

ORDINANCE NO. G-6502

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ADDING SUBSECTION 19.102.190(K) TO CHAPTER 19.102 AND ADDING CHAPTER 19.118 TO THE KERN COUNTY CODE RELATING TO REGULATING TRANSPORT OR TRANSFERS OF NATIVE GROUNDWATER BOTH OUTSIDE KERN COUNTY AND ITS WATERSHEDS , INCLUDING THOSE THROUGH JOINT WATER CONVEYANCE FACILITIES AND SALES TO OWNERS OF WATER CONVEYANCE FACILITIES

The following ordinance, consisting of four (4) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Kern, State of California, at a regular meeting of the Board of Supervisors held on the 12th day of May , 1998, by the following vote, to wit:

AYES: MCQUISTON, PEREZ, PATRICK, PETERSON, PARRA
NOES: NONE
ABSENT: NONE

Pete H. Parra

Chairman of the Board of Supervisors of
the County of Kern, State of California

(SEAL)

ATTEST:

SUE DAVIS
Clerk of the Board of Supervisors

By Tracey E. Cody, Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

Section 1. This ordinance shall take effect and be in full force on and after the 11th day of June , 1998, and shall be published once in The Bakersfield Californian , a newspaper of general circulation, published in the County of Kern, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Book No. _____

Ord. No. G-6502

Section 2. Chapter 19.118 is hereby added to the Ordinance Code of the County of Kern to read as follows:

Chapter 19.118

REGULATION OF TRANSPORT OR TRANSFERS OF NATIVE GROUNDWATER OUTSIDE KERN COUNTY AND ITS WATERSHEDS , INCLUDING THOSE THROUGH JOINT USE OF CAPACITY IN AND SALES TO OWNERS OR OPERATORS OF WATER CONVEYANCE FACILITIES

Sections.

- 19.118.010 Purpose and intent.**
- 19.118.020 Scope.**
- 19.118.030 Conditional use permit requirement.**
- 19.118.040 Application processing and fees.**
- 19.118.050 Required finding.**
- 19.118.060 Monitoring and reporting.**
- 19.118.070 Modifications and revocation.**
- 19.118.080 Severability.**
- 19.118.090 Civil penalty**

19.118.010 Purpose and intent.

A. Under existing law, it is the policy of the state to facilitate the transport or transfer of water and water rights where consistent with the public welfare of the place of export.

B. Under the provisions of the California Water Code (hereafter "Water Code") Sections 1810 et seq., neither the state nor any regional or local public agency may deny a bona fide transferor of water, as defined, the use of a water conveyance facility which has unused capacity as defined, for the period of time for which that capacity is available, if fair compensation, as specified, is paid for that use, subject to conditions specified in Water Code Sections 1810(a), (b), (c) and (d).

C. Water Code Section 1810(d) provides that use of a water conveyance facility to transfer water may be denied if the use of the water conveyance facility will injure any legal user of water, will unreasonably affect fish, wildlife or other instream beneficial uses, or will unreasonably affect the overall economy or the environment of the county from which the water is being transferred.

D. Transfers or transport of native groundwater from Kern County to any area located both outside the watershed of the aquifer producing the water and the County, including those undertaken pursuant to Water Code Sections 1810 et seq., could adversely and significantly affect the overall economy or the environment of any part of Kern County.

E. It is the purpose and intent of this chapter to establish an effective county policy concerning transfers or transport of native groundwater to any area located both outside both Kern County and the watershed of the aquifer producing the water, including those undertaken pursuant to Water Code Sections 1810 et seq. and sales

from any water seller selling to the owner or operator of any water conveyance facility where the transferor, seller or buyer has the intent to or actually does use any native groundwater, directly or indirectly, outside both Kern County and the watershed of any aquifer underlying Kern County in whole or in part from which the water is produced or removed, that will assure that the overall economy and environment of any part of Kern County are protected in the manner described by Water Code Section 1810(d).

19.118.020 Scope.

This chapter shall only apply to transport or transfers of native groundwater from or taking place in the unincorporated areas of Kern County lying within the southeastern drainage of the Sierra Nevada and Tehachapi mountain ranges as defined by the jurisdiction of the Lahontan Regional Water Quality Control Board.

