



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Health
Department No.: 041
For Agenda Of: May 24, 2022
Placement: Departmental
Estimated Time: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: 4/5th

TO: Board of Supervisors
FROM: Department Van Do-Reynoso, MPH, PhD, Director
Director(s) Public Health Department
Contact Info: Lars Seifert, Director
Environmental Health Services 805-681-4934
SUBJECT: Temporary Water Well Permitting Ordinance Related to Drought Emergency
and Governor's Executive Order – Urgency Ordinance and Fee Resolution

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Pursuant to California Government Code sections 25123(d) and 25131 and the California Executive Order N-7-22, adopt an Urgency Ordinance to amend Chapter 34A of County Code in order to implement changes to the process for water well permitting in accordance with California Executive Order N-7-22 until the County's Proclamation of Local Emergency Caused by Drought Conditions is terminated and the Executive Order, as may be superseded, is rescinded (Attachment A); and
- b) Read the title and waive further reading of Urgency Ordinance; and
- c) Adopt a Resolution amending fees for Environmental Health Services relating to Water Wells and Private Water Systems (Attachment B); and
- d) Determine that adoption of the Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15269(c), 15061(b)(3), 15307, and 15378(b)(5); and that approval of the Fee Resolution is exempt from CEQA pursuant to Public Resources Code sections 21080(b)(8)(A) and (B) and CEQA Guidelines section 15273 because

fees will be used for operating expenses and for the purchase of supplies, equipment, and materials and direct staff to file a Notice of Exemption on that basis (Attachments C and D).

Summary Text:

This urgency ordinance would amend Chapter 34A of the County Code in order to implement process changes for water well permitting in accordance with the Governor's Drought Emergency Executive Order N-7-22 (Executive Order) issued on March 28, 2022 and which took immediate effect, until Executive Order N-7-22, or as may be superseded, is rescinded and the County's Proclamation of Local Emergency Caused by Drought Conditions is terminated; and to amend the Water Well and Private Water System Fee Schedule to prescribe fees to pay the reasonable expenses of Environmental Health Services to implement the temporary water well permit review and processing provisions required by the Executive Order.

Background:

On July 8, 2021, the Governor of California added Santa Barbara County to the list of counties experiencing a drought subject to his emergency declaration initially issued on April 10, 2021. On July 13, 2021, the Board proclaimed a Local Emergency Caused by Drought Conditions, which has been reviewed and re-ratified by your Board every 60-days thereafter. Proclaiming the existence of a Drought Emergency within the County provides the County and local water utilities the ability to take immediate actions to mitigate and respond to the current drought conditions.

On March 28, 2022, due to extreme and expanding drought conditions in the State of California, the Governor issued Executive Order N-7-22 (Executive Order) (Attachment E), which in part, seeks to:

- improve coordination between local agencies that approve permits for new groundwater wells or for the alteration of an existing well;
- enable groundwater sustainability agencies to achieve sustainable levels of groundwater in medium- and high-priority basins; and
- require local agencies to make certain findings prior to issuing a well permit for a new groundwater well for the alteration of an existing well.

The Executive Order became effective immediately on March 28, 2022. The Executive Order states that ongoing drought conditions have the potential for significant, immediate impacts on communities with vulnerable water supplies and farms that rely on irrigation to grow food and fiber.

Paragraph 9 of the Executive Order prohibits a county from approving a permit for a new groundwater well or alteration of an existing well during the drought emergency without first obtaining written verification from a Groundwater Sustainability Agency managing a medium- and high-priority groundwater basin that extraction by the proposed well would: (i) not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency; and (ii) not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; and secondly, determining that extraction of groundwater from the proposed well is (iii) not likely to interfere with the production and functioning of existing nearby wells, and (iv) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

In Santa Barbara County, currently designated medium- and high-priority groundwater basins include Cuyama Valley, Carpinteria, Montecito, San Antonio Creek Valley, and the Santa Ynez River Valley. More information on the status of local groundwater resources and how to conserve water in Santa Barbara County can be found at www.waterwisesb.org.

Water wells that provide less than two (2) acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems are exempted from the Executive Order's requirements on local water well permitting.

Currently, Chapter 34A (Wells) of the Santa Barbara County Code requires only that an applicant submit an application with enumerated data points such as applicant name, driller information, and well location, provide a plot plan (Sec. 34A-4), and pay the fee (Sec. 34A-5). If Environmental Health Services (EHS) as the administering authority determines that the proposed work is in compliance with all applicable standards of Chapter 34A and the applicant has provided the required information and paid the fee, the County must issue a water well permit (Sec. 34A-6).

