

ORDINANCE NO. 1930

**AN ORDINANCE TO PREVENT THE MINING AND EXPORT OF GROUNDWATER
WITHIN THE UNINCORPORATED AREAS OF MERCED COUNTY**

(ADDING CHAPTER 9.27 TO THE MERCED COUNTY CODE)

**THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED, STATE OF
CALIFORNIA, ORDAINS AS FOLLOWS:**

SECTION 1: Chapter 9.27 of Title 9 of the Merced County Code, for Groundwater Mining and Export Ordinance of Merced County, approved by the Board of Supervisors as Ordinance 1930, is added as follows:

**CHAPTER 9.27
GROUNDWATER MINING AND EXPORT**

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Chapter 9.27 GROUNDWATER MINING AND EXPORT

9.27.010 Title.

The ordinance codified in this chapter may be cited as the "Groundwater Mining and Export Ordinance of Merced County."

9.27.020 Findings and Declarations.

The Merced County Board of Supervisors makes the following findings in support of the enactment of this ordinance:

1. The protection of the health, welfare, and safety of the residents of the county require that the groundwater resources of Merced County be protected from adverse impacts resulting from both the mining of groundwater resources and the export of those resources outside each respective county groundwater basin; and

2. Groundwater is an essential resource for continued agricultural production within the county which production includes, but is not limited to, field crops, nut and fruit crops, vegetable crops, seed crops, poultry and livestock and products which significantly contribute to the gross value of the total agricultural production of the county, state, and nation; and

3. Groundwater is an essential resource for agricultural, municipal, industrial, and domestic uses within the county; and

4. The mining of groundwater resources from within the county and the export of groundwater from inside Merced County to outside of the respective groundwater basin in which it originates will each have adverse environmental impacts on the county, including but not limited to the following: increased groundwater overdraft, land subsidence, uncontrolled movement of inferior quality groundwater, the lowering of groundwater levels, increased groundwater degradation, streamflow depletion and depleted groundwater basins if the drought extends into future years; and

5. The mining of groundwater resources from within the county and the export of groundwater from inside Merced County to outside of the respective groundwater basin in which it originates will each have adverse economic impacts on the county, including but not limited to the following: loss of arable land, a decline in property values, increased pumping costs due to the lowering of groundwater levels, increased groundwater quality treatment costs, replacement of wells due to declining groundwater levels, losses due to flooding and inundation, and replacement of damaged wells, conveyance infrastructure, roads, bridges and other appurtenances, structures or facilities due to land subsidence; and

6. The effects of the mining of groundwater resources from within the county and the export of county groundwater from inside Merced County to outside of the respective groundwater basin in which it originates, compounded by current extreme drought conditions, presents urgent problems, including the following: subsidence of groundwater aquifer systems, weakening of proprietary groundwater rights, interruption of utility and transportation services provided by infrastructure, placing drinking water supplies at risk, decreasing the county's range land grasses for feed, reducing crop irrigation supplies to critical levels, increasing unemployment and economic hardship in the county because of a reduction of agricultural jobs, failing to conserve groundwater supplies for future years, and threatening harm to animals and plants that rely on Merced County's lakes, rivers, streams, and wetlands; and,

7. The U.S. Department of Agriculture, the Governor of California, and the Board of Supervisors have recognized the detrimental impact of drought conditions on Merced County. On January 15, 2014, the U.S. Department of Agriculture designated

27 counties in California, including Merced County, as primary natural disaster areas due to the recent drought and on January 17, 2014 the Governor of California declared that a state of emergency exists in the State of California due to current drought conditions. On February 25, 2014, the Merced County Board of Supervisors passed resolution No. 2014-16, proclaiming that “[a] local drought emergency now exists in Merced County,” and finding that, “conditions of extreme peril to the safety of persons and property have arisen within the County of Merced caused by the drought”.

