

ORDINANCE NO. _____

AN ORDINANCE OF THE MONTEREY COUNTY WATER RESOURCES AGENCY TO REPEAL ORDINANCE NUMBERS 3660, 3717, AND 3718, AND ADOPT WELL REGISTRATION AND GROUNDWATER REPORTING REQUIREMENTS

County Counsel Summary

This Ordinance repeals Ordinance Numbers 3660, 3717, and 3718, which established Monterey County Water Resources Agency's ("Agency") well registration and extraction reporting regulations for certain areas of the Salinas Valley. This Ordinance adopts updated Agency regulations to require well owners and operators within Monterey County to register wells with the Agency, and periodically report well extraction data if further action is taken by the Agency Board of Supervisors by resolution. This Ordinance also affirms certain Agency requirements for groundwater level and quality monitoring. This Ordinance allows the Agency to enter into groundwater management support service agreements to provide groundwater monitoring and data reporting with requesting entities. The Ordinance also provides for Agency collection of a regulatory fee to be set by resolution of the Agency Board of Supervisors. Lastly, the Ordinance provides for a variance process, and establishes penalties for violations.

The Board of Supervisors of the Monterey County Water Resources Agency ordains as follows:

SECTION 1. Findings and purpose.

A. Pursuant to authority granted to it by the Monterey County Water Resources Agency Act, California Water Code, Appendix Chapter 52, on January 26, 1993, the Board of Supervisors ("Board") of the Monterey County Water Resources Agency ("Agency") adopted Ordinance Number 3660, which enacted new registration provisions for groundwater extraction facilities with a discharge pipe having an inside diameter of at least three inches in Agency Zones 2, 2A, and 2B.

B. On February 2, 1993, the Agency Board adopted Ordinance Number 3663, which enacted groundwater extraction reporting requirements in Agency Zones 2, 2A and 2B in the Salinas Valley Groundwater Basin, commonly known as the Groundwater Extraction Management System ("GEMS").

C. On July 27, 1993, the Agency Board adopted Ordinance Number 3696, which amended portions of Ordinance Number 3663 to advance the time by which flow meters must be installed in certain areas.

D. On October 5, 1993, the Agency Board adopted Ordinance Numbers 3717 and 3718, repealing Ordinance Numbers 3663 and 3696, but reestablishing GEMS requirements in Agency Zones 2, 2A, 2B which encompass a portion of the Salinas Valley Groundwater Basin.

E. Since 1993, the Agency has been collecting GEMS data subject to the provisions of Ordinance Numbers 3717 and 3718; subject to a 1995 settlement agreement with the Salinas Valley Water Coalition, Ralph Riva, James Gianolini, and Roger Moitoso concerning Ordinance No. 3717; and the Agency has consistently produced annual reports thereafter, including ordinance mandated agricultural and urban water conservation plan reports.

F. In addition to GEMS data, the Agency collects groundwater level and groundwater quality data to monitor changes in seawater intrusion and the status of groundwater basins generally.

G. In the fall of 2014, the California State Legislature adopted, and the Governor signed into law, three bills commonly known as the Sustainable Groundwater Management Act (“SGMA”) generally set forth in Water Code section 10720 *et seq.*

H. SGMA was signed into law mandating the sustainability of groundwater basins throughout the state by at least 2040 for “high priority basins in a critical state of overdraft”, and 2042 for “high priority” and “medium priority” basins, as determined by the California Department of Water Resources (“DWR”).

I. SGMA assigns responsibility to the DWR for regulatory oversight through the evaluation and assessment of groundwater sustainability plans (“GSPs”), and the provision of ongoing assistance to local agencies through the development of best management practices, guidance, planning assistance, technical assistance, and financial assistance.

J. SGMA provides for the formation of local groundwater sustainability agencies (“GSAs”) to formulate and implement GSPs throughout the state, in lieu of county or state control.

K. DWR has identified five groundwater basins, and six subbasins, in Monterey County. There are six GSAs in Monterey County, all dependent upon groundwater data to inform, develop, implement, update, and demonstrate to the DWR progress of their GSPs towards maintaining or achieving sustainability, that may want to engage and leverage the existing institutional knowledge, data collection and reporting expertise of the Agency.

