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MEMORANDUM

To: Shannon Parry and Dean Kubani, Office of Sustainability and the Environment
From: Linda Sheehan
Date: June 7, 2016
Re: Implementation of the City's Sustainability Rights Ordinance: Groundwater Extraction

Background

The Santa Monica City Council unanimously adopted on April 9, 2013 the Sustainability Rights Ordinance (SRO), adding Ch. 4.75 to the Municipal Code (attached). The SRO states that:

> Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.[1]

The City amended its Sustainable City Plan in early 2014 to reflect the SRO, stating "Santa Monica is committed to Sustainable Rights for its Residents, Natural Communities, and Ecosystems."

City staff are required at least once every two years to prepare a written report that includes discussion of "the realization of the rights recognized in this Chapter" and "the City's progress in effectuating and enforcing … the policies and provisions of this Chapter."[2] The City Council must review this report, including within a public hearing, and must "provide direction to staff to ensure compliance with … the inherent rights of the people and natural communities of the City..."[3] Though it has been over three years since the City Council adopted the SRO, this first report has yet to be produced. However, work is being done to produce the required reporting this year.

Question

Which issue(s) should the required report to the City on SRO progress include?

Short Answer

At a minimum, the required SRO report should recommend that the City Council direct staff to: (a) ensure regular, transparent aquifer monitoring in support of SRO implementation, and (b) develop a draft Ordinance addressing groundwater extraction in the City consistent with the aquifer's right to flourish, as articulated in the SRO. The report should provide sufficient background information so that the City Council may provide direction that is appropriately specific to ensure expedited action.

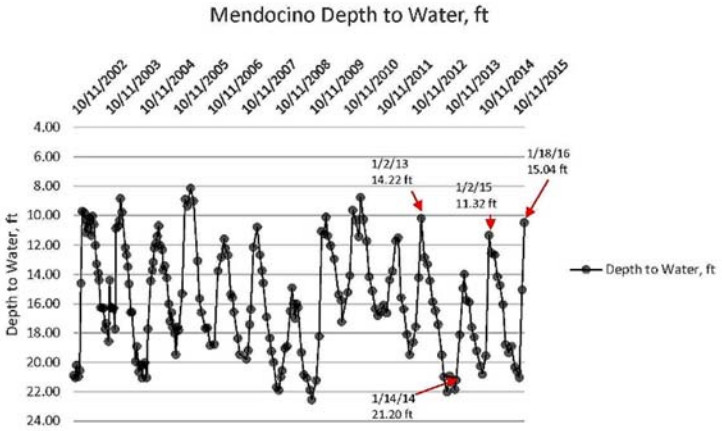
[1] Santa Monica Municipal Code § 4.75.040(b).
[2] Santa Monica Municipal Code § 4.75.050.
[3] Santa Monica Municipal Code § 4.75.060.

Discussion: Implementation of the Rights of the Aquifer through Aquifer Monitoring and Preparation of a Groundwater Extraction Ordinance

The SRO states that City's groundwater aquifers have "fundamental and inalienable rights to exist and flourish." The City's adopted goal of water self-sufficiency by 2020[4] is expected to be achieved through heavy reliance on groundwater,[5] making the health of the aquifer of critical importance.

The Santa Monica Task Force on the Environment recognized the importance of protecting aquifer health by unanimously approving a Motion Regarding Sustainability Bill of Rights and Aquifer Protection.[6] Specifically, the Task Force recommended the City Council direct staff to draft an aquifer protection ordinance that would apply the SRO and applicable state provisions (*e.g.*, California Constitution Art. X, Sec. 2 and Water Code Sec. 275), to either: 1) prohibit unreasonable use or waste of water from aquifers within Santa Monica, or 2) prohibit private citizens or entities from taking water from aquifers within Santa Monica.[7]

The Task Force recommendation has yet to be taken up, but its guidance may serve as a catalyst for action. The ongoing drought, and the expected challenges from future stressors such as climate change, call for significantly increased oversight of the City's aquifer. Yet information on its status does not appear readily available. Thus, **the first recommendation calls for transparent monitoring of aquifer levels, so that decision makers and the public can readily track aquifer well-being.** For example, Mendocino posts average monthly readings of 24 monitoring wells:[8]



[4] *See, e.g.*, City of Santa Monica, Water Resources Division, "Draft 2015 Urban Water Management Plan," prepared by SA Associates, pp. 1-2 (April 2016) (UWMP), at: https://www.smgov.net/uploadedFiles/Departments/Public_Works/Water/SWMP.pdf. The Draft UWMP makes no specific mention of the aquifer's right to flourish under the SRO; this gap should be addressed in the Final UWMP.

[5] Staff recommended to the City Council in May 2013 a water supply option based on 74% reliance on groundwater, a recommendation the City Council approved. City of Santa Monica, Water Resources Division, "Sustainable Water Master Plan," prepared by Kennedy-Jenks Consultants, pp. 5-13 – 5-15 (Dec. 2014), at: https://www.smgov.net/uploadedFiles/Departments/Public_Works/Water/SWMP.pdf. Note that like the UWMP, the Sustainable Water Master Plan should be updated to specifically address the aquifer's right to flourish under the SRO.

[6] City of Santa Monica Task Force on the Environment, Meeting Minutes (October 19, 2015), at: http://www.smgov.net/uploadedFiles/Departments/OSE/Task_Force_on_the_Environment/TFE_2015/15%2010%2019%20TFoE%20Draft%20Minutes.pdf.

[7] The Motion further recommended that, if used, the terms "waste" and "unreasonable use" should be defined as any use over that allowed by the City's outdoor irrigation and landscaping requirements, and that any property owner drilling a well should be required to upgrade their irrigation systems and landscaping to meet current City requirements.

[8] Mendocino City Community Services District, at: http://www.mccsd.com/water_shortage/Depth%20to%20Water.pdf.

By contrast, Santa Monica does not appear to provide the public with similarly available, regular assessments of the status of the City's aquifer. **Transparent monitoring should be a minimum first step in complying with the SRO** and meeting the City's water challenges more generally.

The second recommendation is for staff to seek direction from the City Council to prepare a groundwater extraction ordinance, tied to standards that protect the aquifer's right to flourish. Groundwater management and extraction ordinances adopted elsewhere can serve as models. For example, Mendocino, like Santa Monica, relies heavily on groundwater. It has adopted an ordinance requiring "groundwater extraction permits"[9] for the "common good of all present and potential users." The key operative provision reads:

> No person shall extract groundwater within the boundaries of the MCCSD for "new development", "change in use", or "expansion of existing use" and no water shall be extracted from a well constructed or modified following the adoption of this ordinance within the boundaries of MCCSD unless the person possesses a valid and current Groundwater Extraction Permit as set forth herein.

With *de minimus* exceptions, all groundwater extraction permit applicants must prepare and submit a hydrological study by a qualified hydrologist, and must prove through a pump test that the water is available, that its use will be consistent with adopted use standards, and that the well will not adversely affect hydrologically contiguous wells (including cumulative effects). Violation of "any provision, restriction or prohibition contained in this ordinance or any condition of any valid permit issued pursuant to this ordinance" is a misdemeanor.

The City of Santa Monica similarly enjoys constitutional police powers to regulate groundwater use for the protection of health, welfare and safety.[10] The City should prepare a groundwater management ordinance, particularly focused on groundwater extraction, that demonstrably achieves and maintains local aquifer health consistent with both its police powers and the SRO.

In 2015 Earth Law Center provided Santa Monica's Office of Sustainability and the Environment with a memorandum (attached) describing in detail the City's authority to adopt an ordinance controlling groundwater extraction. In addition to the SRO, the memorandum references the Sustainable Groundwater Management Act (SGMA),[11] which provides state mandates related to aquifer management. In brief, SGMA requires that by January 31, 2020, high- and medium-priority basins subject to "critical conditions of overdraft" must be managed under a groundwater sustainability plan or plans.[12] Santa Monica is in the process now of preparing such a groundwater sustainability plan for its medium-priority basin; the plan is scheduled to be released by the end of

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[9] Mendocino City Community Services District, Ordinance No. 07-1: Groundwater Extraction Permit (adopted Jan. 2007), at: http://www.mccsd.com/ and attached.

[10] In 1995 the California Supreme Court declined to review an appeal of a lower court decision challenging local groundwater management, upholding local authority arising from existing police powers. Water Education Foundation, "The 2014 Sustainable Groundwater Management Act: Approach and Options for New Governance," p. 2, at: http://groundwater.ca.gov/docs/WEFSGMA-Approaches_and_Options_for_New_Governance_00282995xA1C15.pdf.

[11] On September 16, 2014, Governor Jerry Brown signed into law a three-bill legislative package collectively known as the "Sustainable Groundwater Management Act." The Governor's signing message states that "a central feature of these bills is the recognition that groundwater management in California is best accomplished locally." For more information, *see* the state's Sustainable Groundwater Management website, at: http://www.water.ca.gov/groundwater/sgm/index.cfm.

[12] Local agencies also may submit alternative groundwater management plans for consideration by January 1, 2017.

the year. As a groundwater sustainability agency, Santa Monica has a "maximum degree of local control and flexibility consistent with [SGMA's] sustainability goals"[13] to regulate, limit or allocate groundwater extraction.[14] The authorities listed in SGMA, which are "in addition to, and not … a limitation on, any existing authority,"[15] include authority to:

> control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations….[16]

Groundwater sustainability agencies also are authorized, among other things, to: conduct investigations, require registration of facilities that extract groundwater, require facilities to measure the amount of water they extract, authorize transfers of groundwater allocations, impose fees to support their activities, and bring enforcement actions seeking civil penalties for violations.[17]

In sum, Santa Monica not only has sufficient authority under the SRO and pre-SGMA water law and police powers to take action to manage groundwater extraction, but it also has additional mandates under SGMA to do so. However, while SGMA's planning requirements are welcome, its decades-long timeframe for implementation severely curbs its effectiveness. An ordinance clarifying the actions required to meet water goals and protect aquifer health is needed to move forward effectively. Accordingly, **Santa Monica can and should take necessary action now to regulate groundwater extraction by ordinance under its police powers, SRO and other authorities, while a larger groundwater management strategy unfolds over the coming years**.

Finally, the recommended groundwater ordinance should include extraction requirements that specifically ensure the City meets the SRO's mandate of protecting the groundwater aquifer's right to flourish. The "right to flourish" in the SRO is a far more protective standard than provided in SGMA, which generally allows aquifer degradation up to "significant and unreasonable" results.[18]

Earth Law Center welcomes the opportunity to work with the Office of Sustainability and the Environment, local stakeholders (including the Water Advisory Group), and other City staff and Council members to develop a draft groundwater extraction ordinance consistent with the SRO, which can help guide the City's larger groundwater protection strategies under SGMA.

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[13] Calif. Water Code § 10725(b).
[14] Calif. Water Code § 10726.4(a).
[15] Calif. Water Code §§ 10725(a), 10726.8(a).
[16] Calif. Water Code § 10726.4(a)(2).
[17] Calif. Water Code §§ 10725.4 – 10726.4, 10730(a), 10730.2, 10732.
[18] SGMA defines "sustainable groundwater management" as "management and use of groundwater in a manner that can be maintained … without causing undesirable results." "Undesirable results" is defined as including "one or more of the following effects …:
(1) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued…
(2) Significant and unreasonable reduction of groundwater storage.
(3) Significant and unreasonable seawater intrusion.
(4) Significant and unreasonable degraded water quality…
(5) Significant and unreasonable land subsidence that substantially interferes with surface land uses.
(6) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water."

ATTACHMENTS

City of Santa Monica Sustainability Rights Ordinance

Memorandum from Linda Sheehan to Dean Kubani, "Regulation of Groundwater Wells in Santa Monica" (May 20, 2015)

Mendocino City Community Services District, Ordinance No. 07-1: Groundwater Extraction Permit (adopted Jan. 2007)

Council Meeting: April 9, 2013 Santa Monica, California

ORDINANCE NUMBER 2421 (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA ESTABLISHING SUSTAINABILITY RIGHTS

WHEREAS, as declared in Santa Monica's Sustainable City Plan, a healthy environment is integral to the City's long-term economic and societal interests and, accordingly, the City's decision-making is guided by the mandate to maximize environmental benefits and reduce or eliminate negative environmental impacts; and

WHEREAS, as further declared in the Sustainable City Plan, local environmental issues cannot be separated from their broader context; and therefore the City's programs and policies should be developed as models that can be emulated by other communities; and

WHEREAS, in furtherance of these commitments and goals, the City must regularly evaluate whether its plans, laws, and programs are sufficient to meet the growing environmental crisis and must explore all means of addressing the growing environmental crisis; and

WHEREAS, in the last fifty years, national and state governments have attempted to address the crisis by adopting specific environmental protection laws, such

as the Clean Water Act, Clean Air Act, National Environmental Policy Act and California Environmental Quality Act, that limit pollution and resource consumption; but those laws also have proven inadequate to provide long-term protection of our rights to clean air, water, and soil, and sustainable food systems, and the rights of natural ecosystems; and

WHEREAS, the inadequacy of these laws results, in part, from the underlying legal assumption that the natural world is "property", which may be used by its owners -- be they individuals, corporations, or other entities -- for their own, private, short-term economic benefit, generally with minimal regard for the health of the environment; and

WHEREAS, numerous specific examples show that this underlying assumption has proven destructive to the environment upon which all living things ultimately depend; and

WHEREAS, in response to the evils of treating the natural world as mere property, the world-wide, national and local environmental communities are urging governments to adopt a new paradigm based upon recognition that both individual human beings and natural communities or ecosystems have fundamental environmental rights which should be recognized by the law, that the health of the world's populations and ecosystems depends on the full protection of these rights, and that asserted corporate rights can no longer be allowed to take precedence over these rights to human and environmental health and well-being; and

WHEREAS, there are numerous examples of policy statements and laws based on this new paradigm that recognize the rights of the natural world to exist, thrive and evolve; and

WHEREAS, Ecuador amended its constitution to include the rights of nature in 2008, with the first successful case applying that right concluding in March 2011; and

WHEREAS, in December 2010, the City of Pittsburgh became the first major city in the United States to adopt a Community Bill of Rights that bans corporations from drilling natural gas within its city limits and elevates the rights of people, the community, and nature over corporate rights; and

WHEREAS, other municipalities in Pennsylvania, Virginia, Maine, Maryland, New Hampshire, New Mexico, Ohio, and New York have adopted similar measures recognizing the rights of people and natural communities and including language that would subordinate the rights of corporations to local sustainability efforts; and

WHEREAS, Santa Monica's own Task Force on the Environment has studied this growing movement and recommended that the City support it as a means of effectuating the commitments and goals already established by the Sustainable City Plan, and of recognizing the inherent rights of the people and natural communities of the City of Santa Monica; and

WHEREAS, on January 24, 2012 the Santa Monica City Council adopted a resolution declaring the City's Commitment to Sustainable Rights; and

WHEREAS, the City is committed to fully implementing its Sustainable City Plan to further effectuate inherent rights of the people and natural communities of the City of Santa Monica.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 4.75 of the Santa Monica Municipal Code is hereby created to read as follows:

Chapter 4.75 GENERAL PROVISIONS

4.75.010 Title

This chapter shall be known as the City of Santa Monica Sustainability Rights Ordinance.

4.75.020 Findings

The City Council finds and declares:

(a) With the exponential growth in human population and its increasing per capita resource consumption, the planet cannot sustain our current way of life, which is destructive to the natural elements upon which all species depend -- the air, water, climate, soil and other fundamental elements of the world;

(b) Like all other communities, Santa Monica's welfare is inextricably bound to the welfare of the natural environment; and the City has therefore long been committed to protecting, preserving and restoring the natural environment and providing a model of environmental sustainability for other communities to utilize; and

(c) The City Council of Santa Monica has expressed this commitment through a multitude of enactments and actions, including recognizing both the rights of natural communities and ecosystems within Santa Monica to exist, thrive and evolve and the rights of the individual human beings that make up the City of Santa Monica to a clean, healthy and sustainable environment. The peoples' rights include, but are not limited to: the right to affordable and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes, as referenced in Calif. AB 685 (2012); the right to a sustainable energy future based on sustainable renewable energy sources; the right to a sustainable natural climate unaltered by fossil fuel emissions; the right to sustainable, comprehensive waste disposal systems that do not degrade the environment; the right to clean indoor and outdoor air, clean water and clean soil that pose a negligible health risk to the public; and the right to a sustainable food system that provides healthy, locally grown food to the community; and

(d) These rights are not sufficiently safeguarded by the existing body of local, national and international environmental policies and laws, which are grossly inadequate to avert the mounting environmental crisis; and

(e) The inadequacy of the current framework of state, national and international policies and laws necessitates re-examination of the underlying societal and legal assumptions about our relationships with the environment and a renewed focus on effectuating these rights.

4.75.030 Purpose

This Chapter is created and exists for the purpose of codifying Santa Monica's commitment to achieving sustainability by among other things: (1) restoring, protecting and preserving our natural environment and all of its components and communities including, but not limited to the air, water, soil, and climate upon which all living things depend; (2) creating and promoting sustainable systems of food production and distribution, energy production and distribution, transportation, waste disposal, and water supply; and (3) to the full extent legally possible, subordinating the short term, private, financial interests of corporations and others to the common, long-term interest of achieving environmental and economic sustainability.

4.75.040 Rights of Santa Monica Residents and The Natural Environment

(a) All residents of Santa Monica possess fundamental and inalienable rights to: clean water from sustainable sources; marine waters safe for active and passive recreation; clean indoor and outdoor air; a sustainable food system that provides healthy, locally grown food; a sustainable climate that supports thriving human life and a flourishing biodiverse environment; comprehensive waste disposal systems that do not degrade the environment; and a sustainable energy future based on renewable energy sources.

(b) Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City Of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers,

atmospheric systems, marine waters, and native species within the boundaries of the City.

(c) All residents of Santa Monica possess the right to self-governance and to a municipal government which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities, and their directors and managers, do not enjoy special privileges or powers under the law that subordinate the community's rights to their private interests.

4.75.050 Biennial Report

At least once during every 24 month period, City staff shall prepare a written report to the community on the state of the local environment, the realization of the rights recognized in Chapter 4.75, and the City's progress in effectuating and enforcing the Sustainable City Plan and the policies and provisions of this Chapter. The report shall include recommendations for advancing and ensuring compliance with the Sustainable City Plan.

4.75.060 Biennial Hearing

The City Council will bi-annually review the report, conduct a public hearing, assess the City's progress in effectuating and enforcing both the Sustainable City Plan and the policies and provisions of this Chapter, and provide direction to staff to ensure compliance with the Plan's provisions and with the inherent rights of the people and natural communities of the City of Santa Monica described herein.

4.75.070 Compliance Assurance

The City or any City resident may bring an action to enforce any provision of the Santa Monica Municipal Code that advances the goals identified as enforceable in the Sustainable City Plan.

Section 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

Marsha Jones Moutrie

MARSHA JONES MOUTRIE
City Attorney

Approved and adopted this 9th day of April, 2013.

Pam O'Connor, Mayor

State of California)
County of Los Angeles) ss.
City of Santa Monica)

I, Sarah P. Gorman, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2421 (CCS) had its introduction on March 12, 2013, and was adopted at the Santa Monica City Council meeting held on April 9, 2013, by the following vote:

Ayes:	Councilmembers:	Davis, Holbrook, McKeown, Vazquez, Winterer Mayor Pro Tem O'Day, Mayor O'Connor
Noes:	Councilmembers:	None
Absent:	Councilmembers:	None

A summary of Ordinance No. 2421 (CCS) was duly published pursuant to California Government Code Section 40806.

ATTEST:

Sarah P. Gorman, City Clerk

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MEMORANDUM

To: Dean Kubani
From: Linda Sheehan
Date: May 20, 2015
Re: Regulation of Groundwater Wells in Santa Monica

Background

The January 13, 2015 Staff Report to the Santa Monica City Council on the Water Shortage Response Plan and Implementation[1] provides support for a suite of requirements and actions that will help Santa Monica weather the ongoing drought and ensure the continued sustainability of its water supplies. The Staff Report identifies several additional items that staff will prepare for the City Council for future meetings. One of these is "[r]egulation of groundwater wells on private property within the city limits." With regard to this point, the Staff Report states:

> Staff has begun researching the City's ability to regulate groundwater wells on private property. The City cannot currently prohibit the installation of private wells on private property, because Santa Monica is located in a water basin that is unadjudicated. Property owners have the right to use the groundwater on their property. Staff is exploring ways to regulate private well installation and operation such as construction documents, water quality reports, and pumping depths in order to evaluate a well's potential impacts on the City's groundwater wells. An Information Item will be prepared for Council in spring 2015.[2]

This memorandum explores opportunities for the City to regulate the installation of private wells on private property.

Question

Can the City of Santa Monica support in law and policy a program regulating the installation of private wells on private property within the City?

Short Answer

Yes. Existing constitutional and statutory law in California, combined with the context provided by Santa Monica-specific policies and its natural systems, provide an important opportunity for the City to develop legal and policy support for a private well installation regulatory program.

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[1] Memorandum from Dean Kubani and Martin Pastucha to the Mayor and City Council, "Water Shortage Response Plan and Implementation" (Jan. 13, 2015), Agenda Item 8-B; available at: http://www.smgov.net/departments/council/agendas/2015/20150113/s2015011308-B.htm (Staff Report).
[2] *Id.*, p. 8.

Summary of Support: Law

There is a general misconception that water rights are private property subject to takings law regardless of the circumstances of the rights and associated uses. This is not the case. California Constitution Article X, Section 2[3] states as follows:

> It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. *The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. . . .* This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

(Emphasis added.) In other words, *there is no property right in the wasteful and/or unreasonable use, method of use, and/or method of diversion of water*.[4]

The First Appellate District Court reiterated these points last year in *Light v. State Water Resources Control Board*.[5] This case addressed the die-off of young salmon after farmers sprayed the water salmon needed onto vineyards and orchards. The State Water Board adopted a regulation to control water use so as to prevent future such die-offs. The Water Board supported its regulation by stating that diversions harmful to salmonids are by definition "unreasonable" if the diversion could be managed to avoid the harm. The appellate court found for the Water Board, stating that "the Board is charged with acting to prevent unreasonable and wasteful uses of water, regardless of the claim of right under which the water is diverted."

California Water Code Section 275 addresses implementation of this constitutional provision, stating that:

> [t]he department [of water resources] and [state water resources control] board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to

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[3] http://leginfo.legislature.ca.gov/faces/codes.xhtml. *See also* Water Code Section 100 (echoing virtually the same language) and Water Code Section 85023 ("The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy").

[4] *See, e.g.*, *Light v. State Water Resources Control Board,* 226 Cal. App. 4th 1463, 173 Cal. Rptr. 3d 200 (Cal. App. 1st Dist. June 16, 2014, as modified July 11, 2014) (*Light v. SWRCB*) ("since enactment of Article X, Section2, there can no longer be any property right in the unreasonable use of water"). *See also* Craig M. Wilson, Delta Watermaster, "The Reasonable Use Doctrine & Agricultural Water Use Efficiency: A Report to the State Water Resources Control Board and the Delta Stewardship Council," p. 3 (Jan. 2011) (Wilson Report); at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_9.pdf ("All water use must be reasonable and beneficial regardless of the type of underlying water right. No one has an enforceable property interest in the unreasonable use of water.").

[5] *See supra* n. 4; at http://bit.ly/1KQ14Mq and http://bit.ly/1L5sNcM. On October 1, 2014, the California Supreme Court denied review of *Light v. State Water Resources Control Board*, leaving the Appellate Court decision intact.

> prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

Despite this statutory and constitutional direction, the state has yet to take significant action toward implementation of Article X, Section 2. As a result, there is no specific definition of "waste and unreasonable use" which can be readily applied.

This is a gap that the City of Santa Monica could move to begin to fill. Water Code Section 275 does not prohibit such assertive action on "waste and unreasonable use" by the people of California. Indeed, this issue was addressed by the Supreme Court in *In re Water of Hallett Creek Stream System*, 44 Cal.3d 448, 472 (1988), which found that:

> the [State Water] Board's and the state's interest in the conservation and efficient use of water does not depend upon the fortuitous filing of claims by private parties, but may be asserted, and adequately protected, by initiative of the state itself or of concerned citizens.

A memorandum[6] by Craig M. Wilson, long-time Chief Counsel of the State Water Board and later the state's Delta Watermaster, provides guidance in the context of agricultural water use. The memorandum first reviews the applicable statutory and case law on waste and unreasonable use. It next outlines situations in which the State Water Board and the courts have used the doctrine to find unreasonable water uses in a variety of settings, and further notes that "the Reasonable Use Doctrine may be used more broadly to promote the efficient use of water."[7] The memorandum then expands upon this conclusion, recommending specifically that the state employ the reasonable use doctrine proactively (*i.e.*, rather than solely in enforcement actions) to promote more efficient water use or methods of use.[8]

Summary of Support: Context

As explained by the SWRCB's former Chief Counsel in the Wilson Report:

> the inefficient use of water is an unreasonable use of water. Accordingly, *the Reasonable Use Doctrine is available prospectively to prevent general practices of inefficient water use*. Indeed, the Reasonable Use Doctrine, as set forth in the State Constitution and California Statutes is broad and inviolate in scope. As interpreted by case law and administrative decisions and used to its full potential, it can comprehensively address the inefficient use of water in California.[9]

(Emphasis added.) This legal opinion is supported by the *Light v. SWRCB* court, which upheld a regulation that found *in advance* that certain uses of water that harm salmonids are "unreasonable," *even if* the uses were otherwise clearly beneficial for purposes of crop protection. The court specifically held that "[e]fficient regulation of the state's water resources in these circumstances demands that the Board have the authority to enact tailored regulations" rather than act post-incident, by which time the damage would have been done.

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[6] Wilson Report, *supra* n. 4.
[7] *Id*., p. 9.
[8] *Id*., pp. 15-16.
[9] *Id*., p. 3 (emphasis added).

Given this finding and the legal context outlined above, the City of Santa Monica may consider regulations that prevent the wasteful or unreasonable use, method of use, or method of diversion of water. The first step would be to define these terms from the City's perspective and circumstances. As the *Light v. SWRCB* court found:

> California courts have never defined, nor as far as we have been able to determine, even attempted to define, what constitutes an unreasonable use of water, perhaps because the reasonableness of any particular use depends largely on the circumstances. . . .

In other words, though there are no specific definitions of "waste" or "unreasonable" that the City could refer to, the courts have indicated that the *context* of the water use can provide such guidance on a case-by-case basis. This context can also change over time in the same place as well, due to increasing pressures, changing climate, and other factors that alter original use scenarios. Again the *Light* court is instructive, holding that: "[w]hat constitutes an unreasonable use of water changes with circumstances, including the passage of time. . . . Thus, the extent of a particular user's vested right to use water similarly may change." This is consistent with the California Supreme Court's holding that "[w]hat constitutes reasonable water use is dependent upon not only the entire circumstances presented but varies as the current situation changes."[10]

Accordingly, what were formerly "reasonable" uses (such as certain levels of residential irrigation) under prior water circumstances in Santa Monica may become "wasteful" or "unreasonable" based on a new context (such as ongoing drought, overall heightened insecurity over the reliability of water supplies, adoption of a City ordinance protecting the inherent rights of its aquifer to health, and other factors). If Santa Monica wishes to enact a regulation controlling the installation of private wells on private property within the City, it accordingly should first develop a clear foundation of context calling for this regulation. Factors that could be included in this foundational context include, but are not limited to, the following:

- The City's past experiences with the precariousness of its water supplies in the context of MTBE contamination, and its development of a 2020 goal of self-sufficiency to protect the health and safety of the population as a result.
- The semi-arid nature of the City's climate, and the fact that residential water use for landscaping in the City still fails overall to consider the limits the City's climate imposes.
- The need for precautionary action[11] in light of the uncertainties of climate change (a fact referenced in multiple state reports[12]).
- The ongoing drought and the City's heightened responsibility to meet the water *needs* of residents, rather than water desires (such as for extensive, water-dependent landscaping).
- The City's preparation of a drought response Plan that identifies specific levels and methods of water use and prohibitions on certain uses, in response to drought pressures.
- The existence of water uses that run well beyond the limits of this City Plan, contrary to the need to protect the health and safety of residents by setting a "new normal" for water.

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[10] *Environmental Defense Fund, Inc. v. East Bay Municipal Utility District*, 26 Cal.3d 183, 194 (1980).
[11] *See, e.g.*, UCLA Luskin School of Public Affairs, "Los Angeles County Community Water Systems: Atlas and Policy Guide, Vol. 1," (March 2015); at: http://164.67.121.27/files/Downloads/luskincenter/water/Water_Atlas.pdf.
[12] Citations available upon request.

- The City's new groundwater planning responsibilities under state law.[13] Because the groundwater basins on which Santa Monica relies are deemed "medium-priority" basins, stakeholders must establish a management entity by 2017 and adopt a plan for sustainability by 2020. Establishing restrictions to prevent overdraft now are prudent to achieving state groundwater act goals.
- The difficulty (as in *Light*) of correcting injuries to the City's water supply (*i.e.*, the groundwater aquifer(s)) once such injuries have been made through over-diversion, as compared with the City's ability to prevent such situations through targeted regulation.
- The City's 2013 adoption of its Sustainability Rights Ordinance,[14] which set in law City policy to ensure that its aquifer "flourishes."

As to the Sustainability Rights Ordinance, Section 4.75.040 of the Municipal Code states:

> (a) All residents of Santa Monica possess fundamental and inalienable rights to: clean water *from sustainable sources*; … [and]
> (b) *Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish* in the City of Santa Monica… natural communities and ecosystems [are] *defined as: groundwater aquifers*, atmospheric systems, marine waters, and native species within the boundaries of the City.

(Emphasis added.) In other words, the City adopted a law that defined residents' rights to water as limited to *sustainable* sources, not unsustainable uses. It also adopted in the same law a provision stating that the aquifer itself holds its own "fundamental and inalienable rights to *exist and flourish*." (Emphasis added.) This language emphasizes the City's responsibility to ensure the aquifer remains at healthy levels throughout the drought. By this action, the City further reiterated the local importance of exercising civic water responsibilities more carefully than has been done by the state, which has let rivers and aquifers run dry and become almost irretrievably contaminated.

Finally, the Sustainability Rights Ordinance adds an important enforcement provision, which states that: "residents of the City may bring actions to protect these natural communities and ecosystems," including the aquifer(s). This enforcement provision provides an important, additional layer of protection and direction. City policy that effectively ensures the orderly and wise use of water in City borders, consistent with the Sustainability Rights Ordinance, other City laws and policies, and the challenges posed by drought, a semi-arid climate, and climate change, will help prevent after-the-fact reactions that might occur too late to ensure the continued well-being of the waters on which the City depends.

In sum, the City may apply the Constitutional, statutory, and judicial directives regarding waste and unreasonable use to develop a regulation regarding the installation of private wells on private property within the City. In doing so, the City should be sure to clearly provide the context for this regulation, tailored to the goals, needs, and policies of the City.

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[13] On September 16, 2014, Governor Jerry Brown signed into law a three-bill legislative package composed of AB 1739 (Dickinson), SB 1168 (Pavley), and SB 1319 (Pavley), collectively known as the "Sustainable Groundwater Management Act." The Governor's signing message states that "a central feature of these bills is the recognition that groundwater management in California is best accomplished locally." For more information, visit the Sustainable Groundwater Management website, at: http://www.water.ca.gov/groundwater/sgm/index.cfm.
[14] Santa Monica Municipal Code, Article 4, Chapter 4.75.

MENDOCINO CITY COMMUNITY SERVICES DISTRICT
ORDINANCE NO. 07-1
GROUNDWATER EXTRACTION PERMIT

Pursuant to the authority as set forth in the California Water Code Sections 10700 through 10717, the Mendocino City Community Services District (MCCSD) adopts the following Groundwater Extraction Permit Ordinance amending and replacing Groundwater Extraction Permit Ordinance No. 90-1, No. 91-3, No. 92-2, No. 00-1, No. 01-1, and No. 04-1. All real property within the boundaries of MCCSD shall be subject to these regulations. The intent of this ordinance is to protect the groundwater resources within the boundaries of the MCCSD for the common good of all present and potential users.

1. Permits Required

No person shall extract groundwater within the boundaries of the MCCSD for "new development", "change in use", or "expansion of existing use" and no water shall be extracted from a well constructed or modified following the adoption of this ordinance within the boundaries of MCCSD unless the person possesses a valid and current Groundwater Extraction Permit as set forth herein.

A Groundwater Extraction Permit shall be required:

1. prior to the issuance of a Mendocino County Use Permit; or Coastal Development Permit
2. prior to the issuance of a Mendocino County Building Permit for other than minor repair and maintenance;
3. prior to the issuance of a Mendocino County Well Permit; or
4. following the sale of real property within the boundaries of the MCCSD.

A Groundwater Extraction Permit shall not be necessary for minor repair and maintenance to existing structures and wells, or cleaning of an existing well, but a Groundwater Extraction Permit shall be required for any modifications in the structure or depth of the well. The District shall not issue a Groundwater Extraction Permit unless the applicant has obtained all other appropriate drilling permits, including but not limited to permits required by the California Coastal Commission and the County of Mendocino.

The District Superintendent is authorized to advise appropriate agencies that no permit action is required with regard to cases exempt from permit procedures established by this Ordinance.

2. Application Required for Groundwater Extraction Permit

Application for a Groundwater Extraction Permit shall be made in writing on forms provided by MCCSD. The Groundwater Extraction Permit application shall contain the assessor's parcel number, a description of the parcel, the address of the parcel, a description of the proposed change to the parcel, a description of the proposed new development and/or the change in use, a list of all adjacent property owners and their addresses, the existing and proposed placement of wells and water storage facilities on the parcel, the location of existing wells on all adjacent properties, if known, and the maximum amount of water per day anticipated to be extracted by the applicant for the project. A scaled plot map showing all structures, wells, and the proposed development shall be attached to the Groundwater Extraction Permit application. A floor plan for all existing and proposed structures shall be included with the Groundwater Extraction Permit Application. A fee in an amount determined by the Board to cover the cost of administering this groundwater extraction permit process shall accompany the application. The application shall be deemed complete once it is reviewed by the District Superintendent and accepted as complete. The District Superintendent shall contact the applicant regarding the completeness of the application within 30 days of submission and may require further information from the applicant.

3. Hydrological Study

Except as set forth below in Section 4 of this ordinance, all applicants shall be required to submit a hydrological study prior to the issuance of a Groundwater Extraction Permit. A qualified hydrologist (see definition, Appendix B) must perform the hydrological study. Once an application is deemed complete, the applicant shall be permitted to conduct an aquifer pump test for the proposed well(s), as set forth in the application, for the purpose of proving that the amount of water capable of being extracted from that well will support the proposed project as described in the application, based on water use standards established by the Board. The aquifer pump test is also required in order to determine whether the proposed water extraction will have any adverse effect and adverse cumulative effect on hydrologically contiguous wells (see definitions, Appendix B).

The aquifer pump test (Appendix A) shall be conducted continuously over a seventy-two (72) hour period, followed by a monitored twenty-four (24) hour recovery period. Said test shall be conducted during the Hydrological Testing Period (see definitions). The Board may modify the time of year for the test upon determination that weather conditions make such modification appropriate. All aquifer pump tests in the District shall be scheduled by the District Superintendent to avoid conflict

in the data obtained. Water pumped shall be conserved by storage or shall be routed to a recharge/discharge area beyond the influence of the pump test at the applicant's expense.

The hydrological study shall present data obtained and conclusions derived from the aquifer pump test (see Appendix A for hydrological study outline). The hydrological study should include consideration of local geology and hydrology, documentation of current groundwater development, estimation of water use by the development, a pump test, assessment of on-site availability of groundwater, analysis of potential impacts of the proposed groundwater development, and an analysis of cumulative effects to hydrologically contiguous wells. The hydrological study should be documented in a report summarizing the information and analyses, and
it should include appendices containing supporting data.
The following report outline is suggested:

- Introduction
- Estimated Water Allotment
- Hydrological Setting
- Performance of Pump Test
- Pump Test Data Analysis
- Mitigation of Adverse Effect and Adverse Cumulative Effects
- Conclusions
- Appendices

All conclusions expressed by the hydrologist in the hydrological study shall be supported by data and other facts, consistent with good hydrological practices. All assumptions and equations relied on by the hydrologist in conducting the aquifer test and forming his/her conclusions shall be included in the hydrological study report. The hydrological study shall consider: 1) the adequacy of the water supply to support the proposed new development, expansion of existing use, or change in use during the dry summer months and drought conditions, and 2) any adverse effects and adverse cumulative effects to hydrologically contiguous wells. Once a hydrological study has been completed it shall be delivered to the District Office for review.

4. <u>Exceptions to Hydrological Study Requirement</u>

a. <u>No Increase in Water Extraction</u>

If it is clear, based on the Groundwater Extraction Permit Application, that the proposed water extraction will not increase the applicant's existing quantity of water extraction, the District Superintendent may administratively issue the requested Groundwater Extraction Permit without

requiring an applicant to submit a hydrological study. If the proposed new use results in a decrease in water use, a new allotment shall be calculated, and shall be based on the new use. If there is an existing deed restriction for a previous Groundwater Extraction Permit, the applicant shall be required to execute a new deed restriction for the new allotment.

b. <u>Limited Increase in Water Extraction</u>

Based on the information contained in the Groundwater Extraction Permit application, the Board may issue a Groundwater Extraction Permit without requiring an applicant to submit a hydrological study if the proposed change results in a limited increase in water demand. A limited increase is the quantity of water required for "new development", "change in use", or "expansion of existing use", as defined by the Water Use Standard adopted by the Board. A limited increase is determined by the increased water demand for the proposed project. As calculated from the Water Use Standard, a limited increase shall not exceed:

1. 30% of an existing water demand that is less than or equal to 320 gallon per day.
2. 10% of an existing water demand that is greater than 320 gallons per day.

As a condition of approval for an exception to the hydrological study requirement, the applicant agrees not to exceed the water use allotment for current and present use. A limited increase only applies to Section 4(b) of the ordinance. Following the issuance of a Groundwater Extraction Permit under Section 4(b) Exceptions to Hydrological Study Requirements, future "new development", "change in use", or "expansion of existing use", which result in a limited increase in water demand, may require approval of a Hydrological Study prior to issuance of a new Groundwater Extraction Permit to review the effect that incremental development may have on adjacent wells or the aquifer.

c. <u>Modification in the Structure or Depth of an Existing Well or Drilling a New Well</u>

No hydrological study shall be required for modification in the structure or depth of an existing well or to construct a new well for residential or commercial property.

Permittees who have received a permit pursuant to this section 4 shall install water meters, record monthly water meter readings, and submit readings to the District as required. Permits shall specify the quantity of groundwater that the permittee may extract. For those properties assigned water use allotments under provisions of this Ordinance, a penalty will be assessed for continued water use in excess of such allotment. If total use exceeds that allowed by the permit by 25% for three months, the Board may revoke the Groundwater Extraction Permit.

d. Prior to Issuance of a Mendocino County Use Permit or a Coastal Development Permit

A Groundwater Extraction Permit shall be required prior to the issuance of a Mendocino County Use Permit or a Coastal Development Permit. No hydrological study shall be required prior to issuance of a Mendocino County Use Permit unless project is a "new development", "change of use", or "expansion of existing use". The District may administratively issue a Groundwater Extraction Permit with an allotment for current and present use. An administrative fee shall be charged for issuance of a Groundwater Extraction Permit.

e. Prior to Issuance of a Mendocino County Building Permit

A Groundwater Extraction Permit shall be required prior to the issuance of a Mendocino County Building Permit. A Groundwater Extraction Permit shall not be necessary prior to issuance of a Mendocino County Building Permit for minor repair and maintenance, such as painting, minor repairs to structures, and repair and replacement of roofs. No hydrological study shall be required prior to issuance of a Mendocino County Building Permit unless project is a "new development", "change of use", or "expansion of existing use". The District may administratively issue a Groundwater Extraction Permit with an allotment for current and present use. An administrative fee shall be charged for issuance of a Groundwater Extraction Permit.

f. Following the Sale of Real Property

A Groundwater Extraction Permit shall be required, following the sale of developed real property within the boundaries of the MCCSD. The applicant shall have 30 days to submit an application for a GWEP, and 90 days to complete all of the application approval conditions and obtain the GWEP final. No hydrological study shall be required for the sale of real property. The District may administratively issue a Groundwater Extraction Permit with an allotment for current and present use. An administrative fee shall be charged for issuance of a Groundwater Extraction Permit.

5. Board Shall Adopt Water Use Standards and Require Conservation Devices

Water use standards shall be established by the Board designating the quantity of water necessary for a new development or change in use. These water use standards shall be periodically re-evaluated based on actual data collected by the District. The Board shall require water conservation devices including, but not limited to, low flush toilets, to be installed by permittees.

6. Hydrological Study Review

Once a hydrological study has been completed it shall be delivered to the District Office for review.

The District shall refer the hydrological study to an approved hydrologist for review. This review shall include, but not be limited to, consideration of adherence to testing conventions, completeness of data, adequacy of the groundwater supply for the proposed development or change in use, cumulative impact on the District's groundwater resources, and any reported adverse effects and adverse cumulative effects to hydrologically contiguous wells. The applicant shall pay a fee as determined by the Board to cover the cost of such review. The hydrological review and the initial study shall then be submitted to the Board for consideration.

7. <u>Board's Decision on Permit</u>

Within 60 days after the filing of said hydrological study the Board shall consider the Groundwater Extraction Permit application at a regular meeting or a special meeting. Public comment on the proposed Groundwater Extraction Permit shall be heard at the regular or special meeting called by the Board. If necessary, the Board may require the applicant, reviewing hydrologist, or author of the hydrological study to submit supplemental information before deciding whether to approve or deny a Groundwater Extraction Permit. In such case, the Board shall explain the reasons why such information is required.

a. In making their decision, the Board shall independently consider the findings of the aquifer pump test and the hydrological study, all challenges to the aquifer pump test and the hydrological study that have been received by the District during or prior to the public hearing, all information provided by the reviewing hydrologist, and any and all public comment.

b. If, based on the considerations as set forth above, the Board finds that the issuing of a proposed Groundwater Extraction Permit would more likely than not have an adverse effect on the groundwater supply, or the evidence shows that there is insufficient groundwater to support the change in use and/or new development, the Board shall deny the permit. The Board may consider mitigation measures that eliminate adverse effects and adverse cumulative effects to hydrologically contiguous wells as a condition for approval of the hydrological study.

c. The Board shall approve or deny a permit or grant a continuance, within one hundred twenty (120) days of the time the applicant's hydrological report is filed. If the Board does not so act, a Groundwater Extraction Permit shall automatically be approved for the requested water extraction quantity as set forth in their application.

d. The Board shall establish the maximum amount of groundwater an applicant is allowed to extract, and the permit for groundwater extraction shall be issued on condition of that limitation. If

total use exceeds that allowed by the permit by 25% for three months, the Board may revoke the Groundwater Extraction Permit.

8. <u>Reconsideration of Denial</u>

If an applicant is denied a Groundwater Extraction Permit, the applicant may request reconsideration. Said request shall be in writing stating the reason for the request and must be filed with the District Office within 20 days of the Board's decision. The Board shall continue, approve or deny the reconsideration within forty-five (45) days of said request and if they do not act within forty-five (45) days, the request is deemed approved.

9. <u>Water Meter Requirement</u>

Prior to the issuance of any Groundwater Extraction Permit, the applicant shall agree in writing to install an approved water meter prior to any groundwater extraction, at his/her expense. The applicant agrees to install the water meter as a condition of the groundwater extraction permit approval within the date specified in the approval condition. All applicants and permittees shall give permission for the meter to be read by a District employee. Following the issuance of the Groundwater Water Permit, the District, its agents and assigns, may enter onto owner's real property at reasonable times to read the water meter if the property owner fails to submit monthly meter readings for two consecutive months. The water meter shall be accessible by the District during regular business hours. Applicants and Permittees shall provide permission for District employees to sample and test water and to take well depth readings as required for District records, at District expense.

A letter from the District will be sent with self-addressed envelopes requesting that the applicant provide the District with water extraction readings beginning 30 days after the issuance of the Groundwater Extraction Permit, and thereafter on the first of each month. The District will give the applicant 50 days to respond to this notice. (15 day advance notice and 30 days to develop monthly extraction data plus 5 days grace period to submit readings). If the applicant has not responded to the first correspondence, the District will then contact that person in writing and ask them to comply with the earlier request or to establish an acceptable timetable for expected compliance within 30 days. If the second correspondence is not answered within 30 days, the District will write a third letter asking again for compliance and telling the applicant that in the event that they do not comply the matter will be referred to the Board of Directors. The applicant will have two weeks to respond to this letter. This matter will then be administratively referred to the Board Attorney for legal enforcement. The staff attorney will contact the applicant in writing and tell the applicant that Section 15 of the Groundwater Extraction Ordinance will be enforced and damages will begin to accrue in the amount of $100.00 a

day. The applicant will have two weeks to respond to that letter. If the applicant does not respond within two weeks, the staff attorney will advise the applicant that a court complaint will be filed in which damages of $100.00 a day will be sought. If no response to this letter, the complaint will be filed. In the event the District prevails, the applicant shall be responsible for expert witness and attorney's fees and court costs.

10. <u>Completion of the Groundwater Extraction Permit Process</u>

Once a permittee has complied with the conditions of the Groundwater Extraction Permit, including evidence to show that all required well permits have been obtained, the deed restriction has been recorded (see Section 16), and the water meter has been installed, the District shall issue a final Groundwater Extraction Permit. The District shall have the right to inspect the well site and to inspect all improvements and/or changes to the property relative to increased groundwater extraction as enumerated in the permit.

11. <u>Revocation of Permitted Water Extraction</u>

The applicant shall have two years to complete the Groundwater Extraction Permit process if the water source was not in use at the time of the Groundwater Extraction Permit Approval was issued. If groundwater is currently extracted from an existing well, the applicant shall complete the groundwater extraction permit process within the timeframe stated as a condition of the approval. The Groundwater Extraction Permit Application Approval shall automatically expire by its own terms if the applicant does not obtain final approval within the time frame stated as a condition of the approval of his/her application. The applicant may request from the Board an extension for a period of two years and the Board shall approve or deny that request for extension based on information showing that the conclusions of the hydrological study are still valid. There will be a fee for a Groundwater Extraction Permit extension.

If total use exceeds that allowed by the permit by 25% for three months, the Board may revoke the Groundwater Extraction Permit.

12. <u>Permitted Water Extraction Allotment</u>

The Groundwater Extraction Permit shall state the maximum amount of water to be extracted. This limit shall constitute an allotment of groundwater to be extracted by the applicant, and the District shall not reduce this amount unless there is evidence of an error in the hydrological study, discovered within twelve months, evidence of a changed circumstance, which the Board determines is sufficient to justify a quantity modification, or there is a change of use under section 4(a), which would lower the water use allotment.

13. Monitoring of Prior Approvals by County

The District will monitor any restrictions on water usage imposed by the County in groundwater extraction permits issued prior to effective date of this Ordinance, and enforce such restrictions under provisions of this Ordinance.

14. Action on County Referrals of Applications for Use Permits, Land Use Permits, Land Divisions, Local Coastal Plan Consistency Reviews and Coastal Development Permits

The provisions of this Ordinance shall be applied to all County referrals regarding use permits, land divisions, Local Coastal Plan consistency reviews and Coastal Development Permits.

15. Misdemeanor and Penalty

After the adoption and publication of this ordinance, it shall be a misdemeanor for any person to violate any provision, restriction or prohibition contained in this ordinance or any condition of any valid permit issued pursuant to this ordinance, until said ordinance has been repealed. For those properties assigned water use allotments under provisions of this Ordinance, a penalty will be assessed for continued water use in excess of such allotment. Penalty will be at a rate of two cents per gallons of excess use per month, up to 10% overage, five cents for each gallon in excess of 10%, after there has been excess use for two consecutive months, or for three months during any yearly period. If total use exceeds that allowed by the permit by 25% for three months, the Board may revoke the Groundwater Extraction Permit. The District is authorized to read meters to verify water usage. For all other violations, a penalty of $100.00 shall be incurred for each violation. Each day of non-compliance with this ordinance or with the permit conditions shall be deemed a separate violation for purposes of assessment of penalties under this Ordinance. Non-compliance shall be determined commencing with the first day of water extraction activities regulated by the program.

In the event the District is required to file legal action to enforce any provision of this ordinance, the District shall be entitled to recover reasonable attorneys fees and costs (including expert costs) incurred in such legal proceedings in addition to such other relief as may be granted.

16. Conditions shall be Part of Real Property Title Record

The District shall record with the Mendocino County Recorder the conditions on which the permit is issued.

All conditions on the Groundwater Extraction Permit including, but not limited to, the amount of water extraction allowed shall be binding on the applicant as well as his/her heir, assigns or successors in interest to the real property. If the applicant, his/her heirs, or assigns or successor in interest breaches any conditions, the Board may revoke the permit after providing notice of hearing.

17. Severability

If any section, subsection, paragraph, sub-paragraph, sentence, clause or phrase of this is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance and such remaining portions of this ordinance shall remain in full force and effect.

18. Board May Issue Emergency Permit

Nothing in this permit process shall be deemed to diminish the authority of the Board to act in any manner consistent with the existing laws. Nothing in this permit process shall prohibit the Board from issuing any permit for groundwater extraction or other water development without public notice in the event that the Board determines that an emergency situation requires the issuance of such permit.

19. Constitutionality

This ordinance is not intended to authorize, and shall not be construed as authorizing, the MCCSD to exercise its power in a manner which will take or damage private property for public use. This ordinance is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States of America.

This ordinance shall be published once in the Mendocino Beacon, a newspaper of general circulation published within the District. This Ordinance was introduced at a meeting of the Board of Directors on December 18, 2006, and adopted by the Board of Directors on January 29, 2007 by the following vote:

AYES: Directors Kraynek, Bowery, Jelic, Schwartz, and O'Brien
NOES: None
ABSENT: None

_____
Edward O'Brien III, Board President

ATTEST:

_____
Jodi Mitchell, District Secretary

Appendix A

Hydrological Study Guidelines

General

No person shall extract groundwater within the boundaries of the MCCSD for "new development", "change in use", or "expansion of existing use" and no water shall be extracted from a well constructed or modified following the adoption of this ordinance within the boundaries of MCCSD unless the person possesses a valid and current Groundwater Extraction Permit. Except as noted in the ordinance, all applicants shall be required to submit a hydrological study prior to issuance of a Groundwater Extraction Permit.

Approved Hydrologists

MCCSD will maintain a list of approved hydrologists who are authorized to conduct hydrological studies and/or peer review hydrological studies conducted by other approved hydrologists.

Professional Qualifications of Hydrologist

A California Registered Geologist, who is a hydrologist , a Certified Engineering Geologist, and/or a California Certified Hydrogeologist /or a California licensed Civil Engineer, or Registered Geologist with a minimum of five (5) years of experience in groundwater hydrology are eligible to be approved hydrologists.

Elements of the Hydrological Study

The hydrological study should include consideration of local geology and hydrology, documentation of current groundwater development, estimation of water use by the development, a pump test, assessment of on-site availability of groundwater, analysis of potential impacts of the proposed groundwater development, and an analysis of cumulative effects to hydrologically contiguous wells. The hydrological study should be documented in a report summarizing the information and analyses, and should include appendices containing supporting data. The following report outline is suggested:

- **<u>Introduction</u>**

The introduction should include: 1) a description of the project, 2) a description of the location of the proposed development with respect to contiguous properties and wells, and 3) location and site maps. The well head location and elevation should be surveyed in using a benchmark and datum acceptable to MCCSD.

- **<u>Estimated Water Allotment</u>**

The water allotment for the proposed development shall be calculated from the Groundwater Extraction Permit Ordinance Water Use Standard. The allotment is based on the size and type of proposed development described in the Water Use Standard.

- **<u>Hydrological Setting</u>**

Include a summary of the local hydrological setting, site characteristics, and present groundwater use on the contiguous properties and current groundwater use on the proposed development parcel. Discuss the following:

1. **Local Geology and Groundwater**

   Describe the local geology and occurrence of groundwater. Locate all streams and springs on the project parcel and on contiguous parcels, and measure the spring and stream flows, or estimate their dry season flow from available reports by California Department of Water Resources, State Water Resources Control Board, and others.

2. **Aquifer Description**

   Identify the aquifer(s) to be developed. For terrace aquifers, note the extent of the aquifer, average thickness, and average storage capacity. For bedrock aquifers, and composite terrace/bedrock aquifers, provide information on weathering and fracturing, depth to hard bedrock, and other relevant information.

3. **On-Site Hydrological Conditions**

   Document on-site hydrological conditions, including geologic materials encountered during the drilling of the well, and static depth to water during the Hydrological Testing Period (see Appendix B Definitions). DWR Water Well Drillers Report(s) of the well(s) should be included.

4. Existing Wells

Identify all wells on the study parcel and on contiguous parcels. Show well locations and elevations on the assessors parcel map and on the well inventory and topographic map of the Mendocino Headlands available from MCCSD show measured distances to the pumping well. Describe each well, including depth, pump setting, well construction details, geological log if available, static water level in wells, use and estimated pumpage, and water level fluctuations. Observed well interference between hydrologically contiguous wells identified in previous hydrological studies that are within the radius of influence of the test well must be included in the Hydrological Study. Geologic cross-sections illustrating information from available well logs are recommended.

- **<u>Performance of Pump Test</u>**

The pump test is intended to document that an adequate groundwater supply is available on the site for the proposed project and to determine any adverse effect and adverse cumulative effects on local groundwater users and the aquifer(s) as a whole. Pump testing requirements for hydrological studies are as follows:

1. Notice Requirements for Aquifer Pump Test

At least ten days before the beginning of the aquifer test, the District shall publish notice of the test in a local paper of general circulation in the town of Mendocino. The District shall also post notice of the aquifer test at the District Office, the Mendocino Fire House and the Mendocino Post Office ten days before the beginning of said test. At least ten days before the beginning of the aquifer pump test the District shall notify in writing all adjacent property owners along with any person who requests notice in writing. All notifications will be mailed certified-return receipt requested. The **Notice(s) of Aquifer Test** supplied by MCCSD shall be posted in conspicuous visible location(s) on the parcel where the test is to be conducted ten days prior to the test. Such notices shall inform such property owners of date, time, location and purpose of the pump test, and provide a contact name, phone number and address in the event that their wells are apparently affected by the test. The notices will emphasize the importance of response as soon as any effects are observed. The notices shall also advise property owners that they can request that their wells be included in the monitoring process. Surrounding property owners who feel that their wells may be hydrologically contiguous may request that their wells be included in the monitoring process. Such request shall be made to

the District at least 72 hours prior to beginning of the pump test. Any expense related to this monitoring of wells involved in the pump test shall be borne by the applicant. Any property owner that requests that their well be monitored must agree not to use the well during the aquifer pump test. The Superintendent shall schedule all aquifer tests that are to be conducted in the District.

2. Pump Testing Method

A hydrological study aquifer pump test shall be designed and conducted by or under the supervision of an approved Hydrologist. Pump testing shall be conducted generally in accordance with the procedures outlined in the Mendocino County Coastal Groundwater Development Guidelines (Questa, Engineering, 1989), which details the test procedures for the Constant Rate and Step Drawdown Tests.

Authorization to use any other than the constant rate pump test must be obtained from the District Superintendent before conducting the actual test, and shall be based on submission of items “a”, “b”, and “c” below.

a) Provide peer reviewed, multiple literature documentation showing that the substitute test provides equal or greater accuracy for predicting aquifer and well characteristics in the study area setting, compared to the constant rate pump test.

b) Supply industry recognized literature thoroughly documenting how the substitute pump test should be conducted, and the limitations of the test.

c) Supply industry recognized literature showing how the substitute pump test is analyzed.

The minimum pump test duration will be for 72-hours, with a 24-hour monitoring of aquifer recovery. A minimum of 10 groundwater level measurements per log cycle shall be collected from the test well and monitoring well used to determine aquifer characteristics. Water level measurements are to be accurate within 0.1-foot (or 1-inch). The pump discharge rate is to be monitored and maintained to within 10-percent of the selected pump test rate. Any variation from these guidelines including total length of pumping time, gaps in pumping, and variation in pump discharge, will require a technical explanation by the professional under whom the tests were performed. It should be noted that these guidelines are not rigid requirements, with the understanding that the ultimate goal of the pump test is to allow a determination of ground water availability and potential effects on the aquifer and nearby wells.

3. Monitoring Well(s)

Pump testing for hydrological studies shall include water level observations in at least one monitoring well throughout the pumping period. It is recommended that at least one monitoring well be installed within the area of influence of the pumped well specifically for use in the pump test. If a monitoring well is installed specifically for the pump test, care should be taken to assure that the screened interval of the monitoring well intersects the aquifer from which the pumped well draws water. As an alternative, existing nearby water wells may be suitable as monitoring wells, provided: (a) they have a screened interval, which intersects the same aquifer as the well to be tested; (b) they are not pumped during the test. A 24-hour pre-test monitoring of water levels in the well to be pumped and in the monitoring wells is recommended. The pre-test monitoring is used to establish any background influences on groundwater levels, i.e., other pumping activities.

Throughout the full duration of the pump test and recovery period, water level measurements in the monitoring well(s) should be made at regular intervals, similar to readings taken for the pumped wells. Measurements are to be accurate within 0.1-foot.

- **<u>Pump Test Data Analysis</u>**

An analysis should be provided of the pump test results and other information in order to document proof of adequate water supply and to determine impacts on local water users and the regional aquifer.

1. Well and Aquifer Characteristics

The following calculations and data should be provided from field measurements to characterize the pumped well and local aquifer.

a) <u>Drawdown and Recovery.</u> Plot aquifer drawdown and recovery curves on log paper for both the pumped well and monitoring well(s). The curves should be presented for easy comparison. Tabulate all time, water level, and pump rate data in an appendix.

b) <u>Transmissivity and Storativity.</u> Compute transmissivity and storativity for the local aquifer using the Theis equation, Cooper-Jacobs method (Todd, 1980) or other appropriate techniques. Document methodology, including equations and assumptions, and interpretations. If pump testing data analysis software is used, provide information on the software (program name and synopsis).

c) Well Efficiency and Specific Capacity. Compute well efficiency and the specific capacity of the well, if appropriate (Todd, 1980).

2. Proof of Adequate Water Supply

The observed pump rate during the pump test should be a minimum of 2.5 times the estimated daily water use allotment to establish proof of an adequate water supply for the proposed development.

3. Aquifer Effects

The observed and computed drawdown at neighboring wells or installed monitoring wells will provide the basis for assessing the extent of adverse effects and adverse cumulative effects on the aquifer and wells on surrounding properties.

a) Evaluation Criteria for Adverse Effects and Adverse Cumulative Effects

Adverse Effect: An adverse effect on the water table or aquifer shall be considered to occur if the pump rate during the aquifer test results in an aquifer drawdown at the well of an adjacent property or at a well within the radius of influence which either:

1) amounts to more than 10-percent of the available water column at such well; or,
2) causes a decline (estimated or observed) in the existing well yield to a level, which is less than 90-percent of maximum day water use demand for the hydrologically contiguous property.

Adverse Cumulative Effect**:** An adverse cumulative effect will be considered to occur when the sum of incremental drawdown(s) from the current test well(s) and test well(s) from previously approved hydrological studies:

1) amounts to more than 10-percent of the maximum available water column at a hydrologically contiguous well.

The cumulative effect is based on the calculated drawdown using:

1) the aquifer parameters computed for each well when the well was tested,
2) the aquifer conditions for the current test,
3) the pump rate for the drawdown calculation for each test well that is equivalent to their approved allotment, and
4) a three day pumping period for the calculation.

This analysis assumes that adjacent wells or wells within the radius of influence operate under similar hydrogeologic conditions and physical characteristics as the pumped well, unless evidence to the contrary is available. If more than one well is proposed; it must be demonstrated by calculations, or by actual pump testing, that the cumulative drawdown effect from all wells will be less than 10-percent of the available water column at adjacent wells or wells within the radius of influence.

b) Pump Test Results. Aquifer drawdown at all wells within the radius of influence of the production well in the study area shall be reported or computed for conditions during pump testing. Various procedures for computing drawdown and the zone of influence of the pumping well are provided in Appendix A of the Mendocino County Coastal Groundwater Development Guidelines, 1989.

c) Projected Drawdown. The projected drawdown effect on the aquifer and the adjacent wells should also be estimated for the following conditions: 1) maximum day water use demand, 2) 90-day dry weather conditions, and 3) 180-day drought conditions.

4. Regional Aquifer Impact

To evaluate the regional impact on the aquifer, the expected annual pumpage of the well should be computed. If the well penetrates a terrace aquifer, compare the annual well pumpage amount to the storage capacity of the local aquifer and annual recharge as estimated from water balance calculations. Refer to the Groundwater Modeling Study of the Mendocino Headlands (Questa Engineering and ETIC, June 2004) for additional background information. The Regional Aquifer Impact determination is for informational purposes and for use by MCCSD in further developing and implementing a groundwater management plan, and will not be the basis for issuing the groundwater extraction permit.

- **Mitigation of Adverse Effect And Adverse Cumulative Effect**

Mitigation measures that eliminate adverse effects and adverse cumulative effects on hydrologically contiguous wells shall be included in the hydrological study.

- **Conclusions**

Conclusions should include: 1) comparison of the estimated water allotment for the proposed development and the well capacity used to establish proof of an adequate water supply for the development; 2) summary of effects on hydrologically contiguous wells; and, 3) comparison of

annual well pumpage and storage capacity of the aquifer to assess the impact of the well on available groundwater supply.

- **Appendices**

  Appendices should include all relevant pump test data and well logs, as well as letters or other communications from nearby well owners, and written responses.

Peer Review of Hydrological Studies

The District shall refer the hydrological study to an approved hydrologist for review. This review shall include, but not be limited to, consideration of adherence to testing conventions, completeness of data, adequacy of the groundwater supply for the proposed development or change in use, cumulative impact on the District's groundwater resources, and any reported adverse effects and adverse cumulative effects to hydrologically contiguous wells. The applicant shall pay a fee as determined by the Board to cover the cost of such review. The hydrological review and the initial study shall then be submitted to the Board for consideration.

REFERENCES

1. Calif. Dept of Water Resources (DWR) Town of Mendocino Groundwater Study, June 1985, 53 pp
2. Driscoll, F. G., Groundwater and Wells, 1995.
3. Questa Engineering Corp., Mendocino County Coastal Groundwater Development Guidelines,1989
4. Questa Engineering Corp. and ETIC, Inc. Groundwater Modeling Study of the Mendocino Headlands, Mendocino, Calif., Consultant Report prepared for MCCSD. June 2004
5. Todd, David Keith, Groundwater Hydrology, 1980 2nd edition, John Wiley & Sons, New York, 535p.

Appendix B

DEFINITIONS

ADEQUATE WATER SUPPLY: Sufficient quantities of water to support proposed uses and to maintain contiguous and surrounding uses. Adequate water supply is 2.5 times the daily water use allotment established by this Ordinance for the project involved.

ADJACENT: Any real property parcels that shares a common border with an applicant's parcel and all surrounding parcels that are separated by a road or easement.

ADVERSE CUMULATIVE EFFECT: An adverse cumulative effect will be considered to occur when the sum of incremental drawdown(s) from the current test well(s) and test well(s) from previously approved hydrological studies:

1) amounts to more than 10-percent of the maximum available water column at a hydrologically contiguous well.

The cumulative effect is based on the calculated drawdown using:

1) the aquifer parameters computed for each well when the well was tested,
2) the aquifer conditions for the current test,
3) the pump rate for the drawdown calculation for each test well that is equivalent to their approved allotment.
4) a three day pumping period for the calculation.

ADVERSE EFFECT: An adverse effect on the water table or aquifer shall be considered to occur if the pump rate during the aquifer test results in an aquifer drawdown at the well of an adjacent property or at a well within the radius of influence which either:

1) amounts to more than 10-percent of the available water column at such well; or,
2) causes a decline (estimated or observed) in the existing well yield to a level, which is less than 90-percent of maximum day water use demand for the hydrologically contiguous property.

ALLOTMENT: The maximum amount of water an applicant may extract on a daily basis, as averaged over a thirty-day (30-day) period.

APPLICANT: Any person as defined herein who applies for a Groundwater Extraction Permit.

AQUIFER: A saturated bed, formation, or group of formations or strata, which yields water in sufficient quantity to be economically useful.

AQUIFER PUMP TEST: Physical testing for evaluation of an aquifer to determine the existence of an adequate water supply and to provide data for the hydrological study. Test to be conducted during Hydrological Testing Period.

BOARD: Mendocino City Community Services District Board of Directors.

CHANGE IN USE: Any change in use of the property to a different use category as defined in the Water Use Standard.

CHANGED CIRCUMSTANCE: A hydrological change that diminishes water availability within the boundaries of the Mendocino City Community Services District or any part therein.

CLEANING: Shall include removal of silt and other soft materials, but does not include removal of rock or rock materials.

CONE OF DEPRESSION: The depression, roughly conical in shape, produced in a water table by the extraction of water from a well at a given rate. The volume of the cone varies with the rate and duration of withdrawal of water.

CUMULATIVE EFFECTS: The sum of incremental drawdown effects by the test well(s) and by previous aquifer pumps tests performed for hydrological studies for granted Groundwater Extraction Permit Approval(s) on a hydrologically contiguous well.

DEPLETE: The lowering of groundwater levels in an aquifer to the point where there is no longer an adequate water supply for existing uses.

DISTRICT: Mendocino City Community Services District (MCCSD)

EMERGENCY: A sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

EXPANSION OF EXISTING USE: Any increase in water usage by action other than New Development or Change of Use.

GROUNDWATER: That part of the subsurface water which is the zone of saturation, including underground streams.

HYDROLOGY: The science that deals with continental water (both liquid and solid), its properties, circulation, and distribution, on and under the Earth's surface and in the atmosphere, from the moment of its precipitation until it is returned to the atmosphere through evapotranspiration or is discharged into the ocean.

HYDROLOGIST: A Registered Geologist, a Certified Engineering Geologist, a Registered Hydrologist, or a Registered Civil Engineer with a minimum of five (5) years of experience in groundwater hydrology and hydrological studies.

HYDROLOGICALLY CONTIGUOUS WELL: Any well serving a contiguous or surrounding property where such well is hydraulically connected to the pumping well where there is a reasonable expectation of well interference during the aquifer test or increase in water extraction.

HYDROLOGICAL STUDY: A study of the hydrology of a defined area.

HYDROLOGICAL TESTING PERIOD: The hydrological testing period will commence on August 20 of any given year and will terminate when 6 inches of rainfall has been recorded beginning August

1st of the same year, as measured on the Community Services District's rain gauge. After December 31st, if 6 inches of rainfall has not been recorded, the testing period will be extended and will terminate when 7 inches of rain has fallen since August 1st of the prior year. After January 31st, if 7 inches has not been recorded, additional extension will allow hydrological testing until 8 inches has fallen as measured from August 1st of the prior year. After February 28th, termination of the testing period will occur when 9 inches of rain has fallen or March 31st, whichever comes first. During the defined testing period, no hydrological testing will be allowed for 5 consecutive days following a recorded rainfall of 1 inch or more. Testing may be resumed after the 5-day waiting period, provided that the total rainfall has not exceeded the above-defined limits of the hydrological test period. The hydrological test period as defined may be modified by Board action in case of unusual rainfall patterns.

LIMITED INCREASE: A limited increase is the quantity of water required for "new development", "change in use", or "expansion of existing use", as defined by the Water Use Standard adopted by the Board. A limited increase is determined by the increased water demand for the proposed project. As calculated from the Water Use Standard, a limited increase shall not exceed:

1. 30% of an existing water demand that is less than or equal to 320 gallons per day.
2. 10% of an existing water demand that is greater than 320 gallons per day.

As a condition of approval for an exception to the hydrological study requirement, the applicant agrees not to exceed the water use allotment for current and present use. A limited increase only applies to Section 4(b) of the ordinance. Following the issuance of a Groundwater Extraction Permit under Section 4(b) Exceptions to Hydrological Study Requirements, future "new development", "change in use", or "expansion of existing use", which result in a limited increase in water demand, may require approval of a Hydrological Study prior to issuance of a new Groundwater Extraction Permit to review the effect that incremental development may have on adjacent wells or the aquifer.

MAXIMUM DAY WATER USE DEMAND: Daily water allotment based on the Groundwater Extraction Permit Water Use Standards.

MINOR REPAIR AND MAINTENANCE: Repair and maintenance to the existing well structure or equipment. Minor repair and maintenance does not include deepening the well or replacing the casing in the well. Minor repair and maintenance includes painting or minor repairs to structures, replacement of windows, floor coverings, and interior and exterior siding, and repair and replacement of roofs. Construction of a foundation under an existing structure is not considered minor repair and maintenance.

NEW DEVELOPMENT: Development of any new water source, division of an existing parcel, or any project, which requires a building or use permit according to Mendocino County regulations.

PERSON: Includes any state or local governmental agency, private corporation, partnership, individual, group of individuals, owner(s) or developer(s) of a property subdivision, or, to the extent authorized by law, any federal agency.

RADIUS OF INFLUENCE: Is the horizontal distance from the center of a pumping well to the limit of the cone of depression.

SAFE YIELD: The maximum quantity of water that is allotted in the Groundwater Extraction Permit Water Use Standard for the proposed development, which can be withdrawn from an aquifer without causing an undesirable effect.

SUSTAINED YIELD: Is the maximum pumping rate that a pump can remove water from a well without lowering the water level in the well below the pump intake. A sustained yield in a well exists when drawdown stabilizes and equilibrium conditions are achieved during the aquifer test.

WATER DEMAND: Is the quantity of water use calculated from the Water Use Standards for all uses on a parcel. Existing allotments may be greater than or less than the parcel water demand.

WATER METER: Any device used to accurately measure water that is extracted from a groundwater source.

Appendix C

Water Use Standard	Gallons/Day	Units
Residential:		
Single Family Residence-		
1) 1-2 Bedrooms	200 gal/ d	per unit
2) Each additional bedroom, attached or detached	60 gal/ d	each bedroom
Additional Residence		
1) Additional residence w/ 1 or 2 bedrooms	200 gal/ d	per unit
2) Each additional bedroom	60 gal/ d	per bedroom
Guest Cottage	100 gal/ d	per unit
Commercial Visitor Accommodations:		
Bed and Breakfast, Hotel, Motel, Inn		
1) Dwelling unit, w/ kitchen	160 gal/ d	per bedroom
2) Sleeping unit, w/o kitchen,	120 gal/ d	per bedroom
3) With on-site Laundry	40 gal/ d	per bedroom
Vacation Home Rental		
1) 1-2 bedrooms	200 gal/ d	per unit
2) Each additional bedroom	60 gal/ d	per bedroom
Single Unit Rental		
1) 1-2 bedrooms, w/ kit.	200 gal/ d	per unit
2) 1-2 bedroom, w/o kit.	140 gal/d	per unit
3) Each additional bedroom	60 gal/d	per bedroom
Commercial Business:		
Cottage Industry/ Home Occupation		
1) Residence w/ 1-2 bedrooms	200 gal/ d	per unit
2) Each additional bedroom	60 gal/d	per bedroom
3) Business portion of residence	.15 gal/d/ft^2	business portion
Retail Store/ Gallery/ Office		
1) Retail store/Gallery	.15 gal/d/ft^2	Display Area
2) Office	.15 gal/d/ft^2	Work Area
Food and Beverage Establishments		
1) Full Service w/ bar	3.4 gal/d/ft^2	dining area
2) Full Service w/o bar	2.9 gal/d/ft^2	dining area
3) No Service, w/ seating, no dish washing	2.1 gal/d/ft^2	dining area
4) No On-Premise Consumption	2.1 gal/ d/ ft^2	work area

Water Use Standard	Gallons/Day	Units
Bar		
1) Bar area	6.7 gal/d/linear ft.	bar length
2) Patron area	1.4 gal/d/ft^2	patron area
Laundromat		
1) Per machine	400 gal/ d	per machine
Service Station	1,000 gal/ d	per service station
Grocery Store	.2 gal/d/ft^2	work area
Church		
1) w/ kitchen	5 gal/ d	per sanctuary seat
2) w/o kitchen	3 gal/ d	per sanctuary seat
Hall/Auditorium	3 gal/ d	per seat
Theater	5 gal/ d	per seat
School		
1) Public	15 gal/ d	per student
2) Private	15 gal/ d	per student
Government Office or Building	.15 gal/d/ft^2	work area
Personal Services		
1) Beauty Salon/Barber Shop	1 gal/d/ft^2	work area
2) Spa Services	1.5 gal/d/ft^2	work area

The Board will handle types of establishments not listed here or special requests, on a case-by-case basis.

Appendix D
Water Use Standard Definitions

Additional Residence shall mean occupancy, by non-transient residents, of a second dwelling unit on a parcel, attached to or detached from the primary residence or commercial business, with provisions for, sleeping, eating, cooking, and sanitation. Typical uses include an apartment or studio.

Bar shall mean an establishment or place of business primarily engaged in the sale of prepared food or beverages for on premises consumption.

Bed & Breakfast shall mean any building or portion thereof or group of buildings containing no more than four (4) dwelling units or sleeping units, which are designed or intended to be used, let, or hired out for occupancy by transient guests for compensation or profit, with the express permission of the owner, wherein breakfast may be provided for compensation or profit.

Cottage Industry shall mean a secondary use of a parcel containing a Single Family Residence, which is the primary residence of the owner or operator of the Cottage Industry. No Cottage Industry may occupy more than 640 square feet of area within any building or buildings on the same parcel and not more than 10 customers or clients shall come to the parcel for service or products during any one-day. Specific standards are:

1. Not more than one (1) outside person may be employed on the premises in addition to the members of the family residing on the premises;
2. The Cottage Industry shall be a secondary use of a parcel containing a Single Family Residence or Dwelling Unit as a principal residence of the owner or operator of the Cottage Industry.
3. No Cottage Industry permitted pursuant to the Ordinance may occupy more than 640 square feet of area within any building or buildings on the same parcel.
4. Not more than ten (10) customers or clients shall come to the residence for service or products during any one-day.

Detached Bedroom shall mean a separate incidental structure containing one (1) room only without a kitchen or sanitation facilities, designed for and intended to be used as a sleeping or living facility for family members to be used in conjunction with a main structure which includes kitchen and sanitation facilities. A detached bedroom shall be located no farther than one hundred fifty (150) feet from the main structure, and shall not exceed five hundred (500) square feet of floor area.

Dwelling Unit shall mean a living space, which provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation.

Food and Beverage Establishments shall mean:

1) Full Service w/ Bar: Eating and drinking establishments or places of business engaged in the sale of prepared food and beverages for on-premise consumption with a bar and full service.
2) Full Service w/o Bar: Eating and drinking establishments or places of business engaged in the sale of prepared food and beverages for on-premise consumption without a bar and with full service.

3) No Service: Eating and drinking establishments or places of business engaged in the sale of prepared food and beverages for on-premise consumption with seating and no dish washing and no service.
4) No On-Premise Consumption: Eating and drinking establishments or places of business engaged in the sale of prepared food and beverages, and which no consumption of the product occurs on the premises.

Gallery shall mean an establishment that engages in the retail sale of art or specialty items.

Guest Cottage shall mean a living space without provisions for cooking, with provisions for sleeping, and sanitation, and where the person or persons are guest(s) of the regular occupants of the primary residence. Living space shall be restricted to 640 sq. ft.

Home Occupation shall mean an accessory use within a Single Family Residence for gainful employment, which involves the manufacture, provision or sale of goods and /or services, where such uses are clearly incidental and secondary to the use of the Single Family Residence for residential purposes, and must not change the character thereof, or adversely affect the residential or rural nature of its surroundings. Specific Standards are:

1. No person other than members of the family residing on the premises shall be engaged in such occupation;
2. No additional water or sewer demands will be created by the use;
3. The Home Occupation shall be incidental and subordinate to its use for residential purposes and not more than 25 % of the floor area of the residence shall be used for such occupation. Use of any accessory building or garage for these purposes shall be prohibited.
4. No more than ten (10) customers or clients shall come to the residence for service or products in any one-day.

Hotel shall mean any building or portion thereof containing five (5) or more dwelling units or sleeping units each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit wherein meals may be provided for compensation or profit.

Inn shall mean any building or portion thereof or group of buildings containing five (5) or more dwelling units or sleeping units each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit, and where regular meals may be provided for compensation or profit.

Motel shall mean any building or portion thereof or group of buildings containing five (5) or more dwelling units or sleeping units where such units are directly accessible from an outdoor parking area and where each is used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit.

Office shall mean private firms or organizations, which are primarily used for the provision of professional, executive, management, or administrative services.

Personal Services shall mean an establishment or place of business primarily engaged in the provision of services of a personal nature. Typical uses include: beauty salon, barbershop, massages studio, or dance studio.

Retail Store shall mean a business that is engaged in the sale or rental of commonly used goods and merchandise for personal or household use.

Single Family Residence shall mean the occupancy of the primary residential unit of a parcel on a non-transient basis, and the dwelling unit shall provide provisions for sleeping, eating, cooking, and sanitation.

Single Unit Rental shall mean the rental of an attached or detached structure (not the primary residence or business) on a parcel for Visitor Accommodations for transient guests for compensation or profit (30 days or less), and shall provide provisions for sleeping, sanitation, and with or without eating and cooking.

Sleeping Unit shall mean a living space, which provides living facilities for one or more persons, but does not include provisions for cooking and eating within the unit.

Vacation Home Rental shall mean the rental of Single Family Residence, that the only use on the property is for Visitor Accommodations, to be let or hired as an entire unit for occupancy by transient guests for compensation or profit, and limited to one unit per parcel (30 days of less).

Visitor Accommodations shall mean establishments engaged in the provision of lodging services on a less than monthly basis, which may provide incidental food and drink intended for the convenience of the guests.