VIII A.

MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: John Brodie, Water Resource Programs Manager
Joe McGahan, Regional Drainage/Westside Watershed Coalition Coordinator

DATE: March 10, 2022

RE: Activity Agreements – Staff Report for February 2022

This memorandum serves as the Staff Report for February 2022 regarding specified[1] Water Authority activities not separately addressed on the Board meeting agenda.

1. Integrated Regional Water Management (IRWM) Activity Summary

San Joaquin River Funding Area (SJRFA)

Work is now complete on the Phase 2 SJRFA Disadvantaged Community Involvement Program (DACIP). SLDMWA staff previously coordinated with the City of Newman on the Newman Environmental Wetland System (NEWS) project with Contra Costa Water District as the SJRFA DACIP grantee. Work on this phase of the project was focused on completing a geotechnical report, construction documents, a landscape plan, and a design report.

Tulare-Kern Funding Area (TKFA)

IRWM regions in the funding area must come to a consensus on when to submit an application for Proposition 1, Round 2 funding. Most IRWM regions in the TKFA prefer the paired October 2022 and February 2023 deadlines. The comment period on the draft Proposal Solicitation Package and Guidelines closed February 18. The final PSP and guidelines including application deadlines are expected to be released in April.

General Westside-San Joaquin Integrated Regional Water Management Plan (IRWMP)

SLDMWA Staff continues to work with the WSJ IRWM Region's Project Proponents and Activity Agreement members to update the Opti database of projects. Project Proponents are being urged to update details including project status, funding requirements, and amount of water (AF/year) recharged, saved, or recycled/recirculated.

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[1] For the sake of completeness, this includes those Activity Agreements that have been approved by the Board of Directors, but not yet signed by all interested members and/or participants (i.e., the Los Vaqueros Expansion Project Activity Agreement, the Exchange Contractors 2019-2023 Transfer Program Activity Agreement, and the Westside-San Joaquin Integrated Regional Water Management Activity Agreement).

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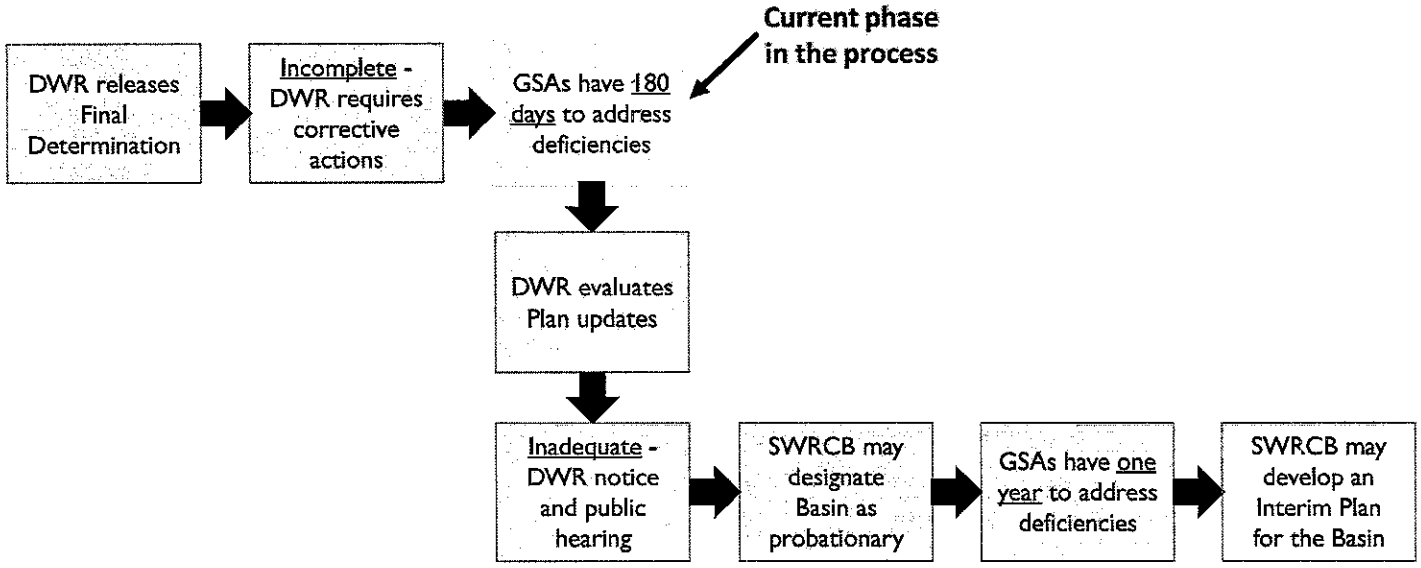
SUMMARY OF DWR REVIEW

NORTHERN AND CENTRAL DELTA-MENDOTA REGION MANAGEMENT COMMITTEES

THURSDAY, 27 JANUARY 2022

DWR'S DETERMINATION - THE PLAN IS "INCOMPLETE"



- GSAs have 180 days (until July 20, 2022) to correct deficiencies.
- If DWR declares the revised Plan *inadequate*, after a notice and a public hearing, the State Water Resources Control Board (SWRCB) can designate the basin as *probationary*.
- If the deficiencies identified in the *probationary* designation are not remedied within one year, the SWRCB may develop and adopt its own *interim plan* to manage groundwater use in the basin.

