

Board Members

Joe Neves, District 1 - Chairman
Richard Valle, District 2
Doug Verboon, District 3
Craig Pedersen, District 4
Richard Fagundes, District 5- Vice Chairman



Staff

Edward Hill, County Administrative Officer
Diane Freeman, County Counsel
Catherine Venturella, Clerk of the Board

Board of Supervisors

Special Meeting Agenda

Date: Friday April 1, 2022
Time: 4:00 p.m.
Place: Board of Supervisors Chambers, Kings County Government Center
1400 W. Lacey Boulevard, Hanford, California 93230

☎ (559) 852-2362 ❖ FAX (559) 585-8047 ❖ website: <https://www.countyofkings.com>

COUNTY OF KINGS PUBLIC MEETING PROTOCOL IN RESPONSE TO CORONAVIRUS COVID-19

California Governor Gavin Newsom signed into Law AB 361 on September 16, 2021, relating to the convening of public agency meetings via teleconference in light of the COVID-19 pandemic. Under this authority, the Board of Supervisors will convene its public meetings via video and teleconference. Pursuant to AB 361, and as advised by local Health Officials, the Kings County Board of Supervisors, County staff and interested members of the public may attend the meeting in person.

The meeting can also be attended telephonically or by the Internet by clicking this link:

<https://countyofkings.webex.com/countyofkings/j.php?MTID=mb9433235da0751d802b60da82ca0f672>

or by sending an email to bosquestions@co.kings.ca.us on the morning of the meeting for an automated email response with the WebEx meeting link information. Members of the public attending via WebEx will have the opportunity to provide public comment during the meeting.

Members of the public who wish to view/observe the meeting virtually can do so via the worldwide web at: www.countyofkings.com and click on the "Join Meeting" button or by clicking this link: <https://youtu.be/HxViCOuKFo>

Members of the public viewing the meeting through YouTube will not have the ability to provide public comment.

Members of the public who wish to comment may submit written comments on any matter within the Board's subject matter jurisdiction, regardless of whether it is on the agenda for the Board's consideration or action, and those comments will become part of the administrative record of the meeting. Comments will not be read into the record, only the names of who have submitted comments will be read into the record. Written comments received by the Clerk of the Board of Supervisors no later than 8:30 a.m. on the morning of the noticed meeting will be included in the record, those comments received after 8:30 a.m. will become part of the record of the next meeting. Email is not monitored during the meeting. To submit written comments by email, please forward them to bosquestions@co.kings.ca.us or by U.S. Mail, please forward them to: Clerk of the Board of Supervisors, County of Kings, 1400 W. Lacey Blvd., Hanford, CA 93230.



I. 4:00 PM CALL TO ORDER
ROLL CALL – Clerk of the Board
PLEDGE OF ALLEGIANCE

II. UNSCHEDULED APPEARANCES

Any person may directly address the Board at this time on any item on the agenda, or on any other items of interest to the public, that is within the subject matter jurisdiction of the Board. Two (2) minutes are allowed for each item.

III. CLOSED SESSION

- ◆ **Significant exposure to litigation: (1 case) Interim Urgency Ordinance [Govt. Code Section 54956.9 (d)(2)(e)(1)]**

IV. REGULAR CALENDAR

A. Administration – Edward Hill/Matthew Boyett

1. Consider adopting a Resolution declaring a local emergency due to drought conditions in Kings County.

**B. Community Development Agency – Chuck Kinney
County Counsel – Diane Freeman**

1. a. Consider adopting an interim urgency ordinance, declaring a moratorium on constructing agricultural pipe infrastructure that is greater than 24 inches in diameter in Kings County.
- b. Return within 35 days to receive preliminary report from Community Development for further consideration.

V. ADJOURNMENT

The next regularly scheduled meeting will be held on Tuesday, April 5, 2022 at 9:00 a.m.

FUTURE MEETINGS AND EVENTS

| | | |
|----------|---------|-----------------|
| April 5 | 9:00 AM | Regular Meeting |
| April 12 | 9:00 AM | Regular Meeting |
| April 19 | 9:00 AM | Regular Meeting |
| April 26 | 9:00 AM | Regular Meeting |

Agenda backup information and any public records provided to the Board after the posting of the agenda will be available for the public to review at the Board of Supervisors office, 1400 W. Lacey Blvd, Hanford, for the meeting date listed on this agenda.



