ORDINANCE NO. ____

AN ORDINANCE REGULATING THE EXPORTATION OF GROUNDWATER

The Board of Supervisors of the County of San Luis Obispo, State of California, ordains as follows:

SECTION 1: That Chapter 8.95 of the County Code be added as follows:

8.95.10 Findings and declarations.

The board finds and declares as follows:

A. The groundwater underlying the county has historically provided the people and lands of the county with water for agricultural, domestic, municipal and other purposes.

B. According to the 2014 San Luis Obispo Integrated Regional Water Management Plan, approximately fifty seven percent of all domestic water supply needs within the county are met by the use of groundwater.

C. The primary industry in the county is agriculture, and the gross value of all agricultural crops produced in the county was estimated at $960,710,000 in 2013. Nearly all irrigated agricultural crops within the county are irrigated with groundwater.

D. According to Bulletin 118, the following twenty two groundwater basins (or portions thereof) underlie the county: the Paso Robles Area Groundwater Basin, the Cholame Valley Groundwater Basin, the Los Osos Valley Groundwater Basin, the San Luis Obispo Valley Groundwater Basin, the Santa Maria River Valley Groundwater Basin, the Cuyama Valley Groundwater Basin, the Carrizo Plain Groundwater Basin, the San Carpoforo Valley Groundwater Basin, the Arroyo de La Cruz Valley Groundwater Basin, the San Simeon Valley Groundwater Basin, the Santa Rosa Valley Groundwater Basin, the Villa Valley Groundwater Basin, the Cayucos Valley Groundwater Basin, the Old Valley Groundwater Basin, the Toro Valley Groundwater Basin, the Morro Valley Groundwater Basin, the Chorro Valley Groundwater Basin, the Rinconada Valley Groundwater Basin, the Pozo Valley Groundwater Basin, the Huasna Valley Groundwater Basin, the Rafael Valley Groundwater Basin and the Big Spring Area Groundwater Basin.

E. As part of the California Statewide Groundwater Elevation Monitoring Program, set forth in California Water Code Section 10920 et seq., the California Department of Water Resources identified a number of groundwater basins within the county as high or medium priority basins in 2014, including the Paso Robles Area Groundwater Basin, the Los Osos Valley Groundwater Basin, the Santa Maria River Valley Groundwater Basin, the San Luis Obispo Valley Groundwater Basin and the Cuyama Valley Groundwater Basin.

F. As part of the county's Resource Management System, set forth in Chapter 3 of the San Luis Obispo County Land Use Ordinance—Framework for Planning, the board has determined that a Level of Severity III exists for water resources within (or within portions of) the Paso Robles Valley Groundwater Basin, the Los Osos Valley Groundwater Basin and the Santa Maria River Valley Groundwater Basin. A Level of Severity III is the highest level of alert and occurs when resource use exceeds the capacity of the resource.

G. Two groundwater basins (or portions thereof) within the county, including the Santa Maria River Valley Groundwater Basin and the Los Osos Valley Groundwater Basin, have been or are in the process of being adjudicated.

H. According to the 2012 San Luis Obispo County Master Water Report, the county is subject to cyclical droughts, declining groundwater levels, degradation of groundwater quality and a limited availability of surface water supplies.

I. Areas of the county have access to limited groundwater supplies.

J. Areas of the county are entirely dependent on groundwater.

K. During dry months and extended drought conditions, some communities within the county are left with insufficient water supplies for outdoor irrigation and fire flow protection.

L. The groundwater of the county will be a vital part of future water use in the county. According to the 2011 San Luis Obispo County 2040 Population, Housing & Employment Forecast, the population of the county is projected to increase approximately twenty percent between 2010 and 2040, under the medium-growth scenario.

M. It is essential for the protection of the health, welfare, and safety of the residents of the county, and the public benefit of the state, that the groundwater resources of the county be protected from harm resulting from the exportation of groundwater.

N. California courts have recognized and upheld the authority of counties, through their police powers, to regulate the use of groundwater.

O. In the statewide groundwater legislation approved by the Governor on September 16, 2014, commonly referred to as the Sustainable Groundwater Management Act, the State Legislature declared its intent to recognize and preserve the authority of counties to manage groundwater pursuant to their police powers.

P. The export of groundwater could have significant environmental impacts on groundwater resources within the county, including but not limited to (increased) lowering of groundwater levels; uncontrolled movement of contaminated groundwater; uncontrolled movement of inferior quality groundwater; (increased) seawater intrusion and land subsidence.

