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SUSTAINING AQUIFER PRODUCTIVITY

by

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GROUNDWATER: Allocation--Development--Pollution
Natural Resources Law Short Course
University of Colorado School of Law
Natural Resources Law Center
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I. INTRODUCTION

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      - City of Los Angeles v. City of San Fernando, 14 Cal.3d 199, 537 P.2d 1250, 123 Cal. Rptr. 1 (1975)

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      - KAHRL, WATER AND POWER: THE CONFLICT OVER LOS ANGELES' WATER SUPPLY IN THE OWENS VALLEY (University of California Press, 1982)
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      - County of Inyo v. City of Los Angeles, 124 Cal.App.3d 1, 177 Cal. Rptr. 479 (1981)
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      - ENVIRONMENTAL DEFENSE FUND, TRADING CONSERVATION INVESTMENTS FOR WATER (1983)
      - DAVENPORT & HAGEN, AGRICULTURAL WATER CONSERVATION IN CALIFORNIA, WITH EMPHASIS ON THE SAN JOAQUIN VALLEY (1982)

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AN ORDINANCE TO REGULATE THE EXTRACTION OF GROUNDWATER WITHIN THE OWENS VALLEY GROUNDWATER BASIN

Section 1. The people of the County of Inyo do ordain as follows:

CHAPTER 7.01 GROUNDWATER EXTRACTION

Section 7.01.010 Declaration of findings and purpose.

The Board of Supervisors does hereby find and declare as follows:

(a) The groundwater basin of the Owens Valley has historically supplied the people and land of Inyo County with spring flow water and a high water table, which has sustained vegetation and wildlife in an otherwise desert environment.

(b) The groundwater basin of the Owens Valley forms a significant water resource of the State of California, which must be managed in trust for the benefit of the State’s entire population, and must be conserved so that it may be perpetually placed to the reasonable and beneficial use of all its potential users.

(c) The groundwater basin of the Owens Valley must be managed and operated for the maximum long-range benefit of the environment, as well as for municipal and agricultural uses, by removing and mitigating all adverse environmental effects caused by groundwater extraction and surface water diversion by whatever feasible means are available.

(d) In recent years the groundwater basin of the Owens Valley has not been managed in accordance with the findings declared in (a), (b) and (c) above, as a consequence of which unnecessary and excessive drawdown of the groundwater table has occurred. Together with other adverse environmental effects, producing detriment to the people, health and economy of the County of Inyo, the lowering of the water table has directly led to a loss of vegetation and indirectly to a reduction in irrigated acreage. As a consequence of the recent environmental changes, the California Department of Water Resources in Bulletin 118-80 has identified the Owens Valley as an area of special concern.

(e) Inyo County has a paramount right and duty to govern the management and extraction of resources within its jurisdiction in order to protect the health, welfare and safety of the citizens of Inyo County.

(f) In order to protect its people, environment and economy, the County of Inyo must adopt a systematic regulation of extractions from the groundwater basin of the Owens Valley; this regulation must consider environmental and economic factors in the area of origin and the area of use, coordinated use of surface and groundwater resources, and the implementation of water conservation and other feasible preferred alternatives to extraction.

(g) To implement the systematic regulation of groundwater extractions, the County of Inyo must undertake the preparation of a water management plan for both groundwater and the inherently integrated surface water resources of the Owens Valley.

Section 7.01.020 Definitions and Establishments.

(a) “Director” means the Director of the Inyo County Water Department, hereby established by enactment of this ordinance. The Director will be appointed by the Board of Supervisors to serve at its pleasure and will report to the County Administrative Officer of the County of Inyo. The Director is empowered to employ such staff as necessary and approved by the Board of Supervisors.

(b) “Administration of the extraction permit application” includes the processing and evaluation of all permit applications, inspection of the execution of permits that have been granted, the performance of technical studies necessary to effectuate the purposes of this chapter, the performance of professional services necessary to execute the purposes of this chapter, and the preparation of a water management plan.