COUNTY OF KINGS BOARD OF SUPERVISORS

GOVERNMENT CENTER HANFORD, CALIFORNIA 93230 (559) 852-2362
Catherine Venturella, Clerk of the Board of Supervisors

AGENDA ITEM

April 1, 2022

SUBMITTED BY: Administration – Edward Hill/Matthew Boyett

SUBJECT: RESOLUTION DECLARING A LOCAL EMERGENCY DUE TO DROUGHT
CONDITIONS IN KINGS COUNTY

SUMMARY:

Overview:

Throughout 2021, Governor Newsom declared a State of Emergency throughout all California counties based on severe to exceptional drought conditions throughout California and substantial water supply and ecosystem challenges in the state. The past three months have been the driest three months in the state's history, resulting in the Department of Water Resources (DWR) reducing State Water Project allocations to only five percent of requested supplies. As a result of continued drought conditions, on March 28, 2022, the governor signed an executive order to bolster regional water conservation efforts to address these critical drought issues. Such efforts revolve around limiting landscaping irrigation in commercial and business areas, among other measures such as water conservation contingency plans. Kings County continues to face similarly substantial water supply and ecosystem challenges resulting from extremely dry drought conditions and would benefit from a Declaration of Local Emergency.

Recommendation:

Adopt a Resolution declaring a local emergency due to drought conditions in Kings County.

Fiscal Impact:

The declaration of local emergency may provide some financial and administrative relief to help local farmers, businesses, and government agencies in addressing the problems associated with fire risk and the lack of adequate supplies of irrigation water.

BACKGROUND:

The California Emergency Services Act, Government Code section 8550, *et seq.*, authorizes the Board to

(Cont'd)

BOARD ACTION:

APPROVED AS RECOMMENDED: _____ OTHER: _____

I hereby certify that the above order was passed and adopted
on _____, 2022.

CATHERINE VENTURELLA, Clerk to the Board

By _____, Deputy.

Agenda Item

RESOLUTION DECLARING A LOCAL EMERGENCY DUE TO DROUGHT CONDITIONS IN KINGS COUNTY

April 1, 2022

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proclaim local emergencies based on the “existence of conditions of disaster or of extreme peril to safety of persons and property” caused by fire or drought (Gov. Code, § 8558, subd. (c).). Thereafter, the County may work with the California Emergency Management Agency to seek aid, and may also appropriate and transfer funds to address emergency situations upon a four-fifths vote (Gov. Code, § 29127.).

Throughout 2021, Governor Newsom declared a State of Emergency throughout all California counties based on severe to exceptional drought conditions throughout California and substantial water supply and ecosystem challenges in the state. In doing so, Governor Newsom recognized that California was in the second consecutive year of dry conditions that had resulted in drought throughout many portions of the state. Governor Newsom expressed concern over degraded water quality, fallowing of productive farmland and setbacks to vulnerable and rural communities through job losses and longer lasting recoveries. As a result of that declaration, the County adopted a resolution declaring a local state of emergency in April 2021 to ensure the provision of some financial and administrative relief to help local farmers, businesses, and government agencies in addressing the problems associated with fire risk and the lack of adequate supplies of irrigation water.

As a result of continued drought conditions, in March 2022, DWR reduced the Stated Water Project allocation for the 2022 water year to five percent of requested supplies. Following the driest three consecutive months in the state’s history, the County is once again needing to enhance it’s commitment to addressing severe drought conditions in the region.

Because of the drought, Kings County is facing substantial reductions to its water supply and significant adverse environmental, economic, and social impacts. These impacts pose an imminent threat of disaster and threaten to cause widespread harm to people, businesses, property, communities, wildlife and recreation in County of Kings. By declaring an emergency due to drought, the County will have the ability to seek additional resources to expeditiously mitigate the effects of the drought and address the water supply and ecosystem challenges within Kings County.

