA preparation is better described in new language added to Section 9.37.060, part A. Also a new section E is added to 9.37.060, Implementation that describes the CEQA appeal process.
10/29/14 - 11/13/14	WAC, et.al.	Groundwater monitoring data needs to be kept confidential and public disclosure of such data protected.	Section 9.37.020, Findings (8) was revised to reflect critical need for and confidential protection of pertinent hydrogeologic and groundwater monitoring data. Further, a new part C is added to Section 9.37.065 that states that the County presumes that the collected of such data will be exempt from disclosure under the California Public Records Act. However, aggregated data will be made available to the public provided that such disclosure does not breach private and confidential nature of such data or source of such data.

**Correspondence Received by the
Board of Supervisors prior to posting this
agenda item online**

Board of Directors

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November 20, 2014

Stanislaus County Board of Supervisors
1010 10th Street
Suite 6700
Modesto, CA 95354

Re: Draft Groundwater Ordinance

Gentlemen:

On behalf of the Patterson Irrigation District, I want to express my concern with the current version of the Stanislaus County Groundwater Ordinance ("**Ordinance**"). In discussions regarding the ordinance, members of the Stanislaus County Water Advisory Commission have repeatedly told representatives of public agencies that the prohibitions of the Ordinance would apply only to groundwater users located in the unincorporated county lying outside the service area of an irrigation district. However, when reading the current draft of the Ordinance, we have found quite to the contrary.

GENERAL COMMENTS

While there are many issues with the ordinance that need to be addressed, the most problematic is that the County is attempting to usurp and second guess the authority granted to a Groundwater Sustainability Agency ("**GSA**") by recently passed state legislation (AB 1739, SB 1168 and 1319) ("**State Groundwater Laws**"). The State Groundwater Laws provide that local public agencies electing to become GSAs will be given broad powers over groundwater, including the power to investigate and determine the sustainable yield of a groundwater basin. The Ordinance would allow Stanislaus County staff to second guess the conclusions reached by a GSA. Under the State Groundwater laws, a GSA must develop a Groundwater Sustainability Plan and it must be reviewed and approved by the State of California. Even after that plan is approved, however, the Ordinance would allow the County to second guess the conclusions reached by a GSA, and force the GSA to demonstrate to the County "by substantial evidence" that actions of the GSA or its landowners are sustainable. Such provisions are unacceptable in addition to violating state law.

BOARD OF SUPERVISORS
2014 NOV 21 P 2:45

California courts have upheld the right of cities and counties to regulate groundwater under their police powers. In *Baldwin v Tehama County* (1984) 31 Cal.App 4th 166, the Court of Appeal rejected arguments that a county ordinance was pre-empted by State law. The court reasoned that in 1984 State law did not occupy the field of groundwater management and did not prevent cities and counties from adopting ordinances to manage groundwater. The Constitution provides that a city or county "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in conflict with the general laws.**" (Cal. Const. art. XI, § 7, *emphasis added.*) Here, that part of the Ordinance that would allow the County to second guess sustainability conclusions reached by local GSAs directly conflicts with state legislation, the State Groundwater Laws, and cannot be upheld.

SPECIFIC COMMENTS

9.37.020 Findings

The findings make unsupported assertions regarding the "unsustainable extraction of groundwater resources within the County" and do not recognize that groundwater conditions vary throughout the County.

9.37.045 Prohibitions

The proposed Ordinance prohibits export of groundwater in (A) and the unsustainable pumping of groundwater in (B). Specifically, subsection B provides:

Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall be applicable to the extraction from any groundwater well for which the County reasonably concludes that the extraction of groundwater constitutes unsustainable extraction of groundwater. In the event of such determination by the County, the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

This means that if the County "reasonably concludes" that the pumping of any water district or Landowner within a water district is "unsustainable" the County can force that pumper to "demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater". **THERE IS NO EXEMPTION TO THIS.** The exemption for public agencies set forth in Section 9.37.050.A.1 does not apply, as expressly stated in Section 9.37.050.C.

- Under this section the County can challenge any pumping, even from wells that have pumped for years, by asserting that it is unsustainable.
- This is a very easy burden for the County to meet and a difficult burden for the pumper to meet. The burden should be on the County to establish "by substantial evidence" that a well is unsustainable.

- Further, this section is not clear: “adoption of an applicable groundwater sustainability plan” by whom?

The County continues to misrepresent that “Current and future compliance groundwater management plan area will continue to have an exemption.” See *Revised StanCo. GWO Comments Matrix 111414*. This is not the case, as set forth above.

9.37.050 Exemptions

At first reading, it appears that Subsection A provides the following exemption from the prohibitions set forth above for the following:

Water resources management practices of public water agencies, and their water rate payers, that are in compliance with and included in groundwater management plans and policies adopted by that agency in accordance with applicable state law and regulations, as may be amended, including but not limited to the California Groundwater Management Act (Water Code Sections 10750 et seq.), or that are in compliance with an approved Groundwater Sustainability Plan.

The exemption itself provides some concerns:

- Who are rate payers?
- What does it mean to be “included” in a plan? Obviously, the current AB 3030 plans in place do not include discussion of individual groundwater wells.
- Who decides if pumping is in compliance with a plan? This is acceptable only if it is the district that makes that determination, not the County. Otherwise, there is no exemption at all because districts are subject to the County’s determination of compliance.
- The County clearly intends that it will be the entity making that determination:

The analysis of “compliant” may have to be technically and institutionally analyzed by the Water Advisory Committee and the Technical Advisory Committee so the BOS is comfortable the areas meet the exemption criteria. See *Revised StanCo. GWO Comments Matrix 111414*.

Most importantly, however, Section 9.37.050.C expressly provides that the above exemptions do not “exempt the activities described in those subsections from paragraph B of Section 9.37.045.” Therefore, all water resources management practices of public water agencies are subject to review by the County to determine if they constitute unsustainable extractions of groundwater.

9.37.060 Implementation

There are some concerns with implementation:

- It is the Department of Environmental Resources that investigates and makes all findings pursuant to the Ordinance.
- All administrative appeals of decisions of DER are made to an appeals committee, and not to the Board of Supervisors.
- Only appeals of determinations made under the California Environmental Quality Act are appealed to the Board of Supervisors.

We look forward to working with Stanislaus County to address these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter M. Rietkerk", with a stylized flourish at the end.

Peter M. Rietkerk
General Manager

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BOARD OF SUPERVISORS
2014 NOV 21 P 2:47

November 21, 2014

VIA ELECTRONIC MAIL

Honorable Members of the Stanislaus County Board of Supervisors

RE: Comments on Proposed Amendments to the Groundwater Ordinance

Gentlemen:

This office represents L.F. Bricchetto Farming LLP. We write to provide comments on the 11/13/14 Draft Proposed Amendments to the Groundwater Ordinance (Chapter 9.37) which we understand you will consider at your November 25, 2014 Board meeting.

First, we want to thank you and your staff for tackling a difficult issue and taking the time and effort to work on amendments to Chapter 9.37. We recognize this is a critical issue for the county and this board.

Many of the changes and clarifications in the proposed amendments are welcome and useful. However, as we note below, there are still a few issues of major concern that should be resolved so that the ordinance can function as intended.

1. The Proposal Subjects a Small Group of Landowners Drilling New Wells to a Discriminatory and Unreasonable Burden

The proposed changes include Section 9.37.045, regarding the applicability of the ordinance. We agree that there should be a section in the ordinance that explains how it will be applied – this is a major flaw in the existing ordinance. However, the proposed section is discriminatory and unreasonable.

The draft contemplates that anyone applying for a well construction permit going forward will bear the initial burden of proving to the County that the proposed pumping is sustainable. By contrast, existing pumpers are not subject to the ordinance until 2020 or 2022, six to eight years later (when Groundwater Sustainability Plans are due under State law).

When existing pumpers become subject to the ordinance six to eight years later, they do not have to meet an initial burden to keep pumping, but will have to respond to a County investigation and finding that their pumping causes an undesirable result. The ordinance is unclear how the County would single out pumpers for investigation and provides no burden of proof for their findings.

