

ORDINANCE NO. 3872

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING ARTICLE 5 TO CHAPTER 6 OF DIVISION 3 OF TITLE 3 OF THE SAN BERNARDINO COUNTY CODE RELATING TO GROUNDWATER MANAGEMENT IN THE UNINCORPORATED, UNADJUDICATED DESERT REGION OF THE COUNTY.

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

SECTION 1. Article 5 is added to Chapter 6 of Division 3 of Title 3 of the San Bernardino County Code, to read:

**Article 5**

**Desert Groundwater Management**

**Sections:**

- 33.06551 Purpose.
- 33.06552 Scope and Exclusions.
- 33.06553 Definitions.
- 33.06554 Permits.
- 33.06555 Notice of Pending Decision.
- 33.06556 Appeals.
- 33.06557 Violations, Remedies and Penalties.

**33.06551 Purpose.**

(a) The protection of groundwater resources within San Bernardino County is of utmost importance. The public health, safety and general welfare of the people of the State of California and of the County depend upon the continued availability of groundwater through ensuring that extraction of groundwater does not exceed the safe yield of affected groundwater aquifers, considering both the short and long-term impacts of groundwater

1 extraction, including the recovery of groundwater aquifers through natural as well as  
2 artificial recharge. The protection of the groundwater resource within San Bernardino  
3 County also includes the consideration of the health of individual aquifers and the continued  
4 ability of those aquifers to store and maintain water.

5 (b) The protection of groundwater resources within the unincorporated and  
6 unadjudicated desert region of San Bernardino County is of particular importance due to:

7 (1) the existence of vast aquifers that underlie those areas that have not  
8 been overdrafted;

9 (2) the relative lack of significant natural recharge in those areas when  
10 compared to the mountain areas and other less arid areas of the County; and

11 (3) the lack of regulatory or judicial oversight of the groundwater aquifers  
12 within the unadjudicated desert region, which oversight would serve to ensure the  
13 groundwater safe yield and health of the aquifers.

14 (c) This Article protects the groundwater resources of San Bernardino County in  
15 order to ensure the health of that resource. This Article is intended to be consistent with the  
16 California Constitution, Article 10, section 2 (water rights), and Article 11, section 7 (police  
17 powers).

18 (d) This Article augments and supplements the Groundwater Management  
19 authority the County may otherwise have pursuant to the Groundwater Management Act,  
20 California Water Code section 10750, et seq.

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22 **33.06552 Scope and Exclusions.**

23 (a) This Article shall only apply to those groundwater aquifers that have not been  
24 adjudicated by judicial decree, which are located outside of the jurisdictional boundaries of  
25 the Mojave Water Agency and Public Water Districts within the Morongo Basin and which  
26 are situated in the unincorporated desert region of the County, described as that area of the  
27 County lying west of the Colorado River and the California-Nevada state line, north of the  
28 San Bernardino-Riverside county line, south of the San Bernardino-Inyo county line and

1 east of Fort Irwin Military Reservation, the Mojave Water Agency, the Marine Air Ground  
2 Task Force Command Center, Twentynine Palms Water District and the City of Twentynine  
3 Palms.

4 (b) This Article shall not apply to any well operated by any district or person  
5 where the district or person has performed both of the following:

6 (1) adopted a groundwater management plan pursuant to Water Code  
7 section 10750, et seq. (“AB 3030 Plan”) which adheres to “groundwater safe yield” and  
8 “aquifer health” limitations, as those terms are defined in section 33.06553 of this Code or  
9 has otherwise developed and instituted a County-approved groundwater management,  
10 monitoring and mitigation plan associated with its extraction of water that is consistent with  
11 guidelines developed by the County; and

12 (2) executed a Memorandum of Understanding (“MOU”) or other binding  
13 agreement with the County which:

14 (A) requires the parties to share groundwater monitoring information  
15 and data and to coordinate their efforts to monitor groundwater resources in the County;  
16 and

17 (B) ensures that the measures identified in the AB 3030 Plan or  
18 County-approved groundwater management, monitoring and mitigation plan are fully  
19 implemented and enforced. Such MOU or agreement must remain enforceable in order to  
20 provide for an exclusion from this Article.

