

Appendix D

Butte County Code

Chapter 33

Groundwater Conservati

Chapter 33

GROUNDWATER CONSERVATION*

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*Editor's note—Ord. No. 3303-A, § 7.01, adopted Dec. 10, 1996, repealed former Ch. 33, §§ 33-1—33-8, of the Code, which pertained to groundwater conservation and derived from Ord. No. 1859 § 1, adopted Aug. 23, 1977. Ord. No. 3303-A, §§ 1.01, 2.01, 3.01, 3.02, 4.01—4.11, 5.01, 6.01, 9.01, enacted new provisions which have been included herein as a new Ch. 33, §§ 33-1—33-18, at the direction of the county.

Cross references—Grading and mining, Ch. 13; code enforcement policies and procedures, Ch. 41.

33-1 Purposes.

The people of the county hereby find and declare:

(a) The groundwater underlying Butte County provides the people and lands of Butte County with water for agricultural, domestic, municipal, and other purposes.

(b) The groundwater underlying Butte County is a significant water resource which must be reasonably and beneficially used and conserved for the benefit of the overlying land by avoiding extractions which harm the Butte Basin aquifer, causing exceedance of the safe yield or a condition of overdraft.

(c) It is essential for the protection of the health, welfare, and safety of the residents of the county, and the public benefit of the state, that the groundwater resources

of Butte County be protected from harm resulting from both the extraction of groundwater for use on lands outside the county and the substitution of groundwater for surface water transferred outside the county.

(d) The county seeks to foster prudent water management practices to avoid significant environmental, social, and economic impacts. It is therefore essential for the protection of the county's important groundwater resources that the county require a permit to extract groundwater for use outside the county and for the substitution of groundwater for surface water that has been used in the county and is now voluntarily transferred outside the county, to protect against groundwater overdraft and to insure that the safe yield of the groundwater aquifers and subbasins are not exceeded. This chapter is not intended to regulate groundwater in any other way.

(e) In adopting this chapter, the county in no way intends to limit public entities' management of groundwater in accordance with the Groundwater Management Act and any other applicable laws.

(f) Butte County is the county and watershed of origin for much of the groundwater and surface water within the county. The availability of groundwater underlying the county for consumptive uses within the county is inextricably linked to the use of surface water. Increased groundwater pumping within the county which directly results from a transfer of surface water from the county causes a net loss of water resources for consumptive purposes within the county and can have significant adverse impacts on the health, welfare, and safety of the residents of the county. The county does not intend that this chapter invade the province of the Legislature by regulating surface water transfers. The county intends to exercise its police power to require a transferor who will pump amounts of groundwater or cause amounts of groundwater to be pumped to mitigate the potential adverse impacts from any additional groundwater pumping related to the surface water transfer. (Ord. No. 3303-A, § 1.01, 12-10-96; Ord. No. 3542, § 1, 8-10-99)

33-2 Definitions.

The definitions set out in this section shall apply to this chapter.

(a) "Aquifer" means a geologic formation that stores, transmits and yields significant quantities of water to wells and springs.

(b) "Association" means the Butte Basin Water Users Association.

(c) "Board" means the board of supervisors of Butte County.

(d) "Commission" means the Butte County Water Commission, which shall be a nine (9) person commission appointed by the board. The commission shall include one (1) member representing each board district and nominated for appointment by the county supervisor duly elected to represent that district and four (4) members at large of which two (2) are landowners of property served by district water and two (2) are landowners served by private wells.

(e) "County" means the County of Butte.

(f) "District" means a district wholly or in part located within the boundaries of the county, which is a purveyor of water for agricultural, domestic, or municipal use.

(g) "Department" shall mean the Butte County Department of Water and Resource Conservation.

(h) "Groundwater" means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water which flows in known and definite channels.

(i) "Groundwater Management Act" means Water Code Sections 10750 et seq.

(j) "Hydraulic gradient" means the slope of the water table.

(k) "Hydrology" means the origin, distribution, and circulation of water through precipitation, stream flow, infiltration, groundwater storage, and evaporation.