By setting forth two different time tables and burdens of proof, the proposed Section 9.37.045 discriminates against a small number of landowners who are saddled with an insurmountable initial burden of proof before they can enjoy their property rights, while other landowners are only required to respond to investigations conducted by the County six or more years later and only after the County has sufficient evidence to make the required findings. Still others, who are exempt, have no burden to satisfy. Yet, all three groups of pumpers could be extracting from the same basin or subbasin and having equal effects on the basin.

The proposal subjects anyone who wants to new drill a well to an enormous, and likely insurmountable burden, to prove the sustainability of their proposed extraction to the County before they can pump. The burden is unreasonable because the County has not yet compiled the data necessary to make this evaluation, assuming an individual landowner could afford to hire a consultant to do so for a single well project.

The burden is also unlawful because overlying landowners, with unexercised, but still paramount, overlying rights to extract and use groundwater, will be prohibited from doing so while fellow overlying right holders and junior groundwater right holders (cities) continue to pump. Yet, under California law, all overlying landowners have a correlative and senior right to share the native yield of the basin. These rights are superior to the rights of all existing appropriators and co-equal with all existing overlying pumpers.

Thus, adopting this ordinance will infringe on property rights and subject the County to substantial legal risk. It also will not correct conditions of overdraft – which is a regional problem caused by collective pumping not by individual pumping. If the County attempts to enforce the ordinance against individuals, before groundwater sustainability plan have been adopted and implemented, it will be forced to address groundwater rights of individual pumpers vis-à-vis all other pumpers in the basin. It seems odd that the County would want to undertake this role rather than focusing its limited resources on gathering more information about the basin that can be used to form regional sustainability plans that will actually help solve identified problems.

If the Board feels that it must adopt the ordinance, at a minimum we strongly urge the Board to amend Section 9.37.045 of the proposed ordinance, as follows, to apply non-discriminatory and realistic burdens and timelines to all pumpers not otherwise exempt:

Proposed amendment: Delete Section 9.37.045 A and B and replace with –

Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall apply to the extraction from any groundwater well for which the County reasonably concludes, based on substantial evidence, that the extraction of is unsustainable. In the event of such a determination by the County, the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that the continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

2. The Ordinance is Still Unclear Regarding the Role of the Permits in Section 9.37.060

It is still unclear who must apply for a permit and when that application should be made. While Section 9.37.045 is entitled “Applicability” the text of the section has no relationship to the permit process described in Section 9.37.060 – they appear to be two different processes. Section 9.37.045 is a prohibition of certain conduct while Section 9.37.060 is a permit to allow certain conduct.

Also, the permit process described in Section 9.37060 B is circular and nonsensical. The permit system is for practices otherwise prohibited (export and unsustainable extraction) but then the permit can only issue on terms that make the extraction sustainable, which in turn obviates the need for a permit for anything other than export.

To correct this drafting problem, we strongly recommend that the Board maintain the permit process in Section 9.37.060 only for export of groundwater.

However, such a change will require a re-draft of the ordinance. Therefore, we urge the Board not to adopt the proposed amendments at your November 25th meeting, but rather to give your staff time to work on this problem and bring back a more coherent draft at a future board meeting.

Finally, Section 9.37.060 provides for no appeal to the Board of Supervisors regarding groundwater permits, except for CEQA. This should be changed to allow for appeal to the Board if the permit process remains in place.

3. The Exemption for Landowners Within Districts is Ambiguous

Proposed Section 9.37.050 A.1 provides an exemption for the water resource management activities of districts and their “water rate payers.” The term “water rate payers” is ambiguous. Some districts do not deliver surface water to all or any landowners and just conduct groundwater management. Does “water rate payers” include landowners in districts that do not deliver surface water or landowners in districts that do deliver surface water but do not deliver surface water to all lands within the district?

To avoid this ambiguity, the phrase “*their water rate payers*” should be replaced with the phrase “*landowners within the jurisdiction of those agencies.*”

It is also unclear how the County or individuals will determine if individual pumping within districts is covered by existing groundwater management plans so that the exemption can apply. Rather than leaving this ambiguity in the language, we urge the Board to amend the exemption to clarify that pumping by any landowner within the jurisdiction of a water agency is exempt so long as the agency has a groundwater management plan in place, as follows:

Replace 9.37.050 A, 1 with:

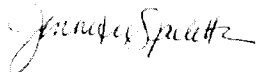
- 1. Groundwater pumping by public water agencies and/or any landowner within the jurisdiction of the public water agency, provided the applicable public water agency has*

adopted either (1) a groundwater management plan in accordance with California law or (2) an approved Groundwater Sustainability Plan.

Note, if the Board accepts our earlier recommended amendment to Section 9.37.045, which would apply the prohibitions only after the adoption of groundwater sustainability plans, Section 9.37.050 A, 1 could be further simplified to require only the adoption of a Groundwater Sustainability Plan that covers the jurisdiction of the agency.

Thank you for considering these comments and for your attention to this important issue.

Very truly yours,



JENNIFER L. SPALETTA
Attorney at Law

cc: Walt Ward, Environmental Resources Department
Jack Doering, Esq., County Counsel
Louis Brichetto

**Correspondence Received by the
Board of Supervisors after posting
this agenda item online**

2014 NOV 24 A 10:48

November 21, 2014

VIA ELECTRONIC MAIL

Honorable Members of the Stanislaus County Board of Supervisors

RE: Comments on Proposed Amendments to the Groundwater Ordinance

Gentlemen:

This office represents West Coast Grape Farming, Inc. We write to provide comments on the 11/13/14 Draft Proposed Amendments to the Groundwater Ordinance (Chapter 9.37) which we understand you will consider at your November 25, 2014 Board meeting.

First, thank you for tackling a difficult issue and taking the time and effort to work on amendments to Chapter 9.37. We recognize this is a critical issue for the county and this board.

Many of the changes and clarifications in the proposed amendments are welcome and useful. However, as we note below, there are still a few issues of major concern that should be resolved so that the ordinance can function as intended.

1. The Exemption for Landowners Within Districts is Ambiguous

West Coast farms within Eastside Water District, a district that does not deliver surface water. Therefore, the exemption for landowners within a district is particularly important to West Coast.

Proposed Section 9.37.050 A.1 provides an exemption for the water resource management activities of districts and their “water rate payers.” The term “water rate payers” is ambiguous. Some districts do not deliver surface water to all or any landowners and just conduct groundwater management. Does “water rate payers” include landowners in districts that do not deliver surface water, or landowners in districts that do deliver surface water but do not deliver surface water to all lands within the district?

To avoid this ambiguity, the phrase “*their water rate payers*” should be replaced with the phrase “*landowners within the jurisdiction of those agencies.*”

It is also unclear how the County or individuals will determine if individual pumping within districts is covered by existing groundwater management plans so that the exemption can apply. Rather than leaving this ambiguity in the language, we urge the Board to amend the exemption to

clarify that pumping by any landowner within the jurisdiction of a water agency is exempt so long as the agency has a groundwater management plan in place, as follows:

Replace 9.37.050 A.1 with:

1. Groundwater pumping by public water agencies and/or any landowner within the jurisdiction of the public water agency, provided the applicable public water agency has adopted either (1) a groundwater management plan in accordance with California law or (2) an approved Groundwater Sustainability Plan.

Note, if the Board accepts our recommended amendment to Section 9.37.045 (below), which would apply the prohibitions only after the adoption of groundwater sustainability plans, Section 9.37.050 A.1 could be further simplified to require only the adoption of a Groundwater Sustainability Plan that covers the jurisdiction of the agency.

2. The Proposal Subjects a Small Group of Landowners Drilling New Wells to a Discriminatory and Unreasonable Burden

The proposal before you seeks to add a new Section 9.37.045, regarding the applicability of the ordinance. We agree that there should be a section in the ordinance that explains how it will be applied – this is a major flaw in the existing ordinance. However, as proposed, this section is discriminatory and unreasonable.

The draft contemplates that anyone applying for a well construction permit going forward will bear the initial burden of proving to the County that the proposed pumping is sustainable. By contrast, existing pumpers are not subject to the ordinance until 2020 or 2022, six to eight years later (when Groundwater Sustainability Plans are due under State law).

