

**Draft
Groundwater Export Ordinance (Regulation)**

Chapter X.XX

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X.xx.010 Findings and declaration of intent.

The Stanislaus County Board of Supervisors hereby find that as stewards of the water resources available to Stanislaus County, it has authority to protect and manage this resource; and

Whereas, the Board finds that groundwater has been and will continue to be an important source of water for the County; and

Whereas, the Board finds that it is essential for the protection of the environment as well as the health, welfare and safety of the residents of the County that groundwater resources within the County be protected; and

Whereas, the Board finds that the needs of the County are best met by monitoring and managing the transfer of surface water and water exports that have an adverse affect on the County's groundwater including, without limitation, water exports/transfers involving (1) direct groundwater export and (2) surface water with groundwater substitution; and

Whereas, the export of the County's groundwater outside of County boundaries and groundwater banking is hereafter regulated as set forth in this ordinance.

Declaration of intent: The intent of this ordinance is to regulate the export/transfer of extracted groundwater outside of County boundaries and the export/transfer of surface water with groundwater substitution. It is not the intent of this ordinance to regulate the

normal, intra-county management and use of water by individuals, water districts, irrigation districts, drainage districts, or cities/municipalities.

Further, the Board intends to ensure the continued availability of groundwater and to ensure that extraction of groundwater does not exceed safe yield as set forth in this ordinance.

X.xx.020 Definitions.

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

1. “Cone of depression” refers to the conical form created by the lowering of the water table or piezometric surface around a pumping well. The cone grows or shrinks in response to the time length of pumping and the volume pumped.

2. “District” means: (a) “Water District” or “Irrigation District” means a district wholly or in part located within the boundaries of the county, which is a purveyor of water for agricultural use, or of water that will be used by a city or the County for domestic, industrial, or municipal use. Listed water district refers to existing Water Districts that serve citizens of the County: Turlock Irrigation District, Modesto Irrigation District, Oakdale Irrigation District, Eastside Water District, West Stanislaus Irrigation District, Rock Creek Irrigation District, Del Puerto Water District, Central California Irrigation District, Eastin Water District, Oak Flat Water District, Patterson Irrigation District, El Solyo Water District, Western Hills Water District; (b) “Drainage District” means a district wholly or in part located within the boundaries of the county, which pumps groundwater for the sole purpose of lowering the water table, to facilitate agriculture. Listed drainage district refers to existing drainage districts that serve citizens of the County; and (c) Cities or County-operated water supply systems are hereby considered different from a Water District, Irrigation District, or Drainage District in that their normal role as purveyors of domestic water does not involve export/transfer of water.

3. “Drainage” means the artificial extraction of groundwater from an area for the purpose of lowering the groundwater table below the root zone of growing trees, or crops or below the foundation of structures and buildings.

4. “Drainage water” means the water resulting from drainage activities.

5. “Export and/or transfer” means extracting and conveying groundwater out of the County, and outside of the boundaries of any District that is partially within the County, either directly or indirectly. Surface water that is sold or exchanged out of the County and outside of the boundaries of any District that is partially within the County that is

replaced in whole or in part, directly or indirectly, by groundwater extraction within the County, shall also be considered the export or transfer of groundwater.

6. “Groundwater” means all water beneath the surface of the earth within the zone of saturation, but does not include water which flows in known and definite subsurface channels.

7. “Groundwater banking” is storing surface water in the ground by allowing it to percolate directly into the water aquifer or by substituting groundwater pumping for surface water.

8. “Metered” or “Metering” refers to the process of measuring a water volume. Accepted ways of metering include a physical meter, or engineering calculations based on pump rating, documented energy consumption, documented hydraulic head differences, and documented time of free channel flow.

9. “Overdraft” means the condition of a groundwater basin, or a significant part thereof, where the amount of water withdrawn exceeds the amount of water replenishing the basin over a period of years to decades. Also, the point at which extractions from the basin exceed its safe yield.

10. “Piezometric surface” means the surface to which the water will rise in a well screened in confined groundwater.

11. “Private Water Source Operator” is an entity who extracts groundwater for bottling.

12. “Radius of influence” means the radial distance from the center of a well borehole to the point where there is negligible lowering of the water table or piezometric surface, i.e., (the edge of the well's cone of depression).

13. “Recharge” means flow to groundwater storage from precipitation, infiltration from streams and reservoirs, irrigation, spreading basins, injection, and other sources of surface water.