Q. The board recognizes the principle developed in the case law of California that water may be appropriated from a groundwater basin if the groundwater basin is in a surplus condition and such appropriation would not impair the reasonable and beneficial use of overlying users.

R. This chapter requires a permit for the export of groundwater and is not intended to regulate groundwater in any other way.

S. In adopting and codifying this chapter, the board does not intend to limit other authorized means of managing the county's groundwater and intends to work with other affected local agencies to develop groundwater sustainability plans to implement prudent water management practices within the groundwater basins within the county.

8.95.20 Definitions.

As used in this chapter:

A. "Board" means the board of supervisors of the county of San Luis Obispo.

B. "Bulletin 118" means the California Department of Water Resources' report entitled "California's Groundwater: Bulletin 118" updated in 2003 and as it may be subsequently updated and revised.

C. "County" means the county of San Luis Obispo.

D. "Contiguous parcels" means parcels which abut, adjoin or otherwise touch each other at more than one point along a common boundary or which would do so except for separation by a strip of land over which some person or entity, other than the owner of the parcels, has some property interest, including fee title or some lesser interest, such as a leasehold or easement. Examples of such strips of land include, but are not limited to, roads, streets, utility easements, railroad rights-of-way, canals and drainage channels.

E. "Department" means the county Department of Public Works and Transportation.

F. "Director" means the county Director of Public Works and Transportation or his or her designee.

G. "Export" means the extraction of groundwater underlying the county for use outside the boundaries of the groundwater basin from which the groundwater is derived, or for use outside of the county.

H. "Groundwater" means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water but does not include water that flows in known and definite channels.

I. "Groundwater basin" means a groundwater basin or subbasin identified and defined in Bulletin 118 or as modified pursuant to Water Code Section 10722 et seq.

J. "Historical practice" means the consistent or predominant practice within seven years preceding the effective date of this chapter.

K. "Local water agency" means any local public agency, mutual water company, non-profit tax exempt incorporated association or water corporation regulated by the Public Utilities Commission within, or partially within, the county which is a purveyor of waters for agricultural, domestic or municipal use.

L. "Person" means any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or local public agency, including any city, county, city and county, district or joint powers authority.

M. "Recharge" means flow to groundwater storage from precipitation, irrigation, infiltration from steams, spreading basins and other sources of water.

N. "Site" means any lot or parcel of land or contiguous combination thereof having the same owner, the same lessee or the same controlling entity in existence on the effective date of this chapter.

O. "Usable storage capacity" means the quantity of groundwater of acceptable quality that can be economically withdrawn from storage.

P. "Water year" means the year beginning January 1 and ending December 31.

8.95.30 Permit required for exportation of groundwater.

Unless otherwise exempt, no person shall export groundwater underlying the county without first obtaining a permit as provided in this chapter.

8.95.40 Exemptions.

This chapter shall not apply to the export of groundwater in the following circumstances:

A. To prevent the flood of lands;

B. To prevent the saturation of the root zone for agricultural land;

C. Movement of groundwater within the boundaries or service area of a single local water agency;

D. Movement of groundwater consistent with historical practice within a parcel or between contiguous parcels having the same owner, the same lessee or the same controlling entity in existence on the effective date of this chapter;

E. Exportation by the county or the San Luis Obispo County Flood Control and Water Conservation District; and

F. Exportation of not more than one-half (1/2) acre foot of water per water year from a site.

8.95.50 Application for an export permit.

A. An application for an export permit shall be filed with the department on a form specified by the director, which shall include all information specifically requested thereon and other information required by the director to address specific aspects of the proposed groundwater export. Information to support the findings listed in Section 8.95.70 must be provided in order for the director to deem the application complete. Concurrently, the applicant shall consent to the commencement and financing of appropriate environmental review as may be required under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and applicable guidelines. The application for an export permit and required environmental review shall be accompanied by the deposit of fees for these purposes, as established by board resolution.

8.95.60 Procedures for processing.

A. Within thirty calendar days of filing the export permit application and the deposit of required fees, and determination by the director that the application is complete, the director shall post a notice on the department's website that an application has been filed. The director shall send a copy of the application to all local agencies which own or include land overlying or immediately adjacent to the location of the proposed export and to any relevant advisory committees to the board, including, without limitation, the Water Resources Advisory Committee, with a request for comment on the application. A notice to any interested party who has made written request to the director for such notice within the last twelve calendar months shall also be sent. Such notice shall provide recipients the opportunity to submit written comments on the application. Notice of the application and the opportunity to provide written comments shall also be included on the board's agenda.