When existing pumpers become subject to the ordinance six to eight years later, they do not have to meet an initial burden to keep pumping, but will have to respond to a County investigation and finding that their pumping causes an undesirable result. The ordinance is unclear how the County would single out pumpers for investigation.

By setting forth two different time tables and burdens of proof, the proposed Section 9.37.045 discriminates against a small number of landowners who are saddled with an insurmountable initial burden of proof before they can enjoy their property rights, while other landowners are only required to respond to investigations conducted by the County six or more years later and only after the County has sufficient evidence to make the required findings. Still others, who are exempt, have no burden to satisfy. Yet, all three groups of pumpers could be extracting from the same basin or subbasin and having equal effects on the basin.

The proposal subjects anyone who wants to drill a new well to an enormous, and likely insurmountable burden, to prove the sustainability of their proposed extraction to the County before they can pump. The burden is unreasonable because the County has not yet compiled the data necessary to make this evaluation, assuming an individual landowner could afford to hire a consultant to do so for a single well project.

The burden is also unlawful because overlying landowners, with unexercised, but still paramount, overlying rights to extract and use groundwater, will be prohibited from doing so while fellow overlying right holders and junior groundwater right holders (cities) continue to pump. Yet, under California law, all overlying landowners have a correlative and senior right to share the native yield of the basin. These rights are superior to the rights of all existing appropriators and co-equal with all existing overlying pumpers.

Thus, adopting this ordinance will infringe on property rights and subject the County to substantial legal risk. It also will not correct conditions of overdraft – which is a regional problem caused by collective pumping not by individual pumping. If the County attempts to enforce the ordinance against individuals, before groundwater sustainability plan have been adopted and implemented, it will be forced to address groundwater rights of individual pumpers vis-à-vis all other pumpers in the basin. It seems odd that the County would want to undertake this role rather than focusing its limited resources on gathering more information about the basin that can be used to form regional sustainability plans that will actually help solve identified problems.

If the Board feels that it must adopt the ordinance, at a minimum we strongly urge the Board to amend Section 9.37.045 of the proposed ordinance, as follows, to apply non-discriminatory and realistic burdens and timelines to all pumpers not otherwise exempt:

Proposed amendment: Delete Section 9.37.045 A and B and replace with –

Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall apply to the extraction from any groundwater well for which the County reasonably concludes, based on substantial evidence, that the extraction of groundwater is unsustainable. In the event of such a determination by the County, the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that the continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

3. The Ordinance is Still Unclear Regarding the Role of the Permits in Section 9.37.060

It is still unclear who must apply for a permit and when that application should be made. While Section 9.37.045 is entitled “Applicability” the text of the section has no relationship to the permit process described in Section 9.37.060 – they appear to be two different processes. Section 9.37.045 is a prohibition of certain conduct while Section 9.37.060 is a permit to allow certain conduct.

Also, the permit process described in Section 9.37.060 B is circular and nonsensical. The permit system is for practices otherwise prohibited (export and unsustainable extraction) but then the permit can only issue on terms that make the extraction sustainable, which in turn obviates the need for a permit for anything other than export.

To correct this drafting problem, we strongly recommend that the Board maintain the permit process in Section 9.37.060 only for export of groundwater.

However, such a change will require a re-draft of the ordinance. Therefore, we urge the Board not to adopt the proposed amendments at your November 25th meeting, but rather to give your staff time to work on this problem and bring back a more coherent draft at a future board meeting.

Thank you for considering these comments and for your attention to this important issue.

Very truly yours,



JENNIFER L. SPALETTA
Attorney at Law

cc: Walt Ward, Environmental Resources Department
Jack Doering, Esq., County Counsel
Frank Canela

BOARD OF SUPERVISORS

2014 NOV 24 P 3: 32

Steven A. Herum
sherum@herumcrabtree.com

November 24, 2014

VIA ELECTRONIC MAIL

Honorable Members of the Stanislaus County Board of Supervisors
1010 Tenth Street, Suite 6500
Modesto, California 95354

Re: Comments on Stanislaus County Groundwater Ordinance

Dear Honorable Members of the Stanislaus County Board of Supervisors:

Our firm represents the Agricultural Preservation Alliance, Inc. (APA). The APA is a nonprofit mutual benefit corporation formed for the express purpose of supporting sustainable groundwater management in the Eastern and Northeastern portions of Stanislaus County. The members of the APA are property owners, residents, taxpayers and voters in Stanislaus County and have been working with local irrigation districts in the area in an effort to secure access to surface water to be used conjunctively with their groundwater resources. Members of the APA own substantial land in the Eastern and Northeastern area of Stanislaus County and have invested millions of dollars in development of their land which could be irreparably harmed by enactment of this proposed ordinance.

Furthermore, in the rush to adopt an ordinance, the County has failed to assemble and collect relevant scientific and technical data to support this extreme regulation and has introduced an ordinance contaminated with Constitutional and legal infirmities. This rush to adopt something will inevitably lead the County to a path of costly and time consuming litigation.

General Comments

1. Lack of Scientific or Technical Data to Support the Extreme Regulation.

The members of the APA have grave concerns regarding the proposed amendments to the County's Groundwater Ordinance dated November 13, 2014 (Draft Groundwater Ordinance). One of the most disturbing aspects of moving forward with the Draft Groundwater Ordinance is the utter lack of scientific data on the condition of the groundwater basin. The County has failed to develop a scintilla of evidence to confirm

that the groundwater basin is being overdrafted, over pumped or otherwise being exercised beyond the safe yield of the basin. Until such information is developed, the County should not take the draconian measures included in the Draft Groundwater Ordinance. Everyone is keenly aware that California is in the throes of a serious drought. However, this circumstance and sound public policy does not justify creating a massive government regulation over the exercise of property rights based upon supposition and newspaper headlines. Simply stated annual rainfall is cyclical. If the County was in the part of the rainfall cycle involving heavy annual rains would this ordinance be considered?

2. The Extreme Regulation will Operate as a *de facto* Moratorium.

The landowners are very concerned that this proposed ordinance will operate as an illegal and *de facto* moratorium prohibiting future construction of wells in the unincorporated area of Stanislaus County. The landowners recognize that state law provides a procedure for a county to adopt a moratorium. However, due to the enormous and substantial consequences of a land use moratorium the statute expressly incorporates Constitutional and other procedures. That is, the statute is expressly designed to require a county to follow a heightened procedure and assemble superior scientific and other evidence before a moratorium is enacted. Here the proposed ordinance does not satisfy the heightened standards and procedures found in state law to enact a moratorium.

3. The Draft Groundwater Ordinance Contains Constitutional Flaws.

The Draft Groundwater Ordinance will subject the County to costly litigation because it is not legally defensible. The Draft Groundwater Ordinance suffers a serious Constitutional flaw. It violates Constitutionally Due Process and Constitutionally protected Equal Protections by the manner in which it is designed and drafted.

It violates Due Process, United States Constitution 14th Amendment and California Constitution Art/ I, Section 7, by providing an illusory and ambulatory standard that a property owner must attain before receiving permission to exercise the landowner's Constitutionally protected right to property. "Individual freedom finds tangible expression in property rights." *United States v. James Daniel Good Real Property* (1993) 510 U.S. 43, 61. The articulated standards that apply when an unelected official decides whether to grant a landowner a permit to enjoy Constitutionally protected property rights is too vague and uncertain to meet Constitutional demands. Simply stated, the vagueness of the Draft Groundwater Ordinance makes it impossible for a property owner to know with any degree of certainty if and when that property owner has provided sufficient information to justify granting the requested permit. This results in government power being exercised in an unreasonable and arbitrary fashion.

The Draft Groundwater Ordinance is too vague, ambiguous and uncertain. What does "substantial evidence" mean? Is it preponderance (more than 50%) beyond a

reasonable doubt? What is "significant and unreasonable?" A prospective pumper must demonstrate that his use of the well over the next 50 year planning period will not lower groundwater level. How can this ever be proven by "substantial evidence?"