14. “Recognized water system” is an existing “public water system (e.g., a city water supply)”, a “community water system”, a “non-community 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.

15. “Safe yield” means the maximum quantity of water that can be withdrawn annually from a groundwater supply, under a given set of conditions, without causing an adverse effect. The phrase “adverse effect” means conditions that harm other groundwater users; adversely modify the hydraulic characteristics of the aquifer; or lead

to lowering of the groundwater levels to the degree that there is a substantial diminution of the supply of groundwater.

16. "Spreading water" means discharging surface water to a permeable area for the purpose of allowing it to percolate to the zone of saturation. Spreading shall also mean the injection of surface water into the zone of saturation.

17. "Water table" is the surface that separates the unsaturated zone above from the saturated zone below.

18. "Well interference" occurs when a well's cone of depression causes other wells within the well's radius of influence to suffer material injury, such as "significant" decline in the amount of groundwater that can be pumped from those wells.

19. "Zone of saturation" means the area below the water table in which the pores of soils and rocks are completely saturated with groundwater.

X.xx.030 County authorization required for extraction of groundwater

It shall be unlawful to export or transfer surface water that is replaced by an increase in groundwater pumping within the County, engage in or allow direct groundwater export out of the County or engage in groundwater banking without first obtaining conditional authorization as set forth in this chapter.

An Export Permit is available upon application for the following project categories:

1. Export under periods of emergency, as set forth in Section X.xx.040 of this Ordinance; or
2. Export for the benefit of the County, as set forth in Section X.xx.050 of this Ordinance; or
3. Groundwater banking in the County, as set forth in Section X.xx.060 of this Ordinance; or
4. Wholesale transfer by a Private Water Source Operator as set forth in Section X.xx.070 of this Ordinance.

An Export Permit will have a validity of up to five years. It may be renewed as long as the conditions that led to the initial authorization remain in effect. The County has discretion to issue an Export Permit for a period longer than five years upon the applicant's request and showing good cause.

The exportations of groundwater or groundwater banking shall not cause well interference. Any documented case of well interference shall result in a temporary suspension of the Export Permit.

X.xx.040 Exports during periods of emergency

A. An emergency includes (1) conditions of emergency as described in the California Government Code, section 8558; (2) states of water shortage emergency as determined by the California Department of Water Resources; or (3) determination by the Board that groundwater within the County can assist areas outside the County without substantial harm to the County.

B. The duration of groundwater extraction for the purpose of emergency relief shall not exceed the time frame of the emergency. Groundwater extraction for the purpose of emergency relief does not set precedent or entitle the exporter to future exports.

X.xx.050 Exempted extraction and exportation of groundwater

The following are exempt from the provisions of this chapter:

A. Extraction of groundwater by a listed and locally recognized water, irrigation, or drainage District serving residents of the County.

B. An established agricultural operation as of January 1, 2012 on parcels that cross County boundaries.

C. District operations designed to enable the transport of extracted groundwater through water conveyance facilities to downstream parcels located within the same water or irrigation District, so long as the use is consistent with the District's rules, regulations or policies as of January 1, 2012.

D. Out-of-county recharge of a groundwater basin that extends into the County can in some instances be of overall benefit to the County, and when implemented by a water, irrigation, or drainage district, is exempt from permitting so long as such activity does not include extraction of groundwater from the County.

E. Exports by a Private Water Source Operator are exempt when exported water is bottled for resale at the source of the groundwater. Wholesale exports by tanker truck shall be allowed only by permit.

X.xx.060 Groundwater banking projects

A. Groundwater banking projects shall not interfere with the historical pumping of other County extractors.

B. Groundwater banking shall not cause or contribute to overdraft of the basin or cause well interference.

C. Groundwater exports out of the County and that are a part of an approved groundwater banking project shall not exceed the volume of groundwater imported into the County and the volume of groundwater lost due to natural migration.

X.xx.080 Application for an Export Permit

A. An application for an Export Permit, as required in this chapter, shall be filed with the Stanislaus County Department of Environmental Resources (DER), on forms provided by DER and shall contain all information required by DER. DER will conduct a preliminary review, and within 60 calendar days will advise the applicant of the need for:

1. Concurrence with operators of inter-counties water conveyance facilities (e.g., the California Aqueduct or Delta-Mendota Canal).
2. Reviews by appropriate local, state or federal agencies.
3. California Environmental Quality Act (CEQA) compliance.