L. The Agency Board hereby adopts this Ordinance to define the Agency’s roles and responsibilities with regard to the monitoring and reporting of groundwater status in Monterey County, including groundwater levels and quality; to require well registration and extraction quantity reporting for its own purposes, and at the request of other entities with groundwater management responsibilities; to establish a regulatory fee to support implementation of this Ordinance; and to promote improved service to stakeholders dependent upon Monterey County’s groundwater resources.

M. The Agency’s groundwater level monitoring provides indicators of seasonal and long-term changes in groundwater levels, the amount of groundwater in storage, geographic and hydrogeologic distribution of groundwater recharge, and direction of groundwater flow throughout the applicable basin. Specific to the Salinas Valley Groundwater Basin (“SVGB”), groundwater level monitoring can assist the Agency in understanding how different areas of the SVGB interact

with the surface water system, which can inform operational decisions for Nacimiento and San Antonio Reservoirs.

N. The Agency's groundwater quality monitoring program in the coastal region allows the Agency to monitor temporal and geographic changes in the extent of seawater intrusion in the SVGB. This data informs decisions related to operation of Agency projects (e.g., Castroville Seawater Intrusion Project, Salinas River Diversion Facility); it also has a supporting role in land use management and permitting decisions that the Agency may advise other County of Monterey departments on, such as implementation of County General Plan policies and recommendations about well permitting to the Health Department.

O. This Ordinance is entitled to a categorical exemption of the California Environmental Quality Act ("CEQA") pursuant to 14 California Code of Regulations section 15306, which exempts: "basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded." This Ordinance will allow for continued and new groundwater extraction data reporting to aid the Agency and other entities engaged in the management and scientific investigation of groundwater resources within Monterey County and to aid in the evaluation of groundwater basin sustainability. Specifically, the groundwater extraction data will provide information concerning groundwater level, usage, and quality. If any projects stem from the use of this data, such project will appropriately be evaluated under CEQA. Further, none of the exceptions listed in 14 California Code of Regulations 15300.2 apply to this project. There is no reasonable possibility that the activities stemming from this Ordinance will have a significant effect on the environment due to unusual circumstances.

SECTION 2. Authority.

A. The Agency's enabling legislation is located at California Water Code, Appendix Chapter 52, and the Agency's authority and jurisdiction derive from this legislation.

B. The Agency has jurisdiction over matters pertaining to water within the entire area of Monterey County, including both incorporated and unincorporated areas. The Agency has authority to carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply. For those purposes, the Agency has the right of access through its authorized representatives to all properties within the Agency and may enter upon those lands and make examinations, surveys, and maps thereof.

C. The Agency Board of Supervisors may adopt, by ordinance, reasonable procedures, rules, and regulations to implement the Agency Act, and may specify that a violation of an ordinance is an infraction. The Agency Board further has power to perform all other acts necessary or proper, including, as allowed by law, establishing fees, taxes, or assessments to be levied and collected, to accomplish the purposes of the Agency Act.

SECTION 3. Repeal.

The Board of Supervisors of the Monterey County Water Resources Agency hereby repeals Ordinance Numbers 3660, 3717, and 3718, which enacted similar but not identical provisions, and adopts this Ordinance as fully described herein.

SECTION 4. Definitions.

A. “Abandoned well” means any well whose original purpose and use has been permanently discontinued or which is in such a state of disrepair that it cannot be used for its original purpose. A well is considered abandoned when it has not been used for a period of one year, unless the owner demonstrates his or her intent to use the well again for supplying water or other associated purposes.

B. “Agency” means the Monterey County Water Resources Agency.

C. “Agency Act” means the Monterey County Water Resources Agency Act, California Water Code, Appendix Chapter 52 (Stats. 1990, Chap. 1159).

D. “Board” means the Board of Supervisors of the Monterey County Water Resources Agency.

E. “County” means the County of Monterey.

F. “Monterey County” means the geographical area of Monterey County.

G. “Requesting Entity” means an entity engaged in the management of groundwater resources within Monterey County, either through the monitoring and reporting of groundwater level, usage, and/or quality data; scientific investigations; or in the administration and compliance of a regulatory program(s).