To the same extent the Draft Groundwater Ordinance violates Equal Protection. United States Constitution 14th Amendment and California Constitution, Art I, Section 7. The Draft Groundwater Ordinance treats adjoining property owners in an arbitrary and capricious fashion. By way of illustration, a property owner within an irrigation district, which has not adopted any regulation regarding the construction of wells, is not subject to this ordinance. However, an adjoining property owner, immediately outside the jurisdiction of the irrigation district is subject to the ordinance and the uncertainty and cost of attempting to gain governmental permission to construct a well. The County offers no evidence that this distinction is necessary to further the purpose of the ordinance nor does it offer reasonable facts and data to justify this distinction.

We respectfully submit that the County continue this matter to work with the affected landowners to achieve a workable and Constitutional ordinance.

4. The Draft Groundwater Ordinance is Drafted and Designed to Violate Mandatory CEQA Procedures.

The Draft Groundwater Ordinance delegates the responsibility of California Environmental Quality Act (CEQA) and permit approval to a Department head. The Board of Supervisors has completely relinquished and seeded all of its authority to an unelected bureaucrat. The Draft Groundwater Ordinance does not provide an appeal right to the Board of Supervisors for a permit approval or denial, but does allow an appeal of the CEQA determination to the Board of Supervisors. This bifurcation of the permit approval and CEQA determination is illegal.

This approach does extreme violence to the California Environmental Quality Act's statutory structure and legislative purpose, and compromises the completeness and accuracy of judicial review. Previously this radical notion has been harshly rejected: "It is the City's bifurcated process, which resulted in segregation of environmental review from project approval, that supports an imputation of bad faith." *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1202 (2004) (*Bakersfield*). There the defendants, over Petitioner objection, induced the trial court to follow a city's fatally flawed bifurcation methodology and this resulted in the trial court judge finding the EIR was partially defective but the challenged land use applications lawfully approved. In reversing the trial court decision *in toto* and finding the EIR totally defective and the land use approvals invalid a highly critical but nevertheless puzzled appellate court found the judge's approach and reasoning to be "inexplicable". *Id.* at 1202. The Board offers no reason or controlling legal precedent to support repeating the same error here.

Indeed, Public agencies shall:

"integrate the requirements of this division (CEQA) with planning and environmental review procedures otherwise required by law or by local practice so that those procedures, to the maximum feasible extent, run concurrently, rather than consecutively"

Pub. Res. C. §21003(a). ("To the extent possible, the EIR process should proceed concurrently with the lead agency's project review and approval process." Kostka & Zischke 1 Prac. Under the Calif. Environmental Quality Act (CEB 2014) at §8.4.)

The Draft Groundwater Ordinance is expressly drafted to bifurcate the CEQA review: upon appeal the ultimate decision on the legal sufficiency of the CEQA document is determined by the County Board of Supervisors but the ultimate decision on the permit remains with the unelected bureaucrat or Appeal Committee. This is the precise type of bifurcation that CEQA prohibits and courts will not tolerate.

Specific Comments

9.37.020 Findings.

The findings make unsupported assertions regarding the "unsustainable extraction of groundwater resources within the County" and unsupported assertions regarding the condition of the groundwater basin. There is no support for the finding that there is a violation of the Article X, Section 2 of the California Constitution.

9.37.030 Definitions.

The definition of "undesirable result" is vague and ambiguous. How is "chronic lowering of groundwater levels" defined? What is "chronic?" Groundwater levels on the subject property, within a 1-mile radius, within some other radius, in the sub-basin or within the basin? The undefined term is too vague and ambiguous to apply to requests to exercise property rights.

9.37.045 Application.

The Draft Groundwater Ordinance prohibits (a) the unsustainable pumping of groundwater and (b) the export of groundwater. The Application Section B provides:

Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall be applicable to the extraction from any groundwater well for which the County reasonably concludes that the extraction of groundwater constitutes unsustainable extraction of groundwater. In the event of such determination by the County,

the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

This means that if the County "reasonably concludes" that the pumping of any groundwater pumper in Stanislaus County is "unsustainable" the County can force that pumper to "demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater." Under this section the County can challenge any pumping, even from wells that have pumped for years, by asserting that it is unsustainable. This is a very easy burden for the County to meet and a difficult burden for the pumper to meet. The burden should be on the County to establish "by substantial evidence" that a well is unsustainable. It also interferes with the property owner's vested right to pump water. When, if ever, under the ordinance does a property owner acquire a vested right against government interference to pump ground water?

Moreover, this clearly is an illegal usurping of authority of the Groundwater Sustainability Agency (GSA) and the groundwater sustainability plans. If the County "reasonably concludes" that the extraction of groundwater constitutes unsustainable extraction of groundwater, then new hoops for well operators. Isn't this what the GSA plans are about? Thus the Draft Groundwater Ordinance creates a serious legal conflict between the County and GSAs over the regulation of groundwater. Litigation between public agencies is inevitable.

9.37.060 Implementation.

There are some real concerns with the implementation section of the Draft Groundwater Ordinance. First, the Draft Groundwater Ordinance delegates the responsibility of CEQA and permit approval to a Department head. It is the Department of Environmental Resources (DER) that investigates and makes all findings pursuant to the Draft Groundwater Ordinance. All administrative appeals of decisions of DER are made to an appeals committee, and not to the Board of Supervisors. The Board of Supervisors has completely seeded its authority to an unelected bureaucrat and an appeals committee. There is no ability to appeal permit approval or denial to the Board of Supervisors. Only appeals of determinations made under the CEQA are appealed to the Board of Supervisors. Bifurcating the permit approval and CEQA determination is not permissible and violates the law.

Second, the Draft Groundwater Ordinance authorizes a yet to be defined new "permitting" requirement, a permit to operate. The language in the section is very unclear. Will this be applied to existing groundwater well pumpers? How will determinations as to who needs to obtain a permit be made? The permit language allows DER to establish a system for permits that would otherwise be prohibited by this

Honorable Members of the Stanislaus County Board of Supervisors
November 24, 2014
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Chapter. So DER is going to develop a permit system to authorize the "unsustainable extraction of groundwater." That makes no sense and completely circular.

Conclusion

We appreciate the opportunity to comment on the Draft Groundwater Ordinance and look forward to working with your staff on important revisions needed to bring the Draft Groundwater Ordinance in compliance with the law. We suggest that you provide your staff and the Advisory Water Committee additional time to redraft the ordinance that is compliant with the law and bring it back to a future board meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven A. Herum". The signature is fluid and cursive, with a long horizontal stroke at the end.

STEVEN A. HERUM
Attorney-at-Law

SAH:lac

cc: Clients
Walt Ward
Jack Doering

WEST STANISLAUS IRRIGATION DISTRICT

116 E Street
PO Box 37
Westley, CA 95387



(209)894-3091
(209)894-3383 Fax
wsidoffice@weststanislausid.org

November 20, 2014

Stanislaus County Board of Supervisors
1010 10th Street
Suite 6700
Modesto, CA 95354

Re: Draft Groundwater Ordinance

Gentlemen:

On behalf of West Stanislaus Irrigation District, I want to express my concern with the current version of the Stanislaus County Groundwater Ordinance (“**Ordinance**”). In discussions regarding the ordinance, members of the Stanislaus County Water Advisory Commission have repeatedly told representatives of public agencies that the prohibitions of the Ordinance would apply only to groundwater users located in the unincorporated county lying outside the service area of an irrigation district. However, when reading the current draft of the Ordinance, we have found quite to the contrary.

GENERAL COMMENTS

While there are many issues with the ordinance that need to be addressed, the most problematic is that the County is attempting to usurp and second guess the authority granted to a Groundwater Sustainability Agency (“**GSA**”) by recently passed state legislation (AB 1739, SB 1168 and 1319) (“**State Groundwater Laws**”). The State Groundwater Laws provide that local public agencies electing to become GSAs will be given broad powers over groundwater, including the power to investigate and determine the sustainable yield of a groundwater basin. The Ordinance would allow Stanislaus County staff to second guess the conclusions reached by a GSA. Under the State Groundwater laws, a GSA must develop a Groundwater Sustainability Plan and it must be reviewed and approved by the State of California. Even after that plan is approved, however, the Ordinance would allow the County to second guess the conclusions reached by a GSA, and force the GSA to demonstrate to the County “by substantial evidence” that actions of the GSA or its landowners are sustainable. Such provisions are unacceptable in addition to violating state law.