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF KINGS, STATE OF CALIFORNIA

IN THE MATTER OF DECLARING
A LOCAL EMERGENCY DUE TO
DROUGHT CONDITIONS _____/

RESOLUTION NO. _____

WHEREAS, by Emergency Proclamations dated April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, California Governor Gavin Newsom declared a state of emergency in California that continues today and exists across all the counties of California, due to extreme and expanding drought conditions;

WHEREAS Governor Newsom further declared the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, and on farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and these drought conditions can result in degraded water quality, fallowing of productive farmland, setbacks to vulnerable and rural communities through job losses and longer-lasting recoveries, significant impacts to tribal, commercial, and recreational salmon fisheries, constraints on access to traditional lifeways, loss of aquatic and terrestrial biodiversity, and ecosystem impacts;

WHEREAS, Governor Newsom further declared that drought conditions vary across the State and that emergency conditions exist in some watersheds that are extremely dry and facing substantial water supply and ecosystem challenges;

WHEREAS, On March 28, 2022, Governor Newsom issued Executive Order N-7-22 declaring that since his October 19, 2021 Proclamation, early rains in October and December 2021 have given way to the driest January and February in recorded history for the watersheds that provide much of California's water supply;

WHEREAS, in Executive Order N-7-22, Governor Newsom further declared that the record-breaking dry period in January and February and the absence of significant rains in March have required the Department of Water Resources to reduce anticipated deliveries from the State Water Project to five percent (5%) of requested supplies;

WHEREAS, Kings County has experienced extremely low precipitation over the past three years and faces substantial water supply and ecosystem challenges based on extremely dry watersheds, reduced surface water distributions, and critically overdrawn water basins;

WHEREAS, on March 5, 2021, United States Department of Agriculture (“USDA”) Secretary, Tom Vilsack, designated 50 of California’s counties, including the County of Kings, as primary natural disaster areas due to a recent drought;

WHEREAS, since that time, Kings County has received precipitation well below its annual average;

WHEREAS, as of March 2, 2022, snow survey measurements by California Department of Water Resources show the regional snowpacks in the Sierra Nevada Mountain Range to be 58-68 percent of annual average;

WHEREAS, as of March 29, 2022, the Department of Water Resources reported that the statewide snowpack is 39 percent (39%) of annual average;

WHEREAS, the adverse environmental, economic, and social impacts of the drought pose an imminent threat of disaster and threaten to cause widespread harm to people, businesses, property, communities, wildlife and recreation in County of Kings;

WHEREAS, it is necessary to expeditiously mitigate the effects of the drought conditions and address the water supply and ecosystem challenges within Kings County to ensure the protection of health, safety and the environment; and

WHEREAS, local resources are inadequate to cope with the effects of these conditions.

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. Pursuant to Government Code section 8550 et seq., due to drought conditions and its imposed substantial water supply and ecosystem challenges, this Board hereby declares a local emergency in Kings County.
2. During the existence of this local emergency, the powers, functions and duties of the Emergency Services Officer and staff shall be as prescribed by state law and by County ordinance and resolutions of this Board.
3. The Emergency Services Officer is hereby authorized and directed to consult and cooperate with federal and state officials about mitigating the conditions caused by the drought.
4. The Board of Supervisors hereby requests that the Governor declare a state of local emergency in Kings County due to the drought conditions and requests disaster assistance from the state and federal government due to drought conditions.

The foregoing resolution was adopted upon motion by Supervisor _____, seconded by Supervisor _____ at a regular meeting held on the _____ day of _____, 2022, by the following vote:

AYES: Supervisors
NOES: Supervisors
ABSENT: Supervisors
ABSTAIN: Supervisors

Chairperson of the Board of Supervisors
County of Kings, State of California

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 2022.

Clerk of said Board of Supervisors

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-7-22

WHEREAS on April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed states of emergency that continue today and exist across all the counties of California, due to extreme and expanding drought conditions; and

WHEREAS climate change continues to intensify the impacts of droughts on our communities, environment, and economy, and California is in a third consecutive year of dry conditions, resulting in continuing drought in all parts of the State; and

WHEREAS the 21st century to date has been characterized by record warmth and predominantly dry conditions, and the 2021 meteorological summer in California and the rest of the western United States was the hottest on record; and

WHEREAS since my October 19, 2021 Proclamation, early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply; and

WHEREAS the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

WHEREAS the two largest reservoirs of the Central Valley Project, which supplies water to farms and communities in the Central Valley and the Santa Clara Valley and provides critical cold-water habitat for salmon and other anadromous fish, have water storage levels that are approximately 1.1 million acre-feet below last year's low levels on this date; and

