

**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

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