BOARD OF SUPERVISORS
2014 NOV 24 A 10:30

California courts have upheld the right of cities and counties to regulate groundwater under their police powers. In *Baldwin v Tehama County* (1984) 31 Cal.App 4th 166, the Court of Appeal rejected arguments that a county ordinance was pre-empted by State law. The court reasoned that in 1984 State law did not occupy the field of groundwater management and did not prevent cities and counties from adopting ordinances to manage groundwater. The Constitution provides that a city or county "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in conflict with the general laws.**" (Cal. Const. art. XI, § 7, *emphasis added.*) Here, that part of the Ordinance that would allow the County to second guess sustainability conclusions reached by local GSAs directly conflicts with state legislation, the State Groundwater Laws, and cannot be upheld.

SPECIFIC COMMENTS

9.37.020 Findings

The findings make unsupported assertions regarding the "unsustainable extraction of groundwater resources within the County" and do not recognize that groundwater conditions vary throughout the County.

9.37.045 Prohibitions

The proposed Ordinance prohibits export of groundwater in (A) and the unsustainable pumping of groundwater in (B). Specifically, subsection B provides:

Effective upon adoption of an applicable groundwater sustainability plan, the prohibition set forth in Paragraph A of Section 9.37.040 shall be applicable to the extraction from any groundwater well for which the County reasonably concludes that the extraction of groundwater constitutes unsustainable extraction of groundwater. In the event of such determination by the County, the affected holder or holders of a Well Construction Permit issued pursuant to Chapter 9.36 for such well shall be notified and shall be required to demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

This means that if the County "reasonably concludes" that the pumping of any water district or Landowner within a water district is "unsustainable" the County can force that pumper to "demonstrate, based on substantial evidence, that continued extraction of groundwater will not result in an unsustainable extraction of groundwater". **THERE IS NO EXEMPTION TO THIS.** The exemption for public agencies set forth in Section 9.37.050.A.1 does not apply, as expressly stated in Section 9.37.050.C.

- Under this section the County can challenge any pumping, even from wells that have pumped for years, by asserting that it is unsustainable.
- This is a very easy burden for the County to meet and a difficult burden for the pumper to meet. The burden should be on the County to establish "by substantial evidence" that a well is unsustainable.

- Further, this section is not clear: “adoption of an applicable groundwater sustainability plan” by whom?

The County continues to misrepresent that “Current and future compliance groundwater management plan area will continue to have an exemption.” *See Revised StanCo. GWO Comments Matrix 111414.* This is not the case, as set forth above.

9.37.050 Exemptions

At first reading, it appears that Subsection A provides the following exemption from the prohibitions set forth above for the following:

Water resources management practices of public water agencies, and their water rate payers, that are in compliance with and included in groundwater management plans and policies adopted by that agency in accordance with applicable state law and regulations, as may be amended, including but not limited to the California Groundwater Management Act (Water Code Sections 10750 et seq.), or that are in compliance with an approved Groundwater Sustainability Plan.

The exemption itself provides some concerns:

- Who are rate payers?
- What does it mean to be “included” in a plan? Obviously, the current AB 3030 plans in place do not include discussion of individual groundwater wells.
- Who decides if pumping is in compliance with a plan? This is acceptable only if it is the district that makes that determination, not the County. Otherwise, there is no exemption at all because districts are subject to the County’s determination of compliance.
- The County clearly intends that it will be the entity making that determination:

The analysis of “compliant” may have to be technically and institutionally analyzed by the Water Advisory Committee and the Technical Advisory Committee so the BOS is comfortable the areas meet the exemption criteria. *See Revised StanCo. GWO Comments Matrix 111414.*

Most importantly, however, Section 9.37.050.C expressly provides that the above exemptions do not “exempt the activities described in those subsections from paragraph B of Section 9.37.045.” Therefore, all water resources management practices of public water agencies are subject to review by the County to determine if they constitute unsustainable extractions of groundwater.

9.37.060 Implementation

There are some concerns with implementation:

- It is the Department of Environmental Resources that investigates and makes all findings pursuant to the Ordinance.
- All administrative appeals of decisions of DER are made to an appeals committee, and not to the Board of Supervisors.
- Only appeals of determinations made under the California Environmental Quality Act are appealed to the Board of Supervisors.

I look forward to working with Stanislaus County to address these issues.

Very Truly Yours,



Robert Pierce, P.E.
General Manager
West Stanislaus Irrigation District

Cc: West Stanislaus Irrigation District Board of Directors



EASTSIDE WATER DISTRICT

BOARD OF SUPERVISORS

2014 NOV 25 A 8:52

**BOARD OF
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November 23, 2014

Stanislaus County Board of Supervisors
1010 10th Street
Suite 6700
Modesto, CA 95354

Re: Draft Groundwater Ordinance

Gentlemen:

On behalf of Eastside Water District, I want to express my concern with the current version of the Stanislaus County Groundwater Ordinance (“**Ordinance**”). In discussions regarding the ordinance, members of the Stanislaus County Water Advisory Commission have repeatedly told representatives of public agencies that the prohibitions of the Ordinance would apply only to groundwater users located in the unincorporated county lying outside the service area of an irrigation district. However, when reading the current draft of the Ordinance, we have found this is quite to the contrary.

GENERAL COMMENTS

While there are many issues with the ordinance that need to be addressed, the most problematic is that the County is attempting to usurp and second guess the authority granted to a Groundwater Sustainability Agency (“**GSA**”) by recently passed state legislation (AB 1739, SB 1168 and 1319) (“**State Groundwater Laws**”). The State Groundwater Laws provide that local public agencies electing to become GSAs will be given broad powers over groundwater, including the power to investigate and determine the sustainable yield of a groundwater basin. The Ordinance would allow Stanislaus County staff to second guess the conclusions reached by a GSA. Under the State Groundwater laws, a GSA must develop a Groundwater Sustainability Plan and it must be reviewed and approved by the State of California. Even after that plan is approved, however, the Ordinance would allow the County to second guess the conclusions reached by a GSA, and force the GSA to demonstrate to the County “by substantial evidence” that actions of the GSA or its landowners are sustainable. Such provisions are unacceptable in addition to violating state law.

California courts have upheld the right of cities and counties to regulate groundwater under their police powers. In *Baldwin v Tehama County* (1984) 31 Cal.App 4th 166, the Court of Appeal rejected arguments that a county ordinance was pre-empted by State law. The court reasoned that in 1984 State law did not occupy the field of ground



EASTSIDE WATER DISTRICT

water management and did not prevent cities and counties from adopting ordinances to manage groundwater. The Constitution provides that a city or county "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in conflict with the general laws.**" (Cal. Const. art. XI, § 7, *emphasis added.*) Here, that part of the Ordinance that would allow the County to second guess sustainability conclusions reached by local GSAs directly conflicts with state legislation, the State Groundwater Laws, and cannot be upheld.

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The findings make unsupported assertions regarding the "unsustainable extraction of groundwater resources within the County" and do not recognize that groundwater conditions vary throughout the County.

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This means that if the County "reasonably concludes" that the pumping of any water district or Landowner within a water district is "unsustainable" the County can force that pumper to "demonstrate, based on substantial evidence that continued extraction of groundwater will not result in an unsustainable extraction of groundwater". **THERE IS NO EXEMPTION TO THIS.** The exemption for public agencies set forth in Section 9.37.050.A.1 does not apply, as expressly stated in Section 9.37.050.C.

- Under this section the County can challenge any pumping, even from wells that have pumped for years, by asserting that it is unsustainable.



EASTSIDE WATER DISTRICT

- This is a very easy burden for the County to meet and a difficult burden for the pumper to meet. The burden should be on the County to establish “by substantial evidence” that a well is unsustainable.
- Further, this section is not clear: “adoption of an applicable groundwater sustainability plan” by whom?

The County continues to misrepresent that “Current and future compliance groundwater management plan area will continue to have an exemption.” *See Revised StanCo. GWO Comments Matrix 111414.* This is not the case, as set forth above.

