



Ventura County Coalition of Labor, Agriculture and Business

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October 27, 2014

Ventura County Board of Supervisors
800 S. Victoria Avenue, L#1920
Ventura, CA 93009
Transmitted via email

RE: Letter in Opposition to Supervisor Bennett's "Urgency Ordinance" imposing a Moratorium on new water wells in Ventura County (Agenda Item 28, 10-28-14)

The Ventura County Coalition of Labor, Agriculture and Business (VC CoLAB) represents over 350 members throughout the county, including many agricultural and industrial businesses and rural residents who will potentially be impacted by this ordinance. These businesses are struggling to manage many difficult issues including water quantity and quality, pest management, labor and increased regulation. In a show of support for the agricultural industry and the jobs and food they provide, we urge you to vote no on this agenda item.

First and foremost we find that the circumstances do not qualify as urgent. The recent drought that is being used as justification for the ordinance has been developing over months and years and there is inadequate reason for this action without proper notice and stakeholder input. In fact, we believe that this is a breach of confidence with the agricultural community and if passed at this time will damage an important relationship, weakening the partnership that is critical to keeping agriculture successful for the long term in this county.

As an alternative, we recommend that the Board of Supervisors, and the county agencies they oversee, become part of the solution to the cyclical problems produced by extended droughts. Solutions will require the proactive encouragement and funding of new projects to infiltrate, collect, store and treat water for the benefit of all water users from the inevitable storms to come. In this way, the efforts of all residents, including agricultural, to conserve water through investment in technology and better practices will achieve the balance between water extraction and safe yield, the goal that we are seeking.

The reasons and analysis of our opposition to this ordinance are as follows:

The Ordinance lacks reasonable arguments to justify its urgency:

Points being used to justify urgency are overstated with respect to declining groundwater levels and increased pumping which are indicative of drought conditions. Drought is a historical occurrence in Ventura County every ten to fifteen years. The fact that drought conditions in the Ojai Valley have caused an increased demand in water from Lake Casitas is to be expected and is the purpose for having such a storage reservoir. Additionally, note that the proposed ordinance extends to groundwater basins

in the County that are not in an overdraft condition. For example, County staff, in its role as staff for the Fox Canyon Groundwater Management Agency, has stated in writing that, despite declining water levels, the East Las Posas Basin is not in an overdraft condition.¹ Yet, that basin, and others like it in the County, is still subject to the County's proposed ordinance, which would apply the moratorium to all basins within the identified watersheds without consideration of such basin-specific information.

Statement B.1.e states the purpose of the ordinance and is indicative of the tone of the language: *"To decrease the likelihood that people will further tap stressed groundwater supplies to avoid restrictions and conservation efforts being made by water districts"*. This reflects the lack of confidence in farmers who have been fully participating in the efforts to reduce water use in basins with a Groundwater Management Agency. It also misunderstands that water districts have boards that include representative users, including farmers, and *"restrictions and conservation efforts"* are approved by these boards in a transparent manner. In contrast, this action usurps the process, taking a position that agency staff and elected officials should decide these matters without stakeholder input.

Statement B.2.g of the ordinance referencing the *"number of new wells permitted in Ventura County in the first 9 months of 2014 already exceed by 50% the average number of new wells in 2011, 2012 and 2013"*, is presented in a misleading way portraying farmers as increasing their water use in spite of the drought. In fact, the County Well Permit Application does not collect information to ascertain the purpose of a new agricultural well so all inferences with respect to the increase in permit numbers are speculative. In reality the majority of these wells reflect replacement, substitution for lack of delivery from the PTP pipeline, and low volume domestic supply wells. To the contrary, farmers have been investing in high-tech sprinkler systems and other practices to significantly reduce water usage as water prices rise and the availability declines.

The Ordinance has the effect of partially adjudicating water rights within Ventura County:

The proposed ordinance deprives property owners overlying groundwater basins from exercising their water rights. Overlying landowners that have not exercised their pumping rights will have those rights curtailed for at least as long as the ordinance is effective. This is contrary to California case law, which holds that overlying landowners may have rights to pump groundwater even if they have not done so in the past and that such unexercised groundwater rights may still have priority over the rights of appropriators. (See *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74.) The proposed ordinance's failure to account for water rights priorities is likely to lead to legal challenges to the ordinance.

The Ordinance will create inequities in groundwater basins based on political boundaries as opposed to water rights priorities:

The cover letter to the ordinance states: *"[S]tate law restricts the applicability of this ordinance to most actions within and by cities and special districts created by the state."* This statement appears to confirm that the County's ordinance does not apply to the jurisdictions of the cities or special districts in Ventura County. Consequently, the County's ordinance will create inequities in groundwater basins based on political boundaries as opposed to water rights priorities. For example, the City of Oxnard, which has

¹ July 11, 2014 letter from Executive Director of Fox Canyon GMA, Jeff Pratt, to Mr. Peter Goldenring, Esq., regarding Grimes Rock, Inc.'s variance request under the GMA's Emergency Ordinance E.

appropriative rights to pump, could drill a new well in the City for municipal purposes even as this ordinance restricts pumping by overlying landowners in the County in the same basin.

The Ordinance is contrary to the intent of the new state legislation:

The new state legislation specifically states that the Act will not alter groundwater rights or give local agencies the authority to make binding determinations on water rights. In fact, the county cannot regulate surface water rights issued by the Department of Water Resources (DWR) or pre 1914 rights. The denial of well permits in the proposed ordinance will potentially lead to litigation.