As used in this chapter, the term “native groundwater” includes connate water and percolating groundwater originating as precipitation within Kern County or its watershed areas. The term “native groundwater” does not include water which is both recharged by artificial means, including water recharged through groundwater banking programs, and which originates outside Kern County and its watershed areas.

There shall be a rebuttable presumption that the quantity of imported water brought into the County is reduced by losses during both transport through and storage in Kern County, reducing the quantity available for unregulated delivery outside the County.

19.118.030 Conditional use permit requirement.

Except as otherwise provided herein, any person, district, or public agency, including any bona fide transferor of water as defined in Water Code Section 1811(a), who proposes to engage, directly or indirectly, in the transport or transfer of native groundwater from Kern County, where the transporter, transferor, seller or buyer has the intent to use or actually does use any native groundwater, directly or indirectly, in any area located both outside Kern County and the watershed of any aquifer underlying Kern County in whole or in part from which the water is produced or removed, including transfers pursuant to the provisions of Water Code Sections 1810 et seq. or any water seller selling to the owner or operator of any water conveyance facility, shall first obtain a conditional use permit as provided in this Chapter, prior to the commencement of any such water transport, transfer or delivery connected with a sale. The following are exempt from the application of this Chapter:

- A. The transport or transfer of water during periods of declared emergency in order to prevent or mitigate the flooding of real property located within Kern County.
- B. The transport or transfer of water to the extent of the highest historical average annual quantity prior to December 15, 1997, by means of substantially similar transport facilities as established by claim of exemption determination and to the extent the transfer is to substantially the same areas as was done historically.
- C. The transport or transfer of water in the form of manufactured or processed goods or products, agricultural products, or in bottles or any other

portable containers including tanker trucks.

D. Water used within that portion of the community of Red Mountain located both outside the watershed for the Fremont Valley hydrologic unit and within Section 6 of Township 30 South, Range 41 East, Mount Diablo Base and Meridian.

Processing claims of exemption under Subsections A, B, C, and D above shall be guided generally by the procedures relating to establishment of non-conforming uses contained in Chapter 19.108 of this Code.

19.118.040 Application processing and fees.

Applications for a conditional use permit for water transport or transfer subject to this Chapter shall be processed generally in the same manner as other conditional use permit applications, and the fee shall be the same as the fee for processing other conditional use permit applications under Chapter 19.104 of this code. The CEQA Notice of Availability and the notice of the hearing on the CUP application shall each be given by mail to the owners, as shown on the latest equalized assessor's roll, of property overlying any part of the hydrologic unit, as shown on the latest Water Quality Control Plan for the Lahontan Region Plate 1B, from which the water is to be removed under the CUP.

19.118.050 Required findings.

A. A conditional use permit for transport or transfer of native groundwater subject to this Chapter shall not be approved, unless the decision-making authority makes a written finding that the proposed water transport or transfer will not unreasonably affect the overall economy of any part of Kern County and will not unreasonably affect the environment of any part of Kern County.

B. A proposed water transfer or water transport shall be found by the decision making authority to affect unreasonably the overall economy of any part of Kern County or to affect unreasonably the environment of any part of Kern County, if the proposed transfer or water transport of native groundwater, including all proposed mitigation measures, will cause a significant effect or effects on the overall economy or the environment of any part of the county, or if the proposed native groundwater transport or transfer when added to all the other native groundwater extracted from the affected aquifer will result in native groundwater being removed from the affected aquifer at an annual rate exceeding 100 per cent of the long-term average annual aquifer recharge. A determination of whether or not the proposed water transport or transfer will have a significant effect or whether a mitigation measure or measures will reduce such a significant effect to less than a significant level shall be made by the decision-making authority by generally referring to the analytical model of the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.), its guidelines, and relevant case law.

C. In determining whether a proposed native groundwater transfer or transport will unreasonably affect the overall economy of any part of Kern County, the county decision-making authority shall consider all relevant factors, including but not limited to potential injuries to legal users of water in any part of the county, indirect economic impacts to suppliers, service providers, and others in any part of the county, impacts to the tax base of any part of the county, and the cumulative effects of the proposed water transport or transfer when considered together with the effects of past native groundwater transfers and past water transport to any area located both outside the County and the watershed of the aquifer producing the water, as well as the effects of all approved or anticipated future native groundwater transfers and transport to any areas located both outside the County and the watershed of the aquifer producing the water on any part of the County's overall economy.

