

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: OCTOBER 17, 2014

**AGENDA ITEM
E-2
OCTOBER 22, 2014**

**CONSIDER SAN LUIS OBISPO COUNTY DRAFT ORDINANCE
REGULATING THE EXPORT OF GROUNDWATER**

ITEM

Consider draft County Ordinance [RECOMMEND CONSIDER DRAFT ORDINANCE AND DIRECT STAFF]

BACKGROUND

The County of San Luis Obispo is considering adoption of an Ordinance that would require a permit for exportation of groundwater outside the County and outside the basin from which it was extracted.

The County Board of Supervisors is requesting public input on the draft Ordinance.

Deputy Director of County Public Works, Mark Hutchinson, confirmed a formal District comment letter transmitted to the County by Friday October 24 would be considered by County staff and the Board of Supervisors.

The County's referral memo and draft Ordinance are attached. An October 6, 2014 comment letter by Mr. Tim Cleath of Cleath-Harris Geologists, Inc. is also provided for your Board's consideration.

FISCAL IMPACT

The District produces water from the Santa Maria Groundwater Basin. This groundwater basin underlies both Santa Barbara and San Luis Obispo Counties. Therefore, the proposed County Ordinance may negatively impact the District's planned supplemental water project and overall Santa Maria Groundwater Basin management.

STRATEGIC PLAN

Goal 1. WATER SUPPLIES. Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

- 1.1 Complete Phase 1 of Supplemental Supply Projects.
- 1.4 Seek to have the County implement sustainable water supply policies that match the level of development they approve, including all the features described in the Water Resources Policy Statement.
- 1.6 Continue to monitor and participate in water supply issues and programs with other local and regional organizations

Goal 7. COMMUNICATION. Use public outreach to communicate effectively with the public to obtain their input and build understanding and support for the District.

7.2 Maintain productive communication and relationships with key stakeholders, such as city, County, State and Federal legislators, service clubs, etc. As appropriate, plan and assign for this role.

RECOMMENDATION

Consider draft County Ordinance and direct staff.

ATTACHMENTS

- A. September 30, 2014 County Referral and Draft Ordinance
- B. October 6, 2014 Cleath-Harris Comment Letter

October 22, 2014

ITEM E-2

ATTACHMENT A



DEPARTMENT OF PLANNING AND BUILDING

THIS IS A NEW PROJECT REFERRAL FOR AN ORDINANCE AMENDMENT

RECEIVED

OCT 03 2014

NIPOMO COMMUNITY SERVICES DISTRICT

DATE: 9/30/2014

TO: Nipomo CSD
148 South Wilson Street
Nipomo, Ca 93444

FROM: Mark Hutchinson, mhutchinson@co.slo.ca.us / Kami Griffin, kgriffin@co.slo.ca.us

PROJECT DESCRIPTION: LRP2014-00008 County of San Luis Obispo - Referral of Proposed Amendment to Title 8 of the County Code to add Chapter 8.92 regarding regulation of the exportation of groundwater.

The proposed amendments will add a new chapter to Title 8 (Health and Sanitation) of the County Code. The purpose of the chapter will be to create a permit for the export of groundwater outside of the county and for the export of groundwater outside of the basin from which it is extracted.

According to the California Department of Water Resources (DWR) Bulletin No. 118 (Bulletin 118), there are twenty two (22) groundwater basins that underlie, either in whole or in part, the County. Bulletin 118 contains descriptions of each delineated groundwater basin in California. The proposed amendments would prohibit the exportation of more than 1/2 acre foot per year to a location outside of the groundwater basin from which it was extracted or outside of the county without first obtaining an export permit. There are specific exemptions defined in the proposed amendments, as well as a process for obtaining the export permit.

The Board of Supervisors is requesting your input on the attached public review draft amendments. Please provide your comments by October 17, 2014 either by using this form or via separate document. You may also choose to comment by participating in the public hearing on these amendments. This hearing is tentatively scheduled for November 2014.

