

STAFF REPORT

MEETING DATE: February 7, 2023

TO: Siskiyou County Board of Supervisors

FROM: Rick Dean, Community Development Director
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SUBJECT: Governor Newsom's Executive Order (N-7-22) and
the County's Groundwater Well Application Process

I. INTRODUCTION

Last year, Governor Gavin Newsom issued Executive Order N-7-22 to address the state's ongoing drought conditions. Paragraph 9 of the Executive Order prevents counties from approving permits for the construction of new groundwater wells, or the alteration of existing wells, excepting domestic wells or public wells, unless:

- The well-permitting agency determines that extraction of groundwater from the proposed or modified well is (a) not likely to interfere with the production and functioning of existing nearby wells, and (b) not likely to cause subsidence that would adversely impact or damage nearby infrastructure; and,
- If the well is located in one of Siskiyou County's medium-priority groundwater basins, the Groundwater Sustainability Agency managing the basin must also verify in writing that the proposed groundwater extractions (i) would be consistent with any applicable Groundwater Sustainability Plan, and (ii) would not decrease the likelihood of achieving a sustainability goal for the basin.

Executive Order N-7-22 took immediate effect, and its well permitting requirements will continue "during this drought emergency" until rescinded by the Governor.¹ The new requirements increase the time and administrative costs of well permitting for the County. In regard to increased administrative costs, the Department of Water Resources has indicated there is no state funding available for local permitting agencies or groundwater sustainability agencies to support the Executive Order's new well permitting requirements.²

¹ The Department of Water Resources published a FAQ document in 2022 that indicates the well permitting requirements are "a temporary measure" and "will likely remain in effect the rest of this water year and will be rescinded by the Governor, which typically occurs when drought conditions have subsided." See DWR Frequently Asked Questions Document available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Water-Basics/Drought/Files/Publications-And-Reports/FAQ-Document_Executive-Order-N-7-22-Action-9_ay11.pdf.

² The Department of Water Resources's FAQ document advises that "local agencies and GSAs can exercise local fee authority. Local well permitting agencies can exercise fee authority for the well

Siskiyou County has four medium-priority groundwater basins: the Shasta Valley, Scott Valley, Butte Valley, and Tulelake subbasins. Environmental Health staff has begun staff-level communications with the Groundwater Sustainability Agencies for these subbasins to establish and implement a review process that is compliant with the Executive Order.

The Community Development Department has also evaluated its internal application review process to determine how best to comply with the Governor's Executive Order. As a result of the Executive Order and this evaluation process, there has been a delay in the Environmental Health Division's processing and issuance of groundwater well permits.

II. DISCUSSION

Today staff is bringing forward draft application processing guidelines (attached hereto as Attachment "A"), which are meant to ensure the County's process complies with the Executive Order. These guidelines, which also contain information about the County's obligations under the Public Trust Doctrine and the California Environmental Quality Act (CEQA), are also meant to assist the public with navigating the well permitting process. Staff is only seeking to introduce the draft guidelines to the public and the Board and to request Board direction to share the draft guidelines with the local groundwater sustainability agencies' Advisory Committees in order to receive the committees' input on the proposed process.

The proposed application process includes:

- Having domestic well and public well applicants provide a declaration regarding the intended use of the proposed wells.
- Having well applicants, except for domestic well and public well applicants, provide a report signed by a California licensed Professional Geologist with a Certified Hydrogeologist specialty certification that concludes the extraction of groundwater from the well (1) "is not likely to interfere with the production and functioning of existing nearby wells" and (2) "is not likely to cause subsidence that would adversely impact or damage nearby infrastructure." (See Paragraph 9(b) of Executive Order N-7-22).
- If a proposed well is located in one of Siskiyou County's medium-priority groundwater basins, requiring written verification from the Groundwater Sustainability Agency that groundwater extraction by the proposed well would not be inconsistent with the sustainable groundwater management program established in the Groundwater Sustainability Plan adopted by the agency and would not decrease

permitting process. SGMA also granted GSAs fee authority to raise revenue to support administrative costs." See DWR Frequently Asked Questions Document available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Water-Basics/Drought/Files/Publications-And-Reports/FAQ-Documents/Executive-Order-N-7-22-Action-9_ay11.pdf.

the likelihood of achieving a sustainability goal for the basin. (See Paragraph 9(a) of Executive Order N-7-22).

- If a proposed well is for a production well in the Shasta Valley or Scott Valley, using modeling tools to inform individual well permitting decisions in regard to whether there would be any potential impacts on interconnected navigable surface waters.
- Having well applicants, except for domestic well and public well applicants, sign the standard indemnity agreements currently used in other land use approval contexts.³

III. CONCLUSION

In conclusion, the requirements of Governor Newsom’s Executive Order N-7-22 and its more stringent well permitting process require the County to modify its well application review process. In addition, given the number of authorities under which applications may now be evaluated, staff believes the public would benefit from an informational document that explains the County’s application process. Today staff seeks to open a dialog with the Board and with the public about its proposed well application process guidelines and to request Board direction to provide the guidelines to the Advisory Committees for the local groundwater sustainability agencies to obtain their comments.

³ On February 10, 2009, the Board of Supervisors approved Resolution 09-20 finding it is in the interest of the taxpayers of Siskiyou County that the legal defense fees associated with private projects be borne by the project proponents and not by the taxpayers and that the Planning Department shall require indemnity agreements for discretionary land use entitlements and approvals. Counties, such as Shasta County, Humboldt County, Monterey County, San Joaquin County, San Bernardino County, and San Diego County, include an indemnity obligation within their Well Application forms. For example, Shasta County’s well permit application states: ““By signing this application I agree to defend, indemnify, and hold the county harmless from any claim, action, or proceeding brought to attack, set aside, void or annul the county’s approval of this application.” Stanislaus County, rather than including the obligation in the permit application, has a separate required indemnity agreement for well applicants.