



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 20-1027, **Version:** 1

- a. Receive an update concerning proposed amendments to Chapter 15.08 of the Monterey County Code to create a distinction between the issuance of ministerial and discretionary water well permits to address the impact of the California Supreme Court case *Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al.*; and
- b. Provide direction to staff.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive an update concerning proposed amendments to Chapter 15.08 of the Monterey County Code to create a distinction between the issuance of ministerial and discretionary water well permits to address the impact of the California Supreme Court case *Protecting our Water and Environmental Resources et al., v. County of Stanislaus, et al.*; and
- b. Provide direction to staff.

SUMMARY/DISCUSSION:

On August 27, 2020, the California Supreme Court issued its decision in the case *Protecting Our Water and Environmental Resources et al., v. County of Stanislaus, et al.*, 10 Cal.5th 479 (2020) (“*Protecting Our Water*”). *Protecting Our Water* held that environmental review, pursuant to the California Environmental Quality Act (“CEQA”), is required when a decision to issue a water well permit involves discretion by a decision-making authority. Under CEQA, ministerial approvals are those that involve little or no discretion, merely apply objective standards to the facts as presented, and are often issued by County staff within a short time frame. In contrast, discretionary approvals are those that involve the exercise of judgment and require County decision-makers to use discretion to decide whether to issue the approvals, and how best to shape or condition those approvals to avoid or mitigate environmental or other land use impacts. Environmental review under CEQA is required only for discretionary approvals, not ministerial approvals.

On September 15, 2020, the Board of Supervisors adopted Urgency Ordinance Number 5339, enclosed as Attachment 1, in response to *Protecting Our Water* so that County staff could assess the impact of the case on Monterey County Code Chapter 15.08. Chapter 15.08, enclosed as Attachment 2, sets forth the application and decision-making process for the County in considering applications for the construction, repair, and destruction of water wells. Urgency Ordinance No. 5339 suspended for ninety days the processing of well permit applications and created a limited emergency exception in cases of a catastrophic event. The ninety day suspension expires on December 14, 2020.

After studying *Protecting Our Water*, County Counsel, working with Environmental Health and Water Resources Agency staff, has developed a draft ordinance amending Chapter 15.08 to delineate criteria creating a distinction between the issuance of ministerial and discretionary well permits. County staff is bringing this draft ordinance (redline and clean versions enclosed as Attachment 3 and 4, respectively) to engage the public and to receive direction from the Board of Supervisors prior to introduction of the ordinance. County staff can then make any necessary changes to the draft ordinance and return to the Board of Supervisors in early 2021 for introduction and adoption of the ordinance.

The draft ordinance proposes to require the approving authority, the Monterey County Health Officer, to issue well permits if an applicant meets certain standards. The ordinance also gives the Health Officer discretion to apply conditions to a permit in response to potential environmental impacts, and to issue a variance from the standards if an applicant meets certain criteria. More specifically, the draft ordinance proposes to amend Section 15.08.060 to require the Health Officer to issue well permits ministerially when the technical standards contained in Sections 15.08.110, 15.08.120, and 15.08.130 are met. The draft ordinance also proposes to add technical standards to Section 15.08.110 to prescribe the ministerial review already being performed by the Environmental Health Bureau, as the Health Officer's representative. Such standards include setbacks from floodplains and contaminants; sizing and sealing of annular space; casing, capping, sounding tube and sanitization requirements; impact of new wells on existing domestic wells or water system wells; impact of new wells on instream flows of surface water bodies; and well destruction requirements. Wells permits issued pursuant to these standards would be done ministerially. In other words, the technical standards would be applied to specific applications without the exercise of judgement and discretion, and therefore environmental review under CEQA would not be required for well permits that meet standards.

The draft ordinance also proposes to amend Section 15.08.060 to give the Health Officer discretion to issue a variance when the technical standards of the Chapter cannot be met, and to require conditions to address potential environmental impacts of a well. In these instances, CEQA would apply, and the decision-maker would determine the appropriate level of environmental review under CEQA. The draft ordinance proposes to add criteria to Section 15.08.080 for when a variance may be issued by the Health Officer. These criteria require that all of the following be met: special circumstances exist; practical difficulties or unnecessary hardship would result from the strict interpretation and enforcement of any provision of Chapter 15.08; and approval of the variance would not defeat the purposes of Chapter 15.08.

The draft ordinance proposes to give an applicant thirty days to appeal a permit application that has been denied or granted conditionally, or whose permit has been suspended or revoked. Currently, Chapter 15.08 only gives an applicant ten days to appeal. This proposed change is made in response to comments from the public that a ten-day appeal period is insufficient.

The draft ordinance also proposes to require that property owners and applicants (if the applicant is not the same as the property owner) indemnify, defend, and hold harmless the County against any claim brought concerning the issuance of a well permit. The Environmental Health Bureau, as the Health Officer's representative, already requires this as a condition of approval on well permits. As such, this addition codifies an already existing requirement and by doing so makes this condition ministerial.

Lastly, the draft ordinance proposes to update citations to state law and the Monterey County Code. For example, the ordinance updates references to state law that have changed, such as the Department of Water Resources' water well standards and the County's Master Fee Resolution for the setting of application and appeal fees.

OTHER AGENCY INVOLVEMENT:

The Health Department and the Monterey County Water Resources Agency concur in the recommendation.

FINANCING:

There is no direct financial impact to the County from this draft ordinance.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Mark a check to the related Board of Supervisors Strategic Initiatives

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared and approved by:

Kelly L. Donlon, Deputy County Counsel, x5313

Approved by:

Leslie J. Girard, County Counsel, x5365

Attachments:

Board Report

1. Urgency Ordinance No. 5339
2. Monterey County Code Chapter 15.08
3. Draft ordinance (redline version)
4. Draft ordinance (clean version)