DWR IDENTIFIED FOUR MAIN DEFICIENCIES

1. The GSPs do not use the same data and methodologies.
2. The GSPs have not established common definitions of Undesirable Results in the Subbasin.
3. The GSPs have not set Sustainable Management Criteria (SMCs) in Accordance with GSP Regulations.
4. The Management Areas in the Plan have not Sufficiently Addressed the GSP Regulations.

ADDITIONAL OVERARCHING THEMES

- **DWR takes exception to the overall context presented in the Plan.** As stated in the Staff Report (page 4) DWR disagrees "that the critically overdrafted Subbasin has been operating sustainably in the past, the six GSP areas are currently sustainable and are not experiencing undesirable results".
- **DWR does not think Plan will achieve sustainability.** "[U]nder management presented in the Plan, groundwater overdraft in the critically overdrafted Subbasin does not appear to stop by 2040 or during SGMA's 50-year planning and implementation horizon" (Staff Report, page 17 of 40).
- **DWR thinks the institutional structure is too complicated.** Having 23 GSAs, 6 GSPs and 17 Management Areas "significantly complicates the Subbasin's implementation of SGMA" and there are Management Areas that "do not have monitoring points" and where "it is uncertain what sustainable management criteria apply" (Statement of Findings, pages 4 and 5).
- DWR's approach to GSP review has not been consistent; to the significant detriment of the Subbasin (in terms of time, detailed input, leniency, etc.). This letter is really just the first layer of the onion.

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KEY TAKEAWAYS

- Strong leadership and significantly increased coordination is needed among the 23 GSAs and 6 GSPs, as the greatest deficiencies in the Plans were found at the Subbasin-level.
- DWR did not indicate which, if any, of the GSPs used acceptable data and methodologies, but did identify some GSP- and Common Chapter-specific inconsistencies and deficiencies that can be addressed "relatively easily".
- "Sum of the parts" methodology for the Subbasin is not an acceptable approach unless the Common Chapter provides a much more comprehensive description of how this approach meets the "intent of SGMA".
- The crux of DWR's findings/corrective actions (e.g., application of common data and methodologies, Management Area delineations) will be difficult to implement within the 180-day timeframe without strong commitment from all participants.
- DWR has established a very high (and some could say inconsistently high) bar to clear. Need legal input, as well as technical input to define strategy going forward.

DEFICIENCY #1: THE GSPS DO NOT USE THE SAME DATA AND METHODOLOGIES

- "[a] statement that the GSPs are coordinated without accompanying explanation is not sufficient coordination." (Staff Report, page 11 of 40).
- DWR inventoried the various methods used by each GSA/GSP to respond to the regulations and identified discrepancies between the GSPs and some clear GSP-specific deficiencies (e.g., the GSPs did not use the same approaches, data sources, and methodologies for the water budget, SMCs, sustainable yield, hydrogeologic conceptual model(s), and sustainability goal).
- **Options to address comments:** (1) revise the Common Chapter to better explain how all the various GSP approaches can and have been working to achieve sustainability, or (2) revise the respective GSPs to apply more consistent data and methodologies across the Subbasin.

DEFICIENCY #2: THE GSPS HAVE NOT ESTABLISHED COMMON DEFINITIONS OF UNDESIRABLE RESULTS

- "A broad, generic definition of undesirable results was developed for the entire Subbasin, but the various GSAs responsible for each GSP further defined what they considered 'significant and unreasonable.' This process has resulted in setting different thresholds with different metrics and establishing a wide range of [MOs]… this fragmented approach towards establishing separate criteria that define sustainable conditions in various parts of the Subbasin does not meet the intent of SGMA or the requirements of the GSP Regulations." (Staff Report, page 21 of 40).
- **Standard we need to meet:** 23 CCR § 354.26(a): "Each Agency shall describe in its Plan the processes and criteria relied upon to define ***undesirable results applicable to the basin***. Undesirable results occur when significant and unreasonable effects for any of the sustainability indicators are caused by ***groundwater conditions occurring throughout the basin***."

DEFICIENCY #3: THE GSPS HAVE NOT SET SMCs IN ACCORDANCE WITH THE REGULATIONS

- "the Subbasin appears to have multiple definitions of its sustainability goal depending upon which GSP is referenced" (Staff Report, page 28 of 40).
- "The establishment of [MTs] and [MOs] in the Subbasin are not coordinated, nor are they supported by information that is sufficiently detailed" (Staff Report, page 29 of 40).
- "each GSP … contains a wide variety of what are considered significant and unreasonable conditions, sets different interim goals, [MTs], and [MOs], often with different units of measurement, or determines that a particular sustainability indicator is not applicable to its GSP area without providing sufficient justification" (Staff Report, page 30 of 40).
- **Options to address comments:** (1) revise the Common Chapter to better explain how all the various SMC approaches can and have been working to achieve sustainability, or (2) the GSAs have to revise their respective SMCs to apply more consistent data and methodologies across the Subbasin.