(c) “Water Management Plan” refers to a document to be prepared by the Inyo County Water Department and approved by the Inyo County Board of Supervisors, the plan will address the
MEASURE A ORDINANCE, CONTINUED

MEASURE A ORDINANCE, CONTINUED

wildlife, minimize air pollution and enable natural springs to flow.
(d) Maintenance of the groundwater table at a depth that will not cause excessive draining or pumping costs for other groundwater users.
(e) Preservation of groundwater quality.
(f) Imposition, whenever feasible, of measures to avoid or mitigate anticipated adverse environmental effects, including but not limited to the use of surface water in the Owens Valley Groundwater Basin.
(g) Satisfactory needs of the extractor, taking into consideration the extractor’s alternative sources of supply and its conservation policies and practices.
(h) Satisfactory to the extent feasible of the agricultural sector of the Owens Valley through the distribution of water for local irrigation and to increase the acreage devoted to agriculture other than open range.
(i) Reduction in the extent to which ground levels sink as a consequence of groundwater extraction.
(j) Consideration of the needs and practices of all water users in the state, and the status of the state’s entire water resources.
(k) Consideration of guidance received from governmental agencies other than the applicant.
(l) Results and adequacy of the extractor’s environmental monitoring program.

Section 7.01.031 Plan, Process: The Director and his staff and/or consultants will draft the Water Management Plan; the Commission will review the document and hold public workshops, and stipulate modifications as necessary.

The Plan will be approved by the Board of Supervisors only after the Commission has completed its review and the Board has held public hearings. No more than nine (9) months will elapse between the authorization of this ordinance and approval of the Plan by the Board of Supervisors, unless the Board of Supervisors determines that there is good cause for an extension of the time necessary for preparing the Water Management Plan. The Plan can be modified as needed, but only as authorized by the Board of Supervisors after the appropriate public hearings. Both the Water Commission and the Board of Supervisors may recommend modifications.

Section 7.01.040 Permit: No person, firm, corporation, or governmental agency (except an agency of the United States government to the extent federal law preempts this ordinance), shall within the Owens Valley Groundwater Basin extract water from that basin by any artificial means without first obtaining a written permit as provided for in this chapter.

Section 7.01.041 Permit Application: An extractor of groundwater shall file its application for a permit to the Director of the Inyo County Water Department and in that application shall include the following data for the pumping year ending March 31 of the year following the year of application.
(a) Location, maximum extraction rate, depth and all other information required in the Water Well Drillers Report (Section 13750, California Water Code) of each well including observation wells owned or controlled by the extractor.
(b) Location, plans, monthly extraction rate, and depth of each well proposed for operations.
(c) Description of the time periods within the Owens Valley Groundwater Basin in which each well is proposed for operation.
(d) Description of the adverse environmental effects of the extraction, by individual well, groups of wells (if applicable), and by the extractor’s entire operation.
(e) Proposed or feasible use or change in related operations of surface water, if any, including uses designed to mitigate or eliminate the adverse environmental effects described in (d) above.
(f) Intended beneficial use of the extracted groundwater and related surface supplies, by individual wells, groups of wells (if applicable), and by the entirety of the extractor’s operation.
(g) A description by quantification and location of each end use of the needs of the extractor which the extraction is designed to meet.
(h) A description of alternatives available to the extractor to meet the needs described in (g) above, including specifications and quantification of the alternative of water conservation.

Section 7.01.043 Permit Process: The Director may recommend approval, denial, or approval with stipulated conditions of the permit to the Commission. No sooner than three (3) weeks after receipt of the application, the Director will recommend approval, denial, or approval with stipulated conditions of the permit to the Commission. No sooner than three (3) weeks after receipt of the application, the Director shall hold public hearings on all those applications to extract groundwater which have not been timely received. Within two (2) weeks after the conclusion of the hearings, the Commission shall issue its decision approving or denying each application. The permits will be conditional pending completion of the Water Management Plan. In reaching its decision the Commission shall be bound by the standards set forth in Section 7.01.030 above. There will be no appeal from the interim decisions of the Commission.

Section 7.01.044 Permit Process: Applications to extract groundwater shall be made, reviewed, and adjudicated according to the following process:
(a) Not later than one month after the adoption of the water management plan, and not later than one month after the adoption of the water management plan, the applicant shall submit the necessary application and data as required under Section 7.01.041 of this ordinance within thirty (30) days of notification by the Department. Notification shall be provided by publication in a newspaper of general circulation in Inyo County, and posting at the Courthouse in Independence and the County Services Building in Bishop. No sooner than three (3) weeks after receipt of the applications, the Director shall hold public hearings on all those applications to extract groundwater which have been timely received. Within two (2) weeks after the conclusion of the hearings, the Director shall issue its decision approving or denying each application. The permits will be conditional pending completion of the Water Management Plan. In reaching its decision the Commission shall be bound by the standards set forth in Section 7.01.030 above. There will be no appeal from the interim decisions of the Commission.