However, because Executive Order N-7-22 requires EHS to obtain additional information from an applicant related to the intended use and location of the proposed water well, EHS requests that Chapter 34A be amended to add (as Article II of Chapter 34A) temporary water well permitting provisions related to drought emergency conditions for consistency with the Executive Order. EHS requests that this be done through an Urgency Ordinance for the immediate protection of public health, safety, and the environment, and to ensure that Santa Barbara County residents and businesses who rely on vulnerable groundwater supplies, and local farms that rely on irrigation wells to grow food and fiber are able to access this water resource, while also allowing EHS to reasonably consider the findings required by the Executive Order for the sustainability of groundwater basins in the county.

Since issuance of the Governor's Executive Order on March 28, 2022, EHS is in receipt of six water well permit applications subject to the Order to which EHS is not able to process. On average, each year since 2017, approximately 110 water well permit applications are reviewed by EHS for permit issuance to construct new wells or to alter existing wells, such as deepening or replacement of a well casing. Over one half (57%) of these wells in the past five years listed the intended use of the water well as irrigation only, which if permitted today, would be subject to the required findings of this Executive Order.

Urgency Ordinance to Amend Chapter 34A to Add Article II

Based on modeling of hypothetical water well drawdown using conservative, yet anticipated values for transmissivity, storage coefficient, and anticipated pumping yields to support field grown agriculture commodities, EHS' in-house certified hydrogeologist (CHG) has determined that a new well located more than 1,000 feet from an existing well is not likely to interfere with the production of a nearby well as locally defined. This is based on the modeling of induced drawdown at a one-year interval from the proposed well. Moreover, a review of the State Water Resources Control Board's *Low-Threat Underground Storage Tank Case Closure Policy*, a 1,000-foot separation from active production wells to contamination plumes is considered to be sufficient to pose a low threat to human health, safety or the environment, and appropriate for no further action determination based on the enumerated groundwater-specific criteria.

With regard to subsidence findings required by the Executive Order, the US Geological Survey has identified areas of land subsidence in Santa Barbara County only within the Cuyama Valley basin area.¹ While groundwater pumping is an identified cause of subsidence in this basin, the permitting of new wells and alteration of existing wells as defined require written verification from the Cuyama Basin Groundwater Sustainability Agency that the proposed extraction is consistent with the sustainable groundwater management program, including a consideration of subsidence in the basin that may adversely impact surface land uses. The basin currently does not meet the requirements for an undesirable condition of land subsidence.²

If Article II of Chapter 34A is adopted as part of the Recommended Actions, water well permits for new (non-exempt) wells or for the alteration of a well located more than 1,000 feet from an existing well will be issued as a ministerial permitting action. Water wells replacing an existing well that do not exceed the production capacity of the existing well as originally permitted or constructed, and where the existing well will be destroyed upon replacement, are also considered not likely to interfere with the production and functioning of nearby wells for purposes of this urgency ordinance, and EHS would proceed with the review and issuance of replacement water well permits pursuant to local ordinance and the Executive Order.

Where a proposed well is located less than 1,000 feet from an existing well, the applicant will be required to provide pertinent information from a third party CHG with the application in order for EHS' in-house CHG to analyze the data to determine the likelihood of impacts, including specified hydrogeology and well extraction data to model potential impacts to nearby wells or structures. EHS will consider the environmental effects of the proposed well and will require the applicant to comply with CEQA, as applicable. Review of water wells associated with coastal zone development permits and land development permits will be processed in coordination with County Planning & Development Services.

New domestic wells providing less than two-acre feet per year of groundwater, including those serving four or less residential parcels, and public water system wells inclusive of State small water systems (serving 5-15 residential connections) are exempted from the drought emergency permitting provisions in the requested urgency ordinance to ensure an ongoing safe, reliable supply of water for human consumption is available during the drought emergency. While the Executive Order does not specifically exempt domestic water wells serving multiple parcels or State small water systems, the stated intent of the Executive Order is to protect human safety and public health due to extreme and expanding drought conditions; whereas otherwise restricting these existing water systems from domestic well drilling to provide water for human consumption to these systems would not meet that intent.

EHS may also adopt other policies, procedures, and/or permit application forms and amendments as necessary consistent with Chapter 34A to implement the provisions of the Order. As proposed, Article II of Chapter 34A includes a provision requiring a property owner to enter into an indemnification agreement with the County as is presently required for other land development permit applications in the county.