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DEFICIENCY #4: MANAGEMENT AREAS NOT ESTABLISHED IN ACCORDANCE WITH THE REGULATIONS

- "the use of management areas in a basin that is already managed under six separate GSPs significantly complicates the Subbasin's implementation of SGMA. It also impedes the ability of [DWR] to determine if the sustainability goal established for the Subbasin is being met" (Staff Report, page 39 of 40).
- "additional information related to legal authority and financial resources [of a GSA] necessary to implement the respective GSPs should be explained. If details specific to the management areas are not available or the GSAs cannot justify… the use of management areas, then the GSAs in the Subbasin should reconsider the use of management areas in the Subbasin's Plan" (Staff Report, page 40 of 40).
- **Standard we need to meet:** "The Common Chapter and coordination materials prepared for the Subbasin should describe all the management areas established in each of the six GSPs and clearly define the applicable [MTs] and [MOs] and indicate where the monitoring points are within each of the management areas for all applicable sustainability indicators." (Staff Report, page 39-40 of 40).

PATH FORWARD

- Prepare for and meet with DWR.
- Improve technical coordination and consistency among the GSPs.
- Look at ways to improve and update the Common Chapter to clearly show and list methodologies, Management Areas, monitoring networks, and SMC/URs on a Subbasin-level.
  - Create uniform definitions of Undesirable Results for each Sustainability Indicator.
  - Create a coordinated, subbasin-wide Sustainability Goal.
  - Where applicable, include recently-obtained information from Subbasin Well Census and Subsidence projects.
- Push back on apparent DWR requirement to establish uniform MOs/MTs, as regulations allow, for differences if they tie back to uniform definition of URs.
- Improve consistency between Subbasin-wide and Individual Water Budget, Change in Groundwater Storage, and sustainable yield calculations.

RECOMMENDATIONS FOR THE NCDM GSP

- Recognize that there is a very heavy lift ahead of the Subbasin to avoid probationary status.
- Coordinate with Subbasin GSP partners across all key GSP aspects and in drafting a revised Common Chapter.
- Re-evaluate SMCs and other GSP elements based on more detailed responses on other GSPs for "acceptable" approaches (see EKI analysis dated December 2021), as well as to address DWR-specific criticisms of the NCDM-GSP (e.g., lack of coordination regarding subsidence SMCs, lack of SMCs for Inter-connected Surface Water).
- Address all specific deficiencies identified by DWR (i.e., lack of a GSP-specific sustainable yield value).
- Make a strong case if you do choose to push back on some of the comments.

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Merced County
Well Ordinance Update

Board of Supervisors

November, 2021

VIII.C.

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Glossary

- GSA – Groundwater Sustainability Agency
- GSP – Groundwater Sustainability Plan
- SGMA – Sustainable Groundwater Management Act
- CEQA – California Environmental Quality Act
- CED – Community and Economic Development
- DEH – Merced County Division of Environmental Health

Background

- Ordinance intended as a bridge to SGMA implementation.
  - GSPs already being implemented.
- County role vs. GSA role.
  - GSA implementation of sustainability policy vs. construction permitting.

"...require the county to take immediate action while Merced County transitions to implementation of the Sustainable Groundwater Management Act of 2014 (SGMA)..." – Merced County Code §9.27.020

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Well Permitting Under Existing Ordinance

- Well prohibition: intended to limit increase in extraction.
  - MCC §9.27.040(A): *The mining of groundwater within the unincorporated areas of the county, in excess of extraction patterns, established between 1995 and 2013, in place as of the date of adoption of the ordinance codified in this chapter. This provision shall prohibit the construction of wells.*
- Exemptions to well prohibition for certain well project types.
- Well construction permitting & CEQA review.
  - County as Lead Agency.

Challenges with Existing Ordinance

- Diverse groundwater conditions and sustainability goals throughout the County.
  - Ordinance as a "one size fits all" approach.
- State has designated GSAs as responsible agencies for management of groundwater sustainability.
  - Liability associated with County regulating groundwater extraction vis-à-vis permitting.
    - Risk to property owners, GSAs, County.

Addressing Challenges

1. Ordinance remains.

2. Repeal ordinance.

3. Amend ordinance.

Ordinance Remains

- Risk, liability, and resulting consequences.
- Data management & reporting to GSAs.
- Coordination with GSAs.
  - How/when are GSAs informed about all well applications?
  - What happens when GSAs want to allow/deny a new well?
  - What happens when GSAs implement management actions (e.g. pumping restrictions, fallowing, extraction fees, etc.)