B. As determined in the judgment of the director, the director shall review the application with potentially affected county departments, with the staff of applicable state and federal agencies, with local agencies and with any potentially affected party. In reviewing the application, the director shall consider any relevant groundwater management plan, including, without limitation, any groundwater management plan adopted pursuant to California Water Code Section 10750 et seq. or Section 10720 et seq., or any other relevant information provided by the applicant.

C. Upon completion of the environmental review and export permit application review process, a public hearing before the director on the export permit application shall be noticed and conducted as follows:

1. Notice of hearing. Notice of public hearing shall be given as provided in Government Code Section 65090 and 65091, except as follows:

(a) Content of notice. In addition to the information required by Government Code Section 65094, the notice shall declare that the application will be acted on without a public hearing if no request for a hearing is made in compliance with subsection C.2 of this Section 8.95.60.

(b) Method of notice distribution. Notice of public hearings shall be given as provided by Government Code Section 65090 and 65091.

(c) Additional notice provided. The public notice shall include mailed notice to all owners of property located within a one mile radius of the exterior boundaries of the site from which the export is to occur.

2. Public hearing. A public hearing on an export permit shall occur only when a hearing is requested by the applicant or other interested person(s). This request shall be made in writing to the director no later than seven days after the date of the public notice provided in compliance with subsection C.1 of this Section 8.95.60. In the event that a public hearing is required, the export permit application shall be scheduled for a hearing on the date and time as defined in the public notice. Any person may provide written comments relevant to the impact of the exportation of groundwater on the groundwater resources within the county. The hearing shall be conducted under such rules as set by the director.

3. Final decisions on export permit applications. Immediately after the conclusion of public testimony in the case of a public hearing, or after the time period within which a hearing may be requested under subsection C.2 of this Section 8.95.60 if no hearing is requested, the director shall:

(a) Announce his or her decision on the export permit application;

(b) Announce that his or her decision is final unless appealed pursuant to subsection D of this Section 8.95.60.

Notwithstanding the foregoing, the director may continue the hearing to a date certain to provide additional time to evaluate information obtained at the hearing prior to a final decision.

D. The director's decision may be appealed to the board consistent with Section 8.95.100.

E. Notice of the director's decision shall be mailed within five calendar days of final action to the person that has applied for the permit, any person who requested a hearing, and all other persons or entities referred to in Subsection A of this Section 8.95.60.

8.95.70 Findings required for export permit approval.

A. An export permit shall be approved only if the director finds that the proposed export will not cause or contribute to significant detrimental impacts to groundwater resources within the county or on the groundwater basin from which the groundwater is exported by finding that:

1. The proposed export will not adversely affect the long-term ability for storage or transmission of groundwater within the groundwater basin from which the groundwater is exported;

2. The proposed export will not (together with other extractions) result in chronic lowering of groundwater levels and will not otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users;

3. The proposed export will not result in, expand or significantly exacerbate groundwater quality degradation;

4. The proposed export will not result in injury to a water replenishment or recharge, storage, restoration or conveyance project;

5. The proposed export will not result in, expand or significantly exacerbate land subsidence;

6. The proposed export will not result in, expand, or significantly exacerbate seawater intrusion;

7. The proposed export will not result in, expand, or significantly exacerbate depletions of interconnected surface water; and

8. The proposed export will not otherwise be detrimental to the environment or to the health, safety and welfare of property owners overlying or in the vicinity of the proposed exportation site.

8.95.80 Conditions of export permit approval.

If the export permit is to be approved, the director shall impose appropriate conditions of permit issuance so as to prohibit and prevent any significant detrimental impacts to groundwater resources within the county described in Section 8.95.70 or other adverse conditions and may impose other conditions that the director deems necessary to promote or maintain the health, safety and welfare of the people of the county. The director shall incorporate into each export permit a monitoring and/or reporting program. The monitoring and/or reporting program shall be of such scope and extent as the director finds to be necessary to ensure that the proposed export will not cause or contribute to any significant detrimental impacts on groundwater resources within the county. Such a monitoring and/or reporting program may include, but shall

not be limited to, amounts of groundwater pumped, monitoring of wells, monitoring of groundwater levels and monitoring of vegetation and wildlife.