9.37.050 Exemptions

At first reading, it appears that Subsection A provides the following exemption from the prohibitions set forth above for the following:

Water resources management practices of public water agencies, and their water rate payers, that are in compliance with and included in groundwater management plans and policies adopted by that agency in accordance with applicable state law and regulations, as may be amended, including but not limited to the California Groundwater Management Act (Water Code Sections 10750 et seq.), or that are in compliance with an approved Groundwater Sustainability Plan.

The exemption itself provides some concerns:

- Who are rate payers?
- What does it mean to be “included” in a plan? Obviously, the current AB 3030 plans in place do not include discussion of individual groundwater wells.
- Who decides if pumping is in compliance with a plan? This is acceptable only if it is the district that makes that determination, not the County. Otherwise, there is no exemption at all because districts are subject to the County’s determination of compliance.
- The County clearly intends that it will be the entity making that determination: The analysis of “compliant” may have to be technically and institutionally analyzed by the Water Advisory Committee and the Technical Advisory Committee so the BOS is comfortable the areas meet the exemption criteria. *See Revised StanCo. GWO Comments Matrix 111414.*



EASTSIDE WATER DISTRICT

Most importantly, however, Section 9.37.050.C expressly provides that the above exemptions do not “exempt the activities described in those subsections from paragraph B of Section 9.37.045.” Therefore, all water resources management practices of public water agencies are subject to review by the County to determine if they constitute unsustainable extractions of groundwater.

9.37.060 Implementation

There are some concerns with implementation:

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- All administrative appeals of decisions of DER are made to an appeals committee, and not to the Board of Supervisors.
- Only appeals of determinations made under the California Environmental Quality Act are appealed to the Board of Supervisors.

We look forward to working with Stanislaus County to address these issues.

Very Truly Yours,

*Alan J. Wilson for
Chairman Al Rossini*

Al Rossini
Board Chair
Eastside Water District

Stanislaus County Water Advisory Committee Report

November 25, 2014

Topics

Activity Report regarding the Stanislaus
County Water Advisory Committee

Groundwater Ordinance Revision

Groundwater Management Action Plan (GMAP)

- Board of Supervisors accepted the GMAP and directed staff to implement it on June 10, 2014
- Five-year, phased program
- Plan Elements
 - Thresholds
 - Monitoring
 - Governance
 - Funding
 - Enforcement
- <http://www.stancounty.com/er/pdf/groundwater/groundwater-management-action-plan.pdf>

Focused Efforts

- Rural Domestic “dry well” issue
- Sustainable Groundwater Management Act
- Groundwater Ordinance revision

Dry Domestic Wells

- Households that rely on groundwater can face problems during a drought, *especially if the facilities are shallow, aged, and not well maintained.*
- In an effort to collect information in a systematic manner and to map the location of the reported dry wells, staff created the “Report A Well Problem” form and made it available on-line at the following address:

[//www.stancounty.com/er/pdf/report-well-problem-form.pdf](http://www.stancounty.com/er/pdf/report-well-problem-form.pdf)

Domestic Dry Wells (cont'd)

- As information began to be collected, a prevailing trend was revealed in that the majority of the impacted domestic wells shared two common characteristics: they were less than 100 feet in total depth and greater than 50 years in age.
 - Lead-time to get repairs made is 2 – 3 months (and up to six months)
 - Backlog primarily due to high demand and limited, qualified well drilling capacity in the area

Emergency Domestic Dry Well Recovery

Loan Program

- Approved by the Board of Supervisors on September 9, 2014, and is being be administered by the Housing Authority.
- \$200,000 program @ \$20,000 cap per loan
- Provides financial assistance (low interest-long term loan) to those persons on fixed incomes (elderly preference) that can't afford the \$12,000 to \$15,000 price tag
 - Deeper well drilled and new pump system installed

Emergency Domestic Dry Well Recovery

Loan Program (cont'd)

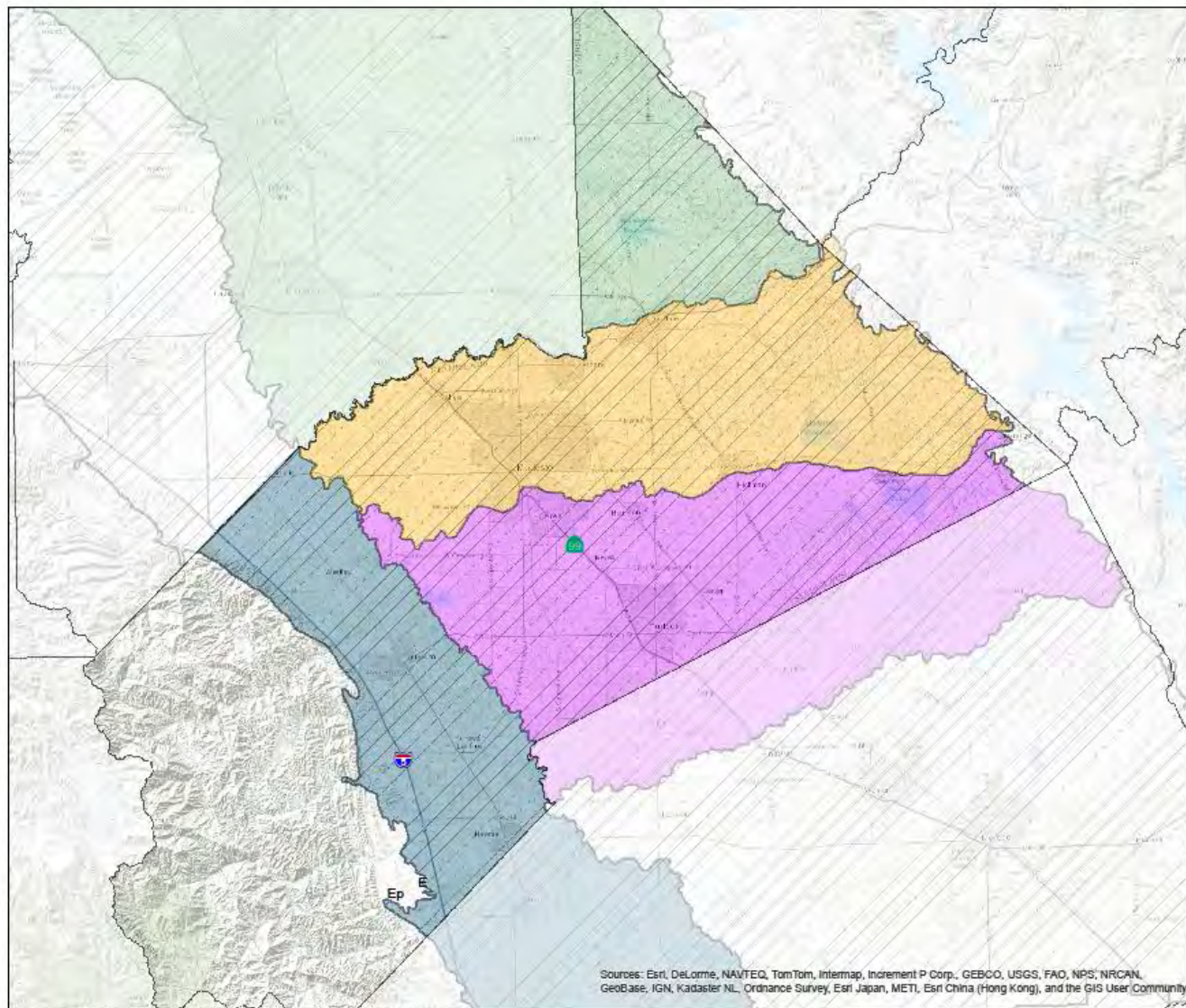
- Application forms and more details involving the program were posted on the County's main website on September 12, 2014

<http://www.stancounty.com/er/pdf/groundwater/loan-application.pdf>

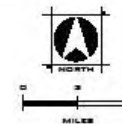
- To date: 4 loans approved and 1 well completed at an average loan amount of \$13,300