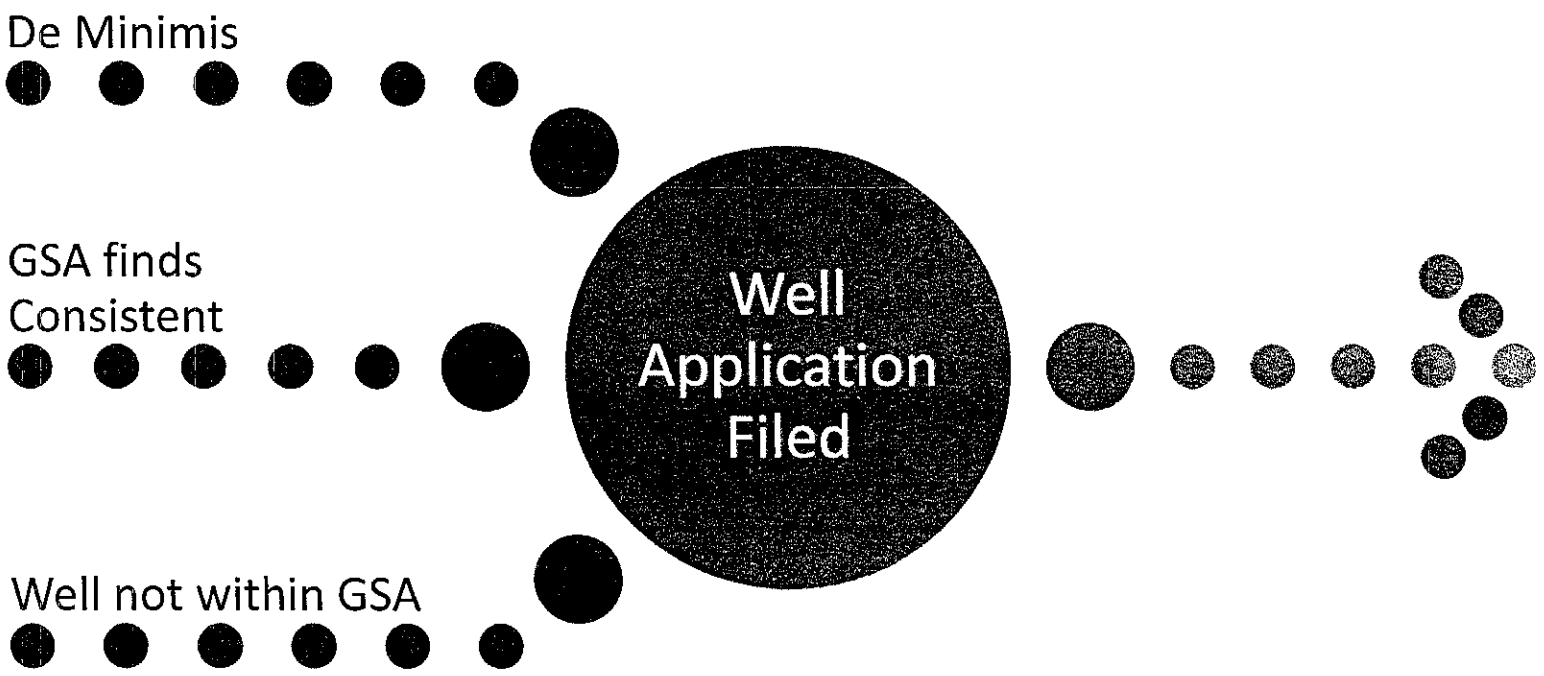
Repeal Ordinance

- New wells increase overdraft conditions.
  - Risk to County, GSAs.
  - Would necessitate GSAs expediting regulations to limit new pumping and new wells.
- Intent of ordinance = bridge to implementation of SGMA.
  - Currently in implementation stages.

Amend Ordinance

- Reduces risk to County.
- Domestic de minimis wells: exempt from prohibition regardless of location.
- Wells within a GSA with an adopted GSP:
  - Exempt from the ordinance **if** GSA makes consistency determination.
- Wells outside of a GSA (or GSA with probationary status):
  - Subject to ordinance and "new well" prohibition.

