

ORDINANCE NO. 1563

AN INTERIM URGENCY ORDINANCE OF THE YOLO COUNTY BOARD OF SUPERVISORS ESTABLISHING A TEMPORARY 45-DAY MORATORIUM ON THE APPROVAL OF NEW AGRICULTURAL WATER WELL PERMITS IN THE CENTRAL YOLO, DUNNIGAN HILLS, AND NORTH YOLO GROUNDWATER MANAGEMENT AREAS WITHIN THE YOLO SUBBASIN, WITH SPECIFIED EXEMPTIONS, PENDING THE COUNTY AND THE YOLO SUSTAINABLE GROUNDWATER AGENCY’S STUDY, IDENTIFICATION, AND CONSIDERATION OF AREAS OF SPECIAL CONCERN

The Board of Supervisors of the County of Yolo, State of California, ordains as follows:

Section 1. Findings and Purpose.

In accordance with California Constitution, article XI, section 7 and Government Code section 25123(d), which authorize adoption of an interim urgency ordinance for the immediate preservation of the public peace, health, or safety, the Board of Supervisors finds as follows:

SGMA and Creation of the Yolo Subbasin Groundwater Agency

On September 16, 2014, Governor Jerry Brown signed three bills into law that are collectively known as the Sustainable Groundwater Management Act (“SGMA”). SGMA provides for local control of groundwater while requiring the sustainable management of groundwater resources. SGMA required the establishment of local groundwater sustainability agencies with the authority to develop, adopt, and implement a Groundwater Sustainability Plan (“GSP”).

Further, SGMA required the Department of Water Resources to classify groundwater basins throughout California as “high,” “medium,” or “low” priority. The Yolo Subbasin, which covers nearly all of Yolo County, is classified as a high priority basin. Through the creation of a joint powers agency, of which Yolo County is a member, the Yolo Subbasin Groundwater Agency (“YSGA”) was formed and is the recognized GSA for the entire Yolo Subbasin and responsible for developing and implementing a GSP. The YSGA adopted a GSP in January 2022.

The GSP identifies six management areas for the Yolo Subbasin based on administrative boundaries and hydrogeologic properties: Central Yolo, Dunnigan Hills, North Yolo, Capay Valley, South Yolo, and Clarksburg. These six management areas are depicted in Exhibit A, attached hereto and incorporated herein by reference. According to YSGA, the purpose of these management areas is to:

- Ensure that groundwater use in the Yolo Subbasin is sustainable,
- Implement the GSP, and
- Work within the framework of the GSP and SGMA to ensure a sustainable future for all beneficial users of groundwater in each management area.

County Well Permits

While the YSGA is responsible for the sustainability of the groundwater basin, the County's Department of Environmental Health (also known as "Yolo County Environmental Health" or YCEH") is the local enforcement agency responsible for issuing permits for groundwater wells in the County, including new wells, alterations to existing wells, and replacement wells. YCEH reviews well permits for consistency with the Yolo County Code and other regulatory requirements to protect the quality of groundwater via public health and safety construction standards.

Drought & Changes to the Well Permit Process to Comply with the Governor's Executive Order

On July 27, 2021, the Board of Supervisors adopted Resolution No. 21-98 proclaiming the existence of a local drought emergency and on October 19, 2021, Governor Newsom issued a proclamation extending the drought emergency statewide and further urging Californians to step up water conservation efforts.

Following the third consecutive dry winter, Governor Newsom issued Executive Order N-7-22 ("EO") on March 28, 2022. Recognizing that "coordination between local entities that approve permits for new groundwater wells and local groundwater sustainability agencies is important to achieving sustainable levels of groundwater, the EO includes a provision that requires additional review and analysis of applications for groundwater well permits in medium and high priority groundwater basins. As a high priority basin, wells in the Yolo Subbasin, and thus throughout the County are subject to the EO.

Domestic wells and public water supply system wells are exempt from the EO, so the primary impact of the EO has been on agricultural, non-domestic well applications.

Section 9a of the EO, now set forth in Paragraph 4a of EO N-3-23, requires the County to obtain a written verification from YSGA that the proposed well is not inconsistent with any sustainable groundwater management program established in the applicable Groundwater Sustainability Plan adopted by YSGA and will not decrease the likelihood of achieving a sustainability goal for the Yolo Subbasin.

Section 9b of the EO, now set forth in Paragraph 4b of EO N-3-23, requires that YCEH also determine that the proposed agricultural well is:

- not likely to interfere with the production and functioning of existing nearby wells, and
- not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

On March 24, 2023, as drought conditions eased with record-setting snow and rainfall, Governor Newsom rolled back some provisions of the drought emergency but maintained certain measures to protect lingering water supply effects of the drought with EO N-5-23. Among the emergency provisions that remain are the well permit requirements set forth in paragraph 4 of EO N-3-23. As stated in paragraph 4 of N-3-23, "to protect health safety and the environment," the County is prohibited from issuing well permits subject to the EO without the appropriate verification from

the YSGA and determination that the proposed well is not likely to interfere with the production and functioning of existing nearby wells and not likely to cause subsidence.

