

August 5, 2022

Board of Supervisors
Sonoma County
575 Administration Drive
Room 100 A
Santa Rosa, California 95403

Subject: Comments regarding proposed Public Trust Well Ordinance (August 9th Board of Supervisors agenda item 33).

Honorable Member of the Sonoma County Board of Supervisors:

The Russian River Property Owners Association (RRPOA), Sonoma Alliance for Vineyards & Environment, and the Sonoma County Farm Bureau, all representing the agricultural industry and agricultural landowners in Sonoma County, have serious concerns regarding the proposed public trust well ordinance you are considering on August 9th and accordingly we respectfully urge you to postpone adoption to allow for a more deliberative process to receive input from affected property owners, stakeholders, and technical experts. We understand the Board feels pressure to respond to the public trust lawsuit regarding well permitting in the Russian River watershed and hope an ordinance can moot the legal challenge, but the rushed and highly flawed draft well ordinance would create significant, unintended consequences, if adopted.

We believe that as the result of the recommended deliberative process outlined below in this letter, an alternative to the proposed ordinance can be prepared in an expeditious manner that addresses public trust concerns while avoiding or reducing the potential impacts, costs, and risks of the Ordinance as presently written.

The draft ordinance lacks clear definitions and standards and proposes a discretionary permitting process subject to CEQA that is destined to cause years of delay, great expense, and litigation. This ordinance would result in a de facto moratorium on new and replacement wells, which would have a devastating impact on agriculture, industry and production of new housing throughout the County. We will provide additional legal and technical comments and recommendations before and at the August 9th hearing.

It has been our experience, and that of our technical and legal advisors, that any significant regulatory public policy adopted in haste often results in disastrous unintended consequences and is doomed to failure. This draft ordinance comes to the Board for potential adoption a mere three weeks after public notice and without any prior opportunity for the public to give input. It comes to the Board without objective biological and hydrological criteria for protection of public trust resources. Worse, it puts the onus on landowners to prove a negative – that a new or replacement well will not adversely impact public trust resources. It would be the applicant's burden to provide both a public trust impact threshold and evidence of no adverse impact.

In contrast, there are several recent, local examples where stakeholders worked in cooperation with policy makers to craft thoughtful and effective solutions, such as:

- The California Tiger Salamander was listed as endangered more than 20 years ago. Over the past three and a half years the first significant agreement has been crafted to address habitat conservation while maintaining economic vitality. The Safe Harbor Agreement that was just approved was the work of stakeholder involvement.
- The Tubbs Fire was five years ago followed by two significant fire events in the County. After more than 18 months, we are close, but we have yet to adopt meaningful policy addressing access into evacuation areas. Broad stakeholder involvement continues to be instrumental in the process.
- Modifications that have led to a very successful VESCO Ordinance took almost two years to receive input and craft meaningful Best Management Practices.
- The three existing Sonoma County Groundwater Sustainability Agencies took five years to form and to prepare Groundwater Sustainability Plans. Importantly, those Groundwater Sustainability Plans have *future* plans for studying surface water-groundwater interactions that would inform the foundation for a public trust well ordinance.

The rush to get out of one lawsuit would likely lead to a raft of new lawsuits. Because the draft ordinance lacks objective screening criteria and public trust impact thresholds, any well permit approvals that actually receive PRMD approval may be litigated by the same interests that brought the current public trust lawsuit. Because the draft ordinance would make nearly all well permits discretionary approvals appealable by any interested party and subject to CEQA, the ordinance also weaponizes NIMBY and fee-seeking plaintiff lawsuits. Ministerial land uses and building permits could now be challenged if a discretionary well permit is needed.

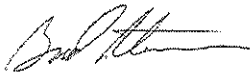
Ultimately, this draft ordinance is simply too flawed for you to adopt on August 9th. Yet, while we are critical of the draft ordinance, we acknowledge that the County has public trust responsibilities. Accordingly, we commit to work with the County and other affected agencies and organizations to fulfill those obligations through a procedurally reasonable and technically sound ordinance.

Therefore, it is our joint recommendation that the Board of Supervisors, recognizing the public trust issues at hand and also the need for a more inclusive and deliberative process, form a diverse Working Group to prepare an alternative ordinance and related procedural guidelines. Such a Working Group, building on other examples, would include appointed public officials with related expertise, industry and landowner representatives, and technical experts (hydrologists, economists, etc.). As for the scope of the Working Group effort, we believe it should be guided by six clearly stated objective features of the alternative ordinance that have been derived from our review of the proposed ordinance as well as our involvement in other regulatory programs. These objectives or features include:

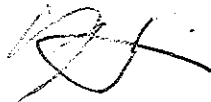
1. Limit the geographic applicability of public trust requirements to the watersheds targeted by the lawsuit and for which the County has scientific evidence of groundwater pumping impacts to public trust resources. Such pumping impacts are presently known or presumed in Dutch Bill Creek, Green Valley Creek, Upper Mark West Creek, and Mill Creek watersheds.
2. Develop the public trust objective standard criteria for regulating these targeted watersheds. These criteria would define: the navigable water stream segments; the area of interconnected groundwater subject to public trust requirements; thresholds of significance for public trust impacts; and a suite of measures that could be adopted by the applicant to avoid well pumping impacts to public trust resources.
3. Limit public trust requirements to permitting of new wells. Replacement wells with no expansion in use would not require public trust determinations as these wells are part of the existing environmental baseline.
4. Transfer responsibility for the public trust determinations to the Groundwater Sustainability Agencies for wells within their boundaries reflecting their broader efforts to conserve water, enhance groundwater storage, and regulate groundwater use.
5. Rely on ministerial approvals for well applications that meet the object standard thresholds of significance and compliance with potential impact avoidance measures adopted by the applicant.
6. Apply a discretionary approval process, subject to CEQA, for well applications that do not meet the thresholds of significance, with the provision for an appeal to the Board of Supervisors.

The RRPOA, SAVE, and the Sonoma County Farm Bureau, along with their technical and legal advisors, stand ready to participate in the recommended Working Group to develop a public trust well ordinance and related procedures sufficient to meet public trust concerns while avoiding the pernicious impacts and litigation risks of the ordinance as currently written. Thank you for your consideration of our concerns and our recommendation.

Sincerely,



Brad Petersen
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Russian River Property Owners
Association



Ken Lafranchi
President
Sonoma Alliance for Vineyards
& Environment



Jennifer Beretta
President
Sonoma County Farm Bureau