



MEMORANDUM

DATE: February 25, 2025
TO: Honorable Board of Supervisors
FROM: Planning and Building Services
SUBJECT: **Discussion and Possible Direction to Staff Regarding Regulation of Water Extraction/Mining from Private Wells for Commercial Purposes and Water Hauling (OA_2023-0003)**

BACKGROUND

On March 15, 2022, the Board of Supervisors (“Board”) discussed possible direction to staff regarding the regulation of water extraction/mining and water hauling. At that time, the Board directed that the Drought Ad Hoc Committee return to the Board with a more detailed draft of an ordinance.

At the July 12, 2022 Board of Supervisors meeting, the Board discussed possible direction to staff to “conduct legal analysis regarding regulation of water extraction/mining from private wells for commercial purposes and water hauling.” The agenda summary prepared for the agenda included the following summary of request:

With the drought and increased aridity as ongoing issues in Mendocino County, people are increasingly concerned about wells going dry and aquifers being excessively tapped. This concern is exacerbated by extraction and hauling of water for non-permitted cannabis grows. There are many reports of people with wells selling water that is then transported to distant locations for unpermitted usages, which may also be causing damage to roads and bridges that were not intended to handle regular traffic by heavy water trucks.

The purpose of this proposed ordinance is to:

- 1. Protect the County’s groundwater resources*
- 2. Avoid adverse effects to neighboring well owners*
- 3. Limit environmental and social impacts of hauling water from private wells*

In order to address the growing concerns about water scarcity, including water diversion for illegal purposes, the recommendation is that the Board of Supervisors direct staff to analyze the proposed ordinance language provided as guidance in drafting an ordinance for first reading to address water extraction and hauling issues in order to protect our county’s water resources

The Board ultimately took the following action: *Upon motion by Supervisor Haschak, seconded by Supervisor Gjerde, IT IS ORDERED that the Board of Supervisors accepts the draft ordinance and forwards to the Planning Commission for review.* It was stated during the meeting that this forwarding of the ordinance would happen after legal analysis was completed.

Internal meetings were held amongst County staff beginning in January 2023. During these meetings staff began to identify concerns associated with the citizen-prepared draft ordinance and identified agencies or County Departments that would need to be involved.

On October 31, 2023, the Board received an update from EKI Environment and Water, Inc. regarding the establishment of a Water Agency. At that time, funding was not allocated by the Board.

On December 19, 2023 the Board reviewed a list of Board directives requiring follow through from County Staff and/or other agencies and deleted outdated directives. During this discussion, the Board directed that Planning and Building Services return in January 2024 with more information regarding current motions and directives to allow the Board to make a more informed decision on possible removal or deferment of motions/directives. Included amongst the motions/directives for Planning and Building Services was the draft ordinance regarding water extraction/hauling.

On January 23, 2024, Planning and Building Services presented the motions/directives to receive direction from the Board. Among the motions/directives was the draft ordinance regarding water extraction/hauling. At the meeting the Board stated they desired to see an agenda item come back to the Board of Supervisors with affected Departments present to discuss the current draft. With the competing priority of the grant funded zoning code update, Staff was not able to continue work on water extraction/hauling until the end of 2024.

Internal staff meetings were held in August 2024 regarding bringing the water extraction/hauling discussion back in front of the Board of Supervisors. Some additional research was determined to be necessary to be able to provide the Board with a clearer picture of the concerns associated with the draft ordinance and the potential costs to revise the ordinance.

On September 10, 2024, with the adoption of the Inland Zoning Code Update, the Board clarified that “water extraction for bulk sale from either a well, spring, watercourse or any other source that is not a water district” is classified as Mining and Processing, an Extractive Use Type, as provided in Mendocino County Code (“MCC”) section 20.036.010. “Water Extraction for Bulk Sale” is defined in MCC section 20.008.060(B) as “extraction of water from a parcel, whether from a well, spring, watercourse or any other source of water, that is not done by a water district, where the water is sold for use on a different property than where it was extracted, including any transportation of water in containers including but not limited to bottles or tank trucks.” Mining and Processing requires the issuance of a Use Permit pursuant to MCC Chapter 20.196 in all zoning districts. All Use Permits are considered a “project” under the California Environmental Quality Act and each Use Permit would obtain site-specific environmental review. The Director of Planning and Building Services previously classified water extraction within this use type, so this action was a codification of that previous determination.