RESPONSE:

Date

Name

Phone

DRAFT

ORDINANCE NO. _____
AN ORDINANCE REGULATING THE EXPORTATION OF GROUNDWATER

The Board of Supervisors of the County of San Luis Obispo, State of California, ordains as follows:

SECTION 1: That Chapter 8.92 of the County Code be added as follows:

8.92.10 Findings and declarations.

The board finds and declares as follows:

A. The groundwater underlying the county has historically provided the people and lands of the county with water for agricultural, domestic, municipal and other purposes.

B. According to the 2014 San Luis Obispo Integrated Regional Water Management Plan, approximately fifty seven percent of all domestic water supply needs within the county are met by the use of groundwater.

C. The primary industry in the county is agriculture, and the gross value of all agricultural crops produced in the county was estimated at \$960,710,000 in 2013. Nearly all irrigated agricultural crops within the county are irrigated with groundwater.

D. Areas of the county are subject to limited groundwater availability.

E. The groundwater of the county is and will be a vital part of future water use in the county.

F. According to Bulletin 118, the following twenty two groundwater basins (or portions thereof) underlie the county: the Paso Robles Area Groundwater Basin, the Cholame Valley Groundwater Basin, the Los Osos Valley Groundwater Basin, the San Luis Obispo Valley Groundwater Basin, the Santa Maria River Valley Groundwater Basin, the Cuyama Valley Groundwater Basin, the Carrizo Plain Groundwater Basin, the San Carpoforo Valley Groundwater Basin, the Arroyo de La Cruz Valley Groundwater Basin, the San Simeon Valley Groundwater Basin, the Santa Rosa Valley Groundwater Basin, the Villa Valley Groundwater Basin, the Cayucos Valley Groundwater Basin, the Old Valley Groundwater Basin, the Toro Valley Groundwater Basin, the Morro Valley Groundwater Basin, the Chorro Valley Groundwater Basin, the Rinconada Valley Groundwater Basin, the Pozo Valley Groundwater Basin, the Huasna Valley Groundwater Basin, the Rafael Valley Groundwater Basin and the Big Spring Area Groundwater Basin.

G. As part of the California Statewide Groundwater Elevation Monitoring Program, set forth in California Water Code Section 10920 et seq., the California Department of Water

Resources identified a number of groundwater basins within the county as high or medium priority basins in 2014, including the Paso Robles Area Groundwater Basin, the Los Osos Valley Groundwater Basin, the Santa Maria River Valley Groundwater Basin, the San Luis Obispo Valley Groundwater Basin and the Cuyama Valley Groundwater Basin.

H. As part of the county's Resource Management System, set forth in Chapter 3 of the San Luis Obispo County Land Use Ordinance—Framework for Planning, the board has determined that a Level of Severity III exists for water resources within the Paso Robles Valley Groundwater Basin, the Los Osos Valley Groundwater Basin and the Santa Maria River Valley Groundwater Basin. A Level of Severity III is the highest level of alert and occurs when resource use exceeds the capacity of the resource.

I. It is essential for the protection of the health, welfare, and safety of the residents of the county, and the public benefit of the state, that the groundwater resources of the county be protected from harm resulting from the exportation of groundwater.

J. California courts have recognized and upheld the authority of counties, through their police powers, to regulate the use of groundwater.

K. The board recognizes the principle developed in the case law of California that water may be appropriated from a groundwater basin if the groundwater basin is in a surplus condition and such appropriation would not impair the reasonable and beneficial use of overlying users.

L. This chapter requires a permit for the export of groundwater and is not intended to regulate groundwater in any other way.

M. In adopting and codifying this chapter, the board does not intend to limit other authorized means of managing the county's groundwater.

8.92.20 Definitions.

As used in this chapter:

A. "Board" means the board of supervisors of the county of San Luis Obispo.

B. "Bulletin 118" means the California Department of Water Resources' report entitled "California's Groundwater: Bulletin 118" updated in 2003 and as it may be subsequently updated and revised.

C. "County" means the county of San Luis Obispo.

D. "Department" means the county Department of Public Works and Transportation.

E. "Director" means the county Director of Public Works and Transportation or his or her designee.

F. "Export" means the extraction of groundwater underlying the county for use outside the boundaries of the groundwater basin from which the groundwater is derived, or for use outside of the county.

G. "Groundwater" means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water but does not include water that flows in known and definite channels.