How It Works


De Minimis
GSA finds Consistent
Well not within GSA
Well Application Filed

How it Works

Domestic (de minimis) Wells

Exempt from ordinance

County reviews, permits, shares app w/ GSA

Wells Outside GSA

Subject to ordinance

County reviews, approves, denies, permit

Wells in GSA

Review by GSA

GSA provides consistency determination

Applicant files well permit w/ County

County reviews for construction standards → DEH inspects well

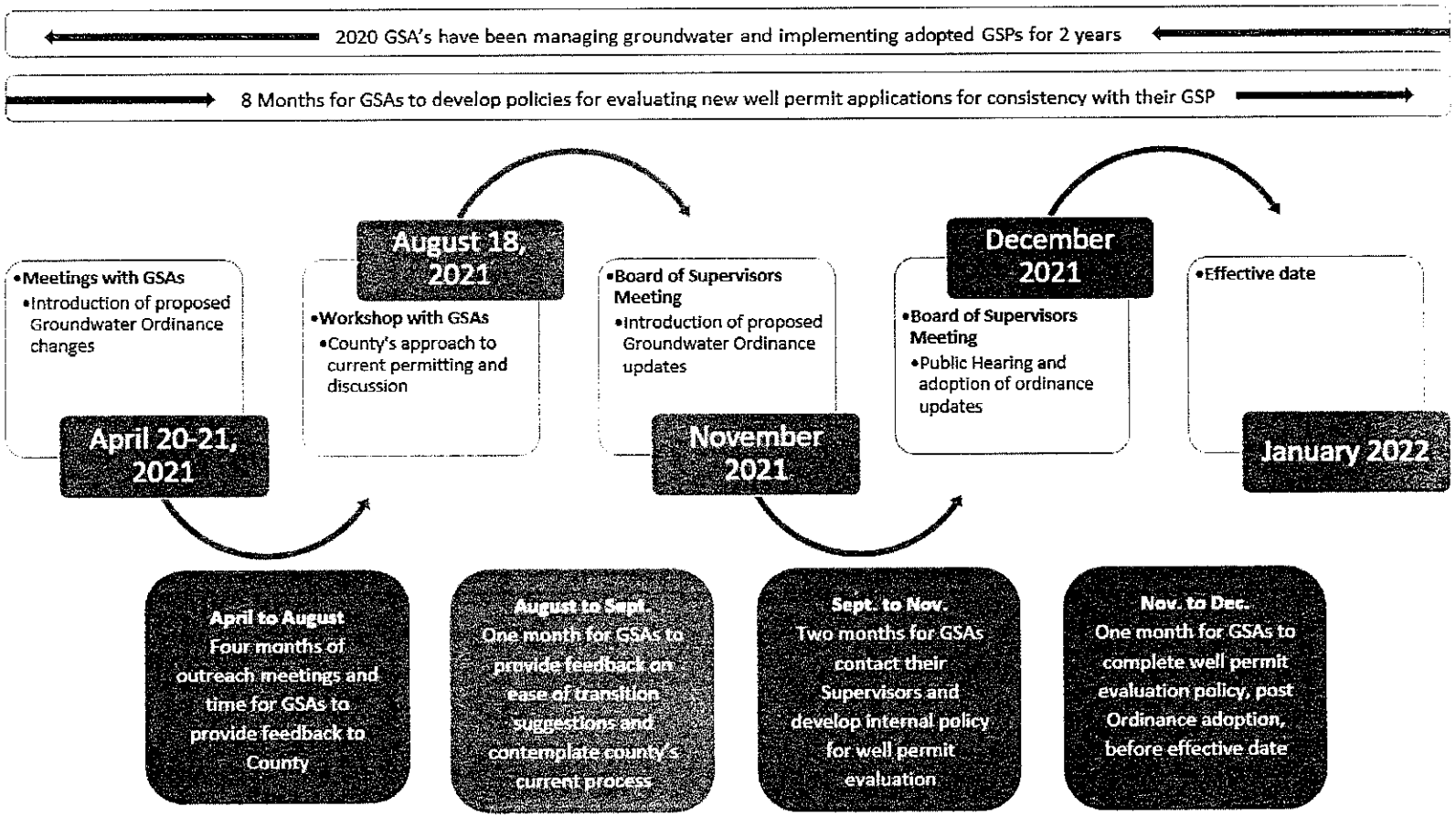
GSA regulates well via GSP implementation

Must happen in this order.

How it Works

- What if GSA does not find well project consistent?
  - Well prohibition in place, and County would be unable to permit well.
    - Function of discretionary decision and link to CEQA.
- GSAs will use implementation authority & actions
  - County will not enforce conditions.
- County remains responsible for well construction permitting, inspection, enforcement (incl. water quality).

Outreach Efforts & Next Steps



Outreach & Feedback

- Coordination with GSAs
  - Timeline, open dialogue, workshops.
  - Sharing application information, potential information needs.
- DEH has indicated willingness to help GSAs, drillers, property owners in early stages of transition.

Wrapping Up

- Request board provide direction to staff:
  - Move forward with additional outreach to GSAs as planned.
  - Return to the Board in December with a draft ordinance for consideration and possible adoption.

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VIII. C.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO GROUNDWATER MINING AND EXPORT.
(REPEALS and REPLACES Chapter 9.27, Title 9, of the MERCED COUNTY CODE)

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

SECTION 1: Chapter 9.27, Title 9, of the Merced County Code is hereby repealed and replaced in its entirety as follows:

Chapter 9.27

GROUNDWATER MINING AND EXPORT

Sections:

9.27.010 Title.
9.27.020 Findings and declarations.
9.27.030 Definitions.
9.27.040 Prohibition.
9.27.050 Exemptions.
9.27.060 Implementation.
9.27.065 Groundwater monitoring and reporting.
9.27.070 Authority.
9.27.080 Penalty for violation.
9.27.090 Severability and effect.

9.27.010 Title.

The ordinance codified in this chapter may be cited as the "Groundwater Mining and Export Ordinance of Merced County."

