

## MONTEREY COUNTY BOARD OF SUPERVISORS

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|---|--|--------------------------------|
| <b>MEETING:</b> May 17, 2011 – 10:30 a.m.   |  | <b>AGENDA NO:</b> S-1          |
| <b>SUBJECT:</b> Public hearing to consider adoption of an interim ordinance to extend Interim Urgency Ordinance No. 5160, as modified and extended by Interim Ordinance No. 5163, for one additional year, until and through May 24, 2012, temporarily prohibiting the acceptance and processing of water well applications and issuance of water well permits, with limited exceptions, on parcels of less than 2.5 acres within a portion of the California American Water Company – Monterey District Main System service area, pending the County’s consideration of additional well regulations. (4/5 <sup>th</sup> vote required) |  |                                |
| <b>Project Location:</b>  |  | <b>APN:</b> Multiple           |
| <b>Planning Number:</b> REF100015   |  | <b>Name:</b> N/A               |
| <b>Plan Area:</b> Del Monte Land Use Plan, Carmel Valley Master Plan, Carmel Land Use Plan, Greater Monterey Peninsula Area Plan  |  | <b>Flagged and Staked:</b> N/A |
| <b>Zoning Designation:</b> Multiple   |  |                                |
| <b>CEQA Action:</b> Statutorily Exempt  |  |                                |
| <b>DEPARTMENT:</b> Health – Environmental Health Bureau   |  |                                |

### **RECOMMENDATION:**

It is recommended that the Board of Supervisors:

Adopt an interim ordinance to extend Interim Urgency Ordinance No. 5160, as modified and extended by Interim Ordinance No. 5163, for one additional year, until and through May 24, 2012, pending the County's consideration of additional well regulations.

### **SUMMARY:**

The conditions that led to the adoption of Interim Urgency Ordinance No. 5160 still exist. Pursuant to Government Code 65858(a), after notice and public hearing and upon appropriate findings, the Board may extend Interim Urgency Ordinance No. 5160 for one additional year. Staff recommends that the Board adopt the proposed ordinance (Attachment A), extending Interim Urgency Ordinance No. 5160 (Exhibit 1 to Attachment A), as modified and extended by Ordinance No. 5163 (Exhibit 2 to Attachment A), to protect the public health, safety, and welfare, pending the development and consideration of additional well regulations.

### **DISCUSSION:**

On February 23, 2010, the Board of Supervisors directed staff to bring forth an interim ordinance for consideration to limit temporarily the issuance of permits to construct water wells on small lots within the unincorporated urbanized service area of the California American Water Company – Monterey District Main System, pending the development of additional well regulations. Pursuant to Government Code section 65858, the Board adopted Interim Urgency Ordinance No. 5160 on May 25, 2010, prohibiting for a 45-day period the acceptance, processing, and issuance of water well permits, with limited exemptions, on parcels of less than 2.5 acres that are underlain by fractured rock in a defined Study Area in order to protect the public health, safety and welfare. The Study Area is the California American Water Company – Monterey District Main System service area in the unincorporated area of the County of Monterey, excluding the Carmel River Alluvial Aquifer and the Carmel Highlands Onsite Wastewater Management Plan area. Under Government Code section 65858, the Board has authority to extend the ordinance for 10 months and 15 days and extend it a second time for one additional year,

following noticed public hearing and subject to appropriate findings. On June 29, 2010, the Board adopted Interim Ordinance No. 5163, which extended the ordinance the first time until and through May 24, 2011, with slight modifications. The second extension of the ordinance, until and through May 24, 2012, is now before the Board for its consideration.

The ordinance identifies the need for additional study and revision of the County's current well regulations to address the threat to the public health, safety, and welfare that would be caused by the construction of an unlimited number of wells on small lots in fractured rock in the Study Area. The 2010 General Plan, adopted since passage of the Interim Ordinance, also directs that regulations be enacted for the installation of new domestic wells in any hard rock areas throughout non-coastal Monterey County. Staff of the Environmental Health Bureau (EHB) is in the process of studying and developing these regulations for consideration by the Board. EHB is coordinating with staff of the Monterey Peninsula Water Management District (MPWMD) as they conduct a study of wells in the Study Area. MPWMD supports the proposed ordinance extension and anticipates a report for public review will be available in late June 2011 (Attachment B). Subsequently, EHB will need sufficient time to carefully analyze the findings of the study, draft the regulations, and conduct any appropriate environmental review. Therefore, Environmental Health is recommending that the interim ordinance be extended for one (1) additional year to allow for the careful review of study findings and the development of potential regulatory revisions for presentation to the Board.

Adoption of this interim ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) because extension of the interim urgency ordinance is to allow time for study and development of additional well regulations and is necessary to prevent or mitigate a public health emergency per CEQA Guidelines §§15262 and 15269.

#### **OTHER AGENCY INVOLVEMENT:**

The Resource Management Agency – Planning Department was consulted during development of the proposed ordinance. County Counsel has approved the proposed ordinance as to form.

#### **FINANCING:**

There is no General Fund Contribution resulting from this Board action.

