# Staff Report

Meeting Date: August 3, 2021

To: Siskiyou County Board of Supervisors

From: Kirk Skierski, Planning Director

Subject: Groundwater Extraction for Use Off-Site Ordinance

## Background

In Siskiyou County, groundwater is an essential resource for domestic, municipal, agricultural, commercial, and industrial uses. It is also a resource essential to the continued agricultural production and economic vitality of the County. In addition, it is an essential resource for the environment, and for the plant and animal species that inhabit Siskiyou County and make it a desirable outdoor tourist destination.

Staff has received complaints about groundwater being extracted from local wells and then delivered to illegal cannabis cultivation sites. In addition, the public has complained that properties are operating as water extraction and distribution centers that are more in line with industrial uses due to the amount of vehicle trips, onsite storage and parking of heavy vehicles, adjacent water wells going dry due to massive amounts of groundwater extraction, and other associated impacts from an industrial level of water extraction and distribution. Due to this, staff is recommending amendments to the County Code to add a ministerial administrative permit process for extraction of groundwater for off-parcel use to ensure extraction for off-parcel use is incidental to a lawful activity and is for land uses consistent with a parcel’s underlying zoning designation.

Groundwater wells are intended for on-site, permitted uses. Other land uses that involve the extraction and distribution of groundwater off-site must comply with the provisions of the County’s Zoning Ordinance, Chapter 6 of Title 10. Water purveyors, water bottlers, and bulk water fill stations may not operate in all zoning districts and are limited to operating on industrial zoned property. As a general matter, the primary or consistent use of property for groundwater extraction and distribution for use off-site may result in significant impacts to a property and its surroundings. The use of property in this manner must go through the appropriate permitting process and associated environmental review before being initiated. Staff recognizes well owners will have an occasionalinstance of groundwater extraction for use off-site for water-well construction or other approved development activities utilizing groundwater for dust abatement purposes; however, this type of occasional use is not anticipated to negatively impact a property or its surroundings and would be expected to maintain compatibility with a property’s zoning and surrounding properties.

## Analysis

The proposed Ordinance would establish a ministerial permitting process required for groundwater extraction for use off-site from the parcel it was extracted. As previously mentioned, the intention of the administrative permit is to ensure appropriate use of groundwater extraction activities/land-uses in relation to a property’s underlying zoning, and appropriate land-use of extracted groundwater, including compliance with local and state regulations.

The proposed Ordinance includes exceptions to the permitting requirements such as extraction of water for the purposes of supplying a "public water system," a "community water system," a "noncommunity water system," or "small community water system" as defined by the Health and Safety Code, serving residents of the County of Siskiyou. There is also a permitting exemption for emergency services and replenishment of a permitted well.

During the July 6, 2021, Board of Supervisor’s meeting, staff proposed revisions to the Ordinance and recommended the Board review the proposed Ordinance and open the public hearing as the first reading. The revisions staff proposed included an additional permitting exemption for activities in which a “license” or “permit” is obtained from a public entity, which the Board of Supervisors would specify by resolution. It is staff’s understanding this resolution would be brought to the Board of Supervisors for consideration during the regularly scheduled Board meeting of August 10, 2021. The other revisions staff proposed was an ordinance review after three years to analyze the effectiveness, enforceability, and feasibility of the Ordinance.

## Environmental Review

Staff recommends that the Board of Supervisors determine the proposed Ordinance exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to CEQA Sections 15061(b)(3), 15307, and 15308. The proposed Ordinance consists of establishing a ministerial permitting process for extraction of groundwater for use off-site from which it was extracted and can be seen with certainty that there is no possibility of a significant effect on the environment from the adoption of this Ordinance, as the Ordinance does not itself prohibit or authorize groundwater extraction for any particular parcel or project including the associated land uses. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to further environmental review.