8. Based on the foregoing facts, immediate action to address groundwater mining and extraction is necessary for the preservation of health, safety, and well-being of Merced County’s citizens, economy, agricultural resources, and environmental resources. Excessive groundwater extraction threatens Merced County’s drinking water supplies and has caused land subsidence that threatens Merced County’s roads, bridges, and water conveyance, flood and inundation management infrastructure.

9. California Constitution, article X, section 2, and Water Code section 100 prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The county finds that under current drought and aquifer conditions the export of groundwater for use outside the respective groundwater basins within the County in which it originates are presumptively unsustainable uses of groundwater and not reasonable or beneficial within the meaning of the California Constitution and the California Water Code.

10. The risks to health, safety and well-being in Merced County from the mining and export of groundwater require the county to take immediate action while Merced County transitions to implementation of the Sustainable Groundwater Management Act of 2014 (SGMA), which recognizes and preserves the authority of cities and counties to manage groundwater pursuant to their police powers.

9.27.030 Definitions.

The following words and phrases shall have the following meanings when used in this chapter:

1. “County” means the County of Merced.
2. “Board” means the Board of Supervisors of Merced County.
3. “Person” means and includes natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons, and public entities.

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

5. "Basin" means any one of the following sub-basins of the San Joaquin Valley Basin [5-22], as identified in Department of Water Resources Bulletin 118:

Turlock [5-22.03]

Merced [5-22.04]

Chowchilla [5-22.05]

Delta Mendota [5-22.07]

6. "Public water agency" means any local public agency, mutual water company, or nonprofit tax-exempt unincorporated association within, or partially within, Merced County that has authority to extract, deliver, store, or regulate water.

7. "Mining" means the process, deliberate or inadvertent, of extracting groundwater from a source at a rate or amount in excess of the replenishment rate, such that the groundwater level declines persistently, threatening exhaustion of the supply, a decline of pumping levels to uneconomic depths, land subsidence, or significant water quality or other significant environmental damage.

8. "Export of groundwater" means the extraction of groundwater from any well for other than municipal use within the boundaries of Merced County and located on or under parcels subject to this chapter and conveyed to, or used directly or indirectly on parcels which are outside of the boundaries of the Merced County groundwater basin from which the groundwater is extracted. Export of groundwater includes activities by which groundwater may through one or more exchanges or transactions be directly or indirectly conveyed or transferred for use out of the same basin from which it is extracted.

9.27.040 Prohibition.

The following actions are prohibited unless covered by an exemption or a permit as set forth in this chapter:

- A. The mining of groundwater within the unincorporated areas of the county, in excess of extraction patterns, established between 1995 and 2013, in place

as of the date of adoption of this ordinance. This provision shall prohibit the construction of wells.

- B. The export of groundwater from inside Merced County outside of the respective groundwater basin in which it originates.

9.27.050 Exemptions.

A. Any person, entity, or public water agency claiming an exemption to this prohibition must submit an application to the Merced County Department of Public Health, Division of Environmental Health. Any application for an exemption should contain sufficient information to establish that the exemption applies.

B. The following water management practices are exempt from the prohibitions in this chapter, provided the claimant or public water agency meets the burden of establishing that the exemption applies:

1. Water resources management practices of public water agencies that have jurisdictional authority within the county, and that are in compliance with and included in groundwater management plans and policies adopted by that agency. This exemption shall not apply if Merced County determines that the public water agency's groundwater management plan and policies fail to prevent the increased mining or export of groundwater in areas within the public water agency's service area and that is subject to the county's jurisdiction.

2. The replacement of existing wells, as authorized under title 9, chapter 28, section 110 of the Merced County Code, that do not produce further decline of groundwater levels, land subsidence, or other significant environmental damage.

3. Water wells in aggregate, on a single parcel delivering two acre-feet of groundwater per year or less for domestic use on property under the same ownership as the parcel on which the well is located.

4. The mining of groundwater in compliance with a permit issued by the Merced County Department of Public Health, Division of Environmental Health pursuant to this chapter.

5. The export of groundwater outside of Merced County groundwater basins in compliance with a permit issued by the Merced County Department of Public Health, Division of Environmental Health pursuant to this chapter.