Prepared by:



Richard LeWarne 755-4544  
Assistant Director of Environmental Health

Approved by:



Ray Bullick 755-4526  
Director of Health

Date: 5/5/11

Date: 5/5/11

Attachment A – Proposed Ordinance

Exhibit 1 to Attachment A– Ordinance No. 5160

Exhibit 2 to Attachment A– Ordinance No. 5163

Attachment B – Letter of Support for Extension from MPWMD

cc: Lew Bauman, County Administrative Officer  
Charles J. McKee, County Counsel

**AN INTERIM URGENCY ORDINANCE OF THE COUNTY OF MONTEREY,  
STATE OF CALIFORNIA, TEMPORARILY PROHIBITING THE  
ACCEPTANCE AND PROCESSING OF WATER WELL APPLICATIONS AND  
ISSUANCE OF WATER WELL PERMITS, WITH LIMITED EXCEPTIONS, ON  
PARCELS LESS THAN 2.5 ACRES WITHIN A PORTION OF THE  
CALIFORNIA AMERICAN WATER COMPANY-MONTEREY DISTRICT  
MAIN SYSTEM SERVICE AREA WITHIN THE UNINCORPORATED  
COUNTY, PENDING THE COUNTY'S CONSIDERATION OF ADDITIONAL  
WELL REGULATIONS.**

**County Counsel Summary**

*This interim urgency ordinance, adopted pursuant to Government Code Section 65858, takes effect immediately to protect the public safety, health, and welfare by temporarily prohibiting the acceptance and processing of water well applications and issuance of water well permits on parcels that are less than 2.5 acres and underlain by fractured rock within a defined Study Area. The Study Area is the California American Water Company-Monterey District Main System service area in the unincorporated area of the County of Monterey, excluding the Carmel River Alluvial Aquifer and the Carmel Highlands Onsite Wastewater Management Plan area. This ordinance exempts certain types of wells, including emergency wells, replacement wells, well destructions, well repairs, and conversion of existing test wells. The purpose of this ordinance is to temporarily limit the number of wells in the defined Study Area pending the County's consideration of revision of existing County well regulations to address the public health, safety, and welfare impacts of well applications in the Study Area. Based upon the threat to the public health, safety, and welfare of Monterey County residents, this is an interim urgency ordinance requiring a four-fifths vote of the Board of Supervisors for adoption. This interim urgency ordinance will expire 45 days after its adoption unless extended by subsequent action of the Board of Supervisors.*

The Board of Supervisors of the County of Monterey ordains as follows:

**SECTION 1. FINDINGS AND DECLARATIONS**

- A. Pursuant to Article XI, section 7, of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.
- B. Monterey County's General Plan and certified Local Coastal Program contain goals and policies to plan for the development and protection of water resources.
- C. Pursuant to Section 13801 of the California Water Code, the County of Monterey is required to adopt a well drilling and abandonment ordinance that contains

standards that meet or exceed the standards contained in California Department of Water Resources Well Bulletins 74-81 and 74-90. Chapter 15.08 of the Monterey County Code fulfills this requirement.

D. Monterey County Code Chapter 15.08 provides standards for the construction, repair, and reconstruction of all wells to the end that the groundwater of this County will not be polluted or contaminated and that water obtained from such wells will be suitable for the purpose for which used and will not jeopardize the health, safety or welfare of the people of Monterey County. Under Chapter 15.08, no person shall construct, repair, reconstruct or destroy any well unless a written permit has first been obtained from the Health Officer of the County or his or her authorized representative including the Director of Environmental Health.

E. Title 20 (Coastal Implementation Plan) of the Monterey County Code requires discretionary development entitlements, typically a Coastal Administrative Permit, for test wells and permanent production wells located on properties in the coastal unincorporated area of the County. A ministerial permit to construct a well is also required in both the inland and coastal areas of the County pursuant to Chapter 15.08 of the County Code.

F. The existing well regulations are in need of study and revision because they do not fully address specific health, safety, and welfare concerns that have arisen as property owners propose wells on small undeveloped lots underlain by fractured rock. The threat to the public health, safety, and welfare is particularly acute and in need of urgent redress in the service area of the California American Water Company ("Cal Am") Monterey District Main System because of the restrictions on new service connections from Cal-Am. In 1995, the California State Water Resources Control Board found that Cal-Am was diverting water from the Carmel River in excess of its water rights and placed a cap on the amount of water Cal-Am may divert from the Carmel River until its unlawful diversions were terminated. (Order No. WR 95-10, dated July 6, 1995). As a consequence, Cal-Am has been unable to serve some properties within its Monterey District Main System service area, and property owners have turned to constructing wells on their properties to obtain a water supply for development on their property without waiting for a service connection from Cal-Am. In October 2009, the State Water Resources Control Board issued a Cease and Desist Order (Order WR 2009-0060) ("CDO") requiring Cal-Am to implement various actions to terminate its unlawful diversions from the Carmel River. Enforcement of the CDO could increase the number of owners applying for wells as an alternative to waiting for a service connection from Cal-Am. The sustainability of the underlying water supply and minimum adequate lot size for onsite wells were not evaluated when these lots were created, and the health, safety, and welfare impacts of wells on such lots need to be addressed before numerous further wells are constructed.