¹ Everett, R.R., Gibbs, D.R., Hanson, R.T., Sweetkind, D.S., Brandt, J.T., Falk, S.E. and Harich, C.R., 2013, *Geology, water-quality, hydrology, and geomechanics of the Cuyama Valley groundwater basin, California, 2008–12*: U.S. Geological Survey Scientific Investigations Report 2013–5108 (https://ca.water.usgs.gov/land_subsidence/california-subsidence-areas.html).

² Woodard & Curran. *Cuyama Basin Groundwater Sustainability Plan*, December 2019, 3-7 (<https://cuyamabasin.org/resources>).

Resolution to Amend EHS Fee Schedule

Currently, Section 34A-5(b)(4) of Santa Barbara County Code allows EHS to recover labor costs in excess of hourly time limits established by the fee resolution for permit processing and related inspections. The well permit fees established during the 2019 EHS Fee Study for water well construction, modification and destruction were based on the average time spent in the permitting of water wells at that time. The proposed fee resolution specifies an hourly time limit of two hours for permit review and processing. Any additional staff time needed for permit processing including, but not limited to consultation, report review, appeals, or public hearings that may be needed to implement the provisions of the urgency ordinance will be assessed at the existing hourly rate for EHS. The proposed fee resolution also establishes a fee to recover the direct cost of CEQA processing and filing fees established by the Clerk of the Board, where applicable. The Fee Schedule for Water Wells and Private Water Systems will not sunset with the rescission of the Local Drought Proclamation and Executive Order. The Resolution to amend the EHS Fee Schedule is included in Attachment B.

Outreach and Countywide Drought Emergency Efforts

Environmental Health Services (EHS) has provided an informational presentation related to the Executive Order and its effects on irrigation water well permitting at the County's Agricultural Advisory Committee on May 5, 2022. Additionally, a virtual public workshop for well drillers, groundwater sustainability agencies and other interested stakeholders was conducted by EHS on May 10, 2022. Information was provided on the Executive Order's drought emergency provisions and exemptions for the county water well permitting process, local agency and groundwater sustainability agency review requirements, proposed regulatory fees and the required temporary process steps for water well permit issuance in Santa Barbara County during the declared drought emergency.

The County has also established ongoing internal and external drought task forces to manage the County's drought response, share information, and develop emergency plans for significant drought related water outages. The internal task force consists of staff from Office of Emergency Management, the County Water Agency and Environmental Health Services, and continues to identify how to support the County's ongoing compliance with State emergency drought measures.

Fiscal Analysis:

There are no one-time costs or staffing requested as a result of this urgency ordinance. Adopting an amended Environmental Health Services fee resolution to utilize the existing Board-approved hourly rate will fully recover regulatory costs. Increased staff time associated with permit reviews may be necessary; however, a decrease in water well permit applications during the drought emergency may also be realized by EHS. Staff workload will be adjusted as necessary to other funded program activities if a decrease in budgeted well permit revenue occurs during the effective dates of the temporary water well permitting provisions.

Staffing Impacts:

There will be no increase or decrease in staff as a result of adopting the proposed resolution and urgency ordinance.

Special Instructions:

1. That the Clerk of the Board publish notice of this hearing, per the attached Public Notice, in a newspaper of general circulation in Santa Barbara County 10 days prior to the hearing and again 5 days prior to the hearing in compliance with Government Code § 6062a.
2. Before the expiration of 15 days after passage of this urgency ordinance, a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in a newspaper of general circulation in Santa Barbara County, in compliance with Government Code Section 25124.
3. Following Board approval, Clerk of the Board to please post the Notice of Exemption and forward a stamped copy to the Environmental Health Services Director.
4. Request the Clerk of the Board to return one copy of the original adopted resolution, one copy of the original adopted ordinance, and one Minute Order to the Public Health Department, Attention: Kelly Lazarus at KLazarus@sbcphd.org.

Attachments:

- A. Urgency Ordinance amending Chapter 34A of the Santa Barbara County Code
- B. Resolution amending fees for Environmental Health Services
- C. CEQA Notice of Exemption, Urgency Ordinance
- D. CEQA Notice of Exemption, Fee Resolution
- E. March 28, 2022 Governor's Executive Order
- F. Notice of Public Hearing
- G. Urgency Ordinance amending Chapter 34A of the Santa Barbara County Code Presentation

Authored by:

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cc:

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