

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 14C, GOVERNING THE
EXTRACTION OF GROUNDWATER FOR USE OUTSIDE OF KINGS
COUNTY, TO THE KINGS COUNTY CODE OF ORDINANCES,

The Board of Supervisors of the County of Kings, State of California,
hereby ordains as follows:

SECTION 1: Findings and Declarations.

The Board of Supervisors makes the following findings and declarations in
support of the enactment of this Ordinance:

A. Groundwater underlying Kings County has historically provided the
people and lands of Kings County with water for agricultural, domestic, municipal
and other purposes that are likely to increase in importance in the future.

B. Most municipal water users in Kings County depend on groundwater
for their domestic water supply.

C. Much of the County's farm production depends upon the use of
groundwater to produce crops and support food animals, which significantly
contribute to the gross value of agricultural production in the County. The estimated
annual gross value of agricultural production in Kings County in 2021 was \$2.34
billion.

D. The federally-recognized Tachi-Yokut Tribe, located at the Santa
Rosa Rancheria within Kings County, depends on groundwater for its domestic and
other uses.

E. The groundwater of Kings County is a primary source of the water
supplying the U.S. Naval Air Station—Lemoore, an installation crucial to
supporting the United States Navy's Pacific Fleet, and therefore critical to national
defense.

F. The principle of correlative rights, developed in California case law,
provides that water may be appropriated from a groundwater basin only if the
groundwater supply is surplus and exceeds the reasonable and beneficial needs of
overlying users.

G. The Board is aware of adverse consequences suffered both in Kings
County and in neighboring counties that have engaged in excessive extraction of

groundwater. These consequences include, but not limited to, land subsidence, damage to the local environment, critical overdraft of local groundwater basins, and increased cost of groundwater production for local use.

H. The groundwater basins underlying Kings County are significant water resources that must be managed for the benefit of the public trust, and must be conserved for the reasonable and beneficial use of all potential users, avoiding their waste and unreasonable use. It is essential for these purposes, and for the public benefit of the County and State, that the groundwater resources of Kings County be protected from harm resulting from the excessive extraction of groundwater for use outside the basins from which it was extracted.

I. Section 7 of Article XI of the California State Constitution states that Kings County may make and enforce within its limits local ordinances and regulations not in conflict with general laws of the state.

J. The Sustainable Groundwater Management Act, passed by the California Legislature in 2014, does not deprive the County from authority to regulate groundwater and expressly provides that its provisions are in addition to, and not a limitation on, the authority granted to a local agency under any other law.

K. Kings County has a right and duty to govern the management and extraction of groundwater resources within its jurisdiction in order to protect the health, welfare, and safety of the residents of the County.

L. It is in the best interest of all residents and water users within Kings County that the County's groundwater resources be governed at the local level to the greatest extent practicable and allowable under the law.

SECTION 2: The Kings County Code of Ordinances is hereby amended by adding Chapter 14C, which is attached to and fully incorporated into this Ordinance.

SECTION 3: Until such time as the Board of Supervisors by resolution delegates the role to another County department or agency, the Kings County Community Development Agency shall assume the role of County Water Agency, as defined in the attached Chapter 14C.

SECTION 4: Until such time as the Water Resources Oversight Commission established by Ordinance No. _____ is fully implemented, the Kings County Planning Commission shall act in the role of Water Resources Oversight Commission for purposes of this Ordinance.

SECTION 5: This Ordinance becomes effective thirty days after its adoption.

The foregoing ordinance was introduced at a meeting of this Board of Supervisors of the County of Kings held on _____, 2022, and adopted at a meeting held on _____, 2022, by the following vote:

AYES: Supervisors

NOES: Supervisors

ABSENT: Supervisors

ABSTAIN: Supervisors

Chairperson of the Board of Supervisors
County of Kings, State of California

WITNESS my hand and seal of said Board of Supervisors this ____ day of November, 2022.

Clerk of said Board of Supervisors

CHAPTER 14C—Extraction of Groundwater for Export Outside of Kings County

ARTICLE I. GENERAL PROVISIONS

SECTION 14C-1. Title

This chapter shall be known as, and may be referred to as, the Kings County Groundwater Export Ordinance.

SECTION 14C-2. Application of the Sustainable Groundwater Management Act to this chapter

A. This chapter is enacted in addition to, and not a limitation on, the authority granted to any GSA or other special districts established for or otherwise engaged in the acquisition, storage, conveyance, or provision of water to the people of Kings County. No permit issued under this chapter shall prevent a GSA from requiring more restrictive limitations on groundwater extractions in their management area through its GSP.

B. The County may rely on findings by a GSA located all or partially within Kings County concerning the extraction of groundwater from within their jurisdiction as evidence that this chapter has been violated.

SECTION 14C-3. Terms defined

A. The following terms shall have the same meaning as in Section 10721 of the California Water Code:

1. Basin
2. Groundwater Sustainability Agency (GSA)
3. Groundwater Sustainability Plan (GSP)
4. Undesirable Result
5. Water Year

B. The following terms shall have the same meaning as those found in Section 10752 of the California Water Code:

1. Groundwater management plan (GMP)

C. The following terms shall have the same meaning as those found in Section 37900 of the California Water Code:ⁱ

1. Aquifer
2. Conjunctive use
3. Extraction
4. Overdraft

D. The following terms shall have the same meaning as in the United States Geological Survey (USGS) Dictionary of Water Terms:

1. Percolation
2. Permeability
3. Piezometric/potentiometric surface
4. Porosity
5. Subsidence
6. Transmissibility
7. Water Table
8. Yield

E. The following definitions shall apply to this chapter:

1. “Applicant” means a person or entity applying for a permit under the provisions of this chapter.
2. “Board” means the Kings County Board of Supervisors.
3. “CEQA” means the California Environmental Quality Act, Division 13 (§§21000-21189.70.10) of the California Public Resources Code, and includes any State rules or regulations promulgated under it and any case law interpreting it.
4. “Clerk” means the Clerk of the Board of Supervisors
5. “Commission” means the Kings County Water Resources Oversight Commission.
6. “County” means the County of Kings.

ⁱ By incorporating these definitions, the Board does not intend to incorporate into this Chapter any portion of Part 8.2 of Division 13 of the California Water Code beyond the definitions specifically identified in this section.

7. “County Water Agency” means the agency or department designated by the Board to have primary enforcement authority of the provisions of this chapter.
8. “Director” means the Director of the County Water Agency, or their designee.
9. “Export” means the transportation of groundwater from within Kings County to any location outside of the county by pipe, canal, stream, river, or other conveyance method.
10. “Groundwater Management Act” means Part 2.75 of Division 6 (§§10750-10755.4) of the California Water Code, and includes any State rules or regulations promulgated under it and any case law interpreting it.
11. “Historical practices” means the consistent or predominant practice of an Applicant or local agency within seven years preceding the operative date of this chapter.
12. “Hydraulic gradient” means the difference in hydraulic head at two points, divided by the distance between the points measured along the path of flow.
13. “Hydrology” means the origin, distribution, and circulation of water through precipitation, stream flow, infiltration, groundwater storage, and evaporation.
14. “Local agency” means any public agency, including an incorporated city, wholly or in part located within the boundaries of Kings County, which is a purveyor of waters for agricultural, domestic, or municipal use.
15. “Recharge” and “groundwater recharge” both mean flow to groundwater storage from precipitation, irrigation, infiltration from streams, spreading basins and other sources of water including recycled water.
16. “Safe yield” and “sustainable yield” both mean the maximum quantity of water, which can be withdrawn annually from a groundwater supply under a given set of conditions without causing overdraft or adverse water quality conditions.

Specifically safe yield is the amount of water which can be withdrawn without:

- a. Exceeding in any water year the long-term mean annual water supply of the basin (considering all sources of recharge and withdrawal);
 - b. Lowering water levels so as to make further drilling of water wells uneconomical;
 - c. Violating water rights or restrictions in pumpage in the groundwater basin as established by court adjudication or applications of state or federal law, including any GSP;
 - d. Producing other environmental damage.
17. “Specific capacity” means the volume of water pumped from a well in gallons per minute per foot of drawdown.
 18. “Spreading water” means discharging 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.
 19. “Sustainable Groundwater Management Act” and “SGMA” mean the Sustainable Groundwater Management Act of 2014, as codified in Part 2.74 of Division 6 (§§10720-10737.8) of the California Water Code, and includes any State rules or regulations promulgated under it and any case law interpreting it.
 20. “Tailwater” means water running off the lower end of a field as part of normal irrigation practices.
 21. “Usable storage capacity” means the quantity of groundwater of acceptable quality that can be economically withdrawn from storage.
 22. “Water Well Drillers’ Report” means the report required by Section 13751 of the California Water Code.

23. “Zone of saturation” means the area below the water table in which the soil is completely saturated with groundwater.

SECTIONS 14C-4 – 14C-9 Reserved

ARTICLE II. PERMIT REQUIRED FOR EXPORT OF GROUNDWATER OUTSIDE OF COUNTY

SECTION 14C-10. Prohibition against export of groundwater without a permit

A. It is unlawful to extract groundwater underlying lands in Kings County for export of that groundwater outside of Kings County, either directly or indirectly, without first obtaining a permit as provided in this chapter.

B. For purposes of this section, the following are considered an extraction of groundwater subject to this chapter:

1. The extraction of groundwater to replace a surface water supply which has been, is being, or will be exported.
2. Overwatering agricultural or other lands, through flood irrigation or other means, that causes an excessive conversion of groundwater into tailwater.

ARTICLE III. EXCEPTIONS TO PERMIT REQUIREMENTS

SECTION 14C-11. Party’s burden to support claim of exception

The party claiming that a permit is not required based on one or more of the exceptions provided for in this Article shall have the burden of supporting its claim by a preponderance of the evidence.

SECTION 14C-12. Exclusions from permit requirements.

This chapter shall not apply to the extraction of groundwater in the following circumstances:

- A. When necessary to prevent the flood of lands.
- B. When necessary to prevent saturation of the root zone of planted agricultural land.

C. For use within the boundaries of a local agency located in part within the County and in part in another county where the extraction quantities and uses are consistent with the historical practices of the local agency.

D. To boost heads for portions of local agency facilities, consistent with the historical practices of the local agency.

E. For use on land outside the County which is contiguous to the land within the County from which the groundwater is extracted and under the same ownership, including leaseholds and other present possessory interests. Such export shall be limited to quantities and uses that are consistent with historical practices and shall not be used to benefit land more than ten miles beyond the point of extraction.

F. During the period of an emergency declared pursuant to Government Code Section 8558, when the extraction is:

1. Directly related to the reason or basis for the declaration of the emergency, and
2. Undertaken to prevent or mitigate injury to people, or the flooding or damaging of property.

G. Extractions from within land owned by the United States government for its own benefit.

H. Extraction from within land, title to which is held by the United States in trust for a federally recognized tribe, and made for the benefit of that tribe on such land.

I. Exports of water that the County lacks the legal authority or jurisdiction to regulate. Overlapping or concurrent jurisdiction with another public agency, including a GSA, shall not on its own preempt County's legal authority to regulate absent additional considerations.

SECTION 14C-13. Activities not defined as export of groundwater

The following shall not constitute "export", as that term is defined in Article I of this chapter:

A. The transport by vehicle of potable bottled water for human consumption.

B. The transport of water in the form of manufactured or processed goods or products, including agricultural products.

C. Water in any fire engine, tender, or other firefighting vehicle or apparatus, stored in that vehicle or apparatus for the purpose of use in firefighting activities.

SECTIONS 14C-14 – 14C-20 Reserved

ARTICLE IV. PROCEDURE FOR ACQUIRING USE PERMIT

SECTION 14C-21. Application for a export permit.

A. An application for a use permit is to be filed with the County Water Agency. No application shall be considered complete that does not include all information specifically requested therein and any other information that may be requested by the County Water Agency to address specific aspects of the proposed groundwater export, including but not limited to:

1. Location, maximum extraction rate, depth, and all other information required in the Water Well Drillers' Report of each well owned by the extractor, including observation and monitoring wells.
2. Location, planned monthly extraction rate, and depth of each well proposed for operations.
3. Delineation of the time periods within the applicable groundwater basin in which each well is proposed for operation.
4. Description of the adverse environmental effects of the extraction, by individual well, groups of wells (if applicable), and by the extractor's entire operation.
5. Description of any proposed or feasible uses designed to mitigate any adverse environmental effects of the extraction.
6. Intended beneficial uses of the extracted groundwater and related surface supplies, by individual well, groups of wells (if applicable), and by the extractor's entire operation.

7. Description by quantification and location of each end use of the needs of the extractor which the extraction is designed to meet.
8. Description of alternatives available to the extractor to meet the needs for which the extraction is proposed, including any available types and amounts of water conservation.
9. Description of proposed measures to ensure compliance with any applicable GSP.

B. Concurrently, the Applicant shall consent to the commencement and financing of environmental review as may be required by CEQA and applicable guidelines. The application for a permit and required environmental review shall be accompanied by the deposit of fees for these purposes, as shall be established by the Board.

SECTION 14C-22. Procedures for processing export permits

A. Within thirty (30) calendar days of filing of a complete permit application, which shall include all information and the deposit of fees required by Section 14C-21, the Director shall send notice to all local agencies within the County that have jurisdiction over lands overlying or adjacent to the location of the proposed extraction, and to any interested party who has made a written request to the Director for such notice within the last twelve calendar months, seeking written comments.

B. The Director shall review the application to determine whether it is complete and, if required, shall thereafter commence CEQA environmental review. Applicant shall be responsible for all costs associated with environmental review.

C. The Director may review the matter of the application with affected County departments, staff of the State Department of Water Resources, staff of the Regional Water Quality Board - Central Valley Region, and any GSA or other interested local water agency within whose boundary the proposed activity is proposed to occur. Any interested person or agency may provide written comments relevant to the matter of the proposed extraction of groundwater, which shall be submitted within thirty days of the date of the notice of filing the permit application.

D. Upon completion of the required environmental review the Director shall forward the application, together with any written comments received, environmental documentation, and the Director's recommendations, to the Commission. Upon receipt of the Director's recommendations, the Commission

shall hold a public hearing on each application. Notice of the public hearing shall be given as set forth in Section 1903 of the Kings County Development Code. Such hearing may not be held until at least fifteen days after the time that the Commission receives the recommendation from the Director.

SECTION 14C-23. Public review concerning issuance of permit.

A. Formal rules of evidence shall not apply in the Commission's public hearing proceeding for the application, but the Commission may establish such rules as will enable the expeditious presentation of the matter and receipt of relevant information thereto.

At the Commission's public hearing, which may be continued from time to time as determined appropriate by the Commission, the Commission shall review the application and other evidence submitted therewith and the Director's report, and shall receive pertinent evidence from the Applicant, members of the public, and interested parties, concerning the proposed extraction.

B. The Commission, in considering each permit application, shall consider all potential impacts the proposed export would have on the affected aquifer, including but not limited to:

1. Potential hydraulic gradient
2. Hydrology
3. Percolation
4. Permeability
5. Piezometric surface
6. Porosity
7. Recharge
8. Annual yield
9. Specific capacity
10. Spreading waters
11. Transmissivity
12. Usable storage capacity
13. Water table
14. Zone of saturation impacts.

C. The Commission may request any additional information it deems necessary for its decision. The cost of such additional information shall be borne by the Applicant.

D. If the groundwater to be extracted is under the concurrent jurisdiction of a GSA, the Commission may, but is not required to, rely on any findings, opinions, or decisions of the GSA.

SECTION 14C-24. Findings required for granting of permit approval or denial.

A. The permit may only be granted if there is a majority of the total membership of the Commission present at the required public hearing, and at the conclusion of that hearing a majority of the total membership of the Commission finds that the proposed groundwater extraction will not have significant detrimental impacts on the affected groundwater basin by determining that:

1. The proposed extraction will not cause or increase an overdraft of the groundwater underlying the County without adequate mitigation;
2. The proposed extraction will not adversely affect the long-term ability for storage or transmission of groundwater within the aquifer;
3. The proposed extraction will not exceed the annual yield of the groundwater underlying the County and will not otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users;
4. The proposed extraction will not result in an injury to a water replenishment, storage or restoration project operating in accordance with statutory authorization;
5. The proposed extraction is in compliance with Water Code Sections 1810 and 1220, as well as any applicable GSP;
6. The proposed extraction will not result in any undesirable results under SGMA; and
7. The proposed extraction will not be otherwise detrimental to the health, safety and welfare of property owners overlying or in the vicinity of the proposed extraction site(s).

B. If the Commission determines that one or more of the findings required by this section cannot be made, upon considering the proposed export together with potential conditions of permit issuance, it shall deny the permit application. The basis for any such denial shall be reflected in the Commission's official record of proceedings.

C. The Applicant shall be notified in writing of the Commission's decision on the application, including the basis for denial where applicable, within fifteen days of the Commission's final action on the application.

SECTION 14C-25. Appeal of granting of a permit.

A. Any interested party or public entity may appeal the decision of the Commission by filing a written request with the Clerk within fifteen days of issuance of the Commission's decision. Any such appeal shall specifically set forth the procedural and substantive reasons for the appeal or be deemed incomplete and ineffectual. The Board shall hear all appeals as to those disputed matters which were heard by the Commission.

B. Within fifteen days after receiving an appeal, the Clerk shall set a hearing not more than thirty days from receipt of the appeal. The Clerk shall give written notice of the hearing to:

1. The Commission,
2. The Applicant,
3. Any appellant other than the Applicant,
4. The County Water Agency
5. The districts and cities, within the County, which have lands overlying or immediately adjacent to the location of the proposed extraction of groundwater, and
6. Interested parties who have requested notice of such appeals within the last twelve months.

C. In any appeal taken under this section, the Applicant shall have the burden of proving to the satisfaction of the Board, that such extraction is either exempt from permit requirements pursuant to Article III or will not have significant detrimental impacts based on the criteria set forth in Section 14C-24.A.

D. 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's decision. The decision of a majority of the Board shall be the final decision in the matter.

SECTION 14C-26. Review by the Board of Supervisors

A. Within fifteen days following the date of a decision by the Commission on an extraction permit, the Board, on its own motion, may initiate proceedings to review the decision of the Commission. The Board shall specify the reason(s) for its review. The review need not be limited to the issues and evidence raised before the Commission.

B. The Clerk shall give notice of the time and place when the decision of the Commission will be reviewed by the Board of Supervisors. Notice will be given in the same manner as provided in Section 1903 of the Kings County Development Code for notice of hearing on appeal.

SECTION 14C-27. Reapplication for permit after Board denial

Reapplication for a permit which has been denied by the Commission or Board may not be filed with the County Water Agency until the water year following the denial. For any such reapplication to be accepted as complete, and for it to be further reviewed in accordance with the procedures set forth in Article IV, it must be accompanied by information that demonstrates a significant change in those circumstances which represented the factual basis for the previous permit application denial.

SECTIONS 14C-28 – 14C-30 Reserved

ARTICLE V. CONTENTS OF APPROVED USE PERMITS

SECTION 14C-31. Permit term.

All approved permits shall be valid for a term not to exceed three water years from the date of issuance, as determined by the Commission, and except as may be modified pursuant to this chapter. For the purpose of calculation, the water year in which the permit is granted shall not be counted in determining the three-year time period if less than four months remain in the current water year at the time of final permit approval. This section shall not restrict the Commission from approving a permit for a period shorter than is permitted in Subsections A and B.

SECTION 14C-32. Conditions of permit approval.

The Commission shall impose appropriate conditions of approval on any permit issued as it deems necessary to promote or maintain the health, safety, and welfare of Kings County residents. Conditions may include, but shall not be limited to, requirements for observation and/or monitoring wells. The Commission may

issue a permit only if the Commission finds that the Applicant will provide adequate mitigation to offset all adverse effects that would otherwise result from the proposed extraction.

SECTION 14C-33. Limitation of permit.

A. Nothing contained in this chapter, nor in the conditions of an issued permit, shall be construed as giving the permittee an exclusive right to groundwater extraction, nor as establishing a compensable right in the event the permit is subsequently terminated or modified following a challenge to the permit.

B. This Ordinance and permits issued hereunder are to be construed and applied in harmony with existing law. No permit issued shall exempt, supersede, or replace any provisions of federal, state, or local laws and regulations, including but not limited to California Water Code Section 1220, SGMA, and any other statutes regulating California groundwater, well drilling and maintenance, or building permit requirements.

SECTIONS 14C-34 – 14C-38 Reserved

ARTICLE VI. CHALLENGES TO APPROVED PERMITS

SECTION 14C-39. Challenge to approved permit.

A. Any interested party may challenge the ongoing extraction of groundwater pursuant to an approved permit during the term of the permit based on allegations that one or more of the following circumstances exists:

1. There has been or is an ongoing violation of one or more conditions of an approved permit; or
2. The extraction of groundwater pursuant to this chapter has caused or increased an overdraft in the basin; has adversely affected the long-term ability for storage or transmission of groundwater in the affected aquifer; exceeds the annual yield of the affected groundwater basin; operates to the injury of the reasonable and beneficial uses of overlying groundwater users; is in violation of Water Code Section 1220; or results in an injury to a water replenishment, storage, or restoration project operating in accordance with statutory authorization; or

3. The continued extraction of groundwater pursuant to a previously approved permit will be detrimental to the health, safety, and welfare of one or more affected local agencies or other interested parties.

B. A challenge pursuant to this section shall be commenced by filing a written request with the County Water Agency on a form prescribed by the Director. Such a challenge shall allege one or more of the circumstances specified by this section and shall generally describe facts in support of those alleged circumstances.

C. The County Water Agency shall investigate the challenge to determine its validity.

1. If after the investigation the Director determines that the challenge is without merit, the Director shall give written notice to the permittee and the challenger of the Director's determination.
2. If the Director determines that the challenge is valid, the Director shall, within fifteen days of such determination give notice of the challenge to the Clerk, the permittee, the appellant, all affected local agencies, and to any other interested party which has requested such notice. A Board review shall be held on the matter following the procedures set out in Section 14C-23. The Board's decision may be to deny the challenge and leave the previously issued permit unchanged, to grant the challenge and terminate the permit, or to impose modified conditions to the permit, which the permittee shall be obligated to adhere to if continued extraction for export purposes is to occur, based on findings addressing the criteria specified in Section 14C-24.

E. The standard for review in any such challenge proceeding shall be substantial evidence. The burden of proof shall be upon the person or entity extracting the groundwater that is the subject of the challenge.

ARTICLE VII. ENFORCEMENT

SECTION 14C-40. Remedies are cumulative

All remedies provided in this chapter and elsewhere in this Code, including Section 1-8, are intended to be cumulative, rather than exclusive, with any other

remedy provided in law or equity available to the County, whether or not such remedy is expressed within this chapter.

SECTION 14C-41. Enforcement authority

The County Water Agency shall have primary enforcement authority over the provisions of this chapter.

SECTION 14C-42. Inspection.

The Director, with good cause, may at any and all reasonable times enter any and all places, property, enclosures and structures, for the purpose of making examinations and investigations to determine whether any provision of this chapter has been violated. The Director may if necessary obtain an inspection warrant pursuant to Section 14-39 of this Code to conduct such examinations.

SECTION 14C-43. Civil penalty

Upon determining that a violation of this chapter has occurred or is ongoing, the County may elect to proceed with a civil action against a violator, including, but not limited to, injunctive relief. Any person or entity who violates this chapter shall also be subject to fines of up to five thousand dollars per separate violation. A person 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 within which any such violation is committed, continued, or permitted.

SECTION 14C-44. Civil enforcement as a public nuisance.

All wells operated in violation of the terms of this chapter are hereby declared to be public nuisances which may be abated in accordance with Article IV of Chapter 14 of this Code of Ordinances. The property owner or his or her agent may abate any such public nuisance described hereinabove at any time prior to commencement of actual abatement by or at the direction of the compliance agency or the building official.

SECTIONS 14C-45 – 14C-50 Reserved