G. In the absence of additional study and revision of the County's current regulations, construction of an unlimited number of water supply wells on small lots underlain by fractured rock in the densely populated unincorporated area within the Cal-

Am Monterey District Main System service area poses a current and immediate threat to the health, safety, and welfare due to the following factors:

1. Fractured Rock Formations. Except for the Carmel River Alluvial Aquifer, the unincorporated area of the Cal-Am Monterey District Main System is underlain by geological formations referred to as "fractured rock". Water production of wells drilled into fractured rock may decline or fail, which has occurred throughout California as well as in Monterey County. As a result of significant decline of water production from wells constructed in fractured rock, the California Department of Public Health developed a strict pumping protocol, which has been codified, for wells constructed in fractured rock that are the water source for water systems that are regulated by Title 22 of the California Code of Regulations. Wells drilled into fractured rock may decline or fail due to the following factors:
  - a. Limited storage capacity: In fractured hard rock formations, water is stored in the fractures, and wells drilled into these fractures typically only yield a small amount of water in comparison to wells in alluvial material. The volume of water stored in fractured hard rock near the surface is estimated to total less than 2 percent of the rock volume. This percentage decreases with depth as fractures become narrower and farther apart. The volume of water stored in many alluvial soils is much greater and can amount to 10-25 percent of the volume of the alluvium since water is stored in the pore spaces between the grains.
  - b. Competition from other wells and cumulative impact of wells: The continuing inability of Cal-Am to add new service connections increases the likelihood of owners applying for wells within the Cal-Am Monterey District Main System, resulting in the need to analyze the cumulative impact of an increased number of wells in an urbanized area with small lots underlain by fractured rock. Neighboring wells can impact the production of each other and prevent one or both from supplying an adequate quantity of domestic water.
  - c. Variability of Fracturing: The variables that affect the potential amount of water storage and extraction (favorably or unfavorably) in the rock fractures can change significantly for better or worse from one location to another location in a short distance and are as follows:
    - i. Aperture Width: The wider the aperture width, the more potential water storage space. The smaller the aperture width, the less potential for water storage;
    - ii. Density of Fractures: The higher the number of fractures in a given area, the more potential for water storage space. The lower the number of fractures in a given area, the lower potential for water storage;

- iii. **Fracture Interconnectivity:** The higher the number of fractures intersecting each other over a large area, the higher the potential for recharge to the fractures and water storage space. This also allows the well increased access to water storage space for water extraction. The reverse is true if the interconnectivity is low.
  - iv. **Fracture Orientation:** This variable refers to how steeply or gently the fractures are dipping. The more gently the fractures are dipping, the more opportunity for the well to intersect more fractures which increases the potential amount of water extraction. Wells intersect fewer fractures that dip steeply, decreasing the potential for amount of water extraction.
  - v. **Soil Cover:** Soil cover provides additional water storage which in turn helps to recharge the fractures. A deeper soil cover provides more additional storage, whereas a thinner soil cover provides less additional storage.
  - d. **Changes in fracture patterns resulting from earthquakes:** An earthquake can change the interconnectivity or size of fractures and therefore, increase or decrease the production of water from these fractures.
2. **Limited Recharge Area.** The primary source of recharge of groundwater in areas underlain by fractured rock in Monterey County is precipitation. The recharge area for properties in densely populated areas is less than on larger lots due to a greater percentage of impervious coverage of the property and surrounding areas as a result of development (i.e., construction of structures, paving of streets and driveways, etc.).
3. **Drought.** Precipitation is the primary source of recharge in Monterey County for areas underlain by fractured rock such as the Study Area. During multiple years of drought, the water production of wells constructed in fractured rock can and have significantly declined or failed in the County multiple drought years. Multiple drought years increase the probability of significant water production decline or failure when combined with the limited storage capability of fractured rock as listed in item 1 and the increased possibility of competition for limited groundwater supplies among wells through interconnecting fractures on small lots in an urbanized area.
4. **Replacement Area.** The ability to locate a well replacement area on small lots becomes quite restricted to the point that no replacement area is possible. If the well fails, which is more likely in fractured rock, the lot needs enough area for a replacement well. In particular, in the Cal-Am Monterey District Main System service area where new service connections to Cal-Am may not be available, failure of a well

and lack of a replacement site could leave a residence without an on-site water supply. Given the vulnerability of wells in fractured rock formations and the need to have an area for a replacement well for a new domestic source, the minimum appropriate lot size on which a well can be allowed without creating a health hazard needs to be evaluated.

