

ORDINANCE NO. 22-01

AN ORDINANCE REQUIRING REGISTRATION OF GROUNDWATER USE FACILITIES, ESTABLISHING A METHOD OF CALCULATING GROUNDWATER USE AND AUTHORIZING THE ADOPTION OF GROUNDWATER SUSTAINABILITY FEE

The Board of Directors of the Petaluma Valley Groundwater Sustainability Agency, State of California, hereby ordains as follows:

ARTICLE 1. General

Section 1. Title

This ordinance shall be known as the "Groundwater Registration and Fee Ordinance" of the Petaluma Valley Groundwater Sustainability Agency.

Section 2. Prior Ordinances

All former Ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance are superseded and repealed

Section 3. Definitions

As used in this ordinance, the following terms shall have the meanings stated below:

- A. "Acre-Foot" or "AF" of water is the equivalent amount of water covering 1 acre to a depth of 1 foot, and equals 326,000 gallons or 43,560 cubic feet of water,
- B. "Agency" means the Petaluma Valley Groundwater Sustainability Agency.
- C. "De Minimis Extractor" means a person who extracts or uses, for domestic purposes, two acre-feet or less per year.
- D. "Extraction" means the act of obtaining groundwater by pumping or other controlled means.
- E. "Extraction Facility" means any device or method for extraction of groundwater within a groundwater basin or aquifer.
- F. "Extractor" means any person or commercial enterprise that uses groundwater either from a well on parcel within the Agency's jurisdiction or from any other groundwater source within the Agency's jurisdiction.
- G. "Groundwater" means water beneath the surface of the earth within a zone in which the soil is sufficiently saturated with water to allow collection and extraction.
- H. "Public Water Service Provider" means an entity owning or operating a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or

more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system that are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system.

(3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

I. "Operator" means a person who operates or owns a groundwater Extraction Facility. In the event the Agency is unable to determine who operates or owns a particular Extraction Facility, then "operator" shall mean the person to whom the Extraction Facility is assessed by the County Assessor, or, if not separately assessed, the person who owns the land upon which the Extraction Facility is located.

J. "Person" includes any state or local governmental agency, private corporation, firm, partnership, individual, group of individuals, or, to the extent authorized by law, and any federal agency.

K. "Petaluma Valley Groundwater Basin" or "Basin" or "PV" shall mean the Petaluma Valley Groundwater Basin which is designated basin number 2-001 in Department of Water Resources' Bulletin No. 118 and as its boundaries may be modified from time to time through the procedures described in California Water Code section 10722.2 or by the Department of Water Resources under its separate authority.

**ARTICLE 2. Registration of Groundwater Extraction Facilities,
Methods of Computing Extractions and the Recordation of Extractions**

Section 1. Registration

All groundwater extraction facilities within the boundaries of the Agency shall be registered with the Agency within thirty (30) days of notice given to the operator.

The Operator of an Extraction Facility will be registered by the Agency and provide at a minimum the following information on a form provided by the Agency. The Agency form may ask for, and the Operator may supply, additional information if requested.

- A. Name, mailing address, and email address of the operator.
- B. Name and address of the owner of the land upon which the Extraction Facility is located.
- C. A description of the equipment associated with the Extraction Facility.
- D. Location of the water Extraction Facility.

Section 2. Methods of Estimating Extractions

The methodology for estimating groundwater extraction is as follows:

- A. *Public Water Service Provider Use:* Cities, municipalities, large water service providers, and small water service providers [including mutual water companies, schools, wineries, warehouses, office parks and other commercial properties which are regulated by the State Water Resources Control Board Division of Drinking Water (DDW)] in the PV Jurisdiction use groundwater for irrigation and public water supply. Future groundwater use by municipalities, large water service providers and small water service providers in the Agency's jurisdiction provide the amount of groundwater pumped annually to the DDW. Future groundwater use of these users will be projected based on a running average of the last five years of reported pumping data, excluding years in which the reported pumping was atypically low as determined by the Administrator.
- B. *Agriculture and Irrigation Use:* Basin agricultural groundwater pumping will be estimated using Sonoma County Land Use Data from California Department of Water Resources (DWR). Calculated water use of groundwater irrigated agricultural parcels will be estimated by applying DWR applied water factors to DWR Land Use Data crop coverage data. Other irrigation uses such as turf and golf course irrigation will be estimated by applying the relevant DWR applied water factor per acre per year. Alternative applied water use rates may be applied using best available information.
- C. *Rural Residential:* Rural residential parcel groundwater use will be estimated using a combination of Sonoma County Assessor data and service areas of water service providers (excluding wholesale water service providers). Any parcel that is located outside of the service area of water service provider and has a residential use shall be *assumed* to have a well, or share a well with another parcel, within the Agency's jurisdiction. Any parcel within the service area of public water service provider that is not connected to public water may also be included in this category. Note, well records on the existence and precise location for wells within the PV are incomplete and are not sufficient to locate Extraction Facilities to individual parcels. An estimated annual use of 0.5 AF shall be assumed for the first residential dwelling unit. An additional 0.25 AF shall be assumed for each additional residential dwelling unit on the parcel.
- D. *Commercial:* Commercial parcel groundwater use will be estimated using a combination of Sonoma County Assessor data and service areas of water service providers (excluding wholesale water service providers). Any parcel that is located outside of the service area of a public water service provider and has a commercial (or non-residential) use shall be *assumed* to have a well, or share a well with another parcel, within the Agency's jurisdiction. Any parcel inside the service area of a public water service provider that has a commercial use that is not connected to public water may also be included in this category. Extraction estimates shall be based on an assumed value for various pertinent assessor use codes.
- E. *Urban Residential with Well:* Urban residential parcels that are connected to a public water system and are known or suspected of also having a private well will be assumed to use 0.1 AFY for outdoor irrigation. It is assumed that all indoor potable use will be covered by the water service provider serving the property.

Section 3. De minimis Extractors

- A. It is the intent of the Agency to regulate De Minimis Extractors by this Ordinance, as provided for in Water code section 10730(a).

ARTICLE 3. Groundwater Sustainability Fee

Section 1. Groundwater Sustainability Fee

The Agency shall establish a groundwater sustainability fee by resolution which shall be payable by all Extractors operating or using groundwater extraction facilities for all groundwater extracted after July 28, 2022, in the amount as established by the Board. The ground water sustainability fee may be collected by any lawful method set forth in Water Code section 10730.

Section 2. Penalties

Any Extractor, Operator or Person who intentionally violates any provision of this ordinance, or any resolution authorized by Article 3, shall be guilty of an infraction, and in addition to the fees due may be required to pay a fine to the Agency of not to exceed five hundred dollars (\$500).

Any Extractor, Operator or Person who negligently or intentionally violates any provision of this ordinance, or any resolution authorized by Article 3, may also be liable civilly to the Agency for actual monetary damages plus fees and costs incurred, in addition to any other penalties that may be prescribed by law.

Upon the failure of any Extractor, Operator or Person to comply with any provision of this ordinance, the Agency may petition the Superior Court for a temporary restraining order, preliminary or permanent injunction, or such other equitable relief as may be appropriate. The right to petition for injunctive relief is an additional right to those which may be provided elsewhere in this ordinance or otherwise allowed by law.

The Agency may petition the Superior Court of the County of Sonoma to recover any sums due the Agency.

ARTICLE 4. Appeals

(1) If after an unsuccessful informal attempt to resolve with the Agency Administrator any dispute regarding data or facts arising out of this ordinance, any aggrieved Extractor, Operator or Person ("Appellant") may contest the determination that their property is subject to registration under this ordinance, the imposition or amount of the groundwater user fee, or penalties imposed pursuant to Article 3, Section 2 above by requesting a hearing pursuant to the procedures shall be established by resolution by the Board of Directors. The request must be made in a written appeal submitted within thirty (30) days after the service of the notice of imposition of penalties. The appeal must contain:

- (a) A brief statement setting forth the interest the appealing party has in the matter.
- (b) A brief statement of the material facts that the appellant claims supports the appeal.
- (c) An address at which the Appellant agrees to receive, by first class-mail, notice of any additional proceedings or an order relating to the appeal. Service of such notices shall be effective three (3) days following deposit in the first-class mail.
- (d) A signature by the Appellant under penalty of perjury.

