

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 8/6/2013	(3) CONTACT/PHONE Kami Griffin, Assistant Director / 781-5708	
(4) SUBJECT Presentation of potential options for an Urgency Ordinance covering the Paso Robles Groundwater Basin. Districts 1 and 5.			
(5) RECOMMENDED ACTION That your Board: <div style="margin-left: 40px;"> 1. Review the potential options for an Urgency Ordinance within the Paso Robles Groundwater Basin as contained in the staff report. 2. Provide direction on contents and future action on an Urgency Ordinance within the Paso Robles Groundwater Basin. </div>			
(6) FUNDING SOURCE(S) Department Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ___) <input checked="" type="checkbox"/> Board Business (Time Est. <u>240 mins.</u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) Districts 1 and 5			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Kami Griffin, Assistant Director

DATE: 8/6/2013

SUBJECT: Presentation of potential options for an Urgency Ordinance covering the Paso Robles Groundwater Basin. Districts 1 and 5.

RECOMMENDATION

That your Board:

1. Review the potential options for an Urgency Ordinance within the Paso Robles Groundwater Basin as contained in the staff report.
2. Provide direction on contents and future action on an Urgency Ordinance within the Paso Robles Groundwater Basin.

DISCUSSION

On July 9, 2013, your Board provided general direction to staff to bring back options for an Urgency Ordinance within the Paso Robles Groundwater Basin in order to reduce demand on the Basin while permanent solutions are being developed. This staff report sets forth potential options for an Urgency Ordinance that would address reducing demand on the Basin for the period during which the Urgency Ordinance is effective.

Background

Section 65858 of the California Government Code sets forth the circumstances under which a County may adopt an interim ordinance as an urgency measure. This section states in part:

“Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption.”

An ordinance adopted pursuant to Section 65858 is effective for a period of 45 days from the date of adoption. Before the 45 days has expired and after a notice is published in accordance with California Government Code Section 65090 and after a public hearing, the Board may, by four-fifths vote, extend the interim ordinance for 22 months and 15 days. An interim ordinance must contain legislative findings “that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable

entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.”

Thus, provided that the above procedural requirements are satisfied, your Board may adopt an Urgency Ordinance prohibiting any uses that may be in conflict with a permanent Title 22 amendment addressing groundwater use through land use regulation.

Consistent with the language contained within Government Code Section 65858 that a county may adopt an “interim ordinance prohibiting any uses that may be in conflict,” the potential options discussed in this staff report begin with the prohibition of certain uses within a defined area of the Paso Robles Groundwater Basin. From this starting point, options for exceptions to the prohibitions are offered, including the potential to allow new uses dependent on water from the Basin.

Attachment C contains sample Urgency Ordinance language for the options outlined in the staff report and Attachment B is a table that outlines the feasibility and potential issues associated with the options. In addition, staff comments at the end of this report also provide the Board with additional information about the options identified in this staff report. The information in the Attachments uses the outline formatting contained in this report. For example, discussions about options to limit the area in which the Urgency Ordinance could apply would be designated as Option I.A.2 (a) and (b).

Attachment D contains the existing language adopted by your Board as Planning Area Standards. Any Urgency Ordinance would apply in addition to these existing standards. These standards address General Plan Amendments and Land Divisions and therefore these types of uses would not need to be addressed in the Urgency Ordinance. The current language reads:

1. **General plan amendments.** General Plan amendment applications that would result in a net increase in the amount of water used for non-agricultural purposes shall not be approved until a Level of Severity I is certified for the Basin by the Board of Supervisors after adoption of a Resource Capacity Study.
2. **Land divisions.** Divisions of land shall not be approved until a Level of Severity I is certified for the Basin by the Board of Supervisors after adoption of a Resource Capacity Study. Exceptions to this provision may be approved by the Review Authority only when the proposed land division is:
 - a. For a public use or facility (e.g. fire station), or
 - b. Required for conservation purposes and found to be consistent with the Conservation and Open Space Element of the General Plan.