9.27.020 Findings and declarations.

The Merced County board of supervisors makes the following findings in support of the enactment of the ordinance codified in this chapter:

1. The protection of the health, welfare, and safety of the residents of the county require that the groundwater resources of Merced County be protected from adverse impacts resulting from both the mining of groundwater resources and the export of those resources outside each respective County groundwater basin; 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, state, and nation; and

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

4. The mining of groundwater resources from within the county and the export of groundwater from inside Merced County to outside of the respective groundwater basin in which it originates will each have adverse environmental impacts on the county, including, but not limited to, the following: increased groundwater overdraft, land subsidence, uncontrolled movement of inferior quality groundwater, the lowering of groundwater levels, increased groundwater degradation, streamflow depletion and depleted groundwater basins; and

5. The mining of groundwater resources from within the county and the export of groundwater from inside Merced County to outside of the respective groundwater basin in which it originates will each have adverse economic impacts on the county, including but not limited to the following: loss of arable land, a decline in property values, increased pumping costs due to the lowering of groundwater levels, increased groundwater quality treatment costs, replacement of wells due to declining groundwater levels, losses due to flooding and inundation, and replacement of damaged wells, conveyance infrastructure, roads, bridges and other appurtenances, structures or facilities due to land subsidence; and

6. The effects of the mining of groundwater resources from within the county and the export of county groundwater from inside Merced County to outside of the respective groundwater basin in which it originates, compounded by persistent drought conditions, presents urgent problems, including the following: subsidence of groundwater aquifer systems, weakening of proprietary groundwater rights, interruption of utility and transportation services provided by infrastructure, placing drinking water supplies at risk, decreasing the county's range land grasses for feed, reducing crop irrigation supplies to critical levels, increasing unemployment and economic hardship in the county because of a reduction of agricultural jobs, failing to conserve groundwater supplies for future years, and threatening harm to animals and plants that rely on Merced County's lakes, rivers, streams, and wetlands; and

7. Climate change has intensified the impacts of droughts in Merced County and the State of California. Unpredictable surface water availability, low moisture content in vegetation, and parched soils have magnified the impact of regularly occurring drought. The 2021 water year was the second driest in state history, and on October 19, 2021, the Governor of California issued a proclamation declaring a state of emergency due to statewide drought, which was sustained and worsened by extreme high temperatures; and

8. Based on the foregoing facts, continued action to address groundwater mining and extraction is necessary for the preservation of health, safety, and well-being of Merced

County's citizens, economy, agricultural resources, and environmental resources. Excessive groundwater extraction threatens Merced County's drinking water supplies and has caused land subsidence that threatens Merced County's roads, bridges, water conveyance, and flood and inundation management infrastructure; and

9. California Constitution, Article X, Section 2, and Water Code Section 100 prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The county finds that, under current drought and aquifer conditions, the export of groundwater for use outside the respective groundwater basins within the county in which it originates is a presumptively unsustainable use of groundwater and not reasonable or beneficial within the meaning of the California Constitution and the California Water Code; and

10. The risks to health, safety and well-being in Merced County from the mining and export of groundwater require the county to take actions to support the implementation of the Sustainable Groundwater Management Act (SGMA), which recognizes and preserves the authority of cities and counties to manage groundwater pursuant to their police powers.

9.27.030 Definitions.

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

"Basin" means any one of the following sub-basins of the San Joaquin Valley Basin [5-22], as identified in Department of Water Resources Bulletin 118:

Turlock [5-22.03]
Merced [5-22.04]
Chowchilla [5-22.05]
Delta Mendota [5-22.07]

"Board" means the board of supervisors of Merced County.

"County" means the County of Merced.

"Export of groundwater" means the extraction of groundwater from any well for other than municipal use within the boundaries of Merced County and located on or under parcels subject to this chapter and conveyed to, or used directly or indirectly on parcels which are outside of the boundaries of the Merced County groundwater basin from which the groundwater is extracted. Export of groundwater includes activities by which groundwater may through one or more exchanges or transactions be directly or indirectly conveyed or transferred for use out of the same basin from which it is extracted.

"Groundwater" means water 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.

"Groundwater Sustainability Agency" shall have the meaning given in Water Code section 10721, subdivision (j).

"Groundwater Sustainability Plan" shall have the meaning given in Water Code section 10721, subdivision (k).

"Mining" means the process, deliberate or inadvertent, of extracting groundwater from a source at a rate or amount in excess of the replenishment rate, such that the groundwater level declines persistently, threatening exhaustion of the supply, a decline of pumping levels to uneconomic depths, land subsidence, or significant water quality or other significant environmental damage.

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

"Public water agency" means any local public agency, mutual water company, or nonprofit tax-exempt unincorporated association within, or partially within, Merced County that has authority to extract, deliver, store, or regulate water. (Ord. 1930 § 1, 2015).

9.27.040 Prohibition.

The following actions are prohibited unless allowed under an exemption or permit as set forth in this chapter:

A. Groundwater Mining, as defined in this chapter, within the unincorporated areas of the county. This provision shall prohibit the construction of wells.

B. The export of groundwater from inside Merced County outside of the respective groundwater basin in which it originates.

9.27.050 Exemptions.

A. Any person, entity, or public water agency claiming an exemption to the prohibitions in this chapter must submit an application to the Merced County Division of Environmental Health. An application for an exemption shall contain sufficient information and supporting documentation to establish that the exemption applies. The person, entity, or public water agency claiming an exemption under this section shall bear the burden of proof of demonstrating that the exemption applies.