8.95.90 Reapplication after director denial.

Reapplication for an export permit which has been denied by the director may not be filed with the director until the following water year and must be accompanied with information that demonstrates a significant change in circumstances from those which caused the denial of the previous export permit application.

8.95.100 Appeal of director action.

A. The applicant or any interested party may appeal a decision of the director by filing a written request with the clerk of the board within fifteen days of issuance of the director's decision. Any such appeal shall specifically set forth the procedural and substantive reasons for the appeal or be deemed incomplete and ineffectual. The clerk shall set a board hearing within thirty days of receipt of a complete request for appeal which shall be heard within ninety days of notice thereof. Written notice of appeal shall be given to the director, the permit applicant, the appellant, and all other parties identified in subsection A of Section 8.92.60, and the appeal hearing shall be published pursuant to Government Code Section 6061.

B. The board shall hear the appeal de novo except where the appeal is confined to a condition imposed by the director in which event the hearing and the decision of the board shall relate only to such condition. The appeal before the board shall be conducted under such rules as set by the board. At its discretion, the board may impose conditions for approval as it finds necessary to protect the interests of the county and its citizens. The decision of the board shall be final.

8.95.110 Review of export permit.

The permit granted pursuant to this chapter shall be subject to periodic staff review in consultation with the permittee. In the event that the department determines that a material violation of the conditions of the permit has occurred, the permittee shall immediately bring itself into compliance. A determination of violation shall be in writing and include specific findings in support of the decision. A determination of violation may be appealed to the board by the permittee using the appeal process as described in Section 8.95.100.

8.95.120 Export permit term.

Approved permits shall be valid for a term, as determined by the director, not to exceed one year from the date of issuance of the export permit.

8.95.130 Inspection.

After providing written notice to the permittee, the director or designee, with good cause may at any reasonable time enter any and all places, property, enclosures and structures, for the purpose of making examinations and investigations to determine whether any provision of this chapter or an approved permit is being violated.

8.95.140 Notice of violation.

Upon receiving knowledge of an alleged violation of this chapter, the county will provide written notice of the alleged violation to the violating party. The notice shall detail the alleged violation and require the violating party to cease and desist immediately upon receipt of such notice from the alleged violating activities or within five working days prove to the county, by meeting with the director or his or her designee, that the alleged violating activities, in fact, do not violate this chapter, or that there are mitigating reasons surrounding the alleged violating activities. No civil fines, as set forth in Section 8.95.150, shall accrue during the notice process. The notice shall also include details of the potential penalties for violations of this chapter.

8.95.150 Penalty for violation.

If, within five working days, after receipt of a notice issued in accordance with Section 8.95.140, the violating party has not complied with Section 8.95.140, the county may elect to proceed with any or all of the following remedies for violation of this chapter:

A. A civil action against the violator, including injunctive relief;

B. A civil action against the violator, including a fine of up to five thousand dollars for each separate violation. A person or entity shall be deemed to have committed a separate violation for each and every day or portion thereof during which any such violation is committed, continued or permitted as well as for each and every separate groundwater well within which any such violations are committed, continued or permitted.

8.95.160 Limitation of permit.

Nothing contained in this chapter or in the conditions of an issued permit shall be construed as giving the permittee an exclusive right to groundwater extraction. Any issued permit shall not exempt, supersede or replace any requirements of federal, state, and local laws and regulations, including but not limited to California Water Code Section 10720 et seq., California Water Code Section 1200 et seq. and Chapter 8.40 of the county Code of Ordinances.

8.95.170 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The board hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, or phrase

hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

8.95.180 Termination date.

The provisions of this chapter shall expire five years from the effective date of this chapter unless prior to such date the board, after conducting public hearings, extends the effective period of this chapter.

SECTION II. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

SECTION III: In accordance with Government Code Section 25131, after reading of the title of the ordinance, further reading of the ordinance in full is waived.

Introduced at a regular meeting of the Board of Supervisors held on the ____ day of _____, 20__, and passed and adopted by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 20__, by the following roll call vote, to-wit:

AYES:

NOES:

ABSENT:

_____
Chairman of the Board of Supervisors of the County of San Luis Obispo, State of California

ATTEST:

_____
County Clerk and Ex-Officio Clerk of the Board of Supervisors, County of San Luis Obispo, State of California

BY:_____

(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:
RITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Dated: November 13, 2014