WHEREAS the record-breaking dry period in January and February and the absence of significant rains in March have required the Department of Water Resources to reduce anticipated deliveries from the State Water Project to 5 percent of requested supplies; and

WHEREAS delivery of water by bottle or truck is necessary to protect human safety and public health in those places where water supplies are disrupted; and

WHEREAS groundwater use accounts for 41 percent of the State's total water supply on an average annual basis but as much as 58 percent in a critically dry year, and approximately 85 percent of public water systems rely on groundwater as their primary supply; and

WHEREAS coordination between local entities that approve permits for new groundwater wells and local groundwater sustainability agencies is important to achieving sustainable levels of groundwater in critically overdrafted basins; and

WHEREAS the duration of the drought, especially following a multiyear drought that abated only five years ago, underscores the need for California to redouble near-, medium-, and long-term efforts to adapt its water management and delivery systems to a changing climate, shifting precipitation patterns, and water scarcity; and

WHEREAS the most consequential, immediate action Californians can take to extend available supplies is to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1 of Executive Order N-10-21 (July 8, 2021); and

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021 Proclamations remain in full force and effect, except as modified by those Proclamations and herein. State agencies shall continue to implement all directions from those Proclamations and accelerate implementation where feasible.
2. To help the State achieve its conservation goals and ensure sufficient water for essential indoor and outdoor use, I call on all Californians to strive to limit summertime water use and to use water more efficiently indoors and out. The statewide Save Our Water conservation campaign at SaveOurWater.com provides simple ways for Californians to reduce water use in their everyday lives. Furthermore, I encourage Californians to understand and track the amount of water they use and measure their progress toward their conservation goals.
3. By May 25, 2022, the State Water Resources Control Board (Water Board) shall consider adopting emergency regulations that include all of the following:
 - a. A requirement that each urban water supplier, as defined in section 10617 of the Water Code, shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1 of the Water Code no later than June 1, 2022, and submit a final annual water

supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code;

- b. A requirement that each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, the shortage response actions adopted under section 10632 of the Water Code for a shortage level of up to twenty percent (Level 2), by a date to be set by the Water Board; and
- c. A requirement that each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, shortage response actions established by the Water Board, which shall take into consideration model actions that the Department of Water Resources shall develop for urban water supplier water shortage contingency planning for Level 2, by a date to be set by the Water Board.

To further conserve water and improve drought resiliency if the drought lasts beyond this year, I encourage urban water suppliers to conserve more than required by the emergency regulations described in this paragraph and to voluntarily activate more stringent local requirements based on a shortage level of up to thirty percent (Level 3).

- 4. To promote water conservation, the Department of Water Resources shall consult with leaders in the commercial, industrial, and institutional sectors to develop strategies for improving water conservation, including direct technical assistance, financial assistance, and other approaches. By May 25, 2022, the Water Board shall consider adopting emergency regulations defining "non-functional turf" (that is, a definition of turf that is ornamental and not otherwise used for human recreation purposes such as school fields, sports fields, and parks) and banning irrigation of non-functional turf in the commercial, industrial, and institutional sectors except as it may be required to ensure the health of trees and other perennial non-turf plantings.
- 5. In order to maximize the efficient use of water and to preserve water supplies critical to human health and safety and the environment, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended, with respect to the directives in paragraphs 3 and 4 of this Order and any other projects and activities for the purpose of water conservation to the extent necessary to address the impacts of the drought, and any permits necessary to carry out such projects or activities. Entities that desire to conduct activities under this suspension, other than the directives in paragraphs 3 and 4 of this Order, shall first request that the Secretary of the Natural Resources Agency make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating conservation projects that are necessary to address impacts of the drought, while at the same time

protecting public health and the environment. The entities implementing these directives or conducting activities under this suspension shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