In addition, staff recommends the Board of Supervisors determine the proposed Ordinance to be categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 CCR § 15308, (regulatory activity to assure protection of the environment) and Class 7 Categorical Exemption, 14 CCR § 15307, (regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources) because the proposed Ordinance, both in its intentions and as written, clearly meets the definitions of the above identified categorical exemptions, which the Secretary of the Natural Resources Agency has found do not have a significant effect on the environment.

During the July 6, 2021, Board of Supervisors meeting, a public comment was received from John Kinsey with the law firm of Wanger Jones Helsley PC, which essentially claimed the recommended categorical exemptions are not appropriate and the proposed Ordinance should be subject to an Environmental Impact Report (EIR). The comment letter appears to suggest the proposed Ordinance is 1). An effective ban on use of groundwater in certain areas; 2). The “common sense” exemption is not appropriate; 3). The use of Class 7 and Class 8 exemptions are not appropriate; and 4). The Ordinance has potential to cause significant environmental impacts. Staff has provided further details in response to these contentions as follows:

1. Ordinance is an effective ban on use of groundwater in certain areas

The commentor alleges that customers of water sales needing to demonstrate zoning compliance is an effective ban on use of groundwater and no permits will be issued. The Community Development Department and Public Works Department have already begun issuing permits to operators under Urgency Ordinances 2021-07 (Groundwater Extraction permitting) and Urgency Ordinance 2021-08 (water truck permitting). The proposed Ordinance, which will modify the existing Ordinance 2021-07, creates a permitting procedure and does not, as a general matter, ban use of groundwater. Individuals throughout Siskiyou County would still be able to maintain land uses and activities that are currently authorized by the County’s existing Zoning Ordinance.

Land-uses that are receiving groundwater fall under the County’s police powers to ensure the land-use and land-use activities are in compliance with the property’s underlying zoning designation. The land uses and activities associated with delivered groundwater are directly connected to the use of the land and subject to zoning consistency. Demonstrating zoning consistency is straightforward and is similar to the building permit process in which applicants identify the intended use of a proposed structure that is verified for zoning consistency prior to building permit issuance.

1. The “common sense” exemption is not appropriate

The commentor suggests, without factual support, that the proposed Ordinance would result in lack of water in communities dependent upon water deliveries. The commentor specifically identifies that the Ellison Ranch provides their personal groundwater to outside individuals. It is unclear if the Ellison Ranch supplies water from their agricultural well, which is non-potable and not intended for human consumption, or from their domestic well.

As noted above, this Ordinance merely creates a regulatory process, and it is anticipated that groundwater extractors and water haulers in the County will seek to comply with the permitting requirements as evidenced by the permits already issued.

Staff reviewed the County’s potable water haulers and determined that there are only three licensed potable water haulers within Siskiyou County (approximately 6,200 square miles). These water haulers are identified on the California Department of Public Health’s (CDPH) website. CDPH has specific requirements for the delivery of potable water intended for human consumption to ensure appropriate health and safety standards are met. Staff spoke with the three licensed water haulers and learned that only one water hauler operator currently provides potable water deliveries to approximately four county customers. The other two water hauler operators are only working with State and/or Federal agencies and not engaging in potable water deliveries. Based on the fact that only a handful of customers in the County receive potable water from a state-licensed water hauler, the commentor’s allegation that communities within Siskiyou County rely on water deliveries for human consumption is unfounded and appears to be an unsubstantiated opinion. Further, the commentor’s argument is based on the unsubstantiated opinion that these communities are receiving groundwater for human consumption as opposed to spring water or other water sources, which would not be subject to the permitting process established by the proposed Ordinance.

One reason communities in Siskiyou County do not rely on potable water deliveries for human consumption is that it is unlawful for individuals to reside on properties in Siskiyou County without a permitted residential dwelling, on-site water well, and septic sewage system.