Section 7.01.045 Permit Process: Upon receipt of the permit application, the Director shall review the application with the affected county departments including but not limited to, the District Attorney, the County Counsel, the Planning Department, the Public Works Department, the County Health Officer and the Agricultural Commissioner of Inyo County, and to the Department of Water Resources, State Water Resources Control Board, South Lahontan Regional Water Quality Control Board, Great Basin Air Pollution Control District, U.S. Forest Service, Bureau of Land Management, Inyo-Mono Association of Government Entities and any other governmental agency requesting such opportunity.

(c) Upon receipt of the permit application, the Director shall review the application with the affected county departments including those listed in (b) above.

(d) Not later than six (6) weeks after the date on which applications are due, the Director shall prepare a recommendation to the Commission for approval, denial or classification of specific terms and conditions of each groundwater pumping permit application. The Director may recommend that the application be placed on a consent calendar. The Director’s recommendation shall be consistent with the groundwater management plan and shall be based upon a review of hydrologic, environmental and economic consequences of the proposed groundwater pumping.
(e) No sooner than eight (8) weeks after the date on which applications are due, the Inyo County Water Commission will hold public hearings on all applications to extract groundwater which have been timely received. As soon as the time for filing applications has passed, and in no event less than seven (7) days prior to the hearing, the applicants shall be notified of public hearings on groundwater extraction applications and notices of these hearings and a description of all applications received shall be published in at least one newspaper of general circulation in Inyo County, and posted in the Courthouse in Independence and the County Services Building in Bishop.
(f) At the public hearings conducted by the County Water Commission, the Director shall present his recommendations. The applicant, any affected federal, state or local agency, any person adversely affected by the application, and any citizens of the County of Inyo may appear to testify, in writing or orally or both, in favor of or against the application. The hearings shall remain open for a maximum of two (2) weeks.

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Section 7.01.044 Permit Duration
Each permit for extraction issued shall be effective for a period not to exceed one (1) year, commencing no earlier than April 1 of each year. All permits shall expire on March 31st of the subsequent year, except those expressly exempted by the Commission.

Section 7.01.045 Permit Modification
By application filed on May 1st, August 1st, or November 1st, a groundwater extractor, or the Director on his or her own motion, may seek modification of a permit in accordance with the procedure outlined in Section 7.01.042 above. A permit may be modified to increase or decrease the amounts, location, times of extraction, or use of groundwater.

Section 7.01.050 Reports: Extraction
Each groundwater extractor to whom a permit for extraction has been granted, unless expressly exempted by the Commission, shall, for the terms of that permit, render monthly reports as follows:
(a) By the 15th of each month of the permit year, a report listing each well operated, the quantity of water extracted by each well during the preceding month, projected amounts of water to be extracted from each well and from all the extractor's wells inclusive for each month of the remainder of the permit year, and the use and location of use of the extracted groundwater from each well and the related surface water.

Section 7.01.051 Reports: Environmental Monitoring
Unless expressly exempted by the Water Commission, all groundwater extractors shall provide by the 15th of each month a record of water level measurements taken in the preceding month in all operating and observation wells under the control of the extractor. All measurements shall be made in a manner approved by the Director.

(b) Each groundwater extractor shall allow the Director to analyze water quality samples taken from those wells and at those periods specified by the Director. All samples shall be taken in a manner approved by the Director.

(c) Each groundwater extractor shall provide all other such reports as reasonably required by the Director.

Section 7.01.060 Fees
The Board of Supervisors by resolution shall adopt fees for administration of the extraction permit system, which fees shall be assessed annually against each person, firm, corporation, or governmental agency (except an agency of the United States government) to the extent that federal law preempts this ordinance. However, the Director also may recommend the removal of any exemptions authorized by this chapter. The fees of the first class for applications to extract water for local, municipal, and domestic use, in-valley recreational and wildlife enhancement and, local irrigation water, so that no surface diversions are affected, and the second class for applications to extract water for all other uses. Fees of the first class shall be set lower than fees of the second class to compensate for the lower costs of evaluating and administering applications of the first fee class.

Section 7.01.070 Exemption: General
Each of the following extractors is hereby declared to be exempt from the reporting provisions of Sections 7.01.050 and 7.01.051, except the initial registration of wells, well location, intended amount of annual extraction, intended use, and location of use of the groundwater:
(a) Any extractor who in any year commences and extracts less than five (5) acre feet and devotes that extraction to its own reasonable and beneficial use in the Owens Valley Groundwater Basin and does not sell or exchange water to other users.
(b) Any extractor who does not sell or exchange water and who extracts for irrigation for agricultural use on the surface of the Owens Valley Groundwater Basin an area of less than twenty (20) acres, not to exceed a total of one hundred (100) acre feet of groundwater per year.

Section 7.01.071 Exemptions: Modifications
The Director may recommend further exemptions but only the Commission may grant further exemptions. However, the Director also may recommend the removal of any exemption authorized by this chapter if he or she finds in writing that the extraction in question or cumulative effect of exempted extractions produced a significant negative effect on the environment. Only the Commission may remove an exemption and only then after a duly noticed public hearing. Any person denied an exemption pursuant to this section may appeal said decision to the Board of Supervisors which by a vote of three or more members may grant the appeal and declare the exemption.

Section 7.01.080 Inspection
The Director or his or her representative, with good cause, may at any and all reasonable times enter any and all places, property, enclosures and structures, for the purposes of making examinations and investigations to determine whether any provision of this chapter is being violated. Upon twenty-four (24) hours notice, all extractors shall make available to the Director of the Inyo County Water Department or his or her representative, at the extractor's principal place of business or other convenient location within the Owens Valley, the original of all logs, reports, data, analysis of data, or other records maintained on their groundwater extractions.

Section 7.01.090 Violation: Stop Order
In the event that an extraction is taking place contrary to the terms of this chapter, the Director may order the extraction stopped by posting a stop order at the site of the unauthorized extraction. No further extraction shall take place at the site of the stop order until such time as the stop order is removed by the Director.

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IMPARTIAL ANALYSIS BY COUNTY COUNSEL

OWENS VALLEY GROUNDWATER MANAGEMENT
REFERENDUM MEASURE A

A "YES" vote on this proposal will authorize the County to establish a water commission composed of five residents of the Owens Valley, who will be charged to prepare a management plan for the Owens Valley Groundwater Basin, and then use that plan to grant or deny permits for groundwater extraction within the Valley. The water commission would remain accountable to the people through their Board of Supervisors, as much as the commission would be appointed by the Board, and all decisions of the water commission, whether in adopting or amending a management plan, or approving or disapproving groundwater pumping in the basin, would be subject to final action by the Board of Supervisors.

The ordinance would require all pumpers to submit an annual report on their intended extraction, and to finance the administration of the ordinance through a fee based upon the amount of water extracted. The average small rancher, and any domestic user not selling its water to others, would pay the lowest fee, and annually submit one brief report on a form provided by the County. Larger extractors would be required to submit more extensive reports, depending upon how much water was pumped and whether or not it would be used at the place of extraction. The larger extractors would pay a larger fee, because they would be extracting more water, and those extractors who took water from one part of the Valley to be used in another part of the Valley or out of the Valley altogether would pay a yet higher fee to underwrite the higher cost of evaluating such complex water use.

Under existing law there is no regulation of groundwater pumping in the Owens Valley. This proposed ordinance would establish a County department charged with the duty of managing the Owens Valley Groundwater Basin for the benefit of the public as a whole. The ordinance also provides both civil and criminal penalties for violations, and gives the power to the Board of Supervisors to amend at any time.

The ordinance becomes inoperable if it is held to be inapplicable to a water extractor who has extracted more than one-third of the water from the Owens Valley Groundwater Basin in the prior ten years preceding the enactment date.

Creation of the water department and commission will not in itself produce any environmental effects. Therefore, this ordinance would not in any event require a full environmental impact report (EIR). Subsequent actions, such as adoption and application of a water plan would likely affect the environment and therefore require preparation of an EIR then. Whether adoption of interim controls might also require an EIR should be decided when the interim controls are considered. To guarantee preparation of subsequent environmental documentation, while preparing no EIR at this time, the ordinance legally adopts the consultants' environmental study.

A "NO" vote on this measure is a vote against the establishment of groundwater management by ordinance in the Owens Valley.

/\s/Dennis L. Myers
County Counsel