C. The following groundwater management practices are exempt from the prohibition against export of water in this chapter, provided the claimant meets the burden of establishing that the exemption applies:

1. Reasonable use of groundwater resources to supplement or replace surface water released for other reasonable and beneficial purposes, including but not limited to fisheries, wildlife refuges, ecosystem habitat or downstream water quality or quantity needs, when required pursuant to federal and state law, regulations, licenses, or pursuant to conditions imposed by valid permits.

2. Conservation of groundwater in compliance with applicable state law that authorizes public water agencies to transfer water outside its usual place of use. Conservation investments include irrigation practices in agricultural areas where the crops grown use less groundwater, or communities that produce recycled water, fix leaks or promote other water saving devices and methods to conserve groundwater on a temporary or permanent basis.

3. Recharge of groundwater in locations in the county that are capable of improving groundwater conditions in order to meet total water demands of beneficial uses in the hydrologic and groundwater basin area, provided that the amount of recaptured groundwater transferred out of the area will not exceed the amount of water used to recharge the aquifer, less losses that occur during the recharge process such as losses to surface water courses, flows to surrounding groundwater basins, or other groundwater movement resulting in loss to recharge amounts.

4. Remediation of contaminated groundwater required by compliance orders issued by local, state or federal agencies, that is pumped and treated to remove contaminants that are in violation of standards for beneficial uses. The extracted and treated water may be released out of the county, resulting in a net loss to the groundwater basin, if the release complies with discharge permits issued by the local, state or federal resource agencies.

5. Export of groundwater that is reasonably necessary to support existing agricultural operations on immediately contiguous parcels outside the basin under common ownership where some parcels, or parts of some parcels, straddle the basin boundary. Claimants exporting groundwater under this exemption shall install a County-approved water flow metering device and report at least annually to Merced County the amount of groundwater exported outside the basin.

6. Export of groundwater that is reasonably necessary to support Federal, State, and County approved public works projects and maintenance activities.

7. De-watering of shallow water tables in accordance with applicable Orders, Codes and Regulations, where the net benefits of the removal of subsurface water substantially outweighs the loss of water, because of damage the high water table unreasonably may cause to agriculture, industry, commerce and other property uses.

9.27.060 Implementation.

A. The Merced County Department of Public Health, Division of Environmental Health shall be responsible for implementation of this chapter and regulations adopted by the Board of Supervisors.

B. The Merced County Department of Public Health, Division of Environmental Health shall establish a permitting system to authorize wells, groundwater exports, and other groundwater management practices (practices listed in title 9, chapter 27, section 050.B of this code) that are consistent with other procedures and practices already utilized by Merced County, but otherwise prohibited by this chapter. The Merced County Department of Public Health, Division of Environmental Health may issue a permit for wells delivering more than two acre-feet of groundwater per year for domestic use to the extent that such practice is consistent with the statements of county policy set forth in title 9, chapter 27, section 020 of this code. The Merced County Department of Public Health, Division of Environmental Health may also issue a permit for groundwater exports or groundwater management practices to the extent that such practice is consistent with the statements of county policy set forth in title 9, chapter 27, section 020 of this code. Merced County Department of Public Health, Division of Environmental Health shall coordinate with the Merced County Community and Economic Development Department for review and determination including any discretionary approval that is necessary under the California Environmental Quality Act or any other applicable statute. The issuance of the determination, discretionary approval, or other findings under the California Environmental Quality Act including public hearing or processing shall be administered through the Merced County Community and Economic Development Department.

C. The Merced County Department of Public Health, Division of Environmental Health shall have authority to investigate any activity subject to this chapter. Compliance with this chapter will be determined based on the submission of a technical report to the Merced County Department of Public Health, Division of Environmental Health. The Merced County Department of Public Health, Division of Environmental Health is authorized to enforce the prohibition of any activity that is determined to be in violation of this chapter or regulations adopted by the Board of Supervisors.