B. All applications shall be accompanied by the corresponding fees as established by ordinance of the County.

C. Upon receipt of the application, DER, will also determine, within 60 calendar days, the specific hydrogeologic data to be submitted by a California Registered Geologist, Civil Engineer, or Certified Engineering Geologist before the approval process can continue. DER may request any additional studies it deems necessary to obtain information required for its decision, including environmental analyses. The cost of such studies, staff time to review the information provided, CEQA compliance and any additional costs incurred by the County to process the application, shall be borne by the applicant. Once the additional consultation responses and/or data are submitted, DER shall review the application with other County departments including, but not limited to, the Agricultural Commissioner and Planning Department.

D. Within 60 calendar days after obtaining the comments of other County departments, and state agencies, as needed, the Director of DER shall file a written report with recommendations with the Board, and provide a copy to the applicant. Concurrent with the filing of the report, DER shall set a Board public hearing regarding the application. The Agricultural Commissioner; County Planning Department; water, irrigation, and drainage Districts; cities/municipalities; and property owners within a one mile radius of the project area shall be notified in writing and invited to attend the hearing. Said hearing shall be noticed pursuant to Government Code Section 6061 and shall be held at least 15 calendar days after the Board receives the report from DER.

X.xx.090 Public hearing on issuance of Export permit

At the hearing, the applicant shall be entitled to present any relevant evidence supporting his/her application. The Board may request any additional information it deems necessary to further evaluate the application and issue its decision. The Board shall also hear relevant evidence presented by the public and County staff, including effects the

proposed project would have on groundwater quality, the hydrology of the aquifer or aquifers, and any neighboring wells.

X.xx.100 Granting of conditional authorization

A. The conditional authorization may only be granted where the Board, after having reviewed the evidence presented, finds and determines that the project will not adversely affect the aquifer or neighboring wells and after full consideration of the potential environmental effects, as set forth in CEQA. The Board may impose conditions upon the permit to prevent overdraft and well interference, including establishing permitted export and extraction volumes, metering of the recharged water as well as the exported and extracted water and annual reporting. The Board may also impose conditions requiring observation and/or monitoring of permitted and neighboring wells, and other environmental controls that it deems necessary to safeguard the health, safety and welfare of the people of the County. The decision of the Board is final.

X.xx.110 Review of Export Permit.

A. The Export Permit granted pursuant to this chapter will have a term of up to five years, and shall be subject to staff review. At the County’s discretion the Export Permit may be issued for more than five years upon the applicant’s request and showing of good cause.

B. It may be renewed as long as the conditions that led to the initial authorization remain in effect.

C. At any time that DER determines an overdraft or well interference is occurring, the permit may be amended to decrease the amount of water allowed to be extracted or other conditions imposed to address the overdraft or well interference.

D. Said decision by DER may be appealed to the Board.

X.xx.120 Appeal of Export Permit

A. Any interested party may challenge the Director’s decision re issuance of an Export Permit during the term of the permit when evidence exists that:

1. Groundwater extraction is causing well interference, or
2. There is a violation of the conditions of the permit, or
3. The conditional authorization was not issued in accordance with the procedural requirements of this chapter, or
4. Extraction of groundwater pursuant to the Export 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 storage or transmission of groundwater, or
 - (iv) Exceeds the safe yield of the groundwater basin or a portion thereof, or

(v) Results in an injury to a water replenishment, storage, or restoration project operating in accordance with statutory authorization.

B. An appeal pursuant to this section is commenced by filing a written request with the Director of DER that describes the supporting facts of the appeal. Once the Director receives an appeal, the Director shall, within 15 calendar days of receipt, give notice of the appeal to the Board, the Exporter, the Appellant, and to any interested party who filed a written request for such notice within the past twelve months. A Board review shall be held on the matter following the procedures set out in Sections XXXXX of the County Code. The recommendations and decision may be to deny the challenge, grant the challenge and terminate the Export Permit, or to establish modified conditions to the permit. The decision of the Board is final.

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

X.xx.130 Inspection

A. The Director of DER, or his or her representative may at any and all reasonable times enter any and all places, property, enclosures and structures used for a water transfer/export operation, or groundwater banking for the purposes of inspection.

X.xx.140 Violation-Criminal penalty

A. Any person who violates any provision of this chapter, or the terms and/or conditions of any conditional authorization issued pursuant to this chapter, 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 the original offense.

X.xx.150 Severability.

A. 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.