D. In determining whether a proposed native groundwater transport or transfer will unreasonably affect the environment of any part of Kern County, the decision-making authority shall consider all relevant factors, including but not limited to effects on plants, fish and wildlife and other instream uses, effects on water levels in wells, effects on springs and seeps, effects on riparian and groundwater dependant vegetation, effects on endangered plant or animal species, and the cumulative effects of the proposed water transfer or sale when considered together with the effects of past native groundwater transfers or sales and past water exports to any areas located both outside the County and the watershed of the aquifer producing the water, as well as the effects of approved or anticipated future native groundwater transfers and exports to any areas located both outside the County and the watershed of the aquifer producing the water on any part of the county's overall economy.

E. Each finding made pursuant to this chapter shall contain a description of the evidence which supports the finding. The format for each finding shall be as follows: "FINDING" followed by specific "Evidence" in support thereof.

19.118.060 Monitoring and reporting.

The decision-making authority shall incorporate into each conditional use permit for a transfer of native groundwater a monitoring and/or reporting program. The monitoring and/or reporting program shall be of such scope and extent as the decision-making authority finds to be necessary to ensure that the proposed native groundwater transfer will not unreasonably affect the overall economy or the environment of any part of the county. Such a monitoring and/or reporting program may include, but shall not be limited to, instream flow measurements, reports of the amounts of surface water diverted and/or amounts of groundwater pumped, monitoring of wells, monitoring of groundwater levels, monitoring of spring and seep flow, and monitoring of vegetation, wildlife, and fish.

19.118.070 Modifications and revocation.

In the event that evidence obtained through the monitoring and/or reporting program or other evidence indicates that a native groundwater transport or transfer

subject to a conditional use permit has unreasonably affected or has the potential to unreasonably affect the overall economy or the environment of any part of the county, the county decision-making authority shall conduct a noticed public hearing into the matter. If at the conclusion of the hearing, the decision-making authority finds that any native groundwater transport or transfer under a conditional use permit, if continued, would cause an unreasonable effect on the overall economy or the environment of any part of the county, the decision-making authority shall modify the provisions of the conditional use permit to the extent that it is necessary to avoid the occurrence of such an effect. If the decision-making authority finds that a native groundwater transport or transfer subject to a conditional use permit has unreasonably affected the overall economy or the environment of any part of the county, the decision-making authority shall order the implementation of such mitigation measures as it may find necessary to reduce the level of any such effects to a less than significant impact. In addition, the decision-making authority may modify the conditional use permit to the extent that it is necessary to avoid the occurrence of such unreasonable effects in the future or, alternatively, the decision-making authority may revoke a conditional use permit if it finds that the native groundwater transport or transfer cannot be continued without causing such an unreasonable effect. The permit process of this chapter shall not be construed to grant any right or entitlement, but rather the conditional use permit evidences that the health, welfare and safety of the residents of any part of the County will not be harmed by the transfer or transport of native groundwater subject to the conditional use permit. The conditional use permit in no way exempts, supersedes, or replaces any other applicable provision of federal, state, or local law or regulations, and any actions provided for in California groundwater law, well drilling and maintenance or building permit requirements.

19.118.080 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reasons 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 Kern County Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

19.118.090 Civil penalty.

The County may elect to proceed with a civil action against a violator, including injunctive relief. Any person, district, public agency or otherwise who may violate this Chapter shall be subject to fines of up to Five Thousand Dollars (\$5,000) per separate violation. A separate violation shall exist for each and every day or portion thereof during which such violation is committed, continued, or permitted, and a separate violation shall exist for each and every groundwater well or other water source used on any day or portion thereof to commit, continue, or permit each such violation.

Section 3. Subsection 19.102.190(K) is hereby added to Chapter 19.102 of the Kern County Code to read as follows:

K. Conditional use permit for native groundwater transport or transfer outside both Kern County and its watersheds (19.118).

Section 4. Subsections (A), (B), (C), (D), (E), (F), (G), (H), (I), and (J) of Section 19.102.190 shall remain unchanged.

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