H. “Water Year” means the 12-month period between October 1, of any given year, through September 30, of the following year, as defined by the United States Geological Survey.

I. “Well” means any artificial excavation constructed by any method for the purpose of extracting water from, or injecting water into, the underground. “Well” includes abandoned wells, inactive wells, monitoring wells, and observation wells. For the purposes of this ordinance, “well” does not include: (1) 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; (2) wells used for the purpose of dewatering excavation during construction, or stabilizing hillsides or earth embankments; (3) cathodic protection wells; or (4) test wells or dry wells.

J. “Well Operator” means a person or entity authorized by a Well Owner to operate a Well.

K. “Well Owner” means a landowner or landowners that own a Well.

SECTION 5. Provision of Services.

Upon mutual written agreement between the Agency and any Requesting Entity, the Agency may provide groundwater monitoring, data reporting, and groundwater management support services to the Requesting Entity. Such action shall be taken by Board approval.

SECTION 6. Well Registration.

A. All permits, which are required to construct, repair, reconstruct, or destroy a Well in Monterey County, are issued by the County pursuant to Monterey County Code Chapter 15.08. The Agency collaborates with the County during the application review process for many, but not all Wells, and will rely upon information provided to the County to fulfill this Ordinance's registration requirements, to the extent practicable, as determined solely by the Agency.

B. The Agency may, for its own purposes, require registration of Wells within Monterey County for the purposes of implementing this Ordinance. Such action shall be taken through a Board resolution.

C. The Agency may require registration of Wells within Monterey County on behalf, and for the purpose of implementing a policy or program, of a Requesting Entity, pursuant to an executed agreement between the Agency and Requesting Entity. Such action shall be taken through a Board resolution.

D. No Well Owner or Well Operator may operate or maintain a Well that has been made subject to this Ordinance and applicable Board resolutions, unless the Well is first registered with the Agency.

E. A Well Owner or Well Operator must properly register their Well(s) within 30 days of completed construction or upon a request by the Agency to do so, in a manner prescribed by the Agency, with such request being acceptably transmitted through direct written correspondence by United States Mail or other electronic means to the Well Owner or Well Operator.

F. The Agency may periodically require Well Owners or Well Operators to update registration information. No Well Owner or Well Operator may operate or maintain a Well that has been made subject to this Ordinance and applicable Board resolutions, if the requested information has not been properly and timely provided to the Agency. Further, Well Owners or Well Operators shall provide updated Well registration information to the Agency within 30 days of a change in Well Owner or contact information for an existing Well Owner, or of a change in Well Operator or contact information for an existing Well Operator, or upon completion of a change to the physical structure of the Well.

G. Upon proper completion of registration, the Agency will issue a certificate of registration to the Well Owner and the Well Operator, if applicable.

H. For all Abandoned Wells, the Well Owner or Well Operator shall report such abandonment to the Agency within 30 days of abandonment. The report shall indicate the steps taken to comply with all legal requirements regarding such abandonment.

SECTION 7. Groundwater Extraction Reporting.

A. The Agency may, for its own purposes, require reporting of groundwater extraction quantities from Wells within Monterey County for the purposes of implementing this Ordinance. Such action shall be taken by Board approval.

B. The Agency may require reporting of groundwater extraction quantities within Monterey County on behalf, and for the purpose of implementing a policy or program, of a Requesting Entity, pursuant to a written, executed agreement between the Agency and Requesting Entity. Such action shall be taken by Board approval.

C. The Agency, for its own purposes or on behalf of a Requesting Entity, may adopt and periodically revise, a Board resolution establishing acceptable standards and methods for measuring the extraction of groundwater. Every Well Owner or Well Operator required to report groundwater extractions shall meet the requirements of such resolution and request approval from the Agency of their measurement method, on a per Well basis.

D. Every Well Owner or Well Operator subject to reporting is required to keep records tallying the total monthly extraction of groundwater, per Well, and to report those extractions in a manner prescribed by the Agency on behalf of the Requesting Entity or the Agency. The annual reporting period shall be the Water Year.