H. "Groundwater basin" means a groundwater basin or subbasin identified and defined in Bulletin 118 within the county.

I. "Local agency" means any local public agency.

J. "Person" means any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or local public agency, including any city, county, city and county, district or joint powers authority.

K. "Recharge" means flow to groundwater storage from precipitation, irrigation, infiltration from streams, spreading basins and other sources of water.

L. "Site" means any lot or parcel of land or contiguous combination thereof, under the same ownership.

M. "Usable storage capacity" means the quantity of groundwater of acceptable quality that can be economically withdrawn from storage.

N. "Water year" means the year beginning January 1 and ending December 31.

8.92.30 Permit required for exportation of groundwater.

Unless otherwise exempt, no person shall export groundwater underlying the county without first obtaining a permit as provided in this chapter.

8.92.40 Exemptions.

This chapter shall not apply to the export of groundwater in the following circumstances:

- A. To prevent the flood of lands;
- B. To prevent the saturation of the root zone for agricultural land;

C. Movement of groundwater within the boundaries or service area of a single local agency in existence on the effective date of this chapter consistent with the historical practice of the local agency;

D. Movement of groundwater between contiguous parcels under common ownership consistent with historical practice;

E. The groundwater is contaminated and does not meet the standards for beneficial uses. Such groundwater may be exported if the release complies with discharge permits issued by the federal, state and state resource agencies;

F. Exportation by the county or the San Luis Obispo County Flood Control and Water Conservation District or their contractors; and

G. Exportation of not more than one-half (1/2) acre foot of water per water year from a site.

8.92.50 Application for an export permit.

A. An application for an export permit shall be filed with the department on a form specified by the director, which shall include all information specifically requested thereon and other information required by the director to address specific aspects of the proposed groundwater export. Information to support the findings listed in Section 8.92.70 must be provided in order for the director to deem the application complete. Concurrently, the applicant shall consent to the commencement and financing of appropriate environmental review as may be required under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and applicable guidelines. The application for an export permit and required environmental review shall be accompanied by the deposit of fees for these purposes, as established by board resolution.

8.92.60 Procedures for processing.

A. Within thirty calendar days of filing the export permit application and the deposit of required fees, and determination by the director that the application is complete, the director shall post a notice on the department's public bulletin board that an application has been filed. The director shall send a copy of the application to all local agencies which own or include land overlying or immediately adjacent to the location of the proposed export with a request for comment on the application. A notice to any interested party who has made written request to the director for such notice within the last twelve calendar months shall also be sent. Such notice shall provide recipients the opportunity to submit written comments on the application.

B. As determined in the judgment of the director, the director shall review the application with potentially affected county departments, with the staff of applicable state and federal agencies, with local agencies and with any potentially affected party. In reviewing the

application, the director shall consider any relevant groundwater management plan, including, without limitation, any groundwater management plan adopted pursuant to California Water Code Section 10750 et seq. or Section 10720 et seq., or any other relevant information provided by the applicant.

C. Upon completion of the environmental review and export permit application review process, a public hearing before the director on the export permit application shall be noticed and conducted as follows:

1. Notice of hearing. Notice of public hearing shall be given as provided in Government Code Section 65090 and 65091, except as follows:

(a) Content of notice. In addition to the information required by Government Code Section 65094, the notice shall declare that the application will be acted on without a public hearing if no request for a hearing is made in compliance with subsection C.2 of this Section 8.92.60.

(b) Method of notice distribution. Notice of public hearings shall be given as provided by Government Code Section 65090 and 65091.

(c) Additional notice provided. The public notice shall include mailed notice to all owners of property located within a one mile radius of the exterior boundaries of the site from which the export is to occur.

2. Public hearing. A public hearing on an export permit shall occur only when a hearing is requested by the applicant or other interested person(s). This request shall be made in writing to the director no later than seven days after the date of the public notice provided in compliance with subsection C.1 of this Section 8.92.60. In the event that a public hearing is required, the export permit application shall be scheduled for a hearing on the date and time as defined in the public notice. Any person may provide written comments relevant to the impact of the extraction and transfer of groundwater on the groundwater resources within the county. The hearing shall not be conducted with formal rules of evidence, but rather shall be conducted under such rules as set by the director for the expeditious presentation of the matter and relevant information by the applicant and by other interested parties.

