

November 3, 2022

Via E-mail to Tennis.Wick@sonoma-county.org

Tennis Wick
Director
Permit Sonoma
Sonoma County
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Recommended Principles for Public Trust Well Ordinance Technical Advisory and Policy Committee

Dear Mr. Wick:

Our understanding is that the County intends to create a Technical Advisory Committee (TAC) and a Policy Committee to develop recommendations for the content and implementation of an amendment to the well ordinance to address impacts to public trust resources in surface water. We believe the main purpose of the TAC and Policy Committee should be to establish a science-based program for incrementally and adaptively (a) identifying public trust resources, (b) assessing potential impacts to public trust resources from groundwater well permits, and (c) and establishing criteria to ensure that well permits do not cause or exacerbate a substantial adverse impact on public trust resources of navigable waters. We further recommend that in pursuing that goal, the TAC and Policy Committee should be guided by the following basic principles:

1. The TAC's and Policy Committee's analyses should be based on a clear understanding of the pathways by which groundwater extraction can affect public trust resources in navigable waterways.

This can happen in at least two ways:

- (i) by reducing flows in navigable waterways, and thereby impairing the ability of those navigable waterways to support one or more public trust uses;
- (ii) by reducing flows in non-navigable tributaries that provide habitat for aquatic life that support public trust uses in the mainstem; for example by de-watering tributaries that provide spawning or rearing habitat for fish that are found in the mainstem at other times of year.

Given the natural environment of Sonoma County, pathway (ii) is likely to be the more significant concern. This is because in the dry season, when streamflows are naturally lowest, sensitive species such as salmonids tend to inhabit smaller perennially-flowing tributaries where temperatures are cooler, and water quality is higher. For these reasons, we believe a major focus of the committees' work should be on protecting tributary streams that support salmon, steelhead, and other key species that are the basis for the mainstem fisheries.

2. The committees should focus efforts to achieve the above stated purposes on the areas and times of highest potential risk. That is, the committees should focus on the geographic areas and seasons and/or climatic conditions when groundwater extraction is most likely to affect surface flows in a way that impairs public trust uses. This will depend on factors including:

- (i) The degree of connection between ground and surface water in a specific area, and the rate of groundwater flow;
- (ii) The sensitivity of the public trust resources potentially affected by groundwater extraction;
- (iii) The degree to which the affected streamflows have already been impaired by past actions;
- (iv) Time of year: the primary focus should be on the dry season when streamflow is lowest, human water demand is highest, and sensitive resources are most at risk.

3. The TAC should develop a clear description of the analytical methodologies that will be used to determine whether a proposed well will cause or exacerbate a substantial adverse impact on public trust resources, and what information applicants will be required to submit to enable that determination. The TAC should also describe the circumstances or geographic locations where an impact determination for an individual well may not be feasible due to insufficient data, analytical tools or other factors. In such cases, the TAC should identify existing studies underway or planned to address the data gaps (e.g., Groundwater Sustainability Agency studies) or recommend the studies and methodologies needed to address these factors (e.g., need for a watershed- or basin-scale hydrogeologic model). The TAC should also identify factors other than groundwater extraction that should be considered in well permit impact analyses, such as channel incision causing groundwater depletion. The Policy Committee should consider the TAC's findings and recommendations regarding data gaps and need for additional study when providing phased implementation and mitigation recommendations.

4. The TAC should recommend well permit avoidance or mitigation measures that are meaningful, economically and technically practical, and commensurate with the well's potential substantial adverse effect on streamflow- and groundwater-dependent public trust resources. To the extent mitigation measures are proposed as a tool for offsetting the impacts of proposed wells, the TAC should ensure both that those measures are meaningful – that is, they will produce benefits that are proportional in magnitude and timing to the potential effects of the proposed well – and that they are practical for applicants to implement and for the County to enforce. To the extent onsite mitigation measures may be infeasible or ineffective (e.g., measures to increase infiltration and groundwater recharge), the TAC and Policy Committee should recommend opportunities for offsite mitigation.

5. When developing recommendations, the committees should consider how wells are regulated by other agencies, including wells that divert surface water under the supervision of the State Water Resources Control Board (wells that divert "Russian River underflow" are regulated in the surface water right priority system and are subject to water right curtailments) and wells regulated within a SGMA Groundwater Sustainability Plan (Petaluma Valley, Santa Rosa Plain, and Sonoma Valley).

6. The committees should consider a phased approach for implementing permitting requirements, based on the availability of sufficient technical information to enable a public trust analysis. In some areas of the County, sufficient technical information likely exists now to enable a determination of how proposed wells may affect surface water, and how those impacts can be mitigated. In other areas,

additional information will need to be gathered and analyzed. The TAC should consider recommending a phased approach that makes new permits available in some areas before others, depending on the adequacy of existing information. At the same time, there should be a plan for resolving technical uncertainty within a reasonable and definite time period, to avoid creating a de facto perpetual moratorium. The phased implementation may defer to other agencies' existing regulation of wells (e.g., State Water Board regulation of surface water wells) and planned studies (e.g., Groundwater Sustainability Agency planned studies of interconnected surface water).

7. The committees should require meter installation as a best practice for all new and replacement wells. Meters are a relatively low-cost item that can encourage conservation and enable better future water management even where no program currently exists for reporting and using data.

8. The committees should evaluate and recommend criteria for permitting "replacement wells" in a way that ensures replacement wells are substantially similar to the wells they are replacing in terms of depth, distance from streams, and substrate, and also in terms of the amount, purpose, and location where the extracted groundwater is used.

9. The Policy Committee should identify a strategy for complying with CEQA in a way that does not require discretionary review of individual well permitting decisions. The most obvious path for CEQA compliance is a robust mitigated negative declaration for the ordinance as a whole, establishing protective conditions in advance. Any permitting decisions that comply with those programmatic protective conditions would not require additional CEQA review. Conversely, any decisions relying on different conditions would be considered discretionary and subject to additional CEQA analysis.

Sincerely,

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