



MOBILIZE SONOMA



OCCIDENTAL ARTS & ECOLOGY CENTER

Community Clean Water Institute



SIERRA CLUB
Sonoma Group



March 31, 2023

Board of Supervisors
Sonoma County

Tennis Wick
Director
Permit Sonoma

Christina Rivera
Chief Administrative Officer
County of Sonoma

Nathan Quarles
Deputy Director, Engineering & Construction
Permit Sonoma

Jennifer Klein
Chief Deputy Counsel
Sonoma County

Robert Pennington
Professional Geologist, Natural Resources
Permit Sonoma

Sent via e-mail to: Jennifer.Klein@sonoma-county.org; PermitSonoma-Wells-PublicInput@sonoma-county.org; Nathan.Quarles@sonoma-county.org; Tennis.Wick@sonoma-county.org; Christina.Rivera@sonoma-county.org; Robert.Pennington@sonoma-county.org; bos@sonoma-county.org; chris.coursey@sonoma-county.org; susan.gorin@sonoma-county.org; david.rabbitt@sonoma-county.org; james.gore@sonoma-county.org; District4@sonoma-county.org; lynda.hopkins@sonoma-county.org

SUBJECT: Comments on the Ongoing Process to Amend Sonoma County Code Chapter 25B (the Well Ordinance)

To Sonoma County Board of Supervisors and County Staff:

The above-listed organizations represent thousands of citizens in Sonoma County and statewide with a keen interest in ensuring groundwater is sustainably and equitably managed for the benefit of all Californians and the ecosystems we all depend on for our health and welfare. We thank you for the opportunity to comment on the proposed amendment to the Sonoma County Groundwater Well Ordinance (Well Ordinance).¹

Groundwater is not limitless. Nor are the fish, wildlife, and recreational opportunities provided by our rivers, streams, and interconnected groundwaters. This Well Ordinance update has the potential to help ensure long-term water security for all County residents and help make us more resilient to a changing climate and increased drought conditions.

An effective Well Ordinance will establish a program ensuring we live within our water means. The proposed ordinance allows for a continued increase in groundwater extraction without requiring reductions in the actual amount extracted (individually or from the whole) or collecting the information necessary to demonstrate if water is available for use—or an area needs recharge.

We certainly appreciate the time and effort spent developing another draft of the proposed Well Ordinance² intended to fulfill the County’s legal public trust duties and to address the problems caused by unsustainable groundwater extraction. These devastating losses have, and will continue to have, resounding impacts everywhere in our County including: the loss of tourism and our robust recreation economy, loss of our local salmon fishery, loss of habitats of cultural and historical importance, reduced groundwater quality, and more dry wells.

The proposed Well Ordinance does not (1) effectively reckon with the ongoing and future cumulative impacts of groundwater pumping on public trust resources, or (2) contain provisions that will ensure the County meets its legal duty to protect public trust resources and mitigate harms. We recognize the extremely tight timeline to develop these amendments, but we do not believe that must (or should) lead to an ineffectual program. We urge the County to take an interim step now and commit to return, in two years or less after filling acknowledged data gaps and completing essential analysis, with a program that is founded on empirical data and the robust analysis necessary to ensure long-term sustainability and protection of public trust resources.

¹ Many of us provided a letter on March 15, 2023 describing the impacts facing public trust resources from unsustainable groundwater extraction, and offering a list of items that we believe need to be addressed and included before the Well Ordinance ensures the County adequately and effectively meets its Public Trust obligations. That letter is attached here, for reference as Exhibit A.

² We have also been following the County-convened technical and policy working groups’ efforts—via limited publicly accessible meetings—and appreciate the hard work and long hours members of these groups have contributed.

Imagine the County developing a program for preventing overdraft of its bank account. As proposed, the Well Ordinance sets up the procedures for withdrawals, but does not define the current balance, a minimum balance, or an effective mechanism for accounting for deposits or withdrawals that ensures overdrafts do not occur.

To mitigate short term harms, and achieve lasting sustainable results, including protection of public trust resources, the County must:

- (1) Adopt an ordinance that limits ministerial approvals to truly low volume, non-commercial uses that are based on verifiable criteria for approval;
- (2) Strengthen basic accounting requirements as identified below; and
- (3) Commit to developing an ordinance that addresses the cumulative impacts of all withdrawals on public trust resources within two years.

Below we offer some examples of how the County may improve the ordinance to address these issues and will set the County on track to balancing the Public Trust “checkbook”.

Recommended Modifications to the Well Ordinance

1. To ensure the Well Ordinance is timely updated, we recommend the County expand the Purpose Statement to include language specifying a program that includes adaptive management and refinement of this Ordinance within two years, and at defined intervals thereafter. Staff and Working Groups agreed adaptive management is critical to meeting the County’s ongoing duty to protect public trust resources and mitigate adverse impacts caused by groundwater extraction.

To address and minimize cumulative impacts and protect public trust resources over the first two implementation years, and while the County is working to account for insights from collected data, we recommend the following:

2. Define a “Well for Low Water Use” as 0.5 AFY and limit it to new wells for residential use. The current exception to discretionary public trust review for “Low Water Use,” defined as less than 2.0 AFY, is not supported by empirical information regarding actual low water use or by findings that it will protect public trust resources. By setting a standard for “Low Water Use” at 2.0 AFY, the County is authorizing *new* groundwater extractions that will further contribute to the cumulative amount of water extracted and the adverse impacts caused by this extraction.
3. Modify “Well for Existing Use” to allow ministerial permits for replacement of 0.5 AFY residential wells, and up to 2.0 AFY for legally established existing uses, not including commercial “agricultural operations.” Existing, legally established uses have created the depleted streams and adverse impacts to public trust resources the Well Ordinance is attempting to address. Unquantified “conservation measures,” while desirable, have not been assessed for effectiveness, and cannot be credited without some numeric value. Existing uses greater than 2.0 AFY must be subject to discretionary review until objective and quantifiable mitigation measures are developed.

4. Eliminate the “Net Zero Increase” exception until clear terms, analysis, and quantification is available. Without quantification or assessment of the benefits or mitigation factors of “Net Zero Increase,” there can be no determination of what level of measures are necessary to mitigate existing adverse impacts, and prevent future adverse impacts. There are no clear standards or criteria regarding timing, rate of withdrawal, or other variables that will ensure the authorized increased withdrawals will not continue or worsen already existing impacts.
5. Expand the Public Trust Review Area (PTRA) to be more inclusive by:
 - Eliminating the “stream buffer” concept and treating all impacted public trust resources equally. The Public Trust Doctrine does not differentiate between types of resources, nor does it utilize an abstract value ranking system. The buffers proposed are not based on empirical data, facts, or analysis, and taking a precautionary approach that allows for development of facts and data ensures future sustainability.
 - Include all areas within Sustainable Groundwater Management Act (SGMA) high and medium priority basins within the PTRA. These areas have already been defined by the State of California as severely depleted. There is no rational justification for excluding wells in these areas from implementing basic conservation measures intended to increase the overall sustainability of groundwater and public trust resources.
 - Include Russian River and Dry Creek mainstem valleys in the PTRA. The Public Trust is applicable to all navigable waterways. Omitting the mainstem means adverse impacts caused by groundwater pumping will continue.

To ensure the County meets its ongoing obligation to protect public trust resources and facilitate adaptation of the ordinance after collection of additional data, we recommend the following:

6. Expand “Well Metering, Monitoring, and Reporting” to all well types and uses. The County acknowledges that there are significant data gaps regarding how much groundwater is available, how much is used, and how and when groundwater extraction depletes flows in nearby streams and rivers. This lack of information makes developing a program that effectively protects public trust resources challenging. Necessary measures must be implemented to close these data gaps. Collecting this information ensures: (1) the County will have a more complete accounting of groundwater resources and uses needed to fully understand impacts to public trust resources; and (2) the County will be able to refine mitigation measures that maximize the benefits of groundwater use and provide for reliable water supply, while avoiding and minimizing harm to public trust resources to the extent feasible.
7. Define standards and criteria for when permits subject to discretionary review will (or will not) be granted. As drafted, the Well Ordinance does not specify the conditions under which the County will, or will not, issue a requested permit that is subject to discretionary review. Sec. 25B-4(d)(4) identifies findings and determinations the County will make when issuing, issuing with conditions, or denying a permit, but does not provide a standard or criteria that will be used to determine whether a permit will be issued or not. This leaves permit applicants without guidance or certainty when seeking a permit, and it provides no standards to equitably apply when evaluating a permit application. (including review by the Board of Supervisors)

Finally, in conjunction with adopting the Well Ordinance with the revisions and modifications identified above, as explained in Item # 1, we urge the Board of Supervisors to direct County staff to thoroughly and expeditiously work to fill data gaps, including information collected through implementation of the Well Ordinance, and complete necessary studies and modeling to further develop and refine the Well Ordinance to achieve the fundamental purpose ensuring we live within our water means.

The County has an opportunity to once again be a leader in California when managing water resources, creating livable communities, and supporting a robust economy and healthy ecosystems. We urge the Board to provide Staff the necessary direction to further amend the proposed Well Ordinance to address our above points, and ensure that Sonoma County is setting the gold standard for protection of our public trust resources.

Sincerely,

Arthur Dawson, Chair
Sonoma Mountain Preservation

Brenda Adelman
Russian River Watershed Protection
Committee

Brock Dolman, Co-Director
The Water Institute

Caroline Banuelos, President
Latino Democratic Club of Sonoma County

Cea Higgins, Co-founder
Save the Sonoma Coast

Dave Henson, Executive Director
Occidental Arts & Ecology Center

David Keller, Director
Petaluma River Council

Dennis Pocekay, MD, MPH
Occupational & Environmental Medicine
Petaluma City Councilman

Don McEnhill, Executive Director
Russian Riverkeeper

Donna Roper, President
League of Women Voters of Sonoma
County

Gail Seymour, Board Member
Turtle Island Restoration Network (TIRN)

Harriet Buckwalter, Co-Chair
Friends of the Mark West Watershed

Janus Matthes
Winewaterwatch.org

Jean Tillinghast, President
Belmont Terrace Mutual Water Company

Jennifer Clary, California Director
Clean Water Action

Joan Cooper, President
O.W.L. Foundation

Laura Morgan, MD
Save Our Sonoma Coast

Michelle K. Irwin
Jenner Resident & Chair of,
Friends of the Jenner Creek Committee

Padi Selwyn, Co-chair
Preserve Rural Sonoma County

Reuben Weinzveg, Treasurer
Sonoma County Tomorrow

Richard Dale, Executive Director
Sonoma Ecology Center

Sarah Davis
Sebastopol Resident & President of,
Fircrest Mutual Water Company

Sean Bothwell
Executive Director
California Coastkeeper Alliance

Yael Bernier, Chair
Dry Creek Valley Association

Atascadero/Green Valley Watershed
Council (AGVWC)

California Native Plant Society, Milo Baker
Chapter

Chiatri de Laguna Farm

Coalition for a Better Sonoma County
(CBSC)

Community Alliance with Family Farmers

Community Clean Water Institute

Forest Unlimited

Friends of Atascadero Wetlands

Friends of Graton (FOG)

Friends of Gualala River (FoGR)

Mobilize Sonoma

Neighborhood Coalition, Sonoma County

Neighbors of West County (NOW)

North Bay Jobs with Justice

River Watch

Rural Alliance

Sebastopol Water Information Group
(S.W.I.G.)

Sierra Club, Sonoma Group

Sonoma County Climate Activist Network!
(SoCoCAN!)

Sonoma County Conservation Action
(SCCA)

Sonoma County Latino Democratic Club

Sonoma County Water Coalition (SCWC)

We Advocate Through Environmental
Review (W.A.T.E.R.)

Individuals:

Carol Sklenicka
Jenner Resident

Diane Hichwa
The Sea Ranch Resident

Fred Allebach
Unincorporated Sonoma Valley Resident

Robert Kourik
Author: *Drip Irrigation, for every landscape
and all climates*

Rue Furch
Sonoma County Resident

Sonia Taylor
Santa Rosa Resident

Susan Shaw
Sebastopol Resident

Wendy Krupnick
Sonoma County Farmer