5. Impact on Neighbors. To protect the public health and prevent contamination of groundwater, state law requires certain minimum setbacks from wells to waste water disposal systems and from wells to sewer laterals. If wells are drilled on small lots, the required setbacks may extend onto neighboring parcels. The smaller the lot, the greater the likelihood of setbacks crossing property lines. In permitting wells in urbanized areas with small lots within the Cal-Am Monterey District Main System service area, the County has received complaints from adjacent parcel owners that the setbacks infringe upon their property rights. Further study of possible regulations to address this issue is needed.
6. Relationship of Wells to Wastewater Disposal: On lots smaller than 2.5 acres which rely on an onsite wastewater treatment system for wastewater disposal, the construction and use of a well increases the risk of groundwater contamination.
7. Impacts to urbanized area: Wells on small lots in a densely populated urbanized area raises unique public health, safety and welfare impacts related to the construction and operation of wells, requiring study of possible regulations to address the following needs:
  - a. Ensure adequate area for access for the well drilling rig and equipment for well construction activity and ongoing routine maintenance to keep the well functioning properly (e.g., pulling and replacing a pump);
  - b. Ensure runoff resulting from required source capacity tests does not impact neighboring parcels;
  - c. Ensure adequate area for the installation of a storage and pressure tank system; and
  - d. Address hauling of water to supply the sanitary needs of the residence in the event of well failure.

H. As a result of all of the above factors, limits on issuance of permits to construct new wells are needed on lots of less than 2.5 acres in areas of fractured rock in the Cal-Am Monterey District Main System service area within the unincorporated area of the County to protect the public health, safety, and welfare pending study and consideration of additional well regulations.

I. This ordinance contains certain exclusions. By its terms, this ordinance applies to wells only within the Cal-Am Monterey District Main System where the likelihood of property owners requesting wells on small lots in fractured rock is increased because of present constraints on service by Cal-Am. Therefore, the ordinance is not intended to apply to parcels greater than 2.5 acres or parcels within the Carmel River Alluvial Aquifer within the Cal-Am Monterey District Main System. This ordinance also is not intended to apply to properties subject to the Carmel Highlands Onsite Wastewater Management Plan (OWMP), adopted by the Board of Supervisors on December 15, 2009, because, per direction already given by the Board of Supervisors, staff is drafting regulations to be considered by the Board separately to govern drilling of wells in the area governed by the OWMP. Compliance with the OWMP and any new regulations separately adopted by the Board will address the threat to public health, safety, and welfare that has given rise to this ordinance.

J. It is also the intent of the County to exempt from this ordinance test wells which have already been constructed prior to May 25, 2010, replacement wells, emergency wells, well destruction, well repairs, and wells that have an active, unexpired well construction permit prior to May 25, 2010. The intent of these limited exceptions is to allow owners who have already constructed a well or already obtained a well construction permit prior to May 25, 2010 to proceed, while limiting the cumulative number of new wells in the affected area until the County is able to study and consider regulations to address the issuance of future well permits in the areas affected by this ordinance.

K. Nothing in this ordinance is intended to allow a well where a County plan, policy or regulation already disallows a well.

L. Well applications that are exempt from this ordinance or not affected by this ordinance shall continue to be subject to all County plans, policies, and regulations.

M. This Ordinance shall be of no further force and effect after 45 days, unless the Board of Supervisors, following a noticed public hearing, elects to extend the ordinance for up to two years pursuant to law.

## **SECTION 2. APPLICABILITY**

This ordinance applies only to the Cal-Am Monterey District Main System service area within the unincorporated area of the County, excluding properties within the Carmel River Alluvial Aquifer and properties subject to the Carmel Highlands Onsite Wastewater Management Plan. The area to which this ordinance applies, as described above, is denoted as the "Study Area" on the map attached hereto as Exhibit A and incorporated herein by reference.

## **SECTION 3. DEFINITIONS.**

For purposes of this Ordinance, the following terms have the definitions set forth below:



A. **Discretionary Development Entitlement.** "Discretionary Development Entitlement" means any County action, permit, or approval pursuant to an application for a permit for development as that term is defined under the Monterey County Code, which requires the exercise of judgment, deliberation, or a decision, and which contemplates the imposition of revisions or conditions by the County, including by any board, commission, or department of the County and any official or employee of the County, in the process of approving or disapproving any such application, as distinguished from a County action, permit, or approval which merely requires the County, including any board, commission, or department of the County and any official or employee of the County, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval. For the purposes of this Ordinance, the term "discretionary development entitlement" shall include, but is not limited to, conditional use permits, combined development permits, coastal administrative permits, coastal development permits, special use permits, and amendments of any of these permits.

B. **Fractured Rock Formation.** "Fractured Rock Formation" means a water-bearing formation primarily influenced by "secondary porosity" (e.g., water stored in fractures, crack, etc) such as in fractured granitic rocks and shales rather than "primary porosity" (e.g., water stored in pore spaces between the grains) such as in alluvium, dune deposits, and terrace deposits.

C. **Ministerial Permits.** "Ministerial Permit" means any County action, permit, or approval which requires the County, including any board, commission, or department of the County and any official or employee of the County, to determine merely whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval.

D. **Parcel.** "Parcel" means a legal lot of record.

E. **Study Area.** "Study Area" means the Cal-Am Monterey District Main System service area within the unincorporated area of the County, excluding properties within the Carmel River Alluvial Aquifer and properties subject to the Carmel Highlands Onsite Wastewater Management Plan, as denoted on the map attached hereto as Exhibit A.

