

## **Preliminary Draft Groundwater Protection Ordinance #3 (Prohibition) For study purposes only**

### **Chapter X.XX AQUIFER PROTECTION**

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#### **X.xx.010 Definitions.**

The definitions applying to this chapter shall be those definitions found in all other sections of the Stanislaus County Code, Title 1 through Title 25. In the event of conflict between a definition in this section and one found in other sections of the Stanislaus County Code, the definition in this section shall control for the purposes of this chapter.

1. "Conjunctive use" and "conjunctive operation" shall mean the coordinated operation of a groundwater basin and surface water supplies. One purpose is to artificially recharge a basin during years of above-average precipitation so that groundwater can be withdrawn during years of below-average precipitation, when surface supplies are less than normal. Conjunctive operation also refers to meeting the needs of an area within the county through the coordinated use of groundwater during years when surface water is not available.
2. "Culture (land use)" shall mean the land use or land cover existing under natural conditions or as modified by man.
3. "Domestic water well" shall mean a well devoted exclusively to the residential and related yard, garden and barnyard uses within the curtilage of a dwelling located on the same parcel of land as the served dwelling house or upon another parcel of land respecting which the owner of the served dwelling has a legally cognizable interest in the nature of real property. Such uses as recognized in this section do not include the growing of crops, or production of other agricultural commodities for commercial purposes.
4. "Groundwater" shall mean water in the zone of saturation. Groundwater is presumed to be percolating, although it does occur in known and definite channels.
5. Groundwater, Confined. "Confined groundwater" shall mean a body of groundwater overlain by material sufficiently impervious to sever free hydraulic connection with overlying groundwater except at the intake.
6. Groundwater, Free (Unconfined). Unconfined water is found in the zone of saturation whenever the upper surface of the zone forms a water table under atmospheric pressure, free to rise and fall with changes in volume of stored water.
7. "Hydraulic gradient" shall mean slope of the water table.

8. "Hydrology" shall mean the origin, distribution, and circulation of water through precipitation, stream- flow, infiltration, groundwater storage, and evaporation.
9. "Imported water" shall mean water transported into a watershed from a different watershed. Native water is water naturally within a watershed.
10. "Mining" shall mean extraction of groundwater by any means, including pumping and the use of artesian wells, from any aquifer within the county of Stanislaus which in contemplation of pre-existing extractions of groundwater used beneficially upon lands overlying the aquifer within the county and the reasonably foreseeable beneficial uses to which groundwater from the aquifer could be made to lands overlying the aquifer within the county which exceeds the reasonably foreseeable replenishment potential of the watersheds' native water together with such imported water as may be available to be applied to recharge the aquifer.
11. "Overdraft" shall mean the condition of a groundwater basin where the amount of water withdrawn exceeds the amount of water replenishing the basin over a period of time. Also, as the point at which extractions from the basin exceed its safe yield plus any temporary surplus.
12. "Percolation" shall mean the movement of water through the soil to the groundwater table.
13. "Permeability" shall mean the capability of soil or other geologic formation to transmit water.
14. "Piezometric surface" shall mean the surface to which the water in a confined aquifer will rise.
15. "Porosity" shall mean voids or open spaces in alluvium, other soils and rocks that can be filled with water.
16. "Radius of influence" shall mean the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface (the edge of the well's cone of depression).
17. "Recharge" shall mean flow to groundwater storage from precipitation, infiltration from streams, irrigation, spreading basins, and other sources of water.
18. "Safe yield" shall mean the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result. The phrase "undesirable result" is intended to refer to a gradual lowering of the groundwater levels resulting in, or tending to result in, the eventual depletion of or the substantial diminution of the supply of water.
19. "Salt water intrusion" shall mean the movement of salt water into fresh water aquifers.
20. "Specific capacity" shall mean the volume of water pumped from a well in gallons per minute per foot of drawdown.
21. "Spreading water" shall mean discharging native or imported water to a permeable area for the purpose of allowing it to percolate to the zone of saturation. Spreading, artificial recharge and replenishment all refer to operations used to place water in a groundwater basin.
22. "Transmissivity" shall mean the rate of flow of water through an aquifer.
23. "Usable storage capacity" shall mean the quantity of groundwater of acceptable quality that can be economically withdrawn from storage.