E. Every Well Owner or Well Operator required to report groundwater extractions must do so no later than November 1, following each Water Year, in a manner prescribed by the Agency. Any Well Owner or Well Operator may report more frequently for convenience or if required by Agency Board resolution. In addition, the report shall include any information necessary to keep Well registration information current.

F. Every Well Owner or Well Operator required to report groundwater extractions must exercise due diligence to maintain and promptly repair all approved measuring equipment. In the event of a measuring method failure, the Well Owner or Well Operator shall notify the Agency in writing, within two weeks of discovery, to report the failure, propose a repair plan, and to determine if utilization of one of the alternate methods of measurement authorized by Agency policy is practicable if restoration of the primary measuring method cannot be achieved within an agreeable timeframe. The Agency may impose an alternative measurement method if the Well Owner or Well Operator fails to address a measuring failure within two months. The Agency may calculate an unmeasured extraction value by averaging usage from the month before and after to fill a data gap, or by averaging historical usage over the same period, if available, unless otherwise mutually agreed. The Well Owner is ultimately responsible for the maintenance and prompt repair of all approved measuring equipment and any costs incurred by the Agency to impose an alternative measurement method will be billed to the Well Owner.

G. The Agency may, from time to time, test the accuracy of extraction measuring methods approved for Wells subject to this Ordinance, to ensure that measuring methods and equipment remain operational and in conformity with acceptable standards, as defined by the Agency. The Agency may, for its own purposes or on behalf of a Requesting Entity, develop policies and procedures through Board resolution, which may include random sampling, to ensure consistent and equitable measurement of extractions. If a measuring method is determined to be inaccurate, the Agency shall immediately notify the Well Owner or Well Operator in writing to determine if utilization of one of the alternate methods of measurement authorized by the Agency is practicable, if proper calibration of the primary measuring method cannot be achieved within one week. The cost to correct the calibration a measuring method shall be borne by the Well Owner or Well Operator. The Agency may impose an alternative measurement method if the Well Owner or Well Operator fails to address a measuring inaccuracy within two weeks. The Agency may recalculate an extraction value based upon the measured discrepancy and revise Well extraction data up to the beginning of the then current Water Year. The Well Owner is ultimately responsible for the maintenance and prompt repair of all approved measuring equipment and any costs incurred by the Agency to correct an inaccuracy or impose an alternative measurement method will be billed to the Well Owner.

H. Extraction data obtained through this Ordinance shall be used only for purposes consistent with the authorities of the Agency. Access and distribution of personally identifiable information will be restricted to the fullest extent allowed by law, including but not limited to California Government Code section 6250 *et seq.*, Civil Code section 3426 *et seq.*, and Water Code section 13751 *et seq.*

SECTION 8. Groundwater Level and Quality Monitoring and Reporting.

A. The Agency may, for its own purposes, collect data, obtain samples, or require reporting of groundwater level and quality data from Wells within Monterey County for the purposes of implementing this Ordinance.

B. The Agency may collect data, obtain samples, or require reporting of groundwater level and quality data from Wells within Monterey County on behalf, and for the purpose of implementing a policy or program, of a Requesting Entity, pursuant to a written, executed agreement between the Agency and Requesting Entity. Such action shall be taken by Board approval.

C. The Agency, for its own purposes or on behalf of a Requesting Entity, may adopt and periodically revise, a Board resolution establishing acceptable standards and methods for measuring groundwater level and quality. If applicable, every Well Owner or Well Operator required to report groundwater level or groundwater quality data shall meet the requirements of such resolution and request approval from the Agency of their measurement method, on a per Well basis.

SECTION 9. Variance.

A. Any Well Owner or Well Operator may, at any time, apply in writing for a variance from the strict application of this Ordinance and applicable Board resolutions. The application for the variance shall be filed with the Agency, on a form prescribed by the Agency. The Agency General Manager may dispense with the requirement of a written application upon finding that an emergency condition requires immediate action on the variance request.

B. The Agency General Manager may grant a variance to the terms of this Ordinance and applicable Board resolutions upon finding that the strict application of this Ordinance and applicable Board resolutions would create an undue hardship, or that an emergency condition requires that the variance be granted.