3. Final decisions on export permit applications. Immediately after the conclusion of public testimony in the case of a public hearing, or after the time period within which a hearing may be requested under subsection C.2 of this Section 8.92.60 if no hearing is requested, the director shall:

(a) Announce his or her decision on the export permit application;

(b) Announce that his or her decision is final unless appealed pursuant to subsection D of this Section 8.92.60.

Notwithstanding the foregoing, the director may continue the hearing to a date certain to provide additional time to evaluate information obtained at the hearing prior to a final decision.

D. The director's decision may be appealed to the board of supervisors consistent with Section 8.92.100.

E. Notice of the director's decision shall be mailed within five calendar days of final action to the person that has applied for the permit, any person who requested a hearing, and all other persons or entities referred to in Subsection A of this Section 8.92.60.

8.92.70 Findings required for export permit approval.

A. An export permit shall be approved only if the director finds that the proposed export will not cause or contribute to significant detrimental impacts to groundwater resources within the county or on the groundwater basin from which the groundwater is extracted by finding that:

1. The proposed export will not adversely affect the long-term ability for storage or transmission of groundwater within the groundwater basin from which the groundwater is exported;

2. The proposed export will not (together with other extractions) result in chronic lowering of groundwater levels and will not otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users;

3. The proposed export will not result in, expand or significantly exacerbate groundwater quality degradation;

4. The proposed export will not result in injury to a water replenishment, storage, restoration or conveyance project;

5. The proposed export will not result in, expand or significantly exacerbate land subsidence;

6. The proposed export will not result in, expand, or significantly exacerbate depletions of interconnected surface water; and

7. The proposed export will not otherwise be detrimental to the environment or to the health, safety and welfare of property owners overlying or in the vicinity of the proposed exportation site.

8.92.80 Conditions of export permit approval.

If the export permit is to be approved, the director shall impose appropriate conditions of permit issuance so as to prohibit and prevent any significant detrimental impacts to groundwater

resources within the county described in Section 8.92.70 or other adverse conditions and may impose other conditions that the director deems necessary to promote or maintain the health, safety and welfare of the people of the county. The director shall incorporate into each export permit a monitoring and/or reporting program. The monitoring and/or reporting program shall be of such scope and extent as the director finds to be necessary to ensure that the proposed export will not cause or contribute to any significant detrimental impacts on groundwater resources within the county. Such a monitoring and/or reporting program may include, but shall not be limited to, amounts of groundwater pumped, monitoring of wells, monitoring of groundwater levels and monitoring of vegetation and wildlife.

8.92.90 Reapplication after director denial.

Reapplication for an export permit which has been denied by the director may not be filed with the director until the following water year and must be accompanied with information that demonstrates a significant change in circumstances from those which caused the denial of the previous export permit application.

8.92.100 Appeal of director action.

A. The applicant or any interested party may appeal a decision of the director by filing a written request with the clerk of the board within fifteen days of issuance of the director's decision. Any such appeal shall specifically set forth the procedural and substantive reasons for the appeal or be deemed incomplete and ineffectual. The clerk shall set a board hearing within thirty days of receipt of a complete request for appeal which shall be heard within ninety days of notice thereof. Written notice of appeal shall be given to the director, the permit applicant, the appellant, and all other parties identified in subsection A of Section 8.92.60, and the appeal hearing shall be published pursuant to Government Code Section 6061.

B. The board shall hear the appeal de novo except where the appeal is confined to a condition imposed by the director in which event the hearing and the decision of the board shall relate only to such condition. The appeal before the board shall not be conducted with formal rules of evidence, but rather shall be conducted under such rules as set by the board for the expeditious presentation of the matter and relevant information by the appellant and by other parties interested in the director's decision. At its discretion, the board may impose conditions for approval as it finds necessary to protect the interests of the county and its citizens. The decision of the board shall be final.

8.92.110 Review of export permit.

The permit granted pursuant to this chapter shall be subject to periodic staff review in consultation with the permittee. In the event that the department determines that a material violation of the conditions of the permit has occurred, the permittee shall immediately bring itself into compliance. A determination of violation shall be in writing and include specific

findings in support of the decision. A determination of violation may be appealed to the board by the permittee using the appeal process as described in Section 8.92.100.