6. To support voluntary approaches to improve fish habitat that would require change petitions under Water Code section 1707 and either Water Code sections 1425 through 1432 or Water Code sections 1725 through 1732, and where the primary purpose is to improve conditions for fish, the Water Board shall expeditiously consider petitions that add a fish and wildlife beneficial use or point of diversion and place of storage to improve conditions for anadromous fish. California Code of Regulations, title 23, section 1064, subdivisions (a)(1)(A)(i)-(ii) are suspended with respect to any petition that is subject to this paragraph.
7. To facilitate the hauling of water for domestic use by local communities and domestic water users threatened with the loss of water supply or degraded water quality resulting from drought, any ordinance, regulation, prohibition, policy, or requirement of any kind adopted by a public agency that prohibits the hauling of water out of the water's basin of origin or a public agency's jurisdiction is hereby suspended. The suspension authorized pursuant to this paragraph shall be limited to the hauling of water by truck or bottle to be used for human consumption, cooking, or sanitation in communities or residences threatened with the loss of affordable safe drinking water. Nothing in this paragraph limits any public health or safety requirement to ensure the safety of hauled water.
8. The Water Board shall expand inspections to determine whether illegal diversions or wasteful or unreasonable use of water are occurring and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
9. To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:
 - a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability

Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or

- b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

This paragraph shall not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code.

10. To address household or small community drinking water shortages dependent upon groundwater wells that have failed due to drought conditions, the Department of Water Resources shall work with other state agencies to investigate expedited regulatory pathways to modify, repair, or reconstruct failed household or small community or public supply wells, while recognizing the need to ensure the sustainability of such wells as provided for in paragraph 9.
11. State agencies shall collaborate with tribes and federal, regional, and local agencies on actions related to promoting groundwater recharge and increasing storage.
12. To help advance groundwater recharge projects, and to demonstrate the feasibility of projects that can use available high water flows to recharge local groundwater while minimizing flood risks, the Water Board and Regional Water Quality Control Boards shall prioritize water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife. For the purposes of carrying out this paragraph, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, and Chapter 3 (commencing with section 85225) of Part 3 of Division 35 of the Water Code and regulations adopted pursuant thereto are hereby suspended to the extent necessary to address the impacts of the drought. This suspension applies to (a) any actions taken by state agencies, (b) any actions taken by local agencies where the state agency with primary responsibility for the implementation of the directives concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b). The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.
13. With respect to recharge projects under either Flood-Managed Aquifer Recharge or the Department of Water Resources Sustainable

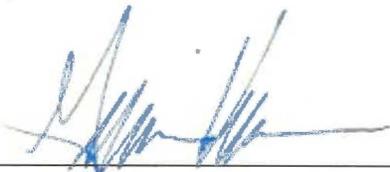
Groundwater Management Grant Program occurring on open and working lands to replenish and store water in groundwater basins that will help mitigate groundwater conditions impacted by drought, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Department of Water Resources concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b), Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought. The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

14. To increase resilience of state water supplies during prolonged drought conditions, the Department of Water Resources shall prepare for the potential creation and implementation of a multi-year transfer program pilot project for the purpose of acquiring water from willing partners and storing and conveying water to areas of need.
15. By April 15, 2022, state agencies shall submit to the Department of Finance for my consideration proposals to mitigate the worsening effects of severe drought, including emergency assistance to communities and households and others facing water shortages as a result of the drought, facilitation of groundwater recharge and wastewater recycling, improvements in water use efficiency, protection of fish and wildlife, mitigation of drought-related economic or water-supply disruption, and other potential investments to support short- and long-term drought response.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of March 2022.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State



COUNTY OF KINGS BOARD OF SUPERVISORS

GOVERNMENT CENTER HANFORD, CALIFORNIA 93230 (559) 852-2362
Catherine Venturella, Clerk of the Board of Supervisors

AGENDA ITEM

April 1, 2022

SUBMITTED BY: Community Development Agency – Chuck Kinney
County Counsel – Diane Freeman

SUBJECT: ADOPT AN INTERIM URGENCY ORDINANCE DECLARING A MORATORIUM ON THE CONSTRUCTION OF AGRICULTURAL PIPE INFRASTRUCTURE EXCEEDING 24 INCHES IN DIAMETER IN KINGS COUNTY

SUMMARY:

Overview:

The County has learned of one or more large water infrastructure construction projects within its jurisdiction that are being constructed in such a way as to create significant threat to the health, safety and welfare of the County and its residents. To protect the health, safety and welfare, the County desires to enact an interim urgency ordinance establishing a moratorium on the construction of agricultural pipe infrastructure exceeding 24 inches in diameter within Kings County to allow the County time to study the impacts and propose appropriate regulation of such construction.