Sustainable Groundwater Management Act

- Signed into law by Governor Brown on September 16, 2014
- Gives *local public agencies* the authority to adopt Groundwater Sustainability Plans intended to manage the groundwater to maintain the “Sustainable Yield” of the basin
- The legislation imposes specific timelines:
 - Establish Groundwater Sustainability Agencies (GSA’s) by June 30, 2017
 - Basins designated as “critically” overdrafted by DWR in Bulletin 118 must have plans in place by *January 31, 2020*
 - Basins “not critically” overdrafted, but designated by DWR as high or medium priority basins, must have plans in place *January 31, 2022*




GROUNDWATER BASIN AND SUBBASIN MAP
 STANISLAUS COUNTY, CALIFORNIA
 APRIL 2014





Groundwater Basin

 San Joaquin Valley

Subbasin

 Eastern San Joaquin

 Modesto

 Turlock

 Delta-Mendota

County

 Stanislaus County

Sources: California Department of Water Resources

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, Increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community

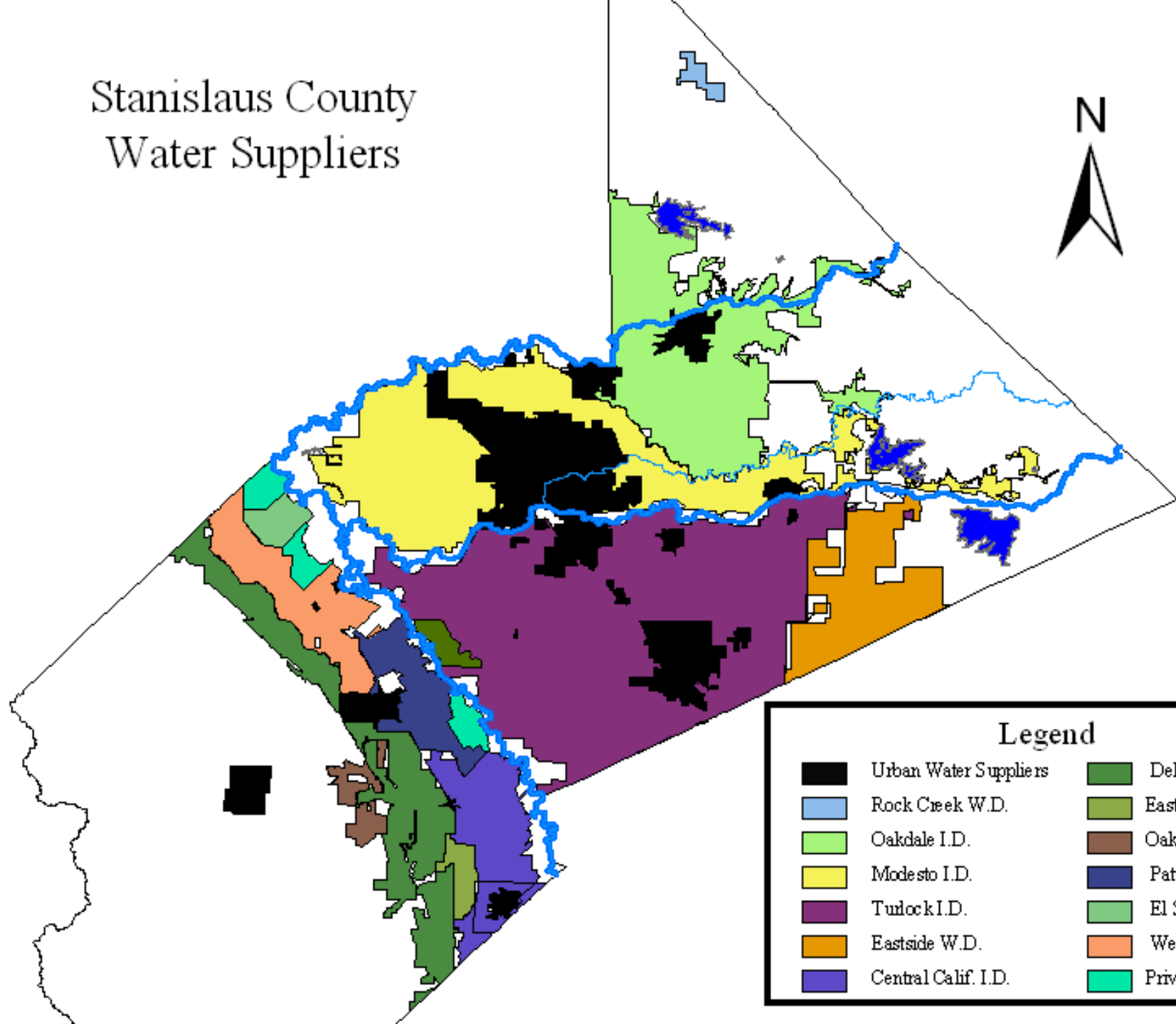
File Path: E:\Groundwater\GIS\Tasks\Stanislaus_County_GW Subbasin Map_20140425_.mxd

FIGURE

Sustainable Groundwater Management Act (cont'd)

- Agencies electing to become GSA's are given broad powers and authority regarding groundwater management, including:
 - 50 Year Planning Horizon and 20 Year Implementation Period
 - Five year reviews/updates
 - Investigate and determine the sustainable yield of a groundwater basin
 - Collect pertinent groundwater monitoring information
 - Limit groundwater extractions
 - Impose fees for groundwater management
 - Enforcement of the terms of a groundwater sustainability plan

Stanislaus County Water Suppliers



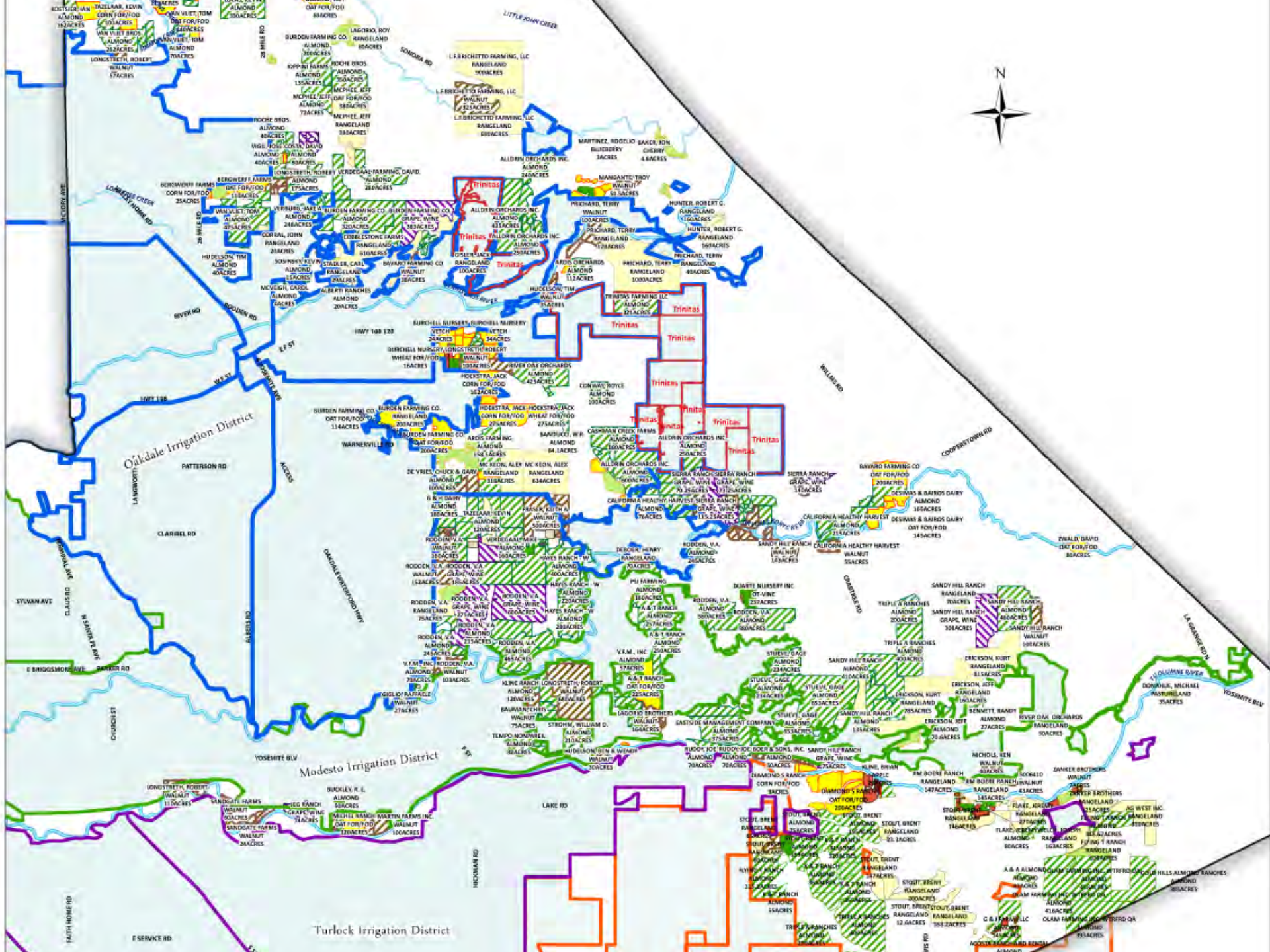
Black	Urban Water Suppliers	Green	Del Puerto W.D.
Light Blue	Rock Creek W.D.	Light Green	Eastin W.D.
Light Green	Oakdale I.D.	Brown	Oak Flat W.D.
Yellow	Modesto I.D.	Dark Blue	Patterson I.D.
Purple	Turlock I.D.	Light Green	El Solys W.D.
Orange	Eastside W.D.	Light Orange	West Stanislaus I.D.
Dark Purple	Central Calif. I.D.	Cyan	Private W.D.