The body of this staff report is organized as a series of questions for your Board to consider. These questions are shown in ***bold face and italics***. In providing direction to staff regarding the possible contents of an Urgency Ordinance, your Board can choose to evaluate the options provided or modify or add to these options. In addition, your Board could choose to eliminate any of these options.

As a means of implementation, staff would suggest that the Health Agency issue a well permit pursuant to Chapter 8.40 of the County Code, only when the use proposed to be served by the well is in compliance with the Urgency Ordinance. In this way, uses that would ordinarily not require any kind of permit other than a well permit would be required to comply with any applicable standards or

limitations imposed by the Urgency Ordinance for the period of time that the ordinance is effective. In the same vein, staff proposes that compliance with the Urgency Ordinance be made a condition on the establishment of any uses that currently require a ministerial permit as a ministerial permit requires some level of review by the County. Uses that currently require the processing of a discretionary land use permit would continue to be reviewed as they are today. Water use and demand on the Basin is taken into account when reviewing discretionary uses as part of both the environmental determination pursuant to the California Environmental Quality Act (CEQA) and ordinance consistency.

Potential Options for the Urgency Ordinance

I. Where could the Urgency Ordinance apply?

The Urgency Ordinance could apply to all properties within the unincorporated areas of the Paso Robles Groundwater Basin except areas within the Atascadero Sub-Basin and within the Shandon and San Miguel urban reserve lines. This would be similar to where the current adopted water conservation standards apply.

A. *Your Board could consider having the ordinance apply to the following:*

1. All areas within the Groundwater Basin (with none of the exceptions stated above).
2. Fewer areas within the Groundwater Basin - include additional exceptions such as:
 - a) the unincorporated areas within the Paso Robles urban reserve line – this would exempt the Jardine Road area and some additional land around Paso Robles from the ordinance.
 - b) the Village reserve areas. This would exempt Whitley Gardens and Creston.

II. What could the Urgency Ordinance do?

Consistent with the language contained within Government Code Section 65858 that a county may adopt an “interim ordinance prohibiting any uses that may be in conflict,” the ordinance should begin with the prohibition of certain uses within a defined area of the Paso Robles Groundwater Basin. Based on direction provided by the Board, staff looked at prohibiting new development, a change in use, an expansion of existing use, or conversion of unused land to agriculture that would extract groundwater from the Basin that was not already being extracted, in order to reduce demand on the Basin.

A. The Urgency Ordinance could disallow the following:

1. New or expanded irrigated crop production involving an irrigation source from the groundwater Basin.
2. Conversion of dry farm or grazing land to new irrigated crops involving an irrigation source from the groundwater Basin.
3. New development dependent upon a well in the groundwater Basin.

B. *Your Board could consider additional specific uses that would be prohibited. These uses would not be allowed during the time the Urgency Ordinance is in effect and would not fall into an allowable exemption. The following options for these additional prohibitions could be considered:*

1. Secondary Dwellings in the Residential Suburban and Residential Rural Land Use Categories.

2. Second Primary Dwellings in the Agriculture and Rural Lands Land Use Categories.

III. What could be exempted from the prohibition defined in Option II.A. above?

Exemptions should be considered in order to address repairs and efficiency improvements to existing water systems. Option III.1. includes re-drilling or replacing an existing well that has gone dry. Option III.4 would make it clear that a destroyed structure could be rebuilt. Options III.5 suggests the use of a permit – further description of that option is outlined in Option IV.1. and 2.

1. Minor Modifications to an existing water supply for an existing use that involves simple repair
2. Efficiency Improvements to an existing water supply for an existing use for the purposes of making the system more efficient
3. A public use or facility or a use that is determined to have an overriding need (i.e.: fire station)
4. A structure or use to replace a destroyed structure or use
5. Any use where an ***Urgency Water Permit*** has been issued

A. *Should there be exemptions from the Urgency Ordinance in addition to those outlined in Option III. 1- 4? The following options for these additional exceptions could be considered:*

1. Small new or expanded irrigated crop production where the total irrigated crop production on the site will not exceed 20 acres (this includes existing irrigated crops).
2. One single family residence subject to Best Management Practices including restricted outdoor landscaping and no irrigated crop production where the water source is metered, monitored and reported twice yearly.
3. Farm Support Quarters with restricted outdoor landscaping where the water source is metered, monitored and reported twice yearly.