24. "Water District" means a district wholly or in part located within the boundaries of the county, which is a purveyor of waters for agricultural, domestic or municipal use.

25. "Water table" shall mean the surface where groundwater is encountered in a well in an unconfined aquifer.

26. "Zone of saturation" shall mean the area below the water table in which the soil is completely saturated with groundwater.

**X.xx.020 Mining of groundwater prohibited.**

It shall be unlawful to conduct any mining for water within this county, or for the owner of real property to allow groundwater of any nature, or connate water, to be mined, where the water extracted is transported, by any means, from the county of Stanislaus.

**X.xx.030 Permit required for extraction of groundwater for use off-parcel.**

It shall be unlawful to extract groundwater of any nature or description, or for a property owner to allow such extraction on his land, for the purpose of using the water or selling the water for use on other than the parcel of land upon which the extraction occurs, or contiguous parcels of land under the same ownership as the parcel from which the extraction occurs, without first obtaining a permit as provided in this chapter. This provision does not apply to the extraction of water for the purposes of supplying a "public water system," a "community water system," a "noncommunity water system," or "state small water system" as defined by Division 5, Part 1, Chapter 7 of the California Health and Safety Code commencing with Section 4010, *or the historical use of groundwater by a recognized water District serving residents of the county of Stanislaus or an established agricultural operation on contiguous parcels including parcels that may cross County boundaries.*

**X.xx.040 Radius of influence of well restricted.**

It shall be unlawful for any person to operate, or for a property owner to allow any person to operate, any well, excepting a domestic well as defined by Section X.xx.010(3), or a well serving any "public water system," "community water system," "noncommunity water system," or "state small water system," *or the historical use of groundwater by a recognized water District serving residents of the county of Stanislaus or an established agricultural operation on contiguous parcels including parcels that may cross County boundaries* in such a manner that the radius of influence of such well extends beyond the boundaries of the parcel of land upon which the well is located, or alternatively, beyond the boundaries of contiguous parcels of land under the same ownership as that parcel upon which the well is located.

**X.xx.045 Restriction on radius of influence not applicable to pre-existing operating wells.**

The prohibition of Section X.xx.040 shall not be applicable to any well actually in operation in calendar year XXXX or any prior year.

**X.xx.050 Application** for permit.

An application for a permit required in this chapter shall be filed with the Stanislaus County Department of Environmental Resources, Environmental Health (EH) division, on forms provided by said division and shall contain all information required by such division. Concurrently, a request for environmental review thereof shall be filed as required by county *and state* guidelines. The application for permit and request for environmental review shall be accompanied by the fees established therefore. Upon receipt of the permit application, the Department of Environmental Resources, E H division, shall review the application with affected county departments including, but not limited to, the agricultural commissioner and planning director. The Department of Environmental Resources, E H division shall also review the application with the State Department of Water Resources and the Regional Water Quality Control Board. After obtaining the comments of the affected county departments and the affected state agencies, the Department of Environmental Resources, **E H division, shall cause the application together with all received comments to be reviewed by the Stanislaus County Environmental Review Committee (ERC) and file a written report incorporating the observations and recommendations, if any, of the ERC, with the Board of Supervisors,** with a copy to the applicant. *After the filing of such report, the E H division shall set a public hearing on the issuance of the permit. Said hearing shall be noticed pursuant to Government Code Section 6061 and said hearing may not be held within fifteen days of the time that the board of supervisors receives the report from the Department of Environmental Resources, E H division.*

**X.xx.060 Public hearing on issuance of permit.**

At said hearing, the applicant shall be entitled to present any relevant evidence to his application. The *EH division* may request any additional geologic *and/or hydrologic* studies it deems necessary to obtain information required for its decision. The cost of such studies shall be borne by the applicant. The *EH division* shall also hear relevant evidence presented by the public and county staff. The *EH division* shall consider all effects the proposed permit would have on the affected groundwater, and the affected aquifer or aquifers, including, but not limited to, the hydraulic gradient, hydrology, percolation, permeability, piezometric surface, porosity, recharge, safe yield, salt water intrusion, specific capacity, spreading water, transmissivity, usable storage capacity, water table, and zone of saturation.