Recommendation:

- a. **Adopt an urgency interim ordinance, declaring a moratorium on constructing agricultural pipe infrastructure that is greater than 24 inches in diameter in Kings County; and**
- b. **Return within 35 days to receive preliminary report from Community Development for further consideration.**

Fiscal Impact:

The proposed action will have no immediate impact to the general fund. Future fiscal impacts may include the cost of any necessary studies and will be brought to the Board for further review.

(Cont'd)

BOARD ACTION:

APPROVED AS RECOMMENDED: _____ OTHER: _____

I hereby certify that the above order was passed and adopted
on _____, 2022.

CATHERINE VENTURELLA, Clerk to the Board

By _____, Deputy.

Agenda Item

ADOPT AN INTERIM URGENCY ORDINANCE DECLARING A MORATORIUM ON THE CONSTRUCTION OF AGRICULTURAL PIPE INFRASTRUCTURE EXCEEDING 24 INCHES IN DIAMETER IN KINGS COUNTY

April 1, 2022

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BACKGROUND:

The County of Kings recently learned of an underground agricultural pipeline being constructed near the community of Stratford. Information available from two Kings County Superior Court cases related to this pipeline (22C-0019 and 22C-0046) show that this pipeline is 48 inches in diameter. Based on these cases and other observations, including numerous encroachment permits that have been applied for, the underground pipeline will be several miles long.

This interconnected conveyance system, if completed, will extend from a point at least 300 feet north of Highway 198 west of Lemoore, to the Blakeley Canal south of Stratford. Moreover, several miles of this conveyance system consists of the underground pipeline, much of which either runs adjacent to or burrows under county property. The County granted the individual encroachment permits across several county roads near Stratford, without knowledge that the individual permits were components of a much larger construction project.

The County has concerns that the unregulated installation of pipe in this diameter and the conveyance system being constructed has the ability to create numerous potential threats to the health, safety and welfare of the County and its residents including the risk of flooding, erosion, contamination to surface water and groundwater, damage to public roads and depletion of scarce groundwater resources from the County's aquifers.

The County requires time to study the potential impacts of agricultural pipeline of this diameter and magnitude within its borders, to determine whether further regulation is required to protect the County's health, safety and welfare.

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE COUNTY OF KINGS, ENACTING
A MORATORIUM ON THE INSTALLATION OF AGRICULTURE PIPELINES
GREATER THAN 24 INCHES IN DIAMETER, PURSUANT TO GOVERNMENT
CODE SECTIONS 65858 AND 25123(d)

The Board of Supervisors of the County of Kings does ordain as follows:

SECTION 1: FINDINGS.

A. Authority. This Urgency Ordinance is enacted pursuant to the following authority:

1. Article XI, section 7 of the California Constitution, which provides as follows: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” This section sets forth the County’s police powers as derived from the California Constitution.

2. Government Code section 65850, which provides the County with broad land use authority, including the authority to regulate the “use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes”, and to otherwise regulate the size of buildings and structures and the intensity of land use.

3. Article 1, section 101 of the County’s Development Code which describes the County’s authority to regulate land use in the County.

4. Article 1, section 105 of the County’s Development Code, which sets forth the purpose and objective of the Development Code to “preserve, protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare”. Specific purposes and objectives include: (a) foster a harmonious, convenient, workable relationship among land uses and a wholesome, serviceable and attractive living environment; (b) promote the stability of existing land uses which conform to objectives and policies of the General Plan and protect them from inharmonious influences and harmful intrusions; (c) ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the general public; (d) protect and promote appropriately located agricultural, commercial and industrial pursuits in order to preserve and strengthen the county’s economic base; (e) conserve the county's natural assets and to capitalize on the opportunities offered by its terrain, soils, vegetation and waterways.

5. The general requirement under state law, as specifically set forth in Article 1, section 105 of the County's Development Code, that all permits and approvals be consistent with the General Plan, any specific plan, and the Development Code.