21 (c) This Article shall not apply to the following:

22 (1) groundwater wells subject to the Lower Colorado Water Supply Project.

23 (2) groundwater wells within the jurisdictional boundary of the Mojave  
24 Water Agency, including public water agencies within the Morongo Basin.

25 (3) groundwater well operations approved before the effective date of this  
26 Article as part of a currently valid and complied with Conditional Use Permit or well  
27 construction permit. Owner must provide evidence or certification the well was drilled prior  
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1 to the existence of permit requirements or was permitted prior to the effective date of this  
2 ordinance.

3 (4) groundwater wells used in conjunction with mining operations for which  
4 a currently valid and complied with mining reclamation plan has been established.

5 (5) groundwater wells associated with an agricultural operation, where the  
6 cumulative extraction from all of the agricultural wells from such an operation is less than  
7 1,100 acre-feet per year and where the water is used on site and allowed to percolate into  
8 the ground, resulting in some return flow to the underlying aquifer.

9 (6) groundwater wells which replace abandoned wells if (i) proof of  
10 abandonment for the existing well is shown, (ii) the replacement well casing is not larger in  
11 diameter than the abandoned well, and/or (iii) the pumping capacity of the replacement well  
12 is no more than the pumping capacity of the abandoned well.

13 (7) non-agricultural wells with casings smaller than ten inches in diameter  
14 or those to be pumped for less than thirty (30) acre feet per year. Notwithstanding the  
15 foregoing exemption, this Article shall apply to a non-agricultural well that is proposed on a  
16 parcel on which other wells are located and where the total production of all wells on-site is  
17 greater than fifty (50) acre feet per year. The term, "parcel" shall include all parcels within  
18 any one groundwater aquifer in which the same person or persons have a common  
19 ownership interest.

20 (8) groundwater wells located on Federal lands unless otherwise specified  
21 by inter-agency agreement. Notwithstanding the foregoing exclusion, this Article shall apply  
22 to groundwater wells located on privately held lands, which are within the boundaries of a  
23 National Park, Preserve or Monument or any other Federal designation.

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25 **33.06553 Definitions.**

26 The following terms related to groundwater management are defined as follows:

27 (a) "AB 3030 District": A district which has adopted a plan pursuant to the  
28 Groundwater Management Act.

1 (b) "Aquifer": A geologic formation that stores, transmits and yields significant  
2 quantities of water to wells and springs.

3 (c) "Aquifer Health": The geologic integrity of the affected aquifer, its storage  
4 capacity and the quality of water within the aquifer, including the quality of water for a  
5 drinking water supply.

6 (d) "Code": The San Bernardino County Code.

7 (e) "District": Excluding a city wholly or in part located within the boundaries of  
8 the County, any district or political subdivision whose primary function is the irrigation,  
9 reclamation or drainage of land or the diversion, storage, management or distribution of  
10 water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife  
11 enhancement, flood control or power production purposes.

12 (f) "Enforcement Agency": The Enforcement Agency for San Bernardino County  
13 may be the Board of Supervisors or the Director of the Department of Public Health,  
14 Environmental Health Services Division.

15 (g) "Groundwater": All water beneath the surface of the earth within the zone  
16 below the water table in which the soil is completely saturated with water, but does not  
17 include water which flows in known and definite channels.

18 (h) "Groundwater Management Act": California Water Code section 10750, et  
19 seq.

20 (i) "Groundwater Safe Yield": The maximum quantity of water that can be  
21 annually withdrawn from a groundwater aquifer (i) without resulting in overdraft (ii) without  
22 adversely affecting aquifer health and (iii) without adversely affecting the health of  
23 associated lakes, streams, springs and seeps or their biological resources. The safe yield of  
24 an aquifer can be increased by management actions such as artificial recharge, including  
25 infiltration and other similar actions.