**X.xx.070 Granting of permit.**

The permit referred to in this chapter may only be granted where the *EH division* after having reviewed the potential effects referred to in Section X.xx.060, finds and determines that the permit will not bring about an overdraft, will not bring about salt water intrusion, will not adversely affect transmissivity within the aquifer, will not adversely affect the water table and will not result in the mining of water. *The EH division shall impose such conditions upon the permit so as to prohibit overdraft, and may impose conditions including, specifically but not limited to, a requirement for observation and/or monitoring wells, that it deems necessary for the health, safety and welfare of the people of the county of Stanislaus. Notwithstanding the foregoing, the EH division may issue the permit if the EH division finds that the applicant has provided for mitigation which will offset any adverse effect that is determined to exist. The decision*

*of the EH division maybe appealed to the Board of Supervisors following established procedures.*

**X.xx.080 Annual review of permit.**

The permit granted pursuant to this chapter shall be subject to an annual staff review. In the event the Department of Environmental Resources, E H division, determines that an overdraft is occurring because of the conditions then existing, the permit may be amended by order of the Department of Environmental Resources, E H division, to decrease the amount of water allowed to be extracted. Said decision by the Department of Environmental Resources, E H division, may be appealed to the board of supervisors by the applicant or any other affected person.

**X.xx.085 Challenge to approved permit.**

(a) Any interested party or public entity may challenge the continuation of an approved permit during the term of the permit when information exists that:

- (1) There is a violation of the conditions of the permit, or
- (2) The permit was not issued in accordance with the procedure requirements of this chapter, or
- (3) Extraction of groundwater pursuant to the permit:
  - (i) Causes or increases an overdraft in the basin, or
  - (ii) Brings about or increases salt water intrusion, or
  - (iii) Adversely affects the long-term ability for storage or transmission of groundwaters, or
  - (iv) Exceeds the safe yield of the groundwaters, or
  - (v) Operates to the injury of the reasonable and beneficial uses of overlying groundwater users, or
  - (vi) Is in violation of Water Code Section 1220, or
  - (vii) Results in an injury to a water replenishment, storage, or restoration project operating in accordance with statutory authorization.

(b) A challenge pursuant to this section is commenced by filing a written request with the Director of Environmental Resources which alleges any of the above situations and in general describes the supporting facts for such allegation. In such event, the Director shall within ten (10) days of receipt of such challenge, give notice of the challenge to the Board, the Permittee, Appellant, to any interested party who filed a written request for such notice within the past twelve (12) months, and also the Districts and Cities, within the County, which have boundaries overlying or immediately adjacent to the location of the permitted extraction. A Board review shall be held on the matter following the procedures set out in Sections XXXXX of the Stanislaus County Code governing the Board of Supervisors. The recommendations and decision may be to deny the challenge, grant the challenge and terminate the permit, or to establish modified conditions to the permit.

(c) The standard for review shall be substantial evidence. The burden of proof is upon the person or entity filing the challenge.

**(Challenge to approved permit from Yolo County)**

**X.xx.090 Inspection.**

The director of Environmental Resources or his or her representative, with good cause, may at any and all reasonable times enter any and all places, property, enclosures and structures, for the purposes of making examinations and investigations to determine whether any provision of this chapter is being violated.

**X.xx.100 Violation-Criminal penalty.**

Any person who violates any provision of this chapter, or the terms and/or conditions of any permit issued pursuant to this chapter, with intent to do so shall be guilty of a misdemeanor, punishable by fine not exceeding one thousand dollars per violation, or by imprisonment not exceeding six months, or by both such fine and imprisonment; and any person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted, and for each and every separate well with which any such violation is committed, continued, or permitted; and for each such subject violation of day or well, shall be subject to the same punishment as for original offense.

**X.xx.110 Severability.**

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The board hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

**(Except as otherwise noted sections of this draft were patterned after the Tehama County Ordinance)**