The commentor further alleges that the Ordinance would result in impacts to the environment, including to agriculture and forestry resources, geology and soils, hydrology and water quality, population and housing, public services, transportation, and wildfires, but provided no evidence of said impacts nor raised any reasonable questions as to how the permitting process would result in impacts. To specifically address the seven items of alleged areas of potential impacts, staff has broken them down by topic as follows:

**Agricultural and Forestry Resources**:

The commentor alleges the proposed Ordinance would result in the conversion of agricultural land to a non-agricultural use. Once again, this proposed Ordinance would not ban the use of groundwater and individuals would still be able to engage in water extraction for off-site use as demonstrated by the number of permits issued to date. The conversion of agricultural land to a non-agricultural use could only be accomplished by obtaining Zone Change Application approval to change an agricultural zoning district to a non-agricultural zoning district. There is no evidence to support the inference that individual property owners would change the underlying agricultural zoning district of their property to a non-agricultural zoning district rather than comply with the proposed Ordinance’s ministerial permitting procedures, and/or continue to irrigate from an on-site source, which is not regulated by the proposed Ordinance.

**Geology and Soils:**

The commentor alleges that there are a large number of irrigators that rely on water deliveries for watering their crops and the Ordinance would result in impacts to geology and soil. However, this appears to be an unsubstantiated opinion as County records, including well records, reflect that county agricultural operations commonly construct one or more on-site water wells, include on-site irrigation canals, access/rights to surface water, or are provided water through irrigation districts for watering of their crops. As a practical matter, an operator’s sole reliance on water deliveries would be a costly business practice and is not a common occurrence for legitimate agricultural operations in Siskiyou County. However, once again, to the extent any such agricultural operations exist, it is anticipated that these operators would still be able to obtain water deliveries since the proposed Ordinance would only create a ministerial permitting process. This Ordinance would not apply to delivered water that is obtained from another jurisdiction, groundwater obtained from a contiguous parcel under the same ownership/management, or from surface water, nor to groundwater extractions that are subject to existing permitting requirements (adopted in 1998) for groundwater extracted for use outside of the basin from which it was extracted.

**Hydrology and Water Quality:**

The commentor alleges the Ordinance’s permitting process would effectively ban use of groundwater and claims groundwater recharge would be negatively impacted. As noted above, the Community Development Department is actively permitting well owners under the existing urgency ordinance, and thus the ordinance permitting process, which verifies zoning consistency, clearly does not ban use of groundwater off-site. Again, agricultural uses that receive water from other jurisdictions, surface water, groundwater obtained from a contiguous parcel under the same ownership/management, or from existing permits for groundwater extractions for use outside of the basin from which it was extracted would be unaffected by the proposed Ordinance.

In regards to recharge, the commentor appears to consider the potential impacts of reduced water use on illegal cannabis cultivation. However, in Siskiyou County the vast majority of illegal cannabis cultivation is not cultivated in the ground but rather cannabis plants are grown in bags, totes, or some other form of moveable container. These growing conditions do not allow for water to go into the ground and back into the aquifer. Essentially, the exact opposite occurs in that groundwater used for illegal cannabis cultivation is generally taken out of the aquifer and is not allowed to recharge/replenish the groundwater aquifer it is was taken out of.

The proposed Ordinance creates a permitting process that is protective of natural resources and would allow County staff to guide applicants to other appropriate permitting procedures. For example, some applications under the existing urgency ordinance have proposed to take groundwater out of a State identified priority groundwater basin, which are identified in the current edition of the California Department of Water Resources' Bulletin No. 118. This activity falls under other existing permitting requirements (adopted in 1998) for extraction of groundwater for use outside of the basin from which it was extracted. Under the existing urgency ordinance, staff has thus been able to educate applicants on the different extraction permits or zone changes that would be necessary for their activities, further assuring the protection and maintenance of the environment and a natural resource.

**Population and Housing**

The commentor appears to suggest that the proposed Ordinance establishing a ministerial permitting process would result in a substantial increase in population. However, the content of the argument provides no evidence of increases to the existing population and only addresses speculative movement of the existing population.

