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 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, 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 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, 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~~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 water well extraction data is critical to the implementation of groundwater regulation under this Chapter 9.37. The County finds and determines that water well extraction data from persons is confidential and proprietary information, and that such information is geological and geophysical data, plant production data, and similar information. The County further finds and determines that the need to receive or obtain private water well extraction data, and to maintain the confidentiality of such information, outweighs the public need for site specific private information in 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 ~~it~~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 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 (1) in a manner that ~~constitutes a waste, unreasonable use,~~is not sustainable groundwater management as defined in Chapter 9.37 or ~~unreasonable method of use~~State law, or (2) that does not comply with an applicable groundwater management plan adopted by a public water agency pursuant to applicable law and that is not within ~~the County, as interpreted under California law.~~ a service area of a public water agency.

7. "Export of water" means the act of conveying groundwater, or surface water 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 without causing undesirable results.

9. "Undesirable result" means one or more of the following effects caused by groundwater conditions occurring throughout the basin:

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 seawater intrusion.
d. Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.
e. Significant and unreasonable land subsidence that substantially interferes with surface land uses.
f. 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, for domestic purposes, two (2) acre-feet or less per year.

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 prohibitions set forth in Section 9.37.040 are applicable to all Persons that apply for a Well Construction Permit pursuant to Chapter 9.36 after November 25, 2014. As a condition precedent to issuance of a Well Construction Permit after November 25, 2014, applicants for a Well Construction Permit after that date shall demonstrate with 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 will not result in an unsustainable extraction of groundwater as defined in Paragraph 6 of Section 9.37.030.

B. Effective upon adoption of a groundwater sustainability plan(s), the prohibitions set forth in Section 9.37.040 are applicable to all Persons that applied for and received a Well Construction Permit pursuant to Chapter 9.36 before November 25, 2014, if the County reasonably concludes that the extraction of groundwater pursuant to a Well Construction Permit causes or substantially contributes to an Undesirable Result as defined in Paragraph 9 of Section 9.37.030. 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 shall be notified, and shall be required to demonstrate with 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. 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. Subject to review under Paragraph B of Section 9.37.045, the following water management practices are presumed to be exempt from the prohibitions in this chapter:

~~1. Water resources~~ Sustainable groundwater management practices of public water agencies that have jurisdictional authority within the county, and their 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~~.).~~

~~2. Water wells delivering 100 gallons per minute or less to uses and property under the same ownership where the well is located.~~

1. .), or that are in compliance with an approved Groundwater ~~mining and~~ Sustainability Plan.

2. De minimus extractions as set forth in Section 9.37.030 (10) of this chapter.

~~1.~~3. Groundwater extraction or the export of water ~~done~~that constitutes sustainable groundwater management, which are 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.

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.

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 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 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 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.

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. Data and information submitted pursuant to this section shall be deemed exempt from disclosure under the California Public Records Act.

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.