6. Article 1, section 110 of the County's Development Code, which establishes the office of Zoning Administrator to "perform the duties and exercise the powers as prescribed in this Development Code and the Government Code in such a way as to promote the public health, safety and welfare, to further the objectives of the zoning plan and to do substantial justice." That authority includes: (a) serving as the review authority on permit and approval applications including interpretations and exceptions; (b) the preliminary screening of projects to determine which projects are exempt from, and which projects are subject to, the requirements of the California Environmental Quality Act (CEQA), and the preparation, filing, and distribution of environmental documents as appropriate.

7. Article 1, section 114 of the County's Development Code, addressing injurious conditions and the requirement for a building permit in all instances involving the construction, enlargement, or movement of a structure, site improvements, and any related grading, and following approval of the use.

8. Water Code section 7033, which provides that "[e]very person or public district or agency who or which initially constructs, or improves for his or its own benefit, any conduit crossing or running along any pre-existing highway, shall construct or improve such conduit in accordance with standards established by the county or State as the case may be, and at the expense of the person so constructing or improving such conduit.

9. Government Code section 65858, which allows the County, in order to protect the public safety, health, and welfare, to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

10. Government Code section 25123(d), which allows the County, for the immediate preservation of the public peace, health, or safety, to adopt an ordinance that takes effect immediately.

B. Facts Establishing Urgency.

1. The County's 2035 General Plan, Land Use Element, Article IV Land Use Policies, B - Agriculture Open Space, sets forth various Goals, Policies, and Objectives to protect agricultural lands and uses. These include the following:

LU OBJECTIVE B1.1

Preserve the integrity of the County's agricultural land resources through agricultural land use designations and other long term preservation policies.

LU OBJECTIVE B2.1

Recognize agriculture as the highest and best use of agricultural designated land, and preserve the right of farmers and agricultural operations to continue customary and usual agricultural practices, and operate in the most efficient manner possible.

LU OBJECTIVE B3.1

Direct agricultural support services to General Agriculture land use designated areas, while ensuring that services are not harmful to the long term agricultural use of the land or potential future urban growth if within the Blueprint Urban Growth Boundary.

2. The County's 2035 General Plan, Health & Safety Element, Article V Health and Safety Policies, C - Community Safety, sets forth various Goals, Policies, and Objectives to address community safety. These include the following:

HS OBJECTIVE C2.4

Ensure maintenance and upkeep of key emergency access routes, and critical facilities and infrastructure to minimize delays or disruptions in emergency response.

HS Policy C2.4.3: Assess vulnerability of critical infrastructure and lifeline utilities, including water distribution systems, to identify and prioritize projects for multi-hazard risk reduction.

3. The County's 2035 General Plan, Resource Conservation Element, Article III Resource Conservation Policies, A – Water Resources, sets forth various Goals, Policies, and Objectives to protect County water resources. These include the following:

RC GOAL A1

Beneficially use, efficiently manage, and protect water resources while developing strategies to capture additional water sources that may become available to ensure long term sustainable water supplies for the region.

RC OBJECTIVE A1.1

Maintain and Protect Existing Water Supplies.

RC Policy A1.1.1: *Cooperate with water purveyors and water management agencies to manage groundwater resources within the County to assure an adequate, safe and reliable groundwater supply for existing and future water users.*

RC Policy A1.1.3: *Discourage the net export of groundwater and surface water resources currently allocated to water users within Kings County.*

RC Policy A1.1.4: *Work cooperatively with state and federal land managers to coordinate watershed management on public land.*

RC Policy A1.1.5: *Encourage and support regional groundwater management strategies such as an Integrated Regional Water Management Plan.*

RC Policy A1.1.6: *Support expansion of joint management of surface water and groundwater supplies that contributes to the protection, reliability and sustainability of local and regional water supplies.*

RC OBJECTIVE A1.4

Protect the quality of surface water and groundwater resources in accordance with applicable federal, state and regional requirements and regulations.

RC Policy A1.4.1: *Evaluate proposed land uses and development projects for their potential to create surface and groundwater contamination from point and non-point sources. Confer with other appropriate agencies, as necessary, to assure adequate water quality review to prevent soil erosion; direct discharge of potentially harmful substances; ground leaching from storage of raw materials, petroleum products or waste; floating debris; and runoff from the site.*

RC OBJECTIVE A1.6

Protect groundwater quality by applying development standards which seek to prevent pollution of surface or groundwater and net loss of natