ORDINANCE NO. 3246

AN URGENCY ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA ESTABLISHING A MORATORIUM ON NEW OR EXPANDED IRRIGATED CROP PRODUCTION, CONVERSION OF DRY FARM OR GRAZING LAND TO NEW OR EXPANDED IRRIGATED CROP PRODUCTION AND NEW DEVELOPMENT DEPENDENT UPON A WELL IN THE PASO ROBLES GROUNDWATER BASIN UNLESS SUCH USES OFFSET THEIR TOTAL PROJECTED WATER USE, INCLUDING CERTAIN EXEMPTIONS

Section 1. Findings and Declarations.

The Board of Supervisors makes the following findings in support of the enactment of this urgency ordinance in the Paso Robles Groundwater Basin:

A. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §21000, et seq.) ("CEQA") because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment as it includes regulations to protect the Paso Robles Groundwater Basin from further depletion (CEQA Guidelines §15061(b)(3)); because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources, namely the water within the Paso Robles Groundwater Basin (Class 7, CEQA Guidelines §15307); and because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of the environment, including the water resources within the Paso Robles Groundwater Basin and all of the people, species, and environs that rely on that resource (Class 8, CEQA Guidelines §15308). This Ordinance is also exempt from CEQA because it is an urgency ordinance that prevents or mitigates impacts from the sudden, unexpected failure of a large number of residential wells within the Paso Robles Groundwater Basin, which poses a clear and imminent danger to other residential and agricultural wells in the basin and to the species and environment that rely on that water, and which requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services. This emergency project, therefore, qualifies for an exemption under Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269(c).

B. The Paso Robles Groundwater Basin is a 505,000 acre area that supplies water to cities, unincorporated communities, rural home sites and agriculture in the northerly portion of San Luis Obispo County. For much of the area, the groundwater basin is the sole source of water for all users. Major hydrogeologic studies and pumping evaluations of the basin have been produced in 2002, 2005, 2009 and 2010. These studies are:

   a. Fugro 2002 – Final Report; Paso Robles Groundwater Basin Study – Phase I;
   b. Fugro 2005 - Final Report; Paso Robles Groundwater Basin Study – Phase II;
   c. Todd 2009 – Evaluation of Paso Robles Groundwater Basin Pumping Water Year 2006
   d. Fugro 2010 - Paso Robles Groundwater Basin Water Balance Review and Update

C. In addition to these hydrogeologic and pumping evaluations, the County produced a Resource Capacity Study (RCS) adopted by the Board in 2011 that addresses basin water demand and future water demand projections. The RCS is completed pursuant to the County General Plan and establishes "levels of severity" for resources and services. The RCS established a Level of Severity III for the main basin and a Level of Severity I for the Atascadero sub-basin. Level of Severity III is the highest level and represents the most serious resource problem. The 2011 RCS concluded that the basin was at or approaching its safe yield, meaning that more water is pumped out than is going back in resulting in continual and widespread lowering of groundwater levels.

D. The San Luis Obispo County Flood Control and Water Conservation District maintains monitoring well locations throughout the groundwater basin. Measurements are conducted twice a year to determine groundwater levels. The latest measurements taken in April 2013 are related in "hydrographs" which are graphic representations of changes in groundwater levels over time along with yearly rainfall. Hydrographs are developed for four areas of the main basin. These hydrographs graphically show that groundwater levels have recently fallen in all four areas:

a. Shandon - Water levels have dropped approximately 17 feet from 2011 to 2013.
b. Creston – Water levels dropped approximately 25 feet from 2011 to 2013.
c. Estrella – Water levels have dropped approximately 25 feet from 2011 to 2013.
d. San Juan – Water levels have dropped approximately 5 feet from 2012 to 2013.

E. The Board of Supervisors has heard testimony from numerous individuals throughout the basin whose wells have gone dry within the recent past. According to that testimony, provided during the general public comment period of the Board of Supervisors' regular meeting on July 9, 2013, during a Board Business item placed on the agenda for the Board of Supervisors' regular meeting on August 6, 2014, and during the noticed hearing on this ordinance held on August 27, 2013, several residential homeowners have experienced severe drops in the water levels in their wells. Some of those homeowners have had to drill new, much deeper wells or lower their pumps. Others have resorted to trucking water to their homes from potentially unsanitary sources. Other individuals testified that they have tested their wells and determined that they are in imminent danger of going dry. These reports have been received from throughout the basin and appear to be particularly prevalent in the Estrella, Creston and Shandon sub areas.