26 (j) "Overdraft": The condition of a groundwater supply in which the average  
27 annual amount of water withdrawn by pumping exceeds the average annual amount of  
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1 water replenishing the aquifer in any ten (10) year period, considering all sources of  
2 recharge and withdrawal.

3 (k) "Person": Any state or local government agency, private corporation, firm,  
4 partnership, individual, group of individuals or, to the extent authorized by law, any federal  
5 agency.

6 (l) "Recharge": Flow to groundwater storage from precipitation, irrigation,  
7 infiltration from streams, spreading basins and other sources of water.

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9 **33.06554 Permits.**

10 (a) Requirement for Permit. Except as otherwise excluded from the application of  
11 this Article and in addition to any applicable permitting requirements for well construction,  
12 reconstruction, abandonment and destruction pursuant to the provisions of the San  
13 Bernardino County Code, no person, district or other entity acting as principal, agent or  
14 employee, shall locate, construct, operate or maintain any new groundwater well within the  
15 desert region of San Bernardino County, as identified in section 33.06552(a), without first  
16 filing a written application to do so with the Enforcement Agency and receiving and retaining  
17 a valid permit as provided herein. This permit is a discretionary permit under the California  
18 Environmental Quality Act (CEQA, Public Resources Code section 21000, et seq.).

19 (b) Application for Permit. Applications for permits under this Article shall be  
20 submitted to the Enforcement Agency in a format prescribed by the Enforcement Agency,  
21 and shall be of sufficient detail to allow the determinations set forth in subsections (c) and  
22 (d) of this section to be made. Applications shall include the following information:

23 (1) A plot plan depicting the location of the proposed well(s) on a section  
24 map depicting the location of the following items within 1/2 mile of the well(s):

25 (A) property lines, location and ownership of all parcels and  
26 easements;

27 (B) all intermittent, perennial, natural or artificial bodies of water or  
28 watercourses;

- 1 (C) notable nearby geographic features (faults, etc.);
- 2 (D) all other wells; and
- 3 (E) landfills, septic systems or other liquid or solid waste facilities.
- 4 (2) Proposed well diameter, depth and completion interval (screen or
- 5 perforation locations) for proposed well(s).
- 6 (3) Well design capacities for proposed well(s).
- 7 (4) Anticipated groundwater safe yield of the affected groundwater aquifer.
- 8 (5) Anticipated static and pumping levels.
- 9 (6) Anticipated water quality.
- 10 (7) The intended use of groundwater from the proposed well(s).
- 11 (8) The proposed months of operation of the proposed well(s) (year-round,
- 12 irrigation months, etc.).
- 13 (9) The proposed pumping cycles (one eight-hour/day cycle, two six-
- 14 hour/day cycles, etc.).
- 15 (10) Estimated annual pumpage from the proposed well(s) in acre-feet.
- 16 (11) System description (irrigation, domestic, etc.).
- 17 (12) Anticipated return flows (deep percolation, runoff, etc.).
- 18 (13) The estimated rate of natural recharge to the affected groundwater
- 19 aquifer(s) calculated in accordance with generally accepted scientific methodologies and as
- 20 deemed appropriate by the Enforcement Agency.
- 21 (14) A description of the affected groundwater aquifer(s) including estimated
- 22 storage capacity and the overall quality of water within the aquifer.
- 23 (15) Other information as may be reasonably necessary for the County to
- 24 determine the potential effects of the proposed well operations on the groundwater safe
- 25 yield and aquifer health of the affected aquifer.
- 26 (16) Supporting documentation, where available, for all of the foregoing
- 27 items.
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1 (c) Permit Review.

2 (1) Procedure: Administrative Review or Public Hearing.