(l) "Overdraft" means the condition of an aquifer where the amount of water withdrawn by pumping exceeds the amount of water replenishing the aquifer over the water year and also the point at which extractions from the aquifer exceed its safe yield plus any temporary surplus.

(m) "Percolation" means the movement of water through the soil to the groundwater table.

(n) "Permeability" means the capability of the soil or another geologic formation to transmit water.

(o) "Piezometric surface" means the surface to which the water in a confined aquifer will rise.

(p) "Porosity" means voids or open spaces in alluvium and rocks that can be filled with water.

(q) "Recharge" means flow to groundwater storage from precipitation, irrigation, infiltration from streams, spreading basins and other sources of water.

(r) "Safe yield" means the maximum quantity of water which can be withdrawn annually from an aquifer under a given set of conditions without causing overdraft or adverse water quality conditions.

(s) "Saline intrusion" means the movement of salt water into fresh water aquifers.

(t) "Specific capacity" means the volume of water pumped from a well in gallons per minute per foot of drawn down.

(u) "Spreading water" means discharging native or imported water to a permeable area for the purpose of allowing it to percolate to the zone of saturation. Spreading, artificial recharge and replenishment all refer to operations used to place water in a groundwater table.

(v) "Subbasin" means one (1) of the four (4) subbasins within the county, including the East Butte, Palermo, Vina, and West Butte subbasins defined by the California Department of Water Resources.

(w) "Technical advisory committee" means a seven (7) person committee nominated by the commission and appointed by the board. They each must have substantial expertise in water management or hydrology.

(x) "Transmissivity" means the rate of flow of water through an aquifer.

(y) "Water table" means the surface or level where groundwater is encountered in a well in an unconfined aquifer.

(z) "Water year" means the year beginning February 1 and ending the last day of the following January.

(aa) "Zone of saturation" means the area below the water table in which the soil is completely saturated with groundwater. (Ord. No. 3303-A, § 2.01, 12-10-96; Ord. No. 3329, §§ 1, 2, 5, 5-13-97; Ord. No. 3505, § 1, 4-13-99)

33-3 Groundwater planning process.

The association, unless otherwise designated by the water commission, shall present the reports described in this section to the department by February 21 of each year. These reports shall guide groundwater planning within county and shall be considered in accordance with section 33-9.

(a) A groundwater status report based upon the data gathered and analyzed pursuant to section 33-4.

(b) Using groundwater data for at least the prior twenty (20) years, a report that analyzes the amount of groundwater pumping that can occur during the water year within each county subbasin without exceeding the safe yield of each subbasin. (Ord. No. 3303-A, § 3.01, 12-10-96; Ord. No. 3641, § 1, 10-10-2000)

33-4 Groundwater monitoring.

(a) The water commission through the department, in cooperation with the technical advisory committee, the association, the California Department of Water Resources

and the regional water quality control board, shall develop and coordinate a county-wide groundwater monitoring program.

(b) Specific monitoring wells shall be identified. Permission to enter the property on which each well is located and to take groundwater level measurement shall be obtained voluntarily from the well owner. If permission cannot be obtained, then another well shall be selected.

(c) Groundwater level measurements shall be taken from all designated monitoring wells at least four (4) times per year, during the months of March, July, August, and October.

(d) Each district and city within the county shall be requested to submit copies of all its groundwater monitoring reports to the department as such reports are completed but not later than December 1 of each year. The department shall also encourage individuals to voluntarily provide any available groundwater data. (Ord. No. 3303-A, § 3.02, 12-10-96; Ord. No. 3455, § 1, 10-27-98)

33-5 Permit required for groundwater extraction for use outside county.

It shall be unlawful to extract groundwater underlying county for use of that groundwater so extracted, outside county without first obtaining a permit as provided in this chapter. A permit is not required pursuant to this section if the groundwater is used within the boundaries of either a district or on a contiguous parcel of any property owner which is in part located within county and in part in another county, where such extraction quantities and use are consistent with historical practices of the district or the property owner. The groundwater extractor shall have the burden of supporting an assertion of an historical practice with competent evidence. (Ord. No. 3303-A, § 4.01, 12-10-96)

33-6 Permit required for groundwater substitute pumping.

It shall be unlawful to extract groundwater underlying county for use on a parcel or parcels of land within the county in substitution for surface water which would otherwise be used to serve the parcel or parcels and which surface water is proposed to be transferred for use outside county, without first obtaining a permit as provided in this chapter. A permit is not required pursuant to this section if changed cropping patterns render the use of surface water infeasible or if the transferred surface water is used within the boundaries of either a district or on a contiguous parcel of any property owner which is in part located within county and in part in another county, where such quantity and use are consistent with historical practices of the

district or the property owner. The transferor shall have the burden of supporting an assertion of infeasibility or an historical practice with competent evidence. (Ord. No. 3303-A, § 4.02, 12-10-96; Ord. No. 3542, § 1, 8-10-99)

33-7 Exemptions.

This chapter shall not apply to the temporary extraction of groundwater to prevent the flooding of lands or to prevent the saturation of the root zone of farm land. (Ord. No. 3303-A, § 4.03, 12-10-96)

33-8 Application for a permit.

An application for a permit pursuant to this chapter shall be filed with the department on forms provided by the department and shall contain all information required by the department. The department shall require the following information in an application for a permit under section 33-6.

(a) Name, address, telephone number, and fax number (if any) of the applicant.

(b) The amount of surface water available to the land and the amount proposed to be transferred, the transfer period, the physical source of the surface water to be transferred, the applicable surface water right held by the applicant, and the name, address, telephone number, and fax number (if any) of the proposed transferee.

(c) A list of all parcels of land where surface water deliveries are to be reduced.

(d) A list of wells, including the maximum engineered pumping capacity of each well's pump and motor, which are proposed to participate in the groundwater substitute pumping program and their location.

(e) A list of all wells located within the well spacing requirements of the wells listed under subsection (d) of this section along with certification that the owners of such wells have received notice of the application. The well spacing requirements are set forth in section 23B-5b of this code.

(f) A map showing the location of all parcels and wells identified under subsections (c), (d) and (e) of this section.

(g) A groundwater hydrology report paid for or otherwise provided by the applicant identifying adverse impacts on wells listed in subsection (e) and any other agricultural well likely to experience significant adverse impacts. The report shall be prepared by a qualified groundwater hydrologist or licensed professional civil or agricultural engineer.

(h) A description of the proposed monitoring program and the pumping curtailment.

(i) A description of the proposed mitigation program for any identified third party impacts, which may specify a dollar amount held in a trust account to satisfy potential third party claims.

(j) Such additional information as required by the department.

Concurrently, a request for environmental review shall be filed as required by applicable county CEQA guidelines. The application for a permit and request for environmental review shall be accompanied by the required fees established by the board, which shall be reviewed by the board not less than every two (2) years. (Ord. No. 3303-A, § 4.04, 12-10-96)

33-9 Procedures for processing.

(a) Within ten (10) calendar days of filing of the permit application, the department shall provide public notice by publication in a newspaper of general circulation in Butte County, and posting at the courthouse at Oroville and the department office in Chico that an application has been filed, shall send a copy of the notice to all districts and cities within the county and to any interested party who has made a written request to the department for such notice within the last twenty-four (24) calendar months. The department shall review the application to determine whether it is complete for purposes of proceeding under the county guidelines adopted pursuant to the California Environmental Quality Act requirements.

(b) The department shall review the most current reports provided pursuant to section 33-3. The department shall review the matter of the application with the technical advisory committee and may also review the matter of the application with the affected county departments, with the staff of the state department of water resources, with the staff of the Regional Water Quality Control Board—Central Valley Region, and with any interested district within whose boundary the proposed activity will occur. If the applicant is applying to pump groundwater from within the boundaries of a district or city which has adopted a groundwater management plan pursuant to the groundwater management act, the department shall consider a groundwater management plan or any other relevant information provided by the district or city. Any interested person or agency may provide comments relevant to the matter of the extraction of groundwater. Comments shall be submitted within thirty (30) days of the date of mailing the notice of filing the permit application.

(c) The environmental review shall be undertaken in accordance with the California Environmental Quality Act

and county guidelines. All costs of the environmental review shall be the responsibility of applicant.

(d) Upon completion of the environmental review, the department shall submit the following documents to the commission: the application, all comments received, the environmental documentation, the most current reports submitted pursuant to section 33-3, the retained expert's report (if applicable), and the department's written report. (Ord. No. 3303-A, § 4.05, 12-10-96)

33-10 Public review concerning issuance of permit.

(a) Upon receipt of the documents described in 33-9(d), the commission shall immediately set a public review on the issuance of the permit which shall be noticed pursuant to Government Code section 6061 and may not be held within fifteen (15) days nor more than thirty (30) days of the time that the commission receives the report from the department.

(b) Formal rules of evidence shall not apply to the public review of the application, but the commission may establish such rules as will enable the expeditious presentation of the matter and relevant information thereto. At the commission review, the applicant shall be entitled to present any oral or documentary evidence relevant to the application, and the applicant shall have the burden of proof of establishing the facts necessary for the commission to make the required findings. The commission may request any additional information it deems necessary for its decision. The commission shall also hear relevant evidence presented by other interested persons and entities, the department, other county staff, the association, and the public. The commission shall consider all effects that the granting of the permit application would have on the subbasin and affected aquifer including, but not limited to, the hydraulic gradient, hydrology; percolation, permeability, piezometric surface, porosity, recharge, safe yield, salt water intrusion, specific capacity, spreading water, transmissivity, water table and zone of saturation. (Ord. No. 3303-A, § 4.06, 12-10-96)

33-11 Granting of permit.

A permit shall be granted pursuant to sections 33-5 and 33-6 only if the commission finds and determines that the extraction will not:

- (a) Cause or increase an overdraft of the groundwater underlying the county;
- (b) Bring about or increase salt water intrusion;
- (c) Exceed the safe yield of the aquifer or subbasins underlying the county;

(d) Result in uncompensated injury to overlying groundwater users or other water users; or

(e) Cause subsidence.

In granting a permit, the commission shall impose appropriate conditions upon the permit to satisfy the above findings, and may impose other conditions that it deems necessary for the health, safety and welfare of the people of the county. Conditions in the permit may include, but are not limited to, requiring metering of the wells under the permit, both short-term and annual pumping limits, prescribed groundwater levels at which groundwater pumping must cease, and additional requirements for observation and/or monitoring wells.

In denying a permit, the commission shall make specific findings in any of the subsections (a) through (e) to support its decision.

The decision of the commission relating to section 33-5 shall be made upon an affirmative vote of six (6) members of the commission and relating to section 33-6 shall be made upon an affirmative vote of a majority of the quorum present. Such decisions may be appealed in accordance with section 33-12 or 33-13. (Ord. No. 3303-A, § 4.07, 12-10-96)

33-12 Appeal of granting or denial of a permit.

The applicant or any interested party or public entity may appeal the decision of the commission by filing a written request with the clerk of the board within thirty (30) days of issuance of the decision. The clerk shall set a time for review by the board within twenty (20) days of receipt of the request for appeal. Notice of appeal shall be given to the commission, the permittee, appellant, as well as to the districts and cities within the county, and to interested parties who have requested notice of such appeals within the last twenty-four (24) months. The board shall hear the appeal as to those disputed matters which were heard by the commission and which are specifically set out in the appeal request. The standard of review shall require that substantial evidence be presented to prevail on an issue. The appeal before the board shall not be conducted with formal rules of evidence but under such rules as set by the board for the expeditious presentation of the matter and relevant information pertaining thereto by the appellant and by those opposed to the reversal of the commission decision. The decision of a majority of the board shall be the final decision in the matter. (Ord. No. 3303-A, § 4.08, 12-10-96; Ord. No. 3542, § 1, 8-10-99)

33-13 Challenge to approved permit.

(a) Any interested party or public entity may challenge the continuation of the permit during the term of the permit when any of the following information exists:

(1) There is a violation of the conditions of the permit;

(2) Extraction of groundwater pursuant to the permit:

a. Causes or increases an overdraft in the basin; or

b. Brings about or increases salt water intrusion, or

c. Exceeds the safe yield of the subbasin(s), or

d. Results in uncompensated injury to overlying groundwater users or other water users, or

e. Causes subsidence.

(b) A challenge pursuant to this section is commenced by filing a written request with the department which alleges any one (1) of the above situations and generally described the supporting facts for such allegation. If the department determines that the supporting facts make a prima facie showing of one (1) of the above categories, the department shall within ten (10) days of the receipt of such challenge, give notice of the challenge to the commission, the permittee, appellant, to any interested party who filed a written request for such notice within the past twenty-four (24) months, and also to districts and cities within the county. A commission review shall be held on the matter following the procedure set out in section 33-11. The commission's decision may be to deny the challenge, grant the challenge and terminate the permit, or to establish modified conditions to the permit.

(c) The standard for review shall be substantial evidence.

(d) Any interested party or public entity may challenge the issuance of a permit by the commission on the basis that the permit was not issued in accordance with the procedural requirements of this chapter by filing an appeal in the same manner and within the same time period specified in section 33-12. The requirements of section 33-12 shall govern appeals filed pursuant to this subsection. (Ord. No. 3303-A, § 4.09, 12-10-96; Ord. No. 3542, § 1, 8-10-99)

33-14 Duration of permit.

All permits shall be valid for a three-year term unless the commission finds that a shorter term is required by the findings in section 33-11(a) through (e). For the purpose of calculation, the water year in which the permit is granted shall not be counted in determining the three (3) year time period if less than four (4) months remains in the then water year. Provided, however, nothing contained in this chapter nor in the conditions of the permit shall be

construed to give permittee an exclusive right to groundwater. (Ord. No. 3303-A, § 4.10, 12-10-96)

33-15 Limitation of permit.

The permit process in this chapter is not to be construed as a grant of any right or entitlement but rather the permit evidences that the health, welfare, and safety of the residents of the county will not be harmed by the extraction of groundwater for use outside the county or the substitution of groundwater for surface water that has been transferred outside county. The permit in no way exempts, supersedes, or replaces any other provisions of federal, state, and local laws and regulations including but not limited to Water Code Section 1220, the Groundwater Management Act, and any actions provided for in California groundwater law, well drilling and maintenance in accordance with Chapter 23B of the Butte County Code, or building permit requirements. (Ord. No. 3303-A, § 4.11, 12-10-96)

33-16 Inspection.

The department, with good cause, may at any and all reasonable times enter any and all places, property, enclosures and structures, where a well is located, for the purposes of making examinations and investigations to determine whether any provision of this chapter is being violated. (Ord. No. 3303-A, § 5.01, 12-10-96)

33-17 Civil penalty.

The county may elect to proceed with a civil action against a violator, including seeking injunctive relief. Any person who or entity which violates this chapter shall be subject to fines of up to five thousand dollars (\$5,000.00) per separate violation. A person or entity shall be deemed to have committed separate violations for each and every day or portion thereof during which any such violation is committed, continued or permitted as well as for each and every separate groundwater well with which any such violation is committed, continued, or permitted. (Ord. No. 3303-A, § 5.01, 12-10-96)

33-18 Amendment.

The board may amend this chapter or any of its provisions following a properly noticed public hearing. The clerk shall publish notice of such hearing as provided in Section 6066 of the Government Code, prior to the date set for hearing, in a newspaper of general circulation printed and published in the county. (Ord. No. 3303-A, § 9.01, 12-10-96; Ord. No. 3329, § 3, 6-13-97)

33.19 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid by a court of competent jurisdiction, such provision shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions or other applications of the chapter which can be given effect without the invalid provision or application thereof. (Ord. No. 3542, § 1, 8-10-99)