F. Meanwhile, the area overlying the Paso Robles Groundwater Basin has experienced a significant increase in the amount of new irrigated agriculture being planted. A number of large areas of land have been very recently converted from dry land farming or grazing to vineyards. The Agricultural Commissioner estimates that approximately 4,000 acres of new vineyards have been planted in the basin in the last 24 months. The establishment of new grape vines is estimated to use 1.0 to 1.25 acre feet of water per acre of plantings, which translates into an additional 4,000 to 5,000 acre feet of water being used from the basin for new vineyards in the last 24 months.

G. This year has been a particularly dry year and has resulted in increasingly severe drought conditions within the County. The United States Department of Agriculture has granted a secretarial disaster designation for the County "due to agricultural losses caused by drought beginning January 1, 2012." This drought has likely exacerbated the effects of the recent increase in water intensive agricultural and other uses within the Basin and contributes to the emergency situation facing homeowners whose wells have very recently gone dry or are about to go dry.

H. Currently, the County's Land Use Ordinance (Title 22 of the County Code) allows new land uses to be established that rely on water from the Paso Robles Groundwater Basin, including new irrigated agricultural uses and the building of new water-using structures such as homes, through the issuance of varying levels of permits or without permits. Some of these water-intensive uses are allowed to be established through the issuance of ministerial permits and some, such as new irrigated agriculture, require no permits at all. Yet any and all new development and agricultural expansion will contribute to the declining groundwater levels within the Basin. Based on the recent rates of decline of water levels in the Basin, the reported increase in incidences of well failures within the Basin, and the rate of establishment of new uses dependent on water from the Basin, continuing to allow the establishment of new water-intensive uses within the Basin poses a current and immediate threat to the people, species, and environs that currently depend on that Basin, and to the public, health, and welfare as a whole.

I. In order to address these urgent water needs within the Paso Robles Groundwater Basin, the County is contemplating amendments to its general plan and/or zoning ordinance and intends to study those potential amendments within a reasonable time. In the meantime, the approval of additional subdivisions, land use permits, variances, building permits, construction permits, grading permits, well permits, or any other applicable entitlement for use required to comply with the Land Use Ordinance within the Paso Robles Groundwater Basin would threaten the public health, safety, and welfare by exacerbating the declining water levels of the Basin and contributing the failure of additional residential and agricultural wells. This urgency and interim zoning ordinance will allow County staff time to complete necessary studies and reports for the contemplated amendments to its general plan and/or zoning ordinance while preserving the resources of the Basin.

J. This Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code sections 25123 and 25131 and as an interim zoning ordinance pursuant to the provisions of Government Code section 65658 and shall be effective for a period of 45 days from its passage. Based on the findings set forth above in this section of the Ordinance, the Board of Supervisors finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare pursuant to the requirements of Government Code sections 25123, 25131, and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance and/or general plan amendment addressing water shortages within the Paso Robles Groundwater Basin.

K. This urgency and interim zoning ordinance does not apply to areas served by the San Miguel Community Services District (CSD) and County Service Area (CSA) 16 because urban water providers can closely manage water demand in their service area. CSDs and CSAs do this through rate structures that directly relate the cost of water to the consumer, differing from water provided from individual wells that are not metered and do not have a rate structure or separate billing. In addition, CSDs and CSAs offer various water conservation programs to benefit their users and deliver water from wells that are metered, monitored and maintained by a single entity allowing for best management practices in the delivery of water. None of these mechanisms exist for rural water users in the Basin that are outside of water service areas or districts. Also water districts or areas such as within Shandon urban reserve line, have an allocation from a supplemental water source (i.e. State Water Project) and are not completely dependent on groundwater. The rural areas of the basin have no alternative water source making groundwater management that much more important in those areas.

Section 2. Applicability.

This Ordinance applies to all properties within the unincorporated areas of San Luis Obispo County that overlie the Paso Robles Groundwater Basin except those properties that overlie the Atascadero Sub-Basin and those properties served by County Service Area 16 or the San Miguel Community Services District (Exhibit 2A).

Section 3. Definitions.

For the purposes of this Ordinance, the following terms have the definitions set forth below:

A. "Approved County Water Conservation Program" means a program, approved by the Board of Supervisors by resolution, to offset total projected water use for new or expanded irrigated crop production, conversion of dry farm or grazing land to new irrigated crop production, and new development dependent upon a well in the groundwater Basin.

B. "Atascadero Sub-Basin" means the hydrologically distinct sub basin that encompasses the Salinas River corridor area south of Paso Robles and includes the communities of Garden Farms, Atascadero, Templeton and a portion of the City of Paso Robles' water supply (See Attachment A1).

C. "Conversion of Dry Farm or Grazing Land to New Irrigated Crop Production" means the conversion of a site that had been used for the purposes of farming a crop, orchard, vineyard or other agricultural product without using irrigation or for the purposes of raising or feeding of beef cattle, sheep, or goats by grazing or pasturing for the past 10 years, to new or expanded irrigated crop production. The 10 year timeframe includes such time the site was fallow, in rotation but not planted, or covered under a conservation plan prepared as part of the Conservation Reserve Program.

D. "Director of Public Works" means the Director of Public Works and Transportation of San Luis Obispo County as established by Chapter 2.18 of Title 2, or his or her designee.

E. "Director of Planning and Building" means the Director of the Department of Planning and Building of San Luis Obispo County as established by Chapter 2.22 of Title 2 of the County Code, or his or her designee.

F. "Discretionary Permit" means any action, permit, or approval which requires the County, including any Board, Commission or Department of the County and any official or employee of the County, to exercise judgment or deliberation, and which contemplates the imposition of conditions by the County, including any Board, Commission or Department of the County and any official or employee of the County, in the process of approving or disapproving any such application.

G. "Efficiency Improvement" meaning an addition, change, upgrade, improvement or replacement of a site's existing well or water supply and distribution system (including the addition of plumbing fixtures) for an existing use or to replace a destroyed use which is for purposes of replacing a dry or otherwise non-producing well, or rendering the system more efficient and is not intended to supply water or make plumbing fixtures available to additional users of said system and does not increase the total consumption of groundwater at that site. If a replacement well is permitted, the new well must be drilled to the same or smaller diameter as the existing well.

H. "Ministerial Permit" means any County action, permit, or approval which requires the County, including any Board, Commission or Department of the County and any official or employee of the County, to determine merely whether there has been compliance with applicable statues, ordinances, regulations or conditions of approval.

I. "Minor Modification" means a modification to an existing water supply for an existing use or to replace a destroyed use that involves simple repair or replacement of pipes, fittings, faucets, hoses, pumps, meters, components of irrigation systems, sinks, tubs, toilets, showers, washing machines, and all other elements of the water supply and delivery system that will not potentially increase the amount of groundwater extraction at that site. For the purposes of this definition, swimming pools (if filled with trucked in water from a supply source that does not include groundwater from the Basin and is provided with a cover), and additional potential bedrooms, residential or agricultural accessory structures with no increase in number of restrooms, whether or not attached to a single-family dwelling unit are considered minor modifications. A minor modification can also mean an interior remodel or addition with no increase in floor area or number of restrooms or a remodel implementing an approved land use permit. Any modification or improvement that will increase the amount of groundwater extracted is not a minor modification.

J. "New Development" means all allowable land uses pursuant to Table 2-2 of Section 22.06.030 of Title 22 of the County Code.

K. "New or Expanded Irrigated Crop Production" means the development, new plantings, or other improvements of a property for the purposes of farming the following, including but not limited to, grains, field crops, vegetables, melons, fruits, tree nuts, flower fields and seed production, ornamental crops, tree and sod farms, other crops, orchards, vineyards or other agricultural products using irrigation. This includes increasing the density of any existing irrigated crop production. This does not include planting of annual or rotational crops where those crops have been planted within the last five years on a site.

L. "Offset Clearance" means a ministerial permit that may be granted by the Director of the Planning and Building pursuant to this Ordinance if the requirements of this Ordinance are met.

M. "Paso Robles Groundwater Basin" means the groundwater basin the basin encompassing an area of approximately 505,000 acres (790 square miles) that extends from the Garden Farms area south of Atascadero to San Ardo in Monterey County, and from the Highway 101 corridor east to Shandon.

N. "Potential bedroom" means any room with a floor area equal to or greater than seventy square feet, including lofts, sewing rooms, offices, game rooms, guesthouses etc., that meet building codes for a sleeping room. A closet or lack thereof is not used in determining whether a room is a potential bedroom.

Section 4. Limitations on Uses.

A. Limitation on Use – None of the following uses shall be established, commenced or initiated, and no applications filed pursuant to Chapter 8.40 of the County Code to construct, repair or modify a water system proposed to serve any of the following uses or applications for a construction permit in connection with the establishment of any of the following uses shall be approved, except in conformance with this Ordinance:

1. New or Expanded Irrigated Crop Production.

2. Conversion of Dry Farm or Grazing Land to New Irrigated Crop Production.

3. New Development dependent upon a well in the groundwater Basin.

Section 5. Activities that are not subject to the ordinance.

A. The following categories are not subject to the requirements of this Ordinance and may be processed in accordance with the County's plans, policies and regulations:

1. A Minor Modification.

2. An Efficiency Improvement.

3. Existing irrigated crop production (including irrigation practices) in effect as of the effective date of this Ordinance.

4. Any application for a land use permit, land division, general plan amendment, ordinance amendment, construction permit, grading permit or well that was submitted to the County, and accepted as complete, including any required fees, prior to the effective date of this Ordinance.

5. Any construction permit necessary to implement a land use permit approved prior to the effective date of this Ordinance.

6. New irrigated crop production where the crop was planted as of August 27, 2013.

7. New ponds, reservoirs and dams constructed to regulate or store a supply of water for frost protection, seasonal irrigation, or livestock purposes.

Section 6. Exemptions.

A. The following categories are exempt from the requirements of this Ordinance and may be processed in accordance with the County's plans, policies and regulations:

1. A proposed development for a public use or facility (e.g. fire station).

2. A proposed development where the Board of Supervisors has determined there is an overriding public or emergency need for the proposed development.

3. Replacement structures (when an existing legal structure had previously existed on the property) where there is no increase to the square footage and number of bathrooms.

4. Where satisfactory evidence can be provided that, prior to the effective date of this Ordinance, an applicant has secured a vested right to complete site preparation, planting, or sale of product.

5. A proposed multi-family development project.

Section 7. Offset Clearance

A. Offset Clearance. New or Expanded Irrigated Crop Production, Conversion of Dry Farm or Grazing Land to New Irrigated Crop Production, and New Development dependent upon a well in the groundwater Basin shall be required to obtain an Offset Clearance prior to the issuance of a permit filed pursuant to Chapter 8.40 of the County Code to construct, repair or modify a water system, issuance of a construction permit or the use being established, commenced or initiated whichever is applicable. An Offset Clearance is a ministerial permit and may be granted if the following requirements are met.

1. Application content. Requests for an Offset Clearance shall be accompanied by the following:

   a. Evidence that the net new water demand (based on actual water data or by approved assumptions about the water demand for that use) has been offset (based on actual water data or by approved assumptions about the water demand for that use) at a ratio of at least 1:1 through verifiable evidence or participation in an Approved County Water Conservation Program. The offset must occur before, or at the same time as, the new water use is developed.

2. Metering and Monitoring. The following requirements apply to all issued Offset Clearances.

   b. Within 30 days of installation of a well for which a permit has been issued pursuant to Chapter 8.40 of the County Code, or prior to final building inspection, whichever is applicable, evidence shall be submitted to the Public Works Director that the property owner has installed a meter on the well serving the use to measure all groundwater used from that well. The configuration of the installation shall conform to a drawing prepared by the property owner and shall conform to the technical standards set forth by the Public Works Director.

   c. On or near the first day of each month the property owner or other person designated by the property owner shall read the water meter and record the data. These records shall be maintained by the property owner.

3. Discretionary Permits. In approving a Site Plan, Minor Use Permit, Conditional Use Permit, Variance or other discretionary application, the Review Authority shall impose reasonable conditions as needed to satisfy the requirements of this ordinance, including proposed offset requirements for the proposed use that would be equivalent to offsetting the net new water demand at a ratio of at least 1:1 and metering and monitoring consistent with this Ordinance.

Section 8. Enforcement.

A violation of this Ordinance is deemed to be a violation of Titles 8 and 22. In the event of a violation of this Ordinance or any requirement imposed pursuant to this Ordinance, the County may, in its discretion and in addition to all other remedies, take such enforcement action as is authorized under Title 8 and/or Title 22 of the County Code and any other action authorized by law.

Section 9. Severability.

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 10. Effective Date.

In light of the recitals in this Ordinance, the Board of Supervisors declares that this Ordinance is necessary as an urgency measure for preserving the public health, safety and welfare. This Ordinance shall take effect immediately upon its passage and shall expire 45 days thereafter unless extended pursuant to law.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the twenty-seventh day of August, 2013, by the following roll call vote, to wit:

AYES: Supervisors Frank R. Mecham, Adam Hill, Debbie Arnold and Acting Chairperson Bruce S. Gibson

NOES: None

ABSENT: None

ABSTAINING: None

Bruce S. Gibson
Acting Chairman of the Board of Supervisors,
County of San Luis Obispo, State of California

ATTEST:

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

By: Annette Ramirez
Deputy Clerk

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM:

RITA L. NEAL
County Counsel

By: /s/ Whitney McDonald
Deputy County Counsel

Dated: August 28, 2013

STATE OF CALIFORNIA) ss.
COUNTY OF SAN LUIS OBISPO)

I, **JULIE L. RODEWALD**, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors this 30th day of August, 2013.