In fact, while the Ordinance cites the new State groundwater law as a justification for the prohibition on new wells, the State legislation actually suggests that such a moratorium is not needed. As noted, even in high and medium priority groundwater basins that have been deemed “subject to critical conditions of overdraft,” the State legislation does not require sustainability plans to be completed until 2020. Sustainability does not actually have to be achieved under those plans until 2040. The new State legislation also defines a “condition of long-term overdraft” as a period “generally 10 years or more” where the extraction of water exceeds the yield of the basin. The new legislation states that “[o]verdraft during a period of drought is not sufficient to establish a condition of long-term overdraft”. The State’s acknowledgment that drought and groundwater issues are cyclical and require long-term solutions, even for basins in overdraft conditions, suggests that an emergency moratorium is not required now.

The passage of the recent state legislation has set a mandate to create Groundwater Sustainability Agencies (GSAs) for all basins that are designated medium or high risk for overdraft and associated impacts. The model for the process in Ventura County is the Fox Canyon Groundwater Management Agency (FCGMA) which has been in effect since 1983. The FCGMA boundary contains roughly 50,000 acres of irrigated agriculture, over half of the agriculture in the county. The process to bring this basin into safe yield through stakeholder involvement is highly regarded, has resulted in self-imposed water well drilling restrictions, and as such is suggested to have been exempted from this moratorium.

Rather than imposing a blanket well drilling moratorium, the process should start with the organization of effected parties in impacted groundwater basins into entities that will become GSAs as envisioned and required by State law. In many cases, groundwater basins do not overlap with political boundaries, which may in turn affect groundwater rights within a single basin. This is a reason to wait until the GSAs, which will encompass an entire basin or multiple basins, take effect pursuant to the recent State legislation. This is especially true since the Fox Canyon and Ojai GMAs have already been called out in the State legislation as the governing sustainability agencies for basins within their respective territories.

The Ordinance must have a clear sunset definition based on the purpose and facts constituting the urgency:

This is NOT a temporary moratorium. While the restrictions may be lifted in certain basins upon future events, such as the adoption of a groundwater sustainability plan pursuant to the recently-adopted State law, this ordinance states that it will remain in effect until amended or repealed. Since the groundwater sustainability plans will take years to implement (they are not due until 2020 even in high and medium priority basins that are in critical overdraft conditions), this ordinance will likely last many

years. Therefore the Ordinance will likely outlast the length of the drought condition used to justify its purpose.

The Ordinance as proposed is not exempt from CEQA:

The County must support its CEQA exemption determinations with actual evidence and not just conclusory statements. The CEQA exemptions relied on by the County fail to note that the County's action will increase reliance on imported water. That reliance has its own environmental consequences (Delta impacts, energy-related impacts (such as increased air quality emissions²) associated with importing the water) which have not been studied by the County.

Additionally, generally speaking, CEQA requires an agency to consider impacts on agricultural resources, including the loss of farmland. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 733.) The County has also failed to examine these potential impacts from the proposed ordinance, which may require agricultural land to be fallowed or underutilized. The failure by the County to examine the adverse impacts of this ordinance precludes application of the exemption found in CEQA Guidelines section 15061(b)(3), which requires "certainty." (*California Unions for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225, 1245-46.)

CEQA Guidelines section 15307 and 15308 are categorical exemptions that apply when a project is designed to benefit the environment. However, "[e]ven a new regulation that strengthens some environmental requirements may not be entitled to an exemption if the new requirements could result in other potentially significant effects." (*California Unions for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225 [rejecting Class 8 categorical exemption for a rule encouraging road paving to reduce dust emissions]; *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 [rejecting a Class 8 categorical exemption for an AQMD rule that "required new control measures for the emission of volatile organic compounds (VOC) from paint and other 'architectural coatings'"].) Because the County's proposed ordinance will have potentially adverse environmental impacts, it is not exempt from CEQA under Guidelines sections 15307 or 15308.

The language does not clearly exempt the FCGMA from being subject to the Ordinance:

The cover letter states that the proposed ordinance "exempts those areas covered by the Fox Canyon GMA." However, this intent is not clearly manifested in the ordinance itself. Section 2 of the ordinance ("Applicability") is lacking a clear statement that the ordinance is not applicable to the Fox Canyon GMA territory. Instead, the proposed ordinance relies on a process by which the Fox Canyon GMA may approve a well permit for processing (Section 4826.2(D)). It should be noted that this determination will essentially also be made by County staff.

The Ordinance does not have specific waiver criteria to preclude a discretionary process:

The Ordinance section on "Waivers of the Water Well Permit and Permit Prohibitions" gives discretionary authority to the Director for determinations as it lacks clear standards. Such a process will trigger a CEQA analysis which creates a high, if not impossible, threshold for granting waivers.

For the aforementioned reasons, we find the proposed "Urgency Ordinance" to be unnecessary, harmful and not helpful in achieving a significant reduction in groundwater pumping. We challenge the Board of

² <http://www.latimes.com/local/lanow/la-me-ln-la-residents-can-do-more-to-wean-itself-off-of-costly-imported-water-activists-say-20140809-story.html> ; <http://www.theclimateregistry.org/downloads/2013/10/California-Water-Energy-Climate-Nexus.pdf>

Supervisors to become a part of the solution, promoting agriculture as the treasured resource that it is by committing to fund new projects to infiltrate, collect, store and treat water from the inevitable storms to come, for the benefit of all county water users. Again, we urge the Board of Supervisors to vote no on this agenda item.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Gray Jensen". The signature is fluid and cursive, with the first name "Lynn" being the most prominent.

Lynn Gray Jensen
Executive Director

VC COLAB Board of Directors: Richard Atmore | Harry Barnum | Tim Cohen | John Hecht | Jurgen Gramckow | John Lamb | Patrick Loughman | David Martinez | Neal Maguire | Matt Meyring | Kioren Moss | Jack Poe | Bud Sloan | Alex Teague | Patty Waters