

ORDINANCE NO.

AN UNCODIFIED ORDINANCE OF THE SISKIYOU COUNTY BOARD OF SUPERVISORS TEMPORARILY RESTRICTING NEW PRODUCTION WELL PERMITS, WITH SPECIFIED EXEMPTIONS, IN THE SCOTT VALLEY WATERSHED PENDING THE COUNTY'S FURTHER STUDY AND CONSIDERATION OF REGULATIONS

The Board of Supervisors of the County of Siskiyou does ordain as follows:

SECTION 1. Findings.

The Board of Supervisors makes the following findings in support of the enactment of this ordinance:

- A. Pursuant to Article XI, section 7, of the California Constitution, the County may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
- B. The Board of Supervisors finds that there is a current need to temporarily prohibit the acceptance of applications for, and the issuance of, new production well permits within all of the unincorporated territory of Siskiyou County subject to the Scott Valley Area Plan, as shown on the map attached hereto as Exhibit A, incorporated herein by reference. This finding is based on all the following facts:
 - 1. Courts in California have held that Siskiyou County, as a political subdivision of the state of California, has an obligation to consider impacts to public trust resources in the Scott River, such as navigation, recreation and fisheries, whenever the County issues a permit for a new well that, through the extraction of groundwater interconnected with the Scott River's surface waters, may substantially impair the Scott River's public trust resources. (*See Environmental Law Foundation et al. v. State Water Resources Control Board et al.*, California Court of Appeal, Third District, Case No. C083239.)
 - 2. The Siskiyou County Community Development Department, Environmental Health Division and the Siskiyou County Administrator's Natural Resources Division have committed themselves to meeting the County's public trust obligation and have been working with consultants Dr's. Harter and Foglia, as contracted through Larry Walker Associates ("LWA"), to identify interim solutions for obtaining data about the Scott Valley's hydrology to inform well permitting decisions.
 - 3. LWA has modeled various pumping scenarios across the watershed using a hydrologic modeling tool that LWA developed to inform well permitting decisions in the Scott Valley and to help the Environmental Health Division and Natural

Resources Division evaluate potential public trust impacts to the Scott River. This has resulted in a series of maps that delineate color-coded impact zones surrounding the Scott River.

4. These maps model impacts from the pumping of either a new domestic well or a new production well in either a year with average flows or in a dry year using data collected over a twenty-year period from 1991-2011.
5. LWA's modeling suggests that new production wells in the Scott Valley could create significant additional consumptive use in the watershed that needs to be evaluated more thoroughly for potential impact on public trust uses or values within interconnected navigable waters.
6. The County's work to evaluate potential public trust impacts to the Scott River arises at a time when the Siskiyou County Board of Supervisors has declared the existence of a local emergency throughout Siskiyou County due to drought.
7. In 2021, Governor Newsom declared a state of emergency due to drought in, among other counties, Siskiyou County. In response to the directives of the Governor's emergency drought proclamation, the State Water Resources Control Board has also implemented emergency regulations regarding minimum flows and water right curtailments for the Scott River watershed.
8. As of February 3, 2022, the U.S. Drought Monitor published by the National Integrated Drought Information System classifies 100 percent of Siskiyou County as being abnormally dry, 98.35 percent of Siskiyou County as experiencing moderate drought, 81.78 percent of Siskiyou County as experiencing severe drought, and 18.27 percent of Siskiyou County as experiencing extreme drought.
9. The groundwater basin underlying the Scott Valley has been designated as a medium-priority basin by the California Department of Water Resources ("DWR") and is subject to a Groundwater Sustainability Plan adopted by the Siskiyou County Flood Control and Water Conservation District ("Flood District") in December 2021 and submitted to DWR in January 2022.
10. This ordinance's temporary prohibitions for new production wells is consistent with the Groundwater Sustainability Plan (GSP) for the sustainable management of groundwater within the subbasin and its management action to "Avoid Significant Increase of Total Net Groundwater Use from the Basin", and is necessary for the study and implementation of other steps to further groundwater sustainability within the Scott River watershed in coordination with the Groundwater Sustainability Agency.
11. It is the intent and purpose of this interim ordinance to temporarily halt the issuance of new production well permits in the Scott Valley that, through the

extraction of groundwater interconnected with the Scott River's surface waters, may substantially impair the Scott River's public trust resources, and to enable the County to study and develop policies and regulations and other recommended actions. Absent this ordinance, applicants could continue to obtain production well permits without the guidance of regulations to be developed for protection of public trust resources and the sustainable management of groundwater within the County.