JULIE L. RODEWALD,
County Clerk and Ex-Officio Clerk of the Board of Supervisors

By: Annette Ramirez - Deputy Clerk
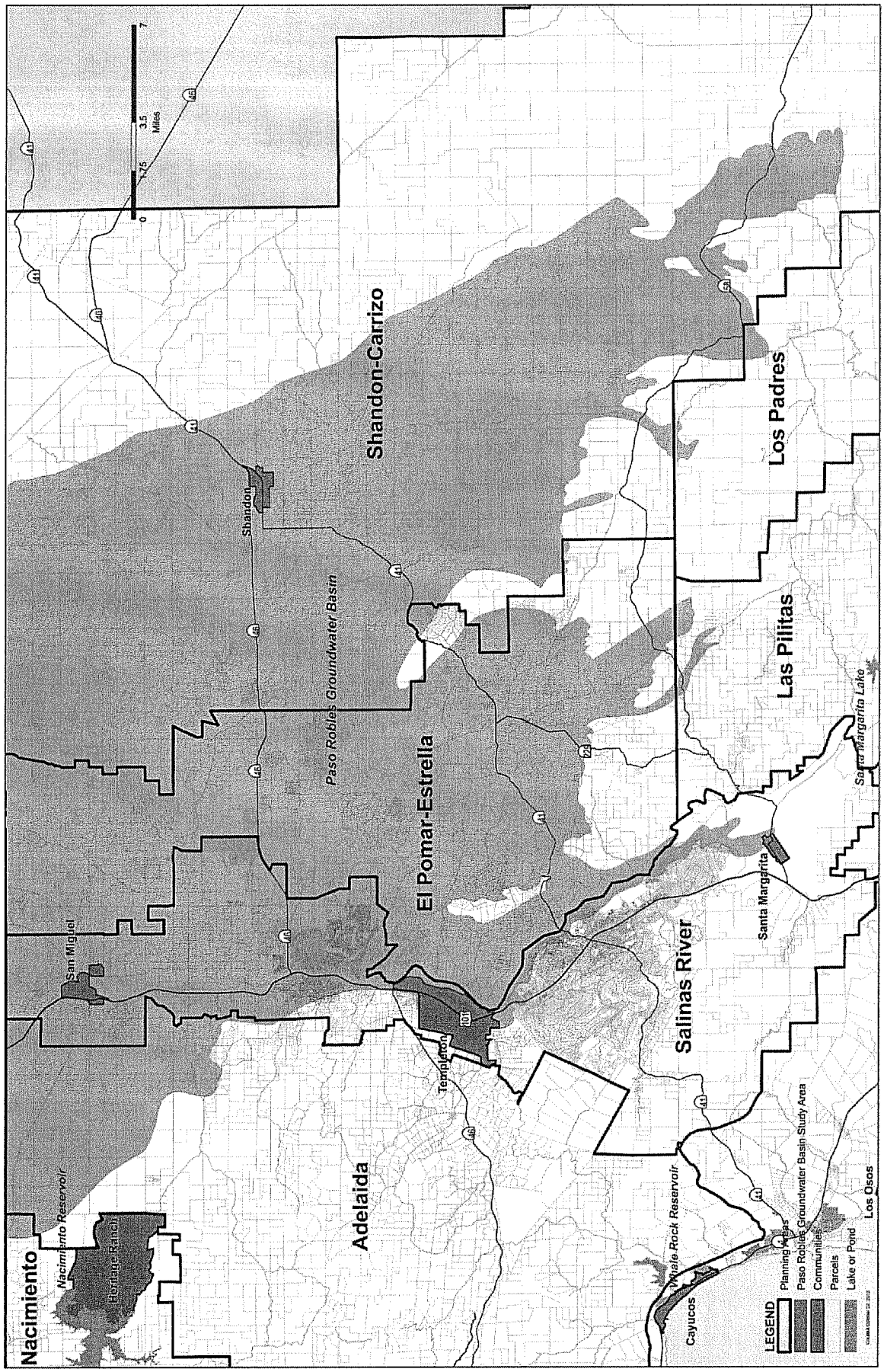
EXHIBIT 2A – Map of the Paso Robles Groundwater Basin