Once again, housing development requirements in Siskiyou County already require construction of on-site water well to reside on a property. The State of California requires basic infrastructure such as water in order to ensure basic health and safety of its residents. Development is required either to “prove” sufficient access to groundwater that supports the proposed development or the ability to connect to a municipal/CSD water service in order to obtain development approval. No reasonable question has been raised that the proposed Ordinance would lead to a substantial increase in population or substantial migration of existing populations.

**Public Services**

The commentor appears to suggest that this Ordinance would lead to a large migration and result in increased needs of public services including fire and police protection and schools. As discussed above, the proposed Ordinance would establish a permitting process for the extraction of groundwater for use off-site and it is anticipated that persons would merely comply with the permitting process.

The development of property in Siskiyou County already requires a property owner to either install on-site well and septic systems or connect to municipal/CSD services. All proposed development is reviewed by County staff to ensure on-site systems are adequate for the proposed development or demonstrate that municipal/CSD services have sufficient capacity for the proposed development.

All proposed development is reviewed by public service providers and includes development fees to ensure these public services can be adequately provided. No reasonable question is raised about this Ordinance increasing proposed development. Nonetheless, it should be noted that if development increased in any part of the county, the development process ensures that county service providers would see an increase in the fees they collect, which would better enable them to provide adequate services since. Currently services such as police, fire and schools are being provided to areas that do not have legally established developments, and thus, do not receive development fees and/or tax assessments for those public services.

**Transportation**

One of the commentor’s main contentions is that this Ordinance would result in a ban effectively stopping deliveries of groundwater to properties throughout the county. However, the commentor’s transportation argument contradicts that argument and speculates that this Ordinance would result in an increase in traffic and water deliveries. The commentor suggests that individuals would avoid the ministerial permitting process, which has no fees associated with the permit, in order to receive water deliveries of 100-gallons or less. It is unclear as to why individuals would avoid the permitting process in-lieu of “personally travel[ing] farther and more often to obtain water, or to hire more frequent, smaller truck deliveries”. These would significantly increase costs to individuals that the commentor characterized as “not fortunate enough to have – or be able to afford to drill – a private well”. It is unlikely that individuals would choose the option leading to increased costs and more frequent deliveries. Lastly, the comment letter states that thousands of individuals currently receive water deliveries but does not provide any evidence or expert opinion as to why this Ordinance is likely to result in an increase in transportation other than the implied belief that individuals would avoid the permitting process for more frequent deliveries. Again, the proposed Ordinance does not apply to delivered water from other jurisdictions, obtained from a contiguous parcel under the same ownership/management, or surface water, and those vehicle trips would remain unchanged.

**Wildfires**

The commentor argues that the proposed Ordinance could result in increased wildfire risk due to the inability to water landscaping surrounding the property and lack of water for private property owners to fight fires. The proposed ordinance would not ban the delivery and/or use of groundwater on properties throughout Siskiyou County, but rather would create a permitting process. Again, the proposed Ordinance does not apply to individuals to obtain water from other jurisdictions, groundwater obtained from a contiguous parcel under the same ownership/management, or from surface water. Development in accordance with local and state law would allow for the ability to water landscaping. In addition, development is reviewed by CalFire to ensure compliance with fire safe regulations such as Public Resource Code (PRC) Sections 4290 and 4291. Property owners would still be able to adequately prepare their properties to achieve the requirements of said PRC 4290 and 4291, which currently include requirements relating to fuel breaks, defensible space, non-combustible building materials, etc. No reasonable question has been raised that the proposed permitting process would increase wildfire risk; rather the commentor offers speculation that the Ordinance would result in property owner’s inability to water landscaping.

1. The use of Class 7 and Class 8 exemptions are not appropriate

The Class 7 and Class 8 exemptions are very similar; they exempt actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Specifically, at issue here is the meaning of the phrase “actions to assure the maintenance, restoration, or enhancement” as it is used in those exemptions.

Case law is instructive as to which actions fall within these exemptions, and which do not. The prohibition of an activity that evidence shows is associated with environmental problems such as the contamination of farmland, constitutes an action to assure protection of the environment. It should be noted that within the last several years the County has seen farmland and agricultural operations be converted into non-agricultural uses specifically used for illegal cannabis cultivations, including the illegal conversion of Williamson Act properties. The proposed Ordinance would establish a ministerial permitting process that would verify zoning consistency, and at times, Williamson Act consistency to ensure the protection and maintenance of the county’s agricultural lands and one of the county’s most important natural resource. By contrast, actions that remove existing wildlife protections, authorize and regulate hunting, or relax existing environmental safeguards do not assure the maintenance, restoration, or enhancement of the environment do not fall within the exemptions.

These legal guideposts indicate that consistent with its plain language, the phrase “actions to assure the maintenance, restoration, or enhancement” embraces projects that combat environmental harm, but not diminish existing environmental protections, which the proposed Ordinance clearly demonstrates through establishing a ministerial permitting process to verify zoning consistency, consistency with local and state laws, and consistency with the goals of the State and County’s Williamson Act policies. The commentor argues that the use of these categorical exemptions is inappropriate, citing *Save Our Big Trees v. City of Santa Cruz,* but the facts of that case opposite. The City of Santa Cruz essentially deregulated the removal of certain heritage trees, while also including additional regulations for the protection of heritage trees. Clearly the proposed Ordinance does not include any actions that would remove existing protects or environmental safeguards.

1. The Ordinance has potential to cause significant environmental impacts

The comment letter goes into further detail relating to the seven areas of potential impacts discussed in sub-section “2” above under the belief that the proposed Ordinance would result in deprivation of water. The letter accurately identifies that an agency’s exemption determination is based on the fair argument standard supported by substantial evidence. In the CEQA context, substantial evidence “means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts but not argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.

All contentions within the comment letter do not raise any legitimate questions because most of its arguments (on population and housing, and services, etc.) are vague and speculative, and rely on misconstruing the nature of the proposed Ordinance. There is no demonstration of facts, expert opinion, or reasonable assumptions supported by facts that reasonably support any of the commentor’s assert conclusions about impacts that would result from the proposed Ordinance. The proposed Ordinances create a ministerial permitting procedure for certain activities and do not, as a general matter, completely ban those activities. Thus, for example, the Ordinance would not be expected to result in conversion of farmland to non-agricultural use; rather it would be assumed that agricultural operators would obtain permits to continue their activities. Keeping in mind that certain water deliveries are exempt from obtaining the permit.

**Conclusion**

The commentor’s claims, while at times contradictory, is that the proposed Ordinance, which would establish a ministerial permitting process, would lead to a ban on the use of groundwater and affect thousands of individuals currently supported by groundwater extraction and delivery resulting in significant environmental impacts. However, there has been nothing provided within the letter to reasonably support any of these claims. The letter also ignores that existing laws already independently prohibit the activities the firm describes such as operation of a water fill station and distribution center within the agricultural zoning districts and persons residing in unpermitted structures on undeveloped property without a well and sewage system. Further, the proposed Ordinance would create a ministerial permit for intra-basin movement of water and does not apply to movement outside a State designated priority basin, which already requires permit approval under Article 3 of Chapter 13 of Title 3 in Siskiyou County Code. The notion that a ministerial permitting process that ultimately verifies zoning consistency would lead to significant environmental impacts is unfounded and unsupported.

**Exceptions to Exemptions**

CEQA Guidelines Section 15300.2 outline certain factors or conditions that can preclude the use of categorical exemptions. There is no substantial evidence that the proposed Ordinance involves unusual circumstances, including future activities, resulting in or which might reasonably result in significant impacts which threaten the environment. Staff has provided further detail of the proposed Ordinance and existing conditions to demonstrate that a categorical exemption may be appropriate. The exceptions that could preclude the reliance on a categorical exemption pursuant to Section 15300.2 of the CEQA Guidelines are:

1. **Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.**

The proposed Ordinance would establish a ministerial permitting process that is intended to verify compliance with existing zoning regulations and local and State regulations. The proposed Ordinance does not itself prohibit or authorize groundwater extraction for any particular parcel or project. The proposed Ordinance has no effect on “location” in that land use regulations under the County’s existing Zoning Ordinance would remain unchanged and unaffected. The County’s Zoning Ordinance, which sets forth regulations for appropriate land uses dependent on the underlying zoning designation, has gone through the appropriate approval process including environmental review. The proposed Ordinance would essentially provide a zoning verification and consistency process.

1. **Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.**

CEQA review considers the whole of an action including potential cumulative impacts that may result from a project. As demonstrated within this staff report, the proposed Ordinance does not authorize any new land uses or changes existing allowed land uses. Rather, the project establishes a permitting process to ensure land uses are consistent with local and state regulations. Therefore, there would be no cumulative impacts that would result from the proposed Ordinance.

1. **Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.**

The proposed Ordinance does not prohibit or authorize groundwater extraction for any particular parcel or project or authorize activities, which are currently regulated by the County’s existing Zoning Ordinance and would remain unaffected by the proposed project. A comment letter received alleges that the proposed Ordinance would result in significant effects to the environment, specifically increases in population/population migration, negative impacts to geology and soil, conversion or loss of agricultural lands, etc. However, the letter provides no evidence or reasonable arguments supporting these opinions, and it is unclear how a ministerial permitting process that essentially verifies zoning consistency and consistency with existing local and state regulations would result in a significant effect to the environment. Once again, the proposed Ordinance does not authorize or prohibit groundwater extraction, or associated land uses.

1. **Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.**

There are no officially designated state scenic highways within Siskiyou County and the proposed Ordinance would not have any impacts to scenic resources because it would establish a permitting process for groundwater extraction for use off-site from which it was extracted from. In addition, the proposed Ordinance would not result in any new development that would impact existing scenic resources.

1. **Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.**

The proposed Ordinance would not have any impacts on any hazardous waste sites because it does not authorize or create a permitting process for land uses on or near hazardous waste sites. The project would establish a permitting process for groundwater extraction for use off-site from which it was extracted from. Land uses on or near hazardous waste sites would still be required to comply with existing local, state, and federal regulations.

1. **Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.**

The proposed Ordinance would not have any impacts on any historical resources because it would establish a permitting process for groundwater extraction for use off-site from which it was extracted from. The proposed Ordinance would not result in any new development that would impact existing historical resources.

## Fiscal Impact

The creation of the proposed permitting process would require staff time for in-take, review, issuance of approval or denial, and archiving of application records. It is anticipated to take approximately 1-4 hours over an average of 1-3 days per permit application depending on the quality of application submittals and responsiveness of applicants.

## Recommendation

Staff recommends the Board of Supervisors adopt the proposed Ordinance establishing a ministerial permitting process for the extraction of groundwater for use off-site from the parcel it was extracted from and determine the proposed Ordinance exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15061(b)(3), 15307 and 15308.

Should the Board of Supervisors find merit in adopting the proposed Ordinance, staff recommends the following motion:

I move to introduce, waive, and approve the second reading of the proposed Ordinance regarding the administrative permit required for use of groundwater off the parcel from which it was extracted and clarifying and amending Section 3-13.601 of said Chapter and Title related to fines.

## Attachments

1. Draft Ordinance, an Ordinance of the County of Siskiyou, Adding Article 3.5 to Chapter 13 of Title 3 of the Siskiyou County Code Regarding the Administrative Permit Required for Use of Groundwater Off the Parcel from which it was Extracted and Clarifying and Amending Section 3-13.601 of said Chapter and Title Related to Fines
2. Comment letter from John Kinsey with the law firm of Wanger Jones Helsley PC, received via email on July 6, 2021