Sustainable Groundwater Management (cont'd)

- *State Intervention.* The State has the ability to step in if a basin is not being properly administered:
 - no local agency is willing to serve as a GSA;
 - the GSA does not complete a GSP;
 - the GSP is found to be inadequate; or
 - the GSP does not achieve its goals
- *State intervention.* Restricted to only those areas of a basin that are not being properly managed

Water Well Facilities Mapping

- Very little known data from certain “White Areas” located within Stanislaus County jurisdiction
 - White Areas refer to the unincorporated areas of the County, outside the service area of any irrigation or water district or municipality
- Existing water management entities (municipalities & irrigation districts) have already compiled such groundwater data in their domain
- Such information will to be included in the longer term GSP processes that are occurring in the region



Water Well Facilities Mapping

- Develop and populate a centralized Data Management System (DMS)
 - Groundwater well inventory of large private agricultural and industrial wells located in White Areas
- The DMS will be used for both short- and long-range planning. In particular, the uses of the DMS include general groundwater management planning, groundwater data monitoring networks (data gaps), and enhanced understanding of the subsurface geology
- Estimated cost of \$72,000 and six-months time to complete

Groundwater Ordinance

When the Board adopted the existing GWO in October 2013, it was recognized as being a “first step”, such that the GWO would be subject to future revision

This need has been accelerated given the ongoing drought conditions, the recent groundwater legislation and the continuing growth of orchards and vineyards that are dependent on groundwater for their water supply

“Mining” has been replaced with the concept of “unsustainable groundwater extraction” to mirror the State legislative goal of sustainable groundwater management

The revised GWO includes several exemptions that recognize the existing planning, operational and water management practices of local public water agencies within their service areas

Groundwater Ordinance (cont'd)

Upon adoption of the revised ordinance (beginning tomorrow), new well construction applications that are not exempt, will be subject to a thorough review, including compliance with the California Environmental Quality Act (CEQA)

- If issuance of a well construction permit is ultimately determined to be allowable, a local permit may be necessary under the provisions of the GWO

It is also envisioned that the GWO will be used as a local enforcement tool or “backstop” to what otherwise would involve State intervention for failure to comply with legislative mandates regarding GSP implementation

- Enforcement activity post-GSP adoption [Section 9.37.045 (B)]

Groundwater Ordinance (cont'd)

- Periodic reports of pertinent groundwater information (that are reasonably necessary to monitor the existing condition of groundwater resources within the unincorporated County) will be required to be submitted to DER.
 - To facilitate the development of effective Sustainable Groundwater Plans.
 - To identify areas of concern and focus for GSP implementation such as areas with no or limited surface water
 - *Such data shall be treated as proprietary and confidential and protected from the public record except in aggregated form for reporting purposes.*
 - A “De minimis extractor” (less than 2 acre feet per year) shall not be required to submit such information

Next Steps

- Groundwater Ordinance implementation
- Groundwater Data Collection
 - Centralized Database
 - Facilities Mapping
 - Water Levels
 - Extraction Volume
 - Coordinate and integrate inter-basin groundwater data to assist Groundwater Sustainability Planning
- Compliance with Sustainable Groundwater Management Act
 - Formation of the various Groundwater Sustainability Agencies and the development of the required Groundwater Sustainability Plans

Staff Recommendations

1. Accept the update from the Stanislaus Water Advisory Committee regarding the current and planned activities related to groundwater management planning.
2. Introduce and waive the first reading amending the existing Stanislaus County Groundwater Mining and Export Prevention Ordinance; find that the ordinance is categorically exempt from the California Environmental Quality Act under CEQA Guidelines section 15308; and direct staff to post a Notice of Categorical Exemption with the Clerk Recorder.

Staff Recommendations (cont'd)

3. Authorize staff to issue a Request for Proposals (RFP) and award a contract for hydrological CEQA services to review well-permitting applications in determining CEQA compliance per the revised Stanislaus County Groundwater Mining and Export Prevention Ordinance; and a contract for Groundwater Mapping and Database Development.

Staff Recommendations (cont'd)

4. Authorize the use of \$122,000 in Appropriations for Contingencies by a 4/5 vote of the Board of Supervisors to hire a consultant to perform groundwater mapping and database development, and to hire a consultant to provide hydrological CEQA services.

5. Direct the Auditor-Controller to increase operating transfers in for the Department of Environmental Resources and operating transfers out for the Chief Executive Office-General Fund Contributions to Other Programs budget in the amount of \$122,000, as detailed in the attached budget journal.

QUESTIONS

&

DISCUSSION

STANISLAUS COUNTY ORDINANCE C.S. 1155

NOTICE IS HEREBY GIVEN that on December 9, 2014, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1155 to amend Chapter 9.37 to the Stanislaus County Code regarding the regulation of groundwater resources within the County of Stanislaus.

Chapter 9.37 prohibits the mining of groundwater within the unincorporated areas of the County, and the export of water outside of the County, with certain exceptions. The principal changes in the amendment to Chapter 9.37 are:

1. The term “unsustainable groundwater extraction” replaces “groundwater mining” to align with the recently enacted Legislative concepts of “sustainable groundwater management” and avoidance of “undesirable results” that could occur as a result of certain groundwater extraction activities. The focus of the long-term groundwater management planning efforts will focus on the development of sustainable groundwater management programs, practices and policies.
2. The geographic scope of the ordinance is clarified to be applicable only in the unincorporated area of the County.
3. The amendment clarifies that applications for a well construction permit submitted after November 25, 2014 are subject to Chapter 9.37, and all well construction permits issued before then may be reviewed upon adoption of groundwater sustainability plan if the County reasonably determines that extraction from the well causes or contributes to “undesirable results.” Certain exemptions remain applicable.
4. The amendment adds a requirement to submit pertinent groundwater monitoring information from all persons and entities within the County.
5. The role of the California Environmental Quality Act (CEQA) in the County’s permitting process is clarified by the amendment.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Keith Boggs, Assistant Executive Officer at (209) 525-6333 or at 1010 10th Street, Suite 6800, Modesto, CA 95354.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: November 25, 2014

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY:


Elizabeth A. King, Assistant Clerk of the Board

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of THE MODESTO BEE, printed in the City of MODESTO, County of STANISLAUS, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of STANISLAUS, State of California, Under the date of February 25, 1951, Action No. 46453; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Dec 02, 2014

STANISLAUS COUNTY
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Pub Dates Dec 2, 2014

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

December 2nd, 2014

(By Electronic Facsimile Signature)