C. In granting a variance, the Agency General Manager may impose time limits and any other conditions in order to ensure that the variance is consistent with this Ordinance and applicable Board resolutions. The variance, and all time limits and other conditions attached to the variance, shall be set forth in writing, and a copy of the written variance shall be provided to the Well Owner or Well Operator. The decision of the Agency General Manager may be appealed to the Board pursuant to Subsection D of this Section.

D. Any Well Owner or Well Operator whose variance has been denied, or granted conditionally, may appeal to the Board, in writing, within fifteen calendar days after any such denial or conditional granting. Such appeal shall specify the grounds upon which it is taken, and shall be accompanied by a filing fee as set from time to time by the Board by resolution. The Clerk of the Board shall set such appeal for hearing at the earliest practicable time, and shall notify the appellant and the Agency, in writing, of the time so set at least 14 calendar days prior to the hearing. After such hearing, the Board may wholly or partly, maintain, reverse, or modify the order or determination that is subject of the appeal.

E. No Well Owner or Well Operator shall operate or maintain a Well for which a variance has been granted hereunder, or use water therefrom, in violation of any of the terms or conditions of the variance.

SECTION 10. Recovery of Regulatory Program Costs.

For the purposes of implementing this Ordinance, the Agency may allocate and recover costs associated with the development, implementation, enforcement, and perpetuation of a regulatory groundwater monitoring program on a per-Well basis, not based on extraction data, within Monterey County. Such regulatory fees shall be as established by a resolution of the Board.

SECTION 11. Enforcement and Penalties.

A. No Well Owner or Well Operator shall operate or maintain a Well, or use water therefrom, in violation of this Ordinance or any resolution adopted in accordance with this Ordinance.

B. Any Well Owner or Well Operator who violates any provision of this Ordinance or any resolution adopted in accordance with this Ordinance is guilty of an infraction.

C. Any violation which occurs or continues to occur from one day to the next shall be deemed a separate violation for each day during which such violation occurs or continues to occur.

D. Any Well Owner or Well Operator who violates any provision of this Ordinance or any resolution adopted in accordance with this Ordinance is guilty of an infraction and shall be assessed: (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation of this Ordinance within one year of the first violation; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation of this Ordinance within one year of the first violation.

E. Any violation of this Ordinance or any resolution adopted in accordance with this Ordinance is hereby declared to be a public nuisance. The Agency may commence civil proceedings to abate such nuisance and seek civil penalties which may be imposed by a court against persons found by the court to have committed the nuisance.

F. Any Well Owner or Well Operator who violates this Ordinance or any resolution adopted in accordance with this Ordinance shall be liable for the cost of enforcement, which shall include, but need not be limited to, the cost of investigation, court costs, attorney's fees, and the cost of monitoring future compliance.

G. The Agency's General Manager is authorized and empowered to enforce the provisions of this Ordinance or any resolution adopted in accordance with this Ordinance. The Agency's General Manager shall first send written notice of a failure to comply by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to the Well Owner or Well Operator. If such notice to comply is not cured within 15 calendar days, the Agency General Manager shall send written notice of a violation by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to the Well Owner or Well Operator. Service by mail shall be deemed to have been completed at the time of deposit in the United States Post Office.

H. Any Well Owner or Well Operator who has received notice of violation may appeal to the Board, in writing, within fifteen calendar days after service of the notice of violation. Such appeal shall specify the grounds upon which it is taken, and shall be accompanied by a filing fee as set from time to time by the Board by resolution. The Clerk of the Board shall set such appeal for hearing at the earliest practicable time, and shall notify the appellant and the Agency, in writing, of the time so set at least 14 calendar days prior to the hearing. After such hearing, the Board may, wholly or partly, maintain, reverse, or modify the notice of violation.

SECTION 12. 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 Agency Board 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 13. Effective Date.

This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of ____ 2024, by the following vote:

AYES:
NOES:
ABSENT:


Glenn Church, Chair
Monterey County Water Resources Agency Board of
Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM



Kelly L. Donlon
Assistant County Counsel