D. The applicant, permit holder or other interested person or entity may appeal an administrative determination made by the department under this chapter which (1) finds that an application is complete or incomplete; (2) establishes or modifies operating conditions; (3) grants or denies a permit; or (4) suspends or revokes a permit. Administrative appeals under this section must be made in writing, must clearly set forth the reasons why the appeal ought to be granted, and must be received by the Clerk of the Board within fifteen calendar days of the postmark date on the envelope that transmits the administrative determination. Any appeal that is not timely filed, or that is not accompanied by the required fee, will be deemed ineffective and the administrative determination that is being appealed will become final. The Board of Supervisors shall fix a reasonable time for the hearing of an appeal of an administrative determination at a regularly scheduled meeting of the Board of Supervisors. The Board of Supervisors shall provide written notice of the appeal hearing to the appellant and all interested parties and to all landowners within one-quarter mile of the parcel where operations will occur. The Board of Supervisors shall hear the appeal and issue a decision within thirty days after the hearing. The Board of Supervisors may take any appropriate action upon the original administrative action that was appealed, including granting or denying the appeal in whole or in part, or imposing, deleting or modifying operating conditions of the permit. The decision of the Board of Supervisors shall be final forthwith.

9.27.065 Groundwater monitoring and reporting.

A. Monitoring. All new permits for wells or groundwater exports under the scope of this ordinance shall be measured by a properly installed and maintained water measuring device satisfactory to the Department of Public Health, Division of Environmental Health. As an alternative to water measuring devices, other reasonable methods to determine groundwater extraction may be used if approved by the Department of Public Health, Division of Environmental Health.

B. Reporting. All Persons, including Public Water Agencies that extract groundwater within the County shall cause to be prepared and submitted to the Department of Public Health, Division of Environmental Health annual reports of groundwater information that are necessary to monitor the existing condition of groundwater resources within the County, to determine trends, or to develop effective sustainable groundwater management plans and policies. Nothing shall prohibit the Department of Public Health, Division of Environmental Health from requiring reports of groundwater information on a more frequent basis. The required information to be reported shall include without limitation water level and pumping data, or other data necessary as required by the Department of Public Health, Division of Environmental Health. Water wells in aggregate, on a single parcel delivering two acre-feet of groundwater per year or less for domestic use on property under the same ownership

as the parcel on which the well is located shall not be required to submit such information.

9.27.070 Authority.

A. General Authority. The Director of the Merced County Department of Public Health, Division of Environmental Health, or his/her authorized designee(s), are authorized to take all necessary action to enforce the provisions of title 9, chapter 27 of this code and to carry out any other special enforcement programs initiated by order or resolution of the Board of Supervisors.

B. Right of Entry and Inspection. The Director of the Merced County Department of Public Health, Division of Environmental Health, or his/her authorized designee(s), may enter at any and all reasonable times any places, property, premises, or enclosure for the purpose of carrying out any activity required or authorized by the provisions of title 9, chapter 27 of this code, including to make examinations and investigations to determine whether any provision of this chapter is being violated. Upon request, the County personnel entering and inspecting shall provide adequate identification. Except under extreme circumstances, an inspection warrant shall be obtained if entry is refused.

C. Stop Orders. The Director of the Merced County Department of Public Health, Division of Environmental Health, or his/her authorized designee(s), are authorized to issue stop orders to prohibit further construction or use of wells or facilities that any of them deem in violation of the provisions of title 9, chapter 27 of this code. Such stop orders shall remain in effect until violations are corrected.

D. Citations. The Director of the Merced County Department of Public Health, Division of Environmental Health, or his/her authorized designee(s), are authorized to issue citations and/or abatement orders to persons for violations of the provisions of title 9, chapter 27 of this code.

E. Enforcement Costs. The Director of the Merced County Department of Public Health, Division of Environmental Health, or his/her authorized designee(s), are authorized to recover from the property owner or the person in control of the property, all administrative costs associated with the enforcement of the provisions of title 9, chapter 27 of this code or the enforcement of any condition to the issuance or granting of any permit or entitlement provided for by title 9, chapter 27 of this code.