3 (2) Reviewing Authority: The Director of the Department of Public Health,  
4 Environmental Health Services Division, shall be the reviewing authority for Permit  
5 applications except in the following circumstances:

6 (A) Where the Director of the Department of Public Health,  
7 Environmental Health Services Division refers the proposal to the Board of Supervisors for  
8 public hearing review procedures.

9 (B) Where the proposal is filed concurrently with an application  
10 subject to Board of Supervisors public hearing review procedures.

11 (3) Where the Director of the Department of Public Health, Environmental  
12 Health Services Division is the reviewing authority, the procedure shall be considered to be  
13 Administrative Review and notice shall be provided pursuant to section 33.06555 herein.

14 (d) Conditions of Approval. Plans shall be submitted to the Enforcement Agency  
15 demonstrating compliance with the standards of this Article. No permit shall be issued  
16 unless the Enforcement Agency determines, based upon the available data, that the well(s)  
17 constructed and operated as proposed, would not result in exceeding the groundwater safe  
18 yield of the relevant aquifers. Permits may include conditions and requirements found by  
19 the Enforcement Agency to be reasonably necessary to accomplish the purposes of this  
20 Article, including, but not limited to, conditions requiring groundwater management,  
21 mitigation and monitoring by the applicant.

22 (e) Environmental Review. Prior to taking an action to approve an application for  
23 a permit, the Enforcement Agency shall make the environmental findings required under the  
24 California Environmental Quality Act.

25 (f) Denial. The Enforcement Agency shall deny the application where it  
26 determines that the standards of this Article have not been met; where the well operations  
27 proposed in the application would result in exceeding the groundwater safe yield of the  
28 relevant aquifers considered individually or in conjunction with other existing wells.



1 (g) Permit Fees. The hourly rates for administering the provisions of this Article  
2 are established under the provisions of the San Bernardino County Code Schedule of Fees.

3 (h) Permit Suspension/Revocation or Modification. Permits may be issued only for  
4 so long as the well operations do not exceed the groundwater safe yield of the relevant  
5 aquifers. Permits will be suspended, revoked or modified if the Enforcement Agency  
6 determines that continued operations under the permit would result in overdraft of the  
7 relevant aquifers.

8 (i) Administrative Variances and Special Circumstances. The County may grant  
9 an administrative variance from any provision of this Article due to special circumstances or  
10 hardship. The County may describe alternative requirements where submitted documents  
11 as may be reasonably required by the County provide substantial evidence that a  
12 modification of the requirements in this Article will not endanger the general public health  
13 and safety and strict compliance would be unreasonable in view of all of the circumstances.

14 (j) Inspection and Monitoring. The Enforcement Agency may, with consent or a  
15 warrant if required, at any and all reasonable times enter any and all places, property,  
16 enclosures and structures for the purposes of making examinations and investigations to  
17 determine whether any provision of this Article is being or has been violated.

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19 **33.06555 Notice of Pending Decision.**

20 (a) Upon receipt of a request for a decision, the reviewing authority shall cause  
21 notice to be given specifying the time and place at least ten (10) calendar days prior to the  
22 date of the scheduled decision by the following applicable methods:

23 (1) Notice shall be published once in a newspaper of general circulation in  
24 the respective community of the proposal for decisions using the Public Hearing procedure.

25 (2) Notice shall be given by first class mail to any person who has filed a  
26 written request for a specific application.

1 (3) Notice shall be given by first class mail or delivery to all property  
2 owners within one (1) mile of the external boundaries of the parcel of the proposed  
3 extraction for decisions using the Public Hearing or the Administrative Review procedures.

4 (4) Notice may be given in such other manner as is deemed necessary or  
5 desirable.

6 (b) Said notice shall include sufficient information to give those receiving the  
7 notice a reasonable opportunity to evaluate the implications of the proposal and to  
8 participate in the decision making process.

9 (c) Ownership and addresses of properties shall be determined from the latest  
10 equalized tax assessment role or from other records of the County Assessor or County Tax  
11 Collector, whichever contains more recent information.