B. *If your Board agrees with the concept of allowing uses based on the issuance of an Urgency Water Permit during the time the Urgency Ordinance is in effect (Option III.5) – should that permit be ministerial with set standards or discretionary with standards determined on a case by case basis (see Option IV below)?*

IV. What are the options for an Urgency Water Permit?

There are two options that are associated with establishing an Urgency Water Permit for new ministerial uses, a ministerial permit and a discretionary permit. In order to be ministerial, the standards would need to be established within the ordinance and require no discretion. Option IV.1. (a) – (c) is a ministerial option that could be considered. A discretionary permit would allow the offsets and water use limitations to be developed on a case by case basis after an environmental determination pursuant to CEQA and public hearing have been completed. Option IV.2. (a) – (d) is a discretionary option that could be considered.

Ministerial Permit

- a) Offsets required for all development and irrigated crop production.
If your Board agrees with establishing offsets – should they be set at 1:1 offset or 2: 1?

- b) The water source required to be metered, monitored and reported twice yearly.
- c) Set limits on average water use as follows (suggested limits):
 - Average of 0.50 acre feet per year for development other than irrigated crop production
 - Average of 0.20 acre feet per acre per year for irrigated crop production

1. Discretionary Permit

- a) Offsets determined on a case by case basis.
- b) The water source required to be metered, monitored and reported twice yearly.
- c) No set limits on average water use - determined on a case by case basis.
- d) Special findings required.

V. What standards would apply to existing Irrigated Crop Production?

Any existing irrigation practices in effect as of the date of the Urgency Ordinance can continue without any additional standards applied. However, the Board could consider at the time of any change in land use or expansion of irrigated crop production, applying standards to the existing irrigated crop production on the site.

A. Your Board could impose additional requirements at the time there is an expansion of the irrigated crop production proposed or a new use other than irrigated crop production is proposed. The following options for these additional requirements could be considered:

- 1. Amount in existing irrigated crop production would be required to offset the same as new irrigated crop production.
- 2. Existing irrigated crop production would be required to meet Best Management Practices, including limiting the use of overhead sprinklers (drip only), reuse, flow meters, etc., and be required to be metered, monitored and reported twice yearly with no limit on water use.
- 3. Existing irrigated crop production would be required to meet Best Management Practices, including limiting the use of overhead sprinklers (drip only), reuse, flow meters, etc., and be required to be metered, monitored and reported twice yearly with a limit of 0.20 acre feet per acre per year.

VI. What standards could apply to new Agricultural Ponds?

Current standards in the County's Grading Ordinance (Chapter 22.52 of the County Code) exempt "small reservoirs" (a pond that is designed to contain no more than one acre foot of water, is located entirely below natural grade and is not located on a waterway) from a grading permit provided that an Agricultural Grading Form is submitted to the County prior to the commencement of any grading activities in which the submitter agrees to meet sound agricultural management measures. Larger ponds are subject to either the Alternative Review Program process through the Resource Conservation District or a grading permit through the County. Both the Alternative Review Program permit and the grading permit require completion of an environmental determination pursuant to the CEQA which will take into consideration water use and demand on the Basin.

A. *If your Board wanted to further regulate Agricultural Ponds beyond what is required today, the following options could be considered:*

1. Completely prohibit new agricultural ponds of any size during the time the Urgency Ordinance is in effect
2. Allow new agricultural ponds that will contain one acre foot or less of water (“small reservoirs”) subject to the standards in effect today. All other new ponds prohibited during the time the Urgency Ordinance is in effect
3. Allow new agricultural ponds that will contain five acre feet or less of water subject to the standards in effect today. All other ponds prohibited during the time the Urgency Ordinance is in effect.

VII. What standards would apply to projects in the “pipeline”?

Projects in the pipeline would be both projects that do not require a permit and projects that require a ministerial or discretionary permit. All issued construction permits would be allowed to continue with no change. Any approved land use permit or land division application would be allowed to continue subject to the conditions applied at the time the project was approved. A vesting map is subject only to the rules in effect at the time of project acceptance by State law.