Since the issuance of the EO, County staff have been collaborating with staff from the YSGA on implementation processes. The YSGA Board adopted Resolution No. 22-01 to formalize the YSGA's process of completing the GSP consistency review for compliance with the EO's written verification requirements required for new wells, i.e., that the groundwater extraction by the proposed well would not be inconsistent with the Yolo GSP and will not decrease the likelihood of achieving the YSGA's sustainability goals for the Yolo Subbasin.

YCEH also worked with a hydrogeologist from Luhdorff & Scalmanini, Consulting Engineers ("LSCE"), to develop temporary well permit processing procedures to address the new EO requirements, which went into effect in December 2022 for non-exempt wells (primarily agricultural wells).

Areas of Special Concern

YSGA and YCEH have continued to review and process well permit applications in accordance with the remaining EO requirements. To date, YCEH has received 69 applications for agricultural permits since the EO was issued on March 28, 2022, of which 48 were for new wells. As of today, 31 agricultural well permits are pending.

Although drought conditions in Yolo County have significantly improved and the Board of Supervisors rescinded its local drought emergency on July 11, 2023, YSGA and the County have received concerning reports of potential impacts to wells in certain agricultural areas of the County. For example, on May 30, 2023, concerned residents in the Hungry Hollow Area (north of Capay) created and circulated a petition on Change.org requesting that the County cease issuing new agricultural well permits on historically non-irrigated lands within the County. That petition had collected over 800 signatures as of July 3, 2023. The Board of Supervisors reviewed such concerns and groundwater conditions at its meetings on July 11, 2023 and September 12, 2023 and received significant public comment and numerous letters, which are incorporated herein by reference, concerning dry wells and declining groundwater levels in certain areas of the County requiring property owners to lower well pumps, such as the Hungry Hollow area.

The YSGA has identified areas like Hungry Hollow as "Areas of Special Concern" or areas where data gaps exist with respect to groundwater conditions. The Areas of Special Concern are areas where recent trends in groundwater levels differ from the rest of the subbasin. The GSP has identified two Areas of Special Concern, which are roughly described as: (1) the general vicinity around the City of Winters and (2) the Hungry Hollow Area. In these two areas, there has been an emerging trend in some wells with declining levels. Further investigation is needed to determine the extent and cause of the declining water levels in the wells in these areas, which may be due in part to continued effects of prior droughts and hardening of irrigation water demand resulting from an increase in total irrigated acres and total perennial acres in the County.

YSGA has received notice of DWR's intent to award YSGA \$7.9M in SGMA Implementation funding, of which \$440,000 is specifically to perform a hydrogeologic analysis in the Hungry

Hollow Area, which will become a template for analysis of other Areas of Special Concern. An additional \$1.1 million of this grant is for the purpose of implementing the GSP, which includes enhancing monitoring of groundwater levels and land subsidence in areas of the County that currently have well data gaps.

Because of the continued land subsidence in the Zamora area, the YSGA also considers Zamora as an Area of Special Concern. Lastly, the YSGA is currently investigating the need to consider portions of the Plainfield Ridge as an additional Area of Special Concern.

The Areas of Special Concern and those areas being considered as additional areas of special concern are located within the Central Yolo, Dunnigan Hills, and North Yolo Management Areas of the Yolo Subbasin. However, the YSGA has not yet completed the analysis necessary to expressly define the boundaries of the Areas of Special Concern and, until that analysis is complete, it is very difficult for the YSGA and the County to make the findings required by the EO and verify that the new agricultural well permits are consistent with the GSP.

Of the 31 non-exempt agricultural well permits pending, 26 are in the Central Yolo, Dunnigan Hills, and North Yolo Groundwater Management Areas. Groundwater is a vital resource of the of the County essential to the health and safety of the many areas in the County that are fully reliant on groundwater as their only source of water. It is necessary to fully define the Areas of Special Concern and gather additional information to better inform YSGA and the County's evaluation of a proposed new agricultural well and whether they can make the EO findings to approve such a well without jeopardizing the sustainability of groundwater resources, i.e., that a proposed well:

- is not inconsistent with any sustainable groundwater management program established in the GSP;
- will not decrease the likelihood of achieving the GSP's sustainability goals for the Yolo Subbasin;
- is not likely to interfere with the production and functioning of existing nearby wells; and
- is not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

Issuing well permits without these findings jeopardizes the health, safety and welfare of the citizens of the County.

The temporary, 45-day prohibition on new drilling permits for agricultural water wells in the identified groundwater management areas is necessary due to the current and immediate threat to the public health, safety, and welfare that would result from permitting new agricultural water wells in the Areas of Special Concern before the YSGA's completion of its studies defining and determining the scope of additional data that may be necessary to satisfy the EO requirements for well permit applications in these Area and to protect groundwater sustainability.