12. This ordinance has due regard for exigencies that may arise in respect to domestic water supply, agricultural production, and public agency needs by exempting certain classes of wells from the prohibitions of this ordinance under the terms specified in this ordinance. Domestic well applications and permits are not subject to the temporary prohibitions of this ordinance.
13. This ordinance is exempt from the California Environmental Quality Act (CEQA) because it is not a project under CEQA. Moreover, if it were deemed a project, it would be categorically exempt under section 15321 of Title 14, Article 7 of the California Code of Regulations because it amounts to an action by an agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency. Furthermore, this ordinance is not subject to CEQA under the following sections of Title 14, Article 7 of the California Code of Regulations: i. Section 15061(b)(3), because there is no possibility the activity in question may have a significant effect on the environment and section; ii. Section 15307, because it regulates activities to assure the maintenance, restoration, or enhancement of natural resources; iii. Section 15308, because it regulates activities to assure the maintenance, restoration or enhancement of the environment including groundwater and interconnected surface water resources within Siskiyou County; and iv. Section 15269(c), because it is an ordinance that may help prevent or mitigate unexpected curtailments on existing wells within the County, which curtailments present a clear and imminent danger to existing residential and agricultural water wells in the County, to users who rely on the water from those wells, and which requires immediate action to prevent or mitigate the loss or damage to life, health, property and essential public services.

SECTION 2. Applicability. This ordinance applies to all property in the unincorporated area of the County of Siskiyou subject to the Scott Valley Area Plan, as shown on the map attached hereto as Exhibit A and as more fully described in this ordinance.

SECTION 3. Regulations.

A. Prohibition on new production water wells:

The County shall not accept for processing, process, or approve any application to construct a new production water well within the area subject to the Scott Valley Area Plan, unless exempted under the terms of this ordinance. For the purposes of this ordinance, "production water well" as used in this ordinance means wells with casings in excess of six (6) inches in diameter that utilize more than 2 acre feet per

year. Production water well expressly does not include a domestic well.

- B. These regulations shall take effect on the effective date of this interim ordinance.
- C. The term "new production water well" as used in this ordinance does not include (1) any well for which a construction permit has been issued by the County prior to the effective date of this ordinance; (2) any water well for which drilling or construction activities have commenced prior to the effective date of this ordinance in accordance with a well construction permit issued by the County; (3) Monitoring wells; (4) or Municipal water supply wells.
- D. These regulations shall apply for two years after the adoption of this ordinance, unless extended by further Board action.

SECTION 4. Exemptions to the Prohibition on Accepting any Application to Construct a New Production Water Well.

- A. The following categories of production water wells are exempt from the regulations set forth in Section 3 of this ordinance and applicants may submit an application for review.
 - 1. Deepening of existing production water wells.
 - 2. New replacement production water wells in the following circumstances:
 - i. The new production water well replaces an existing production water well that will be abandoned and destroyed, or converted to a dedicated monitoring well, in conformity with the law and to the satisfaction of the County within sixty (60) days following completion of the new replacement production water well. A sixty (60) day extension may be granted.
 - ii. A new production water well may replace a shared production water well used by adjoining properties. The new production water well may be placed on either of the adjoining properties regardless of the property location of the original production water well but still must continue to be a shared production water well among the adjoining properties. The new production water well shall comply with the same requirements of Item 2(i).
 - 3. New production water wells to exercise an adjudicated groundwater right.
 - 4. New production water wells under the following circumstances: The applicant has demonstrated the new production well will not, through the extraction of groundwater interconnected with the Scott River's surface waters, substantially impair the Scott River's public trust resources.

B. Exemption under this ordinance does not guarantee approval of the production water well permit to drill. Wells exempt under this ordinance are subject to all other applicable federal, state, and County policies and regulation.

SECTION 5. Enforcement.

Any violation of this ordinance is unlawful and a public nuisance. In the event of a violation of this ordinance, the County may, in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Siskiyou County Code and such other enforcement action as is authorized by law.

SECTION 6. No Taking of Property Intended.

Nothing in this ordinance shall be interpreted to affect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific evidence in the administrative record, that the application of one or more of the provisions of this ordinance to a proposed use of land would affect an unconstitutional taking of private property, the Board shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

SECTION 7. Publication.

This ordinance, within 15 days of adoption, shall be published once in a newspaper of general circulation, printed and published in the County of Siskiyou as required by law.

SECTION 8. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or circumstance is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the remaining portions or other applications of the ordinance, and the provisions of this ordinance are declared to be severable.

PASSED AND ADOPTED this ____ day of _____, 2022, at a regular meeting of the Board of Supervisors by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Brandon A. Criss, Chairman,

Board of Supervisors

ATTEST:
LAURA BYNUM, CLERK,
Board of Supervisors

By _____
Deputy