F. **Well.** "Well" means an artificial excavation or structure put down by any method such as digging, driving, boring, or drilling for the purposes of withdrawing water from or injecting water into the underground or for determining the hydrologic conditions at a site. For the purposes of this ordinance, the term "well" includes test wells, production wells, bore holes, heat exchange wells, monitoring wells, observation wells, and cathodic protection wells. "Well" or "water well" does not include:

- a. Oil and gas wells, or geothermal wells constructed under the jurisdiction of the state Department of Conservation, except those wells converted to use as water wells; or

- b. Wells used for the purpose of dewatering excavation during construction, or stabilizing hillsides or earth embankments

#### **SECTION 4. LIMITATIONS ON WELL PERMITS**

During the term of this ordinance, unless exempt under Section 5 of this ordinance, the County shall not approve any application for a discretionary development entitlement or ministerial permit to construct a test well, to convert a test well into a production well, or to construct a water well within the defined Study Area, nor shall the County accept any applications for such permits or process applications on file with the County for such permits. This prohibition applies only if the application is for a well on a parcel meeting all of the following criteria:

1. The parcel is less than 2.5 acres in size; and
2. The parcel is located in the Study Area depicted on the map attached hereto as Exhibit A.

#### **SECTION 5. EXEMPTIONS**

A. The following categories of well permit applications are exempt from the limitations of this ordinance and may be accepted and processed in accordance with County's plans, policies and regulations and the specifications set forth below:

1. Applications for a drinking water well for an existing permitted water system.
2. Applications for an emergency well permit. An emergency means a sudden loss or decrease in quality or quantity in a water supply well which renders the well unable to meet the property's water needs.
3. Applications for a cathodic protection well
4. Applications for a monitoring well.
5. Applications for repair, reconstruction, or destruction of existing wells.

B. This ordinance does not prohibit owners who have an active, unexpired well construction permit from the Monterey County Health Department prior to May 25, 2010 from proceeding to construct the well as authorized under the permit.

C. This ordinance exempts applicants who have constructed an authorized test well on a parcel in the coastal unincorporated area of the County prior to May 25, 2010. For such applicants, this ordinance does not prohibit the County from accepting and processing applications for a discretionary development entitlement to convert the test well to a production well, provided that the test well was already constructed prior to May 25, 2010 in accordance with all permits issued by the County of Monterey.

D. Exemption from the terms of this ordinance does not guarantee approval of any well applications. All well applications that are exempt from this ordinance or not affected by this ordinance remain subject to all County plans, policies, and regulations.

#### **SECTION 6. ENFORCEMENT.**

In the event of a violation of this ordinance or any requirement imposed pursuant to this ordinance, the County may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and any other action authorized by law.

#### **SECTION 7. SEVERABILITY.**

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

#### **SECTION 8. ACTIONS HELD IN ABEYANCE.**

Should any person, firm, or corporation violate the terms of this ordinance and any action is authorized either by the Board of Supervisors, County Counsel, or District Attorney, or is in fact filed by said agencies for said violation, no other action shall be taken on any application filed by or on behalf of said person, firm, or corporation, until the litigation has been resolved.

#### **SECTION 9. EFFECTIVE DATE.**

In light of the recitals in this ordinance, the Board declares that this ordinance is necessary as an urgency measure for preserving the public health, safety, and welfare. This ordinance shall take effect immediately for the reasons set forth herein and shall expire 45 days thereafter unless extended pursuant to law.


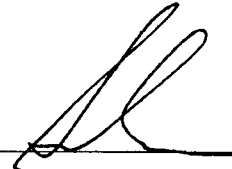
#### **SECTION 10. NO TAKING OF PROPERTY INTENDED.**

Nothing in this ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific

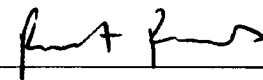
evidence in the administrative record, that the application of one or more of the provisions of this ordinance to a proposed project would effect an unconstitutional taking of private property, the Board shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking.

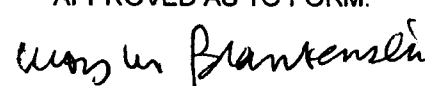
PASSED AND ADOPTED on this 25th day of May, 2010, upon motion of Supervisor Potter, seconded by Supervisor Parker, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, Potter  
NOES:  
ABSTAIN:  
ABSENT:

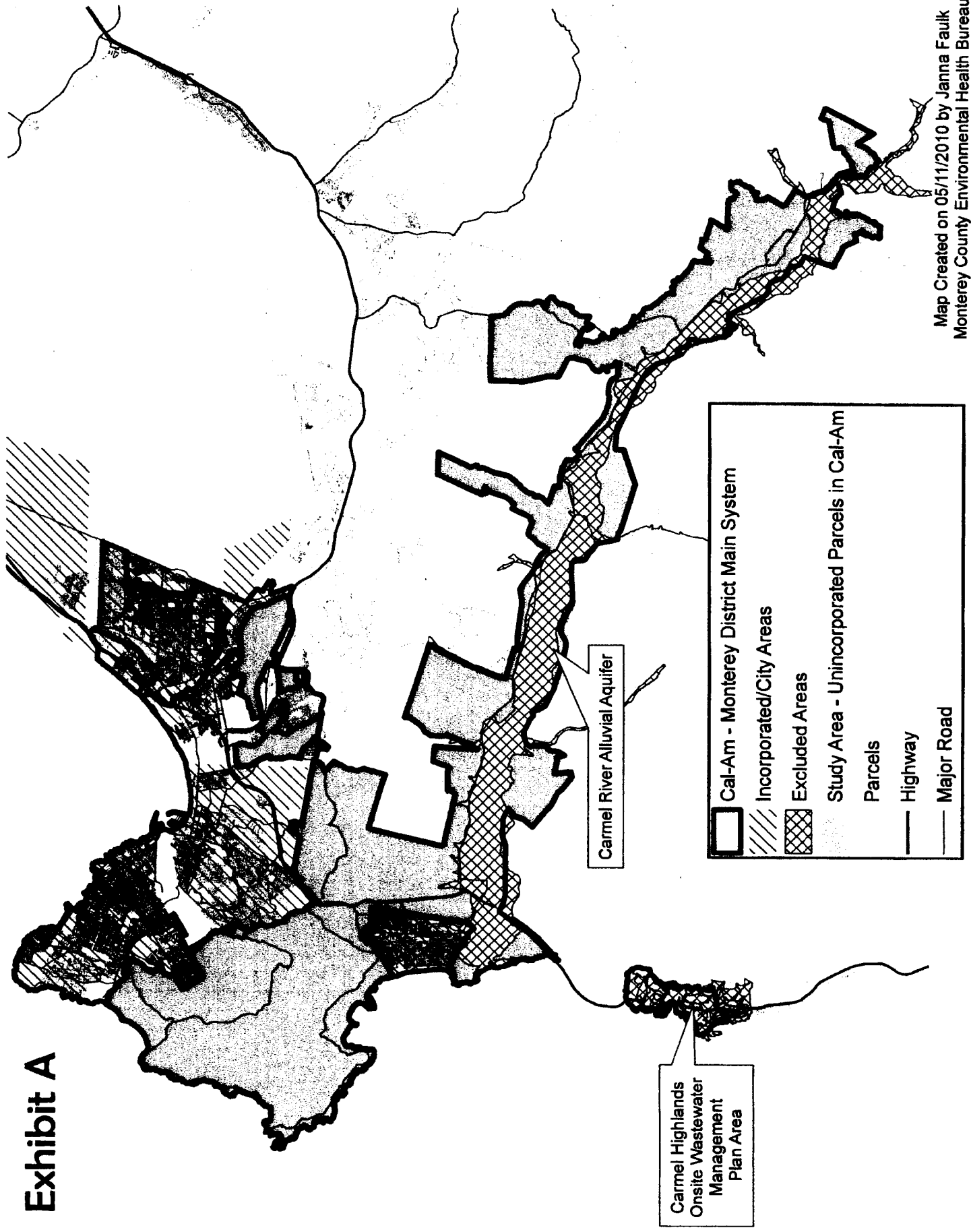
   
Chair  
Monterey County Board of Supervisors

ATTEST:  
GAIL T. BORKOWSKI,  
Clerk of the Board of Supervisors

By:   
Deputy

APPROVED AS TO FORM:  
  
LEROY W. BLANKENSHIP  
Assistant County Counsel

# Exhibit A



Map Created on 05/11/2010 by Janna Faulk  
 Monterey County Environmental Health Bureau  
 Monterey County IT.

Cal-Am and Carmel River Alluvial Aquifer Data provided by Monterey Peninsula Water Management District. All other data provided by Monterey County IT.

**ORDINANCE NO. 5163**

**AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, EXTENDING INTERIM URGENCY ORDINANCE 5160 THROUGH MAY 24, 2011, TEMPORARILY PROHIBITING THE ACCEPTANCE AND PROCESSING OF WATER WELL APPLICATIONS AND ISSUANCE OF WATER WELL PERMITS, WITH LIMITED EXCEPTIONS AS MODIFIED, ON PARCELS LESS THAN 2.5 ACRES WITHIN A PORTION OF THE CALIFORNIA AMERICAN WATER COMPANY-MONTEREY DISTRICT MAIN SYSTEM SERVICE AREA WITHIN THE UNINCORPORATED COUNTY, PENDING THE COUNTY'S CONSIDERATION OF ADDITIONAL WELL REGULATIONS**

**County Counsel Summary**

*This ordinance extends Interim Urgency Ordinance No. 5160, with modified exemptions, for 10 months and 15 days, until and through May 24, 2011. Adopted on May 25, 2010 pursuant to Government Code Section 65858, Interim Urgency Ordinance No. 5160 prohibits, for a 45-day period, the acceptance and processing of water well applications and issuance of water well permits on parcels that are less than 2.5 acres and underlain by fractured rock within a defined Study Area. The Study Area is the California American Water Company-Monterey District Main System service area in the unincorporated area of the County of Monterey, excluding the Carmel River Alluvial Aquifer and the Carmel Highlands Onsite Wastewater Management Plan area. Interim Ordinance No. 5160 contains limited exemptions which are slightly modified and expanded by this ordinance. Based upon the threat to public health and safety, this is an urgency ordinance requiring a four-fifths vote of the Board of Supervisors for adoption.*

The Board of Supervisors of the County of Monterey ordains as follows:

**SECTION 1. FINDINGS AND DECLARATIONS**

A. On May 25, 2010, the Board of Supervisors adopted a 45-day interim urgency ordinance, Interim Urgency Ordinance No. 5160 ("Ordinance"), pursuant to Government Code section 65858. The Ordinance, with limited exemptions, temporarily prohibits the acceptance and processing of water well applications and issuance of water well permits on parcels that are less than 2.5 acres and underlain by fractured rock within a defined Study Area. The Study Area is the California American Water Company-Monterey District Main System service area in the unincorporated area of the County of Monterey, excluding the Carmel River Alluvial Aquifer

and the Carmel Highlands Onsite Wastewater Management Plan area. The Ordinance is attached hereto as Exhibit 1 and incorporated herein by reference. Absent extension of the Ordinance, the Ordinance will expire on July 9, 2010.

B. Pursuant to Government Code section 65858(a), the Board may extend the Ordinance for 10 months and 15 days, following a noticed public hearing and finding that the current and immediate threat to the public health, safety, or welfare justifies extension of the Ordinance. May 24, 2011 is 10 months and 15 days from July 9, 2010, the date the Ordinance would expire absent extension.

C. On June 29, 2010, prior to the expiration of the Ordinance, the Board of Supervisors held a duly noticed public hearing on the proposed extension. Although the Ordinance does not expire until July 9, 2010, June 29 is the last regularly-scheduled Board meeting prior to the date the Ordinance would have expired.

D. In enacting Interim Urgency Ordinance No. 5160, the Board made several findings and declarations constituting the grounds upon which the Ordinance is based. Among other findings, the Board found that, in the absence of additional study and revision of the County's current regulations, construction of an unlimited number of water supply wells on small lots underlain by fractured rock in the densely populated unincorporated area within the California-American Water Company – Monterey District Main System service area poses a current and immediate threat to the public health, safety, and welfare..

E. The Board of Supervisors' findings and declarations contained in Interim Urgency Ordinance No. 5160 remain and continue to be true under the present circumstances and are incorporated herein in their entirety by this reference. In light of said findings and declarations and the findings and declarations contained herein, a current and immediate threat to the public health, safety, and welfare continues to exist, necessitating the extension of Interim Urgency Ordinance No. 5160.

F. The Ordinance contained limited exemptions in order to allow owners who have already constructed an authorized test well or already obtained a well permit prior to the adoption of the Ordinance to proceed, while limiting the cumulative number of new wells in the Study Area pending the County's study and consideration of regulations to address the future issuance of well permits. To provide an opportunity for applicants who had received authorization for test wells but not drilled wells prior to May 25, 2010 and to permit the County to take such steps as may be necessary or appropriate to enforce the terms of any permits for any test well issued prior to May 25, 2010, the Board finds it necessary to amend the Ordinance to modify the exemptions as provided herein. The modifications are consistent with the intent to exempt well applicants who had processed well permit applications prior to the commencement of the Ordinance while limiting the total number of new wells in the Study Area during the period the Ordinance is in effect.

G. On June 29, 2010, at least ten days before the expiration of Interim Urgency Ordinance No. 5160, the Board of Supervisors issued a written report pursuant to Government Code 65858(d) describing the measures the County of Monterey has taken and continues to take in order to alleviate the conditions which led to the adoption of said Ordinance.

H. In light of the above findings and declarations, it is necessary to extend Interim Urgency Ordinance No. 5160, as modified herein, until and through May 24, 2011.

## **SECTION 2. AMENDMENT TO REGULATIONS.**

Subsection C of Section 5 (Exemptions) of Interim Ordinance No. 5160 is amended to read as follows:

C. This ordinance does not apply to applicants who have constructed an authorized test well or received a discretionary development entitlement to construct a test well on a parcel in the unincorporated area of the County within the Coastal Zone prior to May 25, 2010, and the County is not prohibited from accepting and processing applications for a discretionary development entitlement to convert such test wells to production wells, provided that the test well was authorized prior to May 25, 2010 or constructed prior to May 25, 2010 in accordance with the terms of any permits issued by the County of Monterey. If a test well was constructed prior to May 25, 2010 not in accordance with the terms of any County discretionary development entitlements, the County is permitted to take such steps as may be necessary or appropriate to enforce the terms of such permits, including but not limited to the processing and issuance of such discretionary development entitlements and/or ministerial permits as may be needed.

## **SECTION 3. EXTENSION.**

Based on all of the foregoing findings and declarations, the Board of Supervisors hereby extends Interim Urgency Ordinance No. 5160, as amended by Section 2 above, until and through May 24, 2011.

## **SECTION 4. EFFECTIVE DATE.**

Pursuant to the findings and declarations set forth in this ordinance and set forth in Interim Urgency Ordinance No. 5160 and incorporated herein by reference, the Board declares that this ordinance extending the Interim Urgency Ordinance No. 5160 is necessary for the protection of public health, safety, and welfare, and shall take effect immediately. Interim Urgency Ordinance No. 5160, as extended and modified by this ordinance, shall be of no further force and effect upon its expiration pursuant to Section 3, unless extended pursuant to law.