B. The construction of wells in a location that is within the jurisdiction of a groundwater sustainability agency shall be exempt from the prohibition against the construction of wells contained in this chapter provided the following criteria are met:

1. The Groundwater Sustainability Agency has adopted and implemented a Groundwater Sustainability Plan that covers the location for the proposed well.

2. The location for the proposed well is not in a basin or portion of a basin that the State Water Resources Control Board has designated as a probationary basin under Water Code, division 6, part 2.74.

3. The proposed construction and use of the proposed well are consistent with the Groundwater Sustainability Plan that covers the location for the proposed well.

4. The Groundwater Sustainability Agency whose jurisdiction overlies the location for the well provides the Merced County Division of Environmental Health with documentation confirming that each of the requirements in this subsection are satisfied with respect to the proposed well. The Groundwater Sustainability Agency's determination shall be provided with the application for exemption, and shall be in a format the Merced County Division of Environmental Health has approved.

C. Water wells in aggregate, on a single parcel delivering two acre-feet of groundwater per year or less for domestic use on property under the same ownership as the parcel on which the well is located shall be exempt from the prohibition against the construction of wells contained in this chapter.

D. The following water management practices, if proposed in a basin or portion of a basin that is not covered by a Groundwater Sustainability Plan adopted and implemented by a Groundwater Sustainability Agency, or proposed in a basin or portion of a basin that the State Water Resources Control Board has designated as probationary under Water Code division 6, part 2.74, are exempt from the prohibitions in this chapter:

1. Water resources management practices of public water agencies that have jurisdictional authority within the county, and that are in compliance with and included in groundwater management plans and policies adopted by that agency. This exemption shall not apply if the Merced County Division of Environmental Health determines that the public water agency's groundwater management plan and policies fail to prevent the increased Mining or Export of groundwater in areas within the public water agency's service area and that is subject to the county's jurisdiction.

2. The replacement of existing wells, as described in section 9.28.110 of the Merced County Code, that do not result in groundwater Mining as defined in this chapter.

3. Groundwater Mining, which may include well construction, in compliance with a discretionary permit issued by the Merced County Division of Environmental Health that may be issued only after completion of the applicable level of review under the California Environmental Quality Act.

E. The following groundwater management practices are exempt from the prohibition against the export of groundwater contained in this chapter:

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

2. Conservation of groundwater in compliance with applicable state law that authorizes public water agencies to transfer water outside its usual place of use. Conservation investments include irrigation practices in agricultural areas where the crops grown use less groundwater, or communities that produce recycled water, fix leaks or promote other water saving devices and methods to conserve groundwater on a temporary or permanent basis.

3. 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, provided that the amount of recaptured groundwater transferred out of the area will not exceed the amount of water used to recharge the aquifer, less losses that occur during the recharge process such as losses to surface water courses, flows to surrounding groundwater basins, or other groundwater movement resulting in loss to recharge amounts.

4. Remediation of contaminated groundwater required by compliance orders issued by local, state or federal agencies, 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 local, state or federal resource agencies.

5. Export of groundwater that is reasonably necessary to support existing agricultural operations on immediately contiguous parcels outside the basin under common ownership where some parcels, or parts of some parcels, straddle the basin boundary. Claimants exporting groundwater under this exemption shall install a county-approved water flow metering device and report at least annually to Merced County Division of Environmental Health the amount of groundwater exported outside the basin.

6. Export of groundwater that is reasonably necessary to support federal, state, and county approved public works projects and maintenance activities.

7. De-watering of shallow water tables in accordance with applicable Orders, Codes and Regulations, where the net benefits of the removal of subsurface water substantially outweighs the loss of water, because of damage the high water table unreasonably may cause to agriculture, industry, commerce and other property uses.

8. The export of groundwater from inside Merced County outside of the respective groundwater basin in which it originates in compliance with a permit issued by the Merced County Division of Environmental Health under this chapter.

F. The person, entity, or public water agency claiming an exemption under this section shall bear the burden of proof of demonstrating that the exemption applies.

9.27.060 Implementation.

A. The Merced County Division of Environmental Health shall be responsible for implementation of this chapter and regulations adopted by the board of supervisors.

B. The Merced County Division of Environmental Health shall establish a permitting system to authorize wells, groundwater exports, and other groundwater management practices that are consistent with this chapter. Permits issued by the Merced County Division of Environmental Health for groundwater exports or groundwater management practices shall ensure that the export or groundwater management practice is consistent with the statements of county policy set forth in Section 9.27.020. Merced County Division of Environmental Health shall coordinate with the Merced County Community and Economic Development Department for review and determination including any discretionary approval that is necessary under the California Environmental Quality Act or any other applicable statute. The issuance of the determination, discretionary approval, or other findings under the California Environmental Quality Act including public hearing or processing shall be administered through the Merced County Community and Economic Development Department.