8.92.120 Export permit term.

Approved permits shall be valid for a term, as determined by the director, not to exceed one year from the date of issuance of the export permit.

8.92.130 Inspection.

After providing written notice to the permittee, the director or designee, with good cause may at any reasonable time enter any and all places, property, enclosures and structures, for the purpose of making examinations and investigations to determine whether any provision of this chapter or an approved permit is being violated.

8.92.140 Notice of violation.

Upon receiving knowledge of an alleged violation of this chapter, the county will provide written notice of the alleged violation to the violating party. The notice shall detail the alleged violation and require the violating party to cease and desist immediately upon receipt of such notice from the alleged violating activities or within five working days prove to the county, by meeting with the director or his or her designee, that the alleged violating activities, in fact, do not violate this chapter, or that there are mitigating reasons surrounding the alleged violating activities. No civil fines, as set forth in Section 8.92.150, shall accrue during the notice process. The notice shall also include details of the potential penalties for violations of this chapter.

8.92.150 Penalty for violation.

If, within five working days, after receipt of a notice issued in accordance with Section 8.92.140, the violating party has not complied with Section 8.92.140, the county may elect to proceed with any or all of the following remedies for violation of this chapter:

- A. A civil action against the violator, including injunctive relief;
- B. A civil action against the violator, including a fine of up to five thousand dollars for each separate violation. A person or entity shall be deemed to have committed a separate violation for each and every day or portion thereof during which any such violation is committed, continued or permitted as well as for each and every separate groundwater well within which any such violations are committed, continued or permitted.

8.92.160 Termination date.

The provisions of this chapter shall expire on _____ (five years from the effective date) unless prior to such date the board, after conducting public hearings, extends the effective period of this chapter.

SECTION II. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

Introduced at a regular meeting of the Board of Supervisors held on the ____ day of _____, 20__, and passed and adopted by the Board of Supervisors of the County of San Luis Obispo, State of California, on the ____ day of _____, 20__, by the following roll call vote, to-wit:

AYES:

NOES:

ABSENT:

Chairman of the Board of Supervisors of the
County of San Luis Obispo, State of
California

ATTEST:

County Clerk and Ex-Officio Clerk of the
Board of Supervisors, County of San
Luis Obispo, State of California

BY: _____

(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL

County Counsel

By: _____
Deputy County Counsel

Dated: _____

October 22, 2014

ITEM E-2

ATTACHMENT B

Cleath-Harris Geologists, Inc.
71 Zaca Lane, Suite 140
San Luis Obispo, CA 93401
(805) 543-1413



October 6, 2014

Mark Hutchinson, Public Works Department
Kami Griffin, Planning and Building Department
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

SUBJECT: Draft Ordinance Regulating the Exportation of Groundwater

Dear Mr. Hutchinson and Ms. Griffin:

I have concerns that this proposed draft ordinance will result in many consequences that would not benefit the County of San Luis Obispo. The Santa Maria and Cuyama Groundwater Basins underlie both San Luis Obispo County and Santa Barbara County. The Paso Robles Groundwater Basin underlies both San Luis Obispo County and Monterey County. Groundwater management should not be regulated based on County limits. There are currently conditions that exist where groundwater/surface water is moved across county lines both into and out of San Luis Obispo County in these basins for improved management or beneficial use. Permitting such activities and regulating the water rights (including groundwater and water use) is either under the State Water Resources Control Board or through Court mandated management organizations. County of San Luis Obispo ordinances and regulations must not invade the responsibilities given to these agencies.

Some people have raised the possibility that groundwater could be sold to water users outside of the County or outside of groundwater basins. While anything is possible, not all things are probable. The potential for sale of water from the Paso Robles Groundwater Basin (or any other basin in the County) to users outside of the County has not been proven and may not require regulating. While regulations can be an important aspect of managing resources, they also can delay and inhibit needed management activities.

Because of these concerns, the County should not adopt this ordinance.

Very truly yours,
CLEATH-HARRIS GEOLOGISTS

Timothy S. Cleath
President