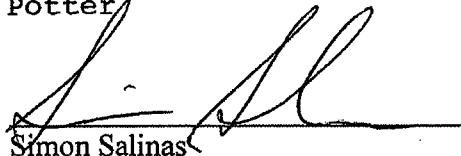


PASSED AND ADOPTED this 29 day of June, 2010, by the following vote:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker

NOES:

ABSENT: Supervisor Potter



Simon Salinas

Chair, Monterey County Board of Supervisors

ATTEST:

GAIL T. BORKOWSKI  
Clerk of the Board of Supervisors

By Denise Hancock  
Deputy

APPROVED AS TO FORM:



LEROY W. BLANKENSHIP  
Assistant County Counsel



May 4, 2011

John Ramirez, Director  
Monterey County Health Department  
1270 Natividad Street  
Salinas, CA 93906

**Subject: Support for Extension on County Ordinance No. 5160 -- Temporary  
Moratorium on Fractured Rock Wells within the Monterey Peninsula Water  
Management District**

Dear Mr. Ramirez:

The Monterey Peninsula Water Management District (MPWMD or District) has worked closely with the Environmental Health Division of the Monterey County Health Department (MCHD) regarding coordinated regulation of water wells, particularly wells located in fractured rock formations. In 2010, the District supported Monterey County Ordinance No. 5160 as it allows continued investigation of the effects on public health, safety, and welfare of fractured rock well applications within the ordinance area. The moratorium affects new wells on lots smaller than 2.5 acres in the California American Water (Cal-Am) service area for its main water distribution system in the unincorporated areas of the Monterey Peninsula. In fall 2010, the District passed its own Ordinance No. 145, which amended regulation of fractured rock wells as part of the MPWMD Water Distribution System (WDS) permit process.

The District staff supports the continuation of the temporary moratorium for one year, as this time frame will allow completion of a comprehensive MPWMD study of hundreds of fractured rock wells within the District, review of the study results, and discussions about the regulatory ramifications of the study conclusions. For reference, a brief task list for the study is enclosed. A report available for public review is anticipated in late June 2011. Presentations tailored for technical staff and the general public will follow.

The District is confident that the study conclusions will be helpful to MCHD and the Board of Supervisors in making science-based decisions regarding wells in the future. The District is excited about the powerful GIS technology that is used to evaluate extensive data from hundreds of wells, and looks forward to sharing this information with the County.

A reliable water supply is even more essential for those property owners who wish to pursue individual wells on lots in fractured bedrock settings due to lack of access to Cal-Am supply, State Water Resources Control Board (SWRCB) Order 95-10 and Cease and Desist Order (Order 2009-0060), along with the moratorium on new and intensified Cal-Am connections recently approved by the California Public Utilities Commission (CPUC) in March 2011. If a well fails to meet potable water needs, the owner will not have access to Cal-Am water as a back-up

John Ramirez  
May 4, 2011  
Page 2 of 2

supply, and would need trucked-in water, similar to the Granite Ridge situation. The District shares MCHD's intent that the Granite Ridge situation not be repeated on the Monterey Peninsula.

Thank you for your consideration of this letter. I can be reached at 831/658-5651 or [darby@mpwmd.net](mailto:darby@mpwmd.net) if you have questions. The technical staff contact regarding the study is Jonathan Lear, Senior Hydrogeologist, at 831/658-5647 or [jlear@mpwmd.net](mailto:jlear@mpwmd.net).

Sincerely,

  
Darby W. Fuerst  
General Manager

Enclosure: task list for MPWMD well study

Cc: Joe Oliver, WRD Manager  
Jonathan Lear, Senior Hydrogeologist  
Henrietta Stern, Project Manager  
Richard LeWarne, MCHD Asst. Director  
Dave Potter, Monterey County Supervisor

ENCLOSURE 1**Hutnak Hydrologic Consultant Services Cost Estimate**

| Task | Task   | Hours | Rate (\$/hr) | Cost     |
|------|--|-------|--------------|----------|
| 1    | Assemble data sets from Monterey County MPWMD, DWR, and USGS.  | 30    | 50           | \$1,500  |
| 2    | Compile comprehensive database of well logs.   | 40    | 50           | \$2,000  |
| 3    | Populate database with lithology, pump test, water level, and water chemistry.                           | 180   | 50           | \$9,000  |
| 4    | Compile water production volumes for wells study area.   | 50    | 50           | \$2,500  |
| 4    | Create geographic database with well locations.  | 30    | 50           | \$1,500  |
| 5    | Perform geostatistical analysis of well pump data to identify "hot spots" where low scoring wells exist. | 50    | 50           | \$2,500  |
| 6    | Identify possible monitoring locations in or near "hot spots."   | 40    | 50           | \$2,000  |
| 7    | Map outcrops and compile geologic data for areas with low scoring drawdown ratios.                       | 40    | 50           | \$2,000  |
| 8    | Design monitoring network for fractured rock   | 50    | 50           | \$2,500  |
| 9    | Compose letter report summarizing findings and implementation of monitoring network.                     | 20    | 50           | \$1,000  |
|      |  | 530   |              | \$26,500 |