The intent and purpose of this interim ordinance is to temporarily halt the issuance of new agricultural water well permits in the denoted groundwater management areas within the Yolo Subbasin (Central Yolo, Dunnigan Hills, and North Yolo Management Areas), which will maintain the status quo for a brief 45-day period to enable the County and the YSGA to study

and develop policies and regulations and implement other recommended actions for well permits within defined Areas of Special Concern. Absent this ordinance, applicants could continue to obtain agricultural water well permits that might exacerbate conditions in Areas of Special Concern without the appropriate analysis regarding the potential impacts of such additional wells. The intent is not to preclude approval of agricultural wells in the denoted groundwater management areas, but to temporarily pause approval to allow for more clear definition of the boundaries of the Areas of Special Concern along with implementation of any additional analysis necessary to make the findings required by the EO “to protect the health, safety and environment.” This additional review is anticipated to be completed within 45 days.

Section 2. Moratorium.

The Board of Supervisors hereby enacts this interim urgency ordinance pursuant to California Constitution, article XI, section 7 and Government Code section 25123(d), which authorize adoption of an interim urgency ordinance for the immediate preservation of the public peace, health, or safety. The moratorium prohibits the approval or issuance of well permits for new agricultural, non-exempt wells within the Central Yolo, Dunnigan Hills, and North Yolo management areas of the Yolo Subbasin, as shown on the map attached hereto as Exhibit A, for 45-days from the effective date of this ordinance, unless this ordinance is rescinded or extended by the Board of Supervisors prior to the expiration of the 45-day period.

Section 3. Exempt Wells.

The following wells are exempt from the temporary moratorium:

- Wells producing less than two acre-feet per year for individual domestic water use
- Public supply system wells as defined in Health & Safety Code § 116275
- Monitoring wells or other wells not intended for extraction of groundwater
- Replacement production wells for wells that have been in production during the five years preceding the effective date of this Ordinance and meeting the requirements of LSCE’s November 7, 2022 Technical Memorandum
- Minor alterations of production wells meeting the requirements LSCE’s November 7, 2022 Technical Memorandum

Section 4. Severability.

The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

Section 5. CEQA

The Board of Supervisors finds and determines that this ordinance is exempt from the California Environmental Quality Act (“CEQA”) because it is not a project under CEQA as the temporary moratorium on the issuance of well permits will not result in a direct or reasonably foreseeable indirect change in the environment. (CEQA Guidelines, Section 15060(c)(2).) It is further exempt from CEQA pursuant to Sections 15307 and 15308 of the CEQA Guidelines (Class 7 and 8 categorical exemptions) as an action taken to assure the maintenance, restoration,

enhancement, and protection of natural resources and the environment where the regulatory process involves procedures for protection of the environment. The basis for this determination is that this ordinance establishes a temporary moratorium on the processing and approval of permits for certain water supply wells in potential Areas of Special Concern. This 45-day moratorium will not result in any significant adverse direct or indirect physical changes to the environment. In addition, this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this interim ordinance may have a significant effect on the environment. The Director of Community Services or the Director's designee is directed to file a Notice of Exemption.

Section 6. Effective Date and Term of Temporary Moratorium.

This uncodified Ordinance shall take effect immediately as an interim urgency ordinance upon its passage by a 4/5 or greater vote of the Board of Supervisors and is applicable to pending well and renewal permit applications, in addition to any new well permit applications received after the effective date of this Ordinance. This Ordinance shall expire 45 days after its adoption without further action by the Board of Supervisors, unless rescinded or extended by the Board of Supervisors prior to expiration.

Section 7. Publication.

This Ordinance or a summary thereof shall be published once within 15 days of its passage or as may otherwise be required by State law.

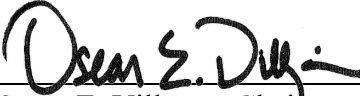
PASSED AND ADOPTED by the Yolo County Board of Supervisors at its regular meeting on September 26, 2023, by the following vote:

AYES: Frerichs, Provenza, Barajas, Villegas.

NOES: None.

ABSENT: None.

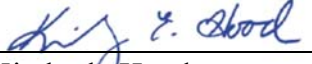
ABSTENTION: None.



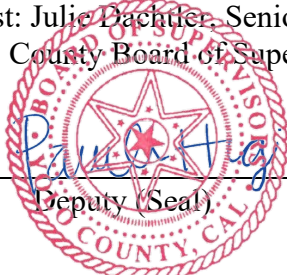
Oscar E. Villegas, Chair
Yolo County Board of Supervisors

Approved as to form:
Philip J. Pogledich, County Counsel

Attest: Julie Dachtler, Senior Deputy Clerk
Yolo County Board of Supervisors

By: 

Kimberly Hood
Assistant County Counsel

By: 

Deputy (Seal)