F. No Entitlement for Wells and Export with Violations. No permits of any kind or other entitlement shall be accepted or processed for wells in violation of

provisions of title 9, chapter 27 of this code unless such entitlement corrects the violation.

G. Revocation or Modification For Cause. A discretionary permit may be revoked or modified for cause as provided by the provisions of this section. For purposes of this section, such modification may include the modification of the terms of the permit itself or the waiver, alteration, and imposition of new conditions.

1. Grounds For Revocation or Modification. Revocations or modifications may be made upon a finding of any one or more of the following grounds:

- a. That such permit was obtained or extended by fraud;
- b. That one or more of the conditions upon which such permit was granted have been violated or is not followed;
- c. That the extraction or use for which the permit was granted is so conducted as to be a nuisance or detrimental to the public health, welfare, or safety; or unreasonable within the meaning of article X, section 2 of the California Constitution.

2. Initiation of Action. An administrative action to revoke or modify may be initiated by order of the Board of Supervisors, on its own motion or on the request of the Director of the Merced County Department of Public Health, Division of Environmental Health, or his/her authorized designee(s).

3. Notice, Review Hearing, and Decision. An action to revoke or modify shall be noticed, reviewed, heard, and decided in the same manner and by the same authority that originally granted the discretionary permit.

4. An action to revoke or modify may be appealed pursuant to the appeal procedure.

H. Any well or use which is established, operated, used, erected, moved, altered, enlarged, or maintained contrary to the provisions of this code, is declared to be unlawful and shall be subject to the remedies and penalties set forth in this chapter.

9.27.80 Penalty for violation.

A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in title 1, chapter 28, section 020 of Merced County Code. "Person" includes any individual or firm who directs, or engages in, the digging, boring, drilling, or expansion of wells. Each

person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or allowed and shall be punishable accordingly.

B. In addition to or in lieu of the penalty provisions or remedies set forth in this chapter, any violation of any of the provisions of this chapter, and any condition caused or allowed to exist in violation of any of the provisions of this chapter, shall be deemed a public nuisance and shall, at the discretion of county, create a cause of action for injunctive relief, including but not limited to any remedy under Chapter 5 (commencing with section 17200) of part 2 of division 7 of the Business and Professions Code.

9.27.090 Severability and effect.

A. The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

B. The prohibitions of this chapter shall not be applicable to the extent that their application would result in a violation of the Constitution or other laws of the United States or the State of California. The Merced County Department of Public Health, Division of Environmental Health shall issue a permit to authorize conduct otherwise prohibited under this chapter if the applicant demonstrates that such permit is necessary to avoid such a violation of state or federal law.

SECTION 2, VALIDITY:

If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The Board of Supervisors hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause, word or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, words, or phrases be declared invalid or unconstitutional.

SECTION 3, ENACTMENT:

This ordinance shall become effective and be in full force on and after thirty (30) days of its passage and adoption, and prior to the expiration of fifteen (15) days from the passage and adoption thereof, shall be published in the newspaper of general circulation printed and published in the County of Merced, State of California, together

with the names of the members of the Board of Supervisors voting for and against the same.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced State of California, at a regular meeting thereof held on the 17th day of March, 2015, by the following vote:

Supervisors:

AYES: John Pedrozo, Hub Walsh, Daron McDaniel, Deidre F. Kelsey, Jerry O'Banion

NOES: None

ABSENT: None

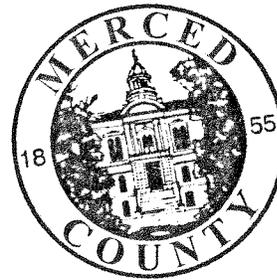


Chairperson, Board of Supervisors

ATTEST:

JAMES L. BROWN
Clerk of the Board of Supervisors
of the County of Merced

By 
Deputy



APPROVED AS TO LEGAL FORM AND EFFECT:
MERCED COUNTY COUNSEL

BY: 