C. The Merced County Division of Environmental Health 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, and other documentation as requested, to the Merced County Division of Environmental Health. The Merced County Division of Environmental Health 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 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; (4) suspends or revokes a permit; or (5) results in the issuance of a stop order. 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 clerk of the board within fifteen (15) calendar days of the postmark date on the envelope that transmits the administrative determination. Any appeal that is not timely filed will be deemed ineffective and the administrative determination that is being appealed will become final. The board of supervisors shall fix a reasonable time for the hearing of an appeal of an administrative determination at a regularly scheduled meeting of the board of supervisors. The board of supervisors 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. The board of supervisors shall hear the appeal and issue a decision within thirty (30) days after the hearing. The board of supervisors 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 board of supervisors shall be final forthwith.

9.27.065 Groundwater monitoring.

All permits granted for wells or groundwater exports under the scope of this chapter shall be conditioned on the installation and proper maintenance of a water measuring device acceptable to the Division of Environmental Health. As an alternative to water measuring devices, other reasonable methods to determine groundwater extraction may be used if approved by the Division of Environmental Health. This requirement shall not apply to well construction done under the exemptions stated in subsections B and C of section 9.27.050 of this Chapter.

9.27.070 Authority.

A. General Authority. The director of the Merced County Division of Environmental Health, or authorized designee(s), is authorized to take all necessary action to enforce the provisions of this chapter and to carry out any other special enforcement programs initiated by order or resolution of the board of supervisors.

B. Right of Entry and Inspection. The director of the Merced County Division of Environmental Health, or authorized designee(s), may enter at any and all reasonable times any places, property, premises, or enclosure for the purpose of carrying out any activity required or authorized by the provisions of this chapter, including to make examinations and investigations to determine whether any provision of this chapter is being violated. Upon request, the county personnel entering and inspecting shall provide adequate identification. An inspection warrant shall be obtained if required by law.

C. Stop Orders. The director of the Merced County Division of Environmental Health, or authorized designee(s), is authorized to issue stop orders to prohibit further construction or use of wells or facilities that violate the provisions of this chapter. Such stop orders shall remain in effect until violations are corrected.

D. Citations. The director of the Merced County Division of Environmental Health, or authorized designee(s), is authorized to issue notices, citations and/or abatement orders to persons for violations of the provisions of this chapter.

E. Enforcement Costs. The director of the Merced County Division of Environmental Health, or authorized designee(s), is authorized to recover from the property owner or the person in control of the property, all administrative costs associated with the enforcement of the provisions of this chapter or the enforcement of any condition to the issuance or granting of any permit or entitlement provided for by this chapter.

F. No Entitlement for Wells and Export with Violations. No permits of any kind or other entitlement shall be accepted or processed for wells in violation of the provisions of this chapter unless such entitlement corrects the violation.

G. Revocation or Modification for Cause. A permit may be revoked or modified for cause as provided by the provisions of this section. For purposes of this section, such modification may include the modification of the terms of the permit itself or the waiver, alteration, and imposition of new conditions.

1. Grounds for Revocation or Modification. Revocations or modifications may be made upon a finding of any one or more of the following grounds:

a. That such permit was obtained or extended by fraud;

b. That one or more of the conditions upon which such permit was granted have been violated or is not followed;

c. That the extraction or use for which the permit was granted is so conducted as to be a nuisance or detrimental to the public health, welfare, or safety; or unreasonable within the meaning of Article X, Section 2 of the California Constitution.

2. Initiation of Action. An administrative action to revoke or modify may be initiated by order of the board of supervisors, on its own motion or on the request of the director of the Merced County Division of Environmental Health, or authorized designee(s).

3. Notice, Review Hearing, and Decision. An action to revoke or modify shall be noticed, reviewed, heard, and decided in the same manner and by the same authority that originally granted the discretionary permit.

4. An action to revoke or modify may be appealed pursuant to the appeal procedure.

H. Any well or use which is established, operated, used, erected, moved, altered, enlarged, or maintained contrary to the provisions of this code, is declared to be unlawful and shall be subject to the remedies and penalties set forth in this chapter.

9.27.080 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 Section 1.28.020 of Merced County Code. "Person" includes any individual or firm who directs, or engages in, the digging, boring, drilling, or expansion of wells. 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 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 subject to chapter 9.70 of the Merced County Code, and also create a cause of action for injunctive relief.

9.27.090 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 Merced County Division of Environmental Health 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.

SECTION 2: EFFECTIVE DATE

This ordinance shall become effective and be in full force on the later of May 1, 2022 or thirty (30) days of its passage and adoption, and prior to the expiration of fifteen (15) days from the passage and adoption thereof, shall be published in a newspaper of general circulation printed and published in the County of Merced, State of California, together with the names of the members of the Board of Supervisors of the County of Merced, voting for or against the same.

SECTION 3: VALIDITY

If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, word or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, words, or phrases be declared invalid or unconstitutional.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California at a regular meeting thereof held on the 8th day of February, 2022 by the following vote:

SUPERVISORS

AYES:

NOES:

ABSENT:

_____
Lloyd Pareira
Chairman, Board of Supervisors

ATTEST:

JAMES L. BROWN
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:
Forrest W. Hansen
MERCED COUNTY COUNSEL

By: _____

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