JULY 12, 2022 DRAFT ORDINANCE

Several concerns were identified during the July 12, 2022 Board meeting by County Counsel Christian Curtis including that an ordinance cannot guarantee funding levels in future years and the language within the current draft regarding citizen enforcement. It was also stated by numerous Supervisors during the July 12, 2022 meeting that the lack of a County hydrologist and full-functioning Water Agency were potential impediments as well as funding.

County staff has been reviewing the draft ordinance that was accepted by the Board on July 12, 2022. Through this review, staff has identified concerns that ultimately require further Board direction before proceeding with revising the draft ordinance and presenting it to the Mendocino County Planning Commission. Staff concerns with the July 12, 2022 draft ordinance are outlined below.

1. Lack of County staff with appropriate expertise to review the citizen-prepared draft ordinance for technical accuracy.
2. Lack of County staff with appropriate expertise to review hydrological studies prepared in response to the draft ordinance. If the County hires a third-party to conduct reviews of hydrological studies, this cost would be passed to the applicant. It is estimated that it would cost an applicant between \$1,500 and \$2,000 for this third-party review, assuming there is a clear protocol developed to guide applicants and the review. This expense would be in addition to hiring a qualified individual to complete the study at the applicant’s expense.
3. Lack of full-functioning County Water Agency which places the burden of administration on other Departments named in the draft (Planning and Building, Environmental Health, and Sheriff) by creating an unfunded local program.
4. This ordinance does not appear to address springs or watercourses.
5. Unclear if ordinance would solely apply to inland areas or to the Coastal Zone as well.

6. Unclear definitions on what qualifies as the “first pumping of the season” for static water levels and limited window to allow for testing of initial static level for year-round pumping (April only).
7. Unclear requirements surrounding requests from owners of adjacent wells after the initial static water level measurements and ability to require a static water level test of their well, assumingly at the expense of the property owner who is extracting water, to determine adverse impact and potential modification of the permitted maximum monthly volume that may be extracted.
8. Unclear requirements for if an adverse impact is identified.
9. Concern about the discretionary authority provided to the “County hydrologist” to modify maximum monthly volume based upon static water level measurements at their sole discretion.
10. Unclear if metering requirements require calibration and confirmation by a County staff member that the meter meets the proposed requirements.
11. Section 2G requires certain actions by the individual providing the water to a potential third-party who is transporting the water and has unclear requirements surrounding reporting. It also seems that it is geared to only providing water to residences (based upon Section 2G.e).
12. The requirements in Section 2H are unclear and susceptible to falsification.
13. Section 5 as it relates to Lead Agency and Enforcement requires clarification and refinement. As written, the ordinance does not appear enforceable by any designated agency.
14. Section 6 regarding Citizen Enforcement should be struck entirely. The current language encourages citizens to seek legal action against the County.
15. Attachment I would need to (1) be vetted by an individual with knowledge of hydrological well testing requirements, (2) be either incorporated into the draft ordinance or adopted separately by the Board, and (3) should be harmonized with existing requirements of Environmental Health that apply to well development and testing in the County.
16. The layout and general formatting of the ordinance must be modified in its entirety to be incorporated into County Code.

POTENTIAL NEXT STEPS

Staff believes that while some of the overall concepts within the draft ordinance can be utilized, a County-prepared re-write of the ordinance is required before bringing it forward to the Planning Commission for consideration. If the Board directs Staff to proceed with preparation of a revised draft there are several critical needs to facilitate this:

1. Staff requires clear direction from the Board on the concerns identified in the current draft to allow for staff to prepare a revised draft.
2. Staff does not believe that County staff is able to provide the necessary technical expertise required to prepare a subsequent draft and recommends that this technical expertise be provided by an independent consultant hired by the County. County staff explored the potential expense with hiring a qualified firm to assist in drafting a revised ordinance including internal meetings with County staff, review of draft ordinance language and writing ordinance language, and hearing support. The estimate is \$36,000 to prepare a revised draft ordinance.

During the July 12, 2022 Board meeting, County Counsel Christian Curtis expressed that outside counsel may be necessary to assist in the review of any proposed ordinance and estimated that expense to be approximately \$20,000.

The above expenses would be in addition to Planning and Building staff time, which is estimated to be approximately \$15,000.

3. Identify where this Ordinance fits into affected-Departments priorities.

4. Direct the use of General Fund to cover the expense, acknowledging this was not budgeted by any Department such that affected Departments may come in over-budget.

Attachments:

- A. March 15, 2022 Board Agenda Packet
- B. July 12, 2022 Board Agenda Packet
- C. Memorandum from Environmental Health to Planning and Building