(2) The failure of any Extractor, Operator or Person to file a proper appeal in accordance with this section shall constitute a failure to exhaust administrative remedies, and a waiver of the right to an administrative hearing and adjudication of the matter subject to appeal.

(3) Only after a request for hearing is received within the required period, and the information submitted is determined to be complete by the Administrator, shall the Agency set the date and time for the appeal hearing.

The hearing shall be set for a date no more than sixty (60) days from the date of a timely filed appeal unless the Agency Administrator determines that good cause exists for an extension of time.

(4) The Appellant shall be served with notice of the date, time, and place set for the hearing at least fifteen (15) days prior to the date of the hearing. Notice shall be mailed to the address provided in the written appeal.

(5) If the Agency's Administrator or designee submits an additional written report concerning the imposition of penalties to the Board of Directors for consideration at the hearing, then a copy of this report shall also be served on the person requesting the hearing at least five (5) days prior to the date of the hearing.

(6) Hearings may be continued once at the request of the Appellant or the Administrator. The Board of Directors may also continue the hearing on its own accord for cause.

(7) The hearing serves to provide full opportunity for a person subject to groundwater facility registration, groundwater user fee, or penalties to object to the imposition of said regulations, fees, or penalties.

(8) At the place and time set forth in the notice of hearing, the Board of Directors or a board-appointed committee or hearing officer shall conduct a hearing and consider all written or oral evidence presented at the hearing. Administrative hearings are informal and need not be conducted according to technical rules related to evidence and witnesses, except as provided herein. Irrelevant evidence shall be excluded, and the Board of Directors has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. Each party shall have the opportunity to present evidence in support of that party's case and to cross examine any witnesses present.

The notice requiring groundwater facility registration, imposing fees, or imposing penalties and any additional reports submitted by the Agency's enforcing officer or his or her designee shall constitute prima facie evidence of the respective facts contained in those documents.

Parties may represent themselves or be represented by any person of their choice.

(9) The Board of Directors may continue the hearing and request additional information from the Agency's enforcing officer or the appellant prior to issuing a written decision.

(10) Absent a showing of good cause or the prior granting of a continuance in writing, the failure of the Appellant to appear at the hearing shall constitute a forfeiture of the appeal and a failure to exhaust administrative remedies.

(11) No later than twenty (20) days after the date on which the hearing concludes, or after the appellant has failed to appear at the hearing, the Board of Directors will issue a written decision to the appellant to (i) uphold or reject the finding of a violation of this ordinance and (ii) uphold, modify, suspend, or cancel the fees or penalties imposed. The decision shall list the reason or reasons for the decision and may order the appellant to comply with this ordinance.

(12) The decision of the Board of Directors shall be final.

(13) The Board of Directors' decision may be appealed to the Superior Court of Sonoma County in accordance with the provisions set forth in Government Code section 53069.4 or Code of Civil Procedure section 1094.5.

(14) In the event there is a conflict between this Ordinance and any adopted groundwater fee resolution, this Ordinance shall prevail.

ARTICLE 5. Effective Date

Section 1. Effective Date

This ordinance shall become effective on the 30th day after adoption.

ADOPTED THIS 28th day of July, 2022, by the following vote:

AYES: Abelli-Amen, Gorin, Healy, Rabbitt, Wasem

NOES: N/A

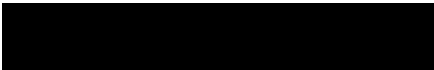
ABSENT: N/A



Chair, Board of Directors
Petaluma Valley Groundwater Sustainability Agency

ATTEST:

By:


Clerk of the Board