A. *For land use permits, your Board could consider the following options:*

1. Land use permit applications in process would be subject to the standards in place at the time of the public hearing on the application.
2. Recognize all projects where an application was submitted and the fee paid prior to August 6, 2013 as in the pipeline and only subject to the standards in place today for the Paso Robles Groundwater Basin.

B. *For new irrigated crop production, your Board could consider the following options:*

1. Recognize new irrigated crop production where the entire acreage has been planted as in the pipeline and subject only to the standards in place today.
2. Recognize new irrigated crop production where the crop is currently being planted (even if the entire acreage has not yet been planted but the entire site has been prepared for planting) as in the pipeline and subject only to the standards in place today.
3. Recognize new irrigated crop production where site preparation (no planting) was begun prior to August 6, 2013 as in the pipeline and subject only to the standards in place today.
4. Recognize new irrigated crop production where financing has been obtained for site preparation and planting prior to August 6, 2013 as in the pipeline and subject only to the standards in place today.

Staff Comments

The following comments provide additional information about the Options discussed in the staff report, in addition to other information that may be of interest to your Board.

1. Urgency Ordinance Implementation - It becomes difficult to implement the measures of an Urgency Ordinance where a well already exists on a site or where the use itself would not otherwise require a permit (for example crop production).

If the ordinance uses the issuance of a well permit consistent with Chapter 8.40 of the County Code or the issuance of a construction permit consistent with Title 19 of the County Code as the method for implementing the Urgency Ordinance, then the ordinance does not capture those prohibited uses that will use an existing water supply or that do not otherwise require a permit. For these uses, it will be a challenge to inform property owners that they now require review by the County. This could create enforcement issues for the time period that the Urgency Ordinance is in effect.

2. Urgency Ordinance versus Permanent Ordinance - In addition, some of the potential options discussed in this staff report may be more appropriate to consider as part of a permanent ordinance, rather than as part of an Urgency Ordinance that is valid for a limited timeframe. For instance, developing and establishing an off-set program for agriculture may require a significant amount of time and would require additional staffing to implement. For those reasons, that option may not be appropriate for a temporary Urgency Ordinance and it might be better to consider as part of a future permanent ordinance.
3. Stakeholder Involvement - Staff has received requests from the various stakeholders in the Basin to participate in the development of the Urgency Ordinance. If an ordinance were to be considered on August 27, 2013, in order to meet noticing and agenda requirements, it would need to be prepared approximately one week from August 6, 2013. This timeframe would allow for no formal stakeholder participation other than through testimony at the public hearings on the Urgency Ordinance. If your Board would like to have formal stakeholder participation in the form of meetings and discussions about the contents of an Urgency Ordinance, with a report out to the Board about those meetings and discussions, any adoption of an Urgency Ordinance would need to occur much later than August 27, 2013. This could create a rush to establish new uses before they would be subject to the ordinance. However, it is difficult to know what the impact of postponing a decision might be.

Although these issues are complex, we hope the potential options contained in this staff report will provide your Board with a place to begin your discussions about this very important resource issue.

OTHER AGENCY INVOLVEMENT/IMPACT

Staff from County Counsel's office, Public Works, Environmental Health, Agricultural Commissioner's Office and County Administration have participated in meetings about the development of the options contained in this report.

FINANCIAL CONSIDERATIONS

This staff report was prepared under the Department's current budget. Some of the options may have budget and staffing impacts that will need to be determined.

RESULTS

Providing direction to staff regarding the potential content of an Urgency Ordinance will allow preparation of the ordinance, noticing and a public hearing to occur consistent with the requirements of State law.

ATTACHMENTS

Attachment A – Map of the Groundwater Basin

Attachment B – Table outlining feasibility, issues and comments regarding the options proposed

Attachment C – Proposed Urgency Ordinance language for the options proposed

Attachment D – Existing Planning Area Standards applicable within the Paso Robles Groundwater Basin