



Monterey County Board of Supervisors

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Upon motion of Supervisor Salinas, seconded by Supervisor Phillips and carried by those members present, the Board of Supervisors hereby:

- a. Introduced, waived reading, and conduct a public hearing to consider adoption of an interim urgency ordinance to prohibit, on a temporary basis and pending the development of new regulations, new wells in a defined "Area of Impact" where seawater intrusion is evident and in the Deep Aquifers in the Salinas Valley Groundwater Basin, with specified exemptions;
- b. Found the ordinance statutorily exempt from the California Environmental Quality Act (CEQA);
- c. Adopted the interim urgency ordinance 5302 to prohibit, on a temporary basis and pending development of new regulations, new wells in a defined "Area of Impact" where seawater intrusion is evident and in the Deep Aquifers in the Salinas Valley Groundwater Basin, with specified exemptions; and
- d. Directed staff to return within 45 days with an extension of the ordinance for the Board's consideration.

PASSED AND ADOPTED on this 22nd day of May 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Phillips and Adams

NOES: Supervisor Parker

ABSENT: None

I, Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 81 for the meeting May 22, 2018.

Dated: May 25, 2018
File ID: ORD 18-006

Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

ORDINANCE 5302

AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, TEMPORARILY PROHIBITING NEW WELLS IN SEAWATER INTRUDED AQUIFERS, WITH SPECIFIED EXEMPTIONS, PENDING THE COUNTY'S STUDY AND CONSIDERATION OF REGULATIONS.

County Counsel Summary

This interim ordinance is an urgency measure to prohibit, on a temporary basis and pending the development of new regulations, approval of new wells in a defined "Area of Impact" and in the Deep Aquifers of the Salinas Valley Groundwater Basin in the unincorporated area of Monterey County, due to the immediate threat to the public health, safety and welfare posed by new wells in these areas. The Area of Impact is that area where the Pressure 180-Foot and Pressure 400-Foot Aquifers have already been impacted by seawater intrusion or where seawater intrusion is actively advancing in the Salinas Valley Groundwater Basin, according to Monterey County Water Resources Agency data. The prohibition on drilling new wells in the Deep Aquifers applies in the portions of the 180/400-Foot Aquifer Subbasin and the Monterey Subbasin within the Area of Impact; additionally, testing is required of new wells in those subbasins outside of the Area of Impact to prevent extraction of water from the Deep Aquifers. The following types of new wells are exempt from this ordinance: wells operating under the auspices of the Castroville Seawater Intrusion Project (CSIP); domestic wells; monitoring wells owned and maintained by the Monterey County Water Resources Agency or other water management agencies; municipal water supply wells; and replacement wells that meet specified criteria. This ordinance is an interim urgency ordinance pursuant to Government Code section 65858 and requires a four-fifths vote of the Board of Supervisors for adoption. The ordinance would take effect immediately upon adoption and would 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 not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may, as an urgency measure, adopt an interim ordinance temporarily prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying or considering or intends to study within a reasonable time.

C. The Board of Supervisors finds that there is a current and immediate threat to the public health, safety, and welfare resulting from the drilling of new wells within the Area of Impact, defined as that certain area shown on the map attached hereto as Exhibit A and incorporated herein by reference, and from the drilling of new wells within the Deep Aquifers of the 180/400 Foot Aquifer Subbasin and Monterey Subbasin of the Salinas Valley Groundwater Basin. The Board of Supervisors further finds that the approval of additional new wells within these areas will result in that threat to the public health, safety and welfare, pending further study and development of regulations, based on all the following facts:

1. The California Department of Water Resources (DWR) has designated the 180/400-Foot Aquifer Subbasin (Subbasin No. 3-004.01) as a subbasin subject to critical conditions of overdraft. (DWR, Bulletin 118, Interim Update 2016.) "Subject to critical conditions of overdraft" is defined to mean that "continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts." (DWR Bulletin 118-80.) The 180/400-Foot Aquifer contains multiple water bearing units (aquifers), including – in terms used by the Monterey County Water Resources Agency – the Pressure 180-Foot Aquifer, the Pressure-400 Foot Aquifer, and the Deep Aquifers. The Pressure 180-Foot Aquifer, the Pressure-400 Foot Aquifer, and the Deep Aquifers also underlie the adjacent Monterey Subbasin designated by DWR (Subbasin No. 3-004.10). Both the 180/400 Foot Aquifer Subbasin and Monterey Subbasin are part of the Salinas Valley Groundwater Basin.

2. In October 2017, the Monterey County Water Resources Agency issued a report with recommendations to slow or halt further seawater intrusion in the Salinas Valley Groundwater Basin. (Monterey County Water Resources Agency, *Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin* (Special Reports Series 17-01, October 2017) (hereafter "*Basin Report*")). Seawater intrusion poses a threat to the public health, safety and welfare because it degrades and impairs water quality, making the water unusable for drinking or agricultural production. Immediate steps are necessary "to ensure the viability of current and future water supplies." (*Basin Report*, at p. 6.)

3. To slow or halt seawater intrusion, the report recommended an immediate moratorium on groundwater extractions from new wells, with some exceptions, in the Pressure 400-Foot Aquifer within an identified "Area of Impact," which encompasses a portion of the 180/400 Foot Aquifer Subbasin and a portion of the Monterey Subbasin. The Monterey County Water Resources Agency has documented seawater intrusion into the Pressure 180-Foot and Pressure 400-Foot Aquifers, with the seawater intrusion front generally advancing over several decades. The 2015 and 2017 data indicate the continued advance of seawater intrusion in those aquifers, including the presence of isolated "islands" of intruded groundwater beyond the contiguous seawater intrusion front in the Pressure 400-Foot Aquifer. (*Basin Report*, at p. 33.)

4. The Monterey County Water Resources Agency also recommended an immediate moratorium on groundwater extractions from new wells, with some exceptions, in the Deep Aquifers of the 180/400 Foot Aquifer Subbasin, pending further

study of the hydraulic properties and long-term viability of the Deep Aquifers. The “Deep Aquifers” are those water-bearing zones in the 180/400 Foot Aquifer Subbasin and Monterey Subbasin that underlie the Pressure 400-Foot Aquifer. (See *Basin Report* at pp.45-47.) The number of wells and amount of pumping in the Deep Aquifers has increased in response to seawater intrusion in the Pressure 180-Foot and Pressure 400-Foot Aquifers. Increased pumping in the Deep Aquifers has the potential to induce additional leakage from the impaired overlying Pressure 180-Foot and Pressure 400-Foot aquifers, potentially impairing the water quality of the Deep Aquifers. (*Basin Report*, sec. 5.4.) Increased drilling of wells and pumping of groundwater in the Deep Aquifers also puts the Deep Aquifers at risk of potential depletion. (*Basin Report*, section 5.)

5. The Board of Supervisors, sitting as the Board of the County and the Board of the Monterey County Water Resources Agency, considered the Agency’s *Basin Report* and directed County and Agency staff to work with staff of the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) to formulate recommendations in response to the Agency recommendations, resulting in the formation of the “Ninety-Day Working Group” of staff from these agencies.

6. The Ninety-Day Working Group held numerous meetings, met with stakeholders, and, on April 24, 2018, presented a set of recommendations to a joint meeting of the Board of Supervisors of the County, the Board of Supervisors of the Monterey County Water Resources Agency, and the Monterey County Water Resources Agency Board of Directors. Following consideration of the Working Group’s recommendations and public testimony, the Board of Supervisors of the County, among other actions, directed staff to return as soon as possible to the Board of Supervisors with an ordinance for a temporary moratorium on drilling of new wells in the Pressure 180-Foot Aquifer and Pressure 400-Foot Aquifer within a defined “Area of Impact” and a temporary moratorium on drilling of new wells in the Deep Aquifers, with exceptions for replacement wells, domestic wells, and municipal supply wells. The Board also endorsed other recommendations of the Ninety-Day Working Group to stop or halt seawater intrusion.

7. The Area of Impact, where the prohibition on the drilling of new wells in the Pressure 180-Foot Aquifer and Pressure 400-Foot Aquifer applies, is shown on Exhibit A. A closer view of the Area of Impact is shown on the map attached hereto as Exhibit B and incorporated herein by reference. The Area of Impact is where the Pressure 180-Foot and Pressure 400-Foot Aquifers have already been impacted by seawater intrusion or where seawater intrusion is actively advancing in the Salinas Valley Groundwater Basin in Monterey County, according to Monterey County Water Resources Agency data. This Area of Impact includes a portion of the 180/400-Foot Aquifer Subbasin, which the state has designated as critically overdrafted, and a portion of the Monterey Subbasin as denoted by the DWR. The Deep Aquifers new well prohibition applies in the portions of the 180/400-Foot Aquifer Subbasin and the Monterey Subbasin within the Area of Impact; in the portions of those Subbasins outside

of the Area of Impact, it is the intent and purpose of this ordinance to require testing to ensure no extraction of water from the Deep Aquifers.

8. This ordinance's temporary prohibition on drilling of new wells in the identified areas is necessary due to the current and immediate threat to the public health, safety, and welfare that would result from new wells in the Area of Impact and Deep Aquifers, pending the development of a plan for the sustainable management of the 180/400 Foot Aquifer Subbasin and the study and implementation of other steps to address seawater intrusion in the Pressure 180-Foot and Pressure 400-Foot Aquifers. It is the intent and purpose of this interim ordinance to enact a ban that is only temporary in order to provide time for the County to study and develop appropriate regulations. The areas where this ordinance applies will be the subject of study and development of further regulations, within two years of adoption of this ordinance, to address the sustainability of the groundwater supply. Pursuant to the Sustainable Groundwater Management Act (SGMA), the Salinas Valley Basin Groundwater Sustainability Agency and the Marina Coast Water District Groundwater Sustainability Agency must adopt Groundwater Sustainability Plans (GSPs) for sustainable management of the critically overdrafted 180/400 Foot Aquifer by January 31, 2020. Additionally, pursuant to Policy PS 3.1 of the 2010 Monterey County General Plan, the County is conducting a five-year comprehensive study of the Zone 2C assessment area of the Salinas Valley Groundwater Basin, including development of an integrated comprehensive hydrogeologic model to assess the ability of the Salinas Valley Groundwater Basin to provide a sustainable supply of water for land use activities projected to year 2030 under the General Plan and to 2040 for the GSP planning horizon. Additionally, on April 24, 2018, the Board of Supervisors endorsed a number of other measures recommended by the Ninety-Day Working Group for addressing seawater intrusion, such as destruction of certain identified wells. A temporary halt on drilling of new wells in the denoted areas under this ordinance will enable the County to study and develop policies and regulations in connection with the Groundwater Sustainability Plans and results of the General Plan study and to implement other recommended actions. Absent this ordinance, applicants could continue to obtain well permits that could exacerbate seawater intrusion without the guidance of regulations to be developed for the sustainable management of the Salinas Valley Groundwater Basin.

9. This ordinance has due regard for exigencies that may arise in respect to domestic water supply, agricultural production, and public agency needs by exempting certain classes of wells from the prohibitions of this ordinance under the terms specified in this ordinance.

D. This ordinance was adopted following a public hearing duly noticed under Government Code section 65090. Pursuant to Government Code section 65858, this urgency interim ordinance may have duration of no more than 45 days and may be extended, following notice and public hearing, for 22 months and 15 days. It is the County's intent that this interim 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 Interim Ordinance pursuant to law.

E. The adoption of this interim ordinance is statutorily exempt from the California Environmental Quality Act because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety and welfare.

SECTION 2. APPLICABILITY

This interim ordinance applies in the unincorporated area of the County of Monterey in the Area of Impact and 180/400-Foot Aquifer and Monterey Subbasins as shown on the map attached hereto as Exhibit A and as more fully described in this ordinance.

SECTION 3. DEFINITIONS

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

- A. "180/400 Foot Aquifer Subbasin" means Subbasin No. 3-004.01 as designated by the California Department of Water Resources, shown on the map attached hereto as Exhibit A.
- B. "Area of Impact" means that area depicted on the maps attached hereto as Exhibits A and B.
- C. "Deep Aquifers" means the water-bearing zones in the 180/400 Foot Aquifer Subbasin and Monterey Subbasin underlying the Pressure 400-Foot Aquifer.
- D. "Effective date" means the date that this interim ordinance was adopted by the Board of Supervisors.
- E. "Domestic well" means a water well used to supply water for the domestic needs of an individual residence or local or state small water system permitted under Monterey County Code Chapter 15.04 which serves fourteen or fewer connections and no more than an average of twenty-five individuals daily for more than sixty days out of the year.
- F. "Monterey Subbasin" means Subbasin No. 3-004.10 as designated by the California Department of Water Resources, shown on the map attached hereto as Exhibit A.
- G. "Municipal water supply well" means a water well that supplies potable water for the domestic needs of a permitted public water system.
- H. "Public water system" means a water system for the provision of water for human consumption through pipes or other constructed conveyances that has fifteen or more service connections or regularly serves at least twenty-five individuals daily

at least sixty days out of the year. (California Health and Safety Code section 116275).

- I. "Replacement well" means a new well drilled for the sole purpose of replacing an existing well which is impaired or otherwise rendered ineffective due to structural difficulties or water quality in the determination of the Monterey County Health Department upon the advice of the Monterey County Water Resources Agency; to qualify as a "replacement well," the new well must be constructed to provide water for the same purpose as the existing water well, and if the purpose is for irrigation, it must deliver water to the same amount of irrigated acreage (or less acreage) as served by the existing water well. "Replacement well" does not include deepening of an existing well.
- J. "Well" or "water well" means any artificial excavation constructed by any method for the purpose of extracting water from, or injecting water into, the underground. This definition shall not include: (a) oil and gas wells, or geothermal wells constructed under the jurisdiction of the Department of Conservation, except those wells converted to use as water wells; or (b) wells used for the purpose of (1) dewatering excavation during construction, or (2) stabilizing hillsides or earth embankments.

SECTION 4. REGULATIONS

- A. Prohibition on new wells in the Pressure 180-Foot and Pressure 400-Foot Aquifers:
 - 1. The County shall not accept for processing, process, or approve any application to construct a new well in the Pressure 180-Foot Aquifer or the Pressure 400-Foot Aquifer in the Area of Impact depicted in Exhibits A and B in the unincorporated area of the County, unless exempted under the terms of this ordinance.
 - 2. To the extent that the 2010 General Plan or County's certified Local Coastal Program requires a discretionary entitlement for a new well, the County shall not accept for processing, process, or approve any application for a discretionary entitlement for a new well in the Pressure 180-Foot Aquifer or the Pressure 400-Foot Aquifer in the Area of Impact depicted in Exhibits A and B, unless exempted under the terms of this ordinance.
- B. Prohibition on new wells in the Deep Aquifers:
 - 1. The County shall not accept for processing, process, or approve any application to construct a new well in the Deep Aquifers in that portion of the 180/400 Aquifer Subbasin and Monterey Subbasin within the Area of Impact depicted in Exhibits A and B in the unincorporated area of the County, unless exempted under the terms of this ordinance.

2. To the extent that the 2010 General Plan or County's certified Local Coastal Program requires a discretionary entitlement for a new well, the County shall not accept for processing, process, or approve any application for a discretionary entitlement for a new well in the Deep Aquifers in that portion of the 180/400 Aquifer Subbasin or Monterey Subbasin that lies within the Area of Impact depicted in Exhibits A and B, unless exempted under the terms of this ordinance.
 3. If the proposed well is in a portion of the 180/400 Aquifer Subbasin or Monterey Subbasin that is outside of the Area of Impact depicted in Exhibits A and B and within the unincorporated area of the County, the County may process an application to construct a new well, but any approval of the application shall be contingent on the applicant demonstrating, based on evidence of the depositional environment to be evaluated by the Monterey County Health Department upon the advice of the Monterey County Water Resources Agency, that the well would not be constructed with screened or perforated intervals in the Deep Aquifers. To the extent that construction of the well must be started in order to obtain the necessary information about the depositional environment, the permit to construct the well shall be conditioned to require, prior to completion of the well, prompt destruction of the well or modification of the design to prevent the well from extracting water from the Deep Aquifers if the evidence shows that the well would extract water from the Deep Aquifers.
- C. These regulations shall take effect on the Effective Date of this interim ordinance.
- D. The term "new well" as used in these regulations does not include (1) any well for which a construction permit has been issued by the Monterey County Health Department prior to the Effective Date of this ordinance; and (2) any well for which drilling or construction activities have commenced prior to the Effective Date of this ordinance in accordance with a well construction permit issued by the Monterey County Health Department.
- E. These regulations apply during the term of this interim ordinance and any duly adopted extension of this interim ordinance, unless a specific exemption under this ordinance is applicable.

SECTION 5. EXEMPTIONS

- A. The following categories of new wells are exempt from the regulations set forth in Section 4 of this ordinance:
1. Wells operating under the auspices of the Castroville Seawater Intrusion Project (CSIP);
 2. Domestic wells;
 3. Monitoring wells owned and maintained by the Monterey County Water Resources Agency or other water management agencies;

4. Municipal water supply wells, provided that the entity owning or operating a new municipal water supply well in the Deep Aquifers shall meter groundwater extractions, monitor groundwater levels and quality, and submit all such data to the Monterey County Water Resources Agency, the Groundwater Sustainability Agency with jurisdiction, and/or other identified public agency upon request; and
 5. Replacement wells, provided that all of the following criteria are met and the well permit is conditioned as needed to ensure compliance with these criteria:
 - a. The replacement well meets all of the criteria in this ordinance's definition of replacement well;
 - b. The replacement well is located on the same or adjacent parcel as the existing well;
 - c. The replacement well shall replace an existing water well that has not been destroyed but that will not be used after construction of the replacement well. The existing well shall be destroyed within one hundred eighty (180) days after the replacement well is operational. "Operational" means that the well has been fitted with a pump and connected to a source of power or other means by which water can be extracted from the well on demand by the well owner or operator.
 - d. Applicants for a replacement well proposed in a different aquifer than the existing well shall, as part of the permit application process, provide at least five (5) years of annual historical extraction data or otherwise quantify the volume of groundwater typically extracted from the existing well in order to allow for a reasonable estimate of the additional water likely to be extracted by the replacement well.
 - e. Applications for replacement wells shall be subject to an assessment of potential significant impacts to existing domestic or municipal water supply wells. The assessment methodology and thresholds for determining potential significant adverse impact shall be the same as used by the Monterey County Water Resources Agency in the application of General Plan Policies PS-3.3 and 3.4.
 - f. The owner of a replacement well in the Deep Aquifers shall meter groundwater extractions, monitor groundwater levels and quality, and submit all such data to the Monterey County Water Resources Agency, the Groundwater Sustainability Agency with jurisdiction, and/or other identified public agency upon request.
- B. Exemption under this ordinance does not guarantee approval of the well. Wells exempt under this ordinance are subject to all other applicable federal, state, and County policies and regulation.

SECTION 6. ENFORCEMENT

Any violation of this interim ordinance is unlawful and a public nuisance. In the event of a violation of 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 such other enforcement action as is authorized by law.

SECTION 7. 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 use of land would effect an unconstitutional taking of private property, the Board shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

SECTION 8. 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 9. EFFECTIVE DATE

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

PASSED AND ADOPTED this 22nd day of May, 2018, by the following vote:

AYES: Supervisors Alejo, Phillips, Salinas and Adams

NOES: Supervisor Parker

ABSTAIN: None

ABSENT: None



Luis A. Alejo
Chair, Monterey County Board of Supervisors

ATTEST:

NICHOLAS CHIULOS
Interim Clerk of the Board of Supervisors

By: Donise Hancock
Deputy

APPROVED AS TO FORM

Wendy S. Strimling

WENDY S. STRIMLING
Senior Deputy County Counsel

EXHIBIT A

Interim Ordinance Basin Boundaries And Area Of Impact

Area of Impact and Salinas Valley Groundwater Basin / Subbasin Boundaries

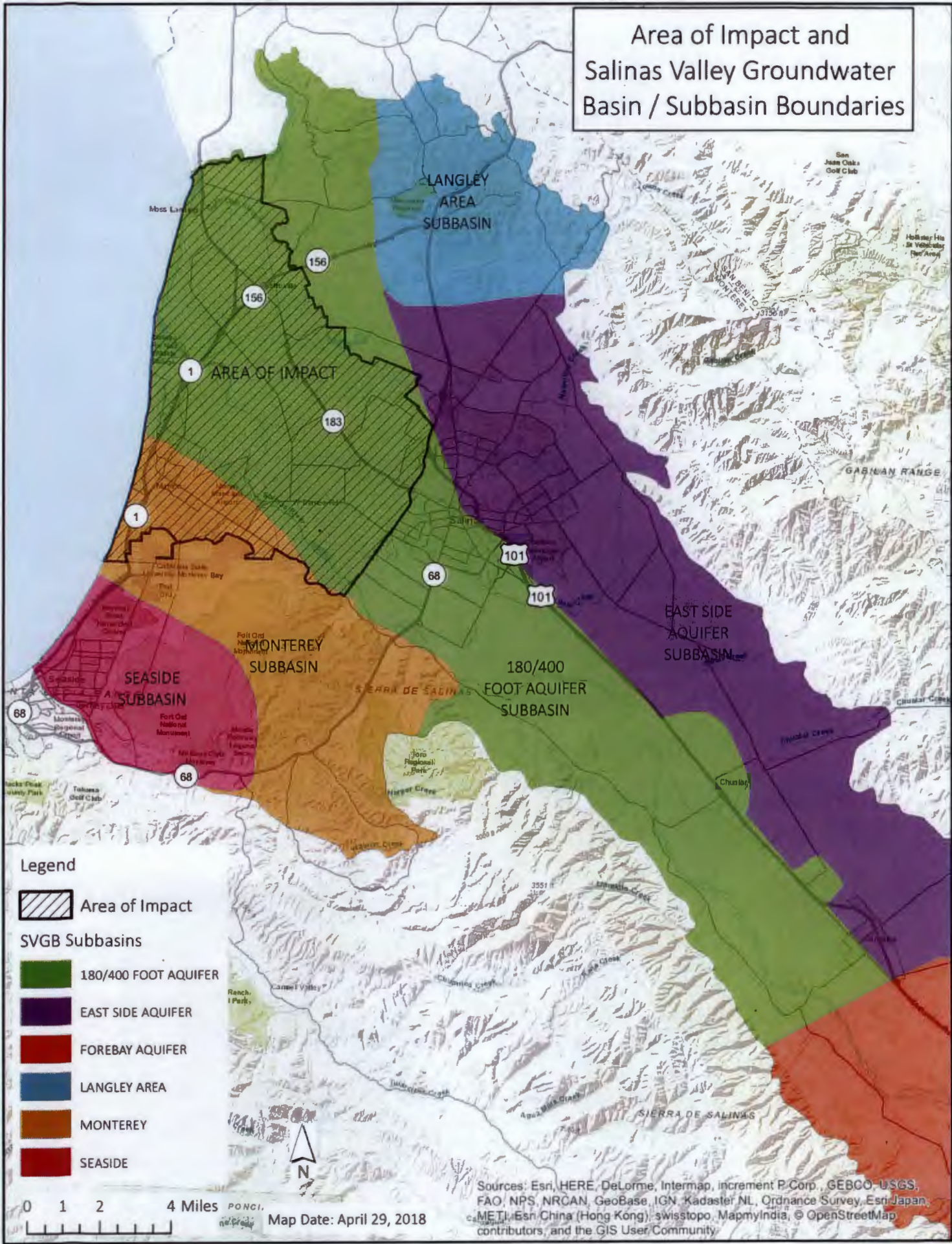









EXHIBIT B
AREA OF IMPACT (CLOSE VIEW)

Area of Impact and Salinas Valley Groundwater Basin Boundaries

Legend

- | | | | |
|---|----------------------|---|--------------|
|  | 180/400 FOOT AQUIFER |  | LANGLEY AREA |
|  | EAST SIDE AQUIFER |  | MONTEREY |
|  | FOREBAY AQUIFER |  | SEASIDE |
|  | | Area of Impact | |