12 (d) If during a public hearing, items are continued by the reviewing authority to a  
13 specific date, the items shall not be re-noticed unless specifically requested by the reviewing  
14 authority.

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16 **33.06556 Appeals.**

17 (a) Prior to its effective date, a decision made in accordance with the provisions of  
18 this Code by a reviewing authority other than the County Board of Supervisors may be  
19 appealed by the applicant or other affected party, as follows:

20 (1) Applications for an appeal to the Board of Supervisors shall be made  
21 on forms supplied by the Enforcement Agency. Applications for appeals shall be  
22 accompanied by a written statement of the grounds upon which the appeal is based. The  
23 appeal application shall identify:

- 24 (A) the subject permit application;
- 25 (B) the specific decision, condition of approval or other matter being  
26 appealed;
- 27 (C) the date of such action;
- 28 (D) the justification for the appeal; and

1 (E) any remedy or solution for which the appellant petitions.

2 (2) A uniform fee established by the Board of Supervisors shall be paid to  
3 the County upon the filing of each appeal.

4 (3) A properly filed application for appeal stays proceedings in the matter  
5 appealed until a decision is rendered on the appeal.

6 (4) An application for an appeal must be submitted to the Clerk of the  
7 Board of Supervisors within fifteen (15) days after a notice of decision is mailed by the  
8 Enforcement Agency to the applicant.

9 (5) Within thirty (30) days of the acceptance of an application for an  
10 appeal, the Clerk of the Board of Supervisors shall set the matter for hearing and shall give  
11 notice of the date, time and place of the hearing to the appellant, the applicant and to any  
12 other party who has requested in writing to be so notified.

13 (6) Upon hearing the appeal, the Board of Supervisors shall consider the  
14 record and such additional evidence as may be offered and may affirm, reverse or modify in  
15 whole or in part the decision appealed. The Board of Supervisors is subject to all of the  
16 criteria, findings and requirements imposed by this Code upon the original decision maker.

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18 **33.06557 Violations, Remedies and Penalties.**

19 It shall be unlawful for any person or entity to violate any provision of this Article. All  
20 enforcement procedures, remedies and penalties of Chapter 1 of Division 3 of Title 3 of this  
21 Code shall apply to this Article and are in addition to all others provided by law.

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23 SECTION 2. The Board of Supervisors declares that it would have adopted this  
24 ordinance and each section, subsection, sentence, clause, phrase or portion of it  
25 irrespective of the fact that any one or more sections, subsections, sentences, clauses,  
26 phrases or portions of it be declared invalid or unconstitutional. If for any reason any portion  
27 of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall  
28 remain valid and enforceable.

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SECTION 3. The Board of Supervisors declares that the terms and implementation of this ordinance shall not constitute, and are not intended to constitute, any determination regarding the water rights of any persons subject to the ordinance, including but not limited to any correlative rights of overlying landowners.

SECTION 4. This ordinance shall become effective thirty (30) days after its adoption.

  
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FRED AGUIAR, Chairman  
Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

J. RENEÉ BASTIAN,  
Clerk of the Board of Supervisors  
of the County of San Bernardino

  
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STATE OF CALIFORNIA            )  
  )    ss.  
COUNTY OF SAN BERNARDINO    )

I, J. RENEÉ BASTIAN, Clerk of the Board of Supervisors of the County of San Bernardino, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the 29th day of October, 2002 at which meeting were present Supervisors: Bill Postmus, Jon D. Mikels, Dennis Hansberger, Fred Aguiar

and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

1 AYES: Postmus, Mikels, Hansberger, Aguiar

2 NOES: None

3 ABSENT: Eaves

4 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of  
5 the Board of Supervisors this 29th day of  
6 October, 2002.

7 J. RENEE BASTIAN,  
8 Clerk of the Board of Supervisors of the County  
9 of San Bernardino, State of California

10 Nora Hernandez  
Deputy

11 Approved as to Form  
12 Alon K. Marks, County Counsel

13 By [Signature]  
Deputy

14 Date: 10-21-02

