**STAFF REPORT**

MEETING DATE: May 21, 2024

 TO: Siskiyou County Board of Supervisors

 FROM: Rick Dean, Community Development Director

SUBJECT: Governor Newsom’s Executive Order (N-7-22/N-3-23) and

 the County’s Groundwater Well Application Process

1. **INTRODUCTION**

On March 28, 2022, Governor Gavin Newsom issued Executive Order N-7-22 to address the state’s ongoing drought conditions. On February 13, 2023, Governor Newsom signed Executive Order N-3-23, which revised Paragraph 9 of Executive Order N-7-22 to read as follows: Note: (that 9(b)(iii) highlighted below was added to the language.)

 *To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:*

*a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or*

*b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.*

*This Paragraph shall not apply to permits for wells (i) that will provide less than two acre-feet per year of groundwater for individual domestic users, (ii) that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code, or (iii) that are replacing existing, currently permitted wells with new wells that will produce an equivalent quantity of water as the well being replaced when the existing well is being replaced because it has been acquired by eminent domain or acquired while under threat of condemnation.*

Executive Orders N-7-22, and its amendment under Executive Order N-3-23, took immediate effect, and the well permitting requirements therein will continue “during this drought emergency” until rescinded by the Governor.[[1]](#footnote-1) These new requirements increase the time and administrative costs of well permitting for the County. Counties throughout the state have had to develop a process to implement the Executive Order, including requiring permit applications to include information necessary to do so.[[2]](#footnote-2)

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 that are for wells that are not exempt from the Order’s new requirements.

1. **DISCUSSION**

Today staff is bringing forward groundwater well application process guidelines without the addition of an indemnification agreement as directed by the Board (attached hereto as Attachment “A”). These guidelines, which also contain information about the County’s obligations under the Public Trust Doctrine and the California Environmental Quality Act (CEQA), explain to the public the requirements of the Executive Order and are meant to assist the public with navigating the well application process.

The proposed application process includes:

* Having well applicants who are not exempt from the requirements of the Executive Order 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/N-3-23).
* 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 the likelihood of achieving a sustainability goal for the basin. (See Paragraph 9(a) of Executive Order N-7-22, as amended by Executive Order N-3-23).
* During the BOS meeting held on November 14, 2023, Supervisors discussed the issue surrounding indemnification agreements associated with water well permitting. County Counsel referred to resolution 09-20, which requires indemnity agreements for discretionary land use entitlements and approvals.[[3]](#footnote-3) Ultimately the BOS determined that placing full liability on water well permit applicants is overbearing considering applicants will bear the cost to work through the Government created approval process.
1. **GSA FEEDBACK**

As previously noted, the primary concerns from GSA participants regarding the draft groundwater well application guidelines were the requirement of an indemnification agreement to be signed by the property owner/applicant and secondly the requirement to provide a hydrology analysis by a California licensed Professional Geologist with a Certified Hydrogeologist specialty certification. Commenters pointed out that it is not likely that an applicant would sign an indemnification agreement thus effectively creating a moratorium on well drilling. Also, participants stated that it is extremely difficult to find a Hydrogeologist that is willing to participate given the liability risk.

In response to this feedback, the BOS has directed staff to discontinue the requirement of an indemnification clause associated with the issuance of water well drilling permits. Also, note that a couple of Hydrogeologists/firms have participated and provided hydrogeologic analysis for the water well permitting application process within Siskiyou County. Further, Dr. Foglia – Larry Walker and associates continue to develop a decision support tool, to provide an alternative means to make the findings required by the Executive Order, Public Trust Doctrine, and GSP compatibility.

1. **BROADER ISSUES**

While the application processing guidelines are meant to address the requirements of the Executive Order and to educate the public on the authorities under which Environmental Health processes applications, staff continues to evaluate other issues for future action raised by commentors. These issues include further refinement of the modeling that supports consideration of potential adverse impacts on public trust resources when approving well permits.

At the November 14, 2023 BOS meeting, Dr. Foglia provided a conceptual presentation of a support tool that could be utilized to establish ministerial versus discretionary permitting parameters. May 21, 2024, Dr. Foglia will provide an update of the support tool development and anticipated timeline of competition.

1. **CONCLUSION**

In conclusion, the requirements of Governor Newsom’s Executive Order N-7-22, as amended by Executive Order N-3-23, and its more stringent well permitting process require the County to modify its well application review process to comply with the Order. In addition, given the number of authorities under which applications may now be evaluated, staff believes the public would benefit from an informational and educational document presented in the form of the Groundwater Well Application Process Guidelines that explains the County’s processing of well applications.

Today, staff seeks the following.

* Board approval of a resolution to adopt the informational ground water well application process guidelines.
* Further to direct staff to work with Dr. Foglia – Larry walker and associates to develop development a comprehensive county wide well ordinance.
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>. [↑](#footnote-ref-1)
2. Regarding 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. 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 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-Document_Executive-Order-N-7-22-Action-9_ay11.pdf>. [↑](#footnote-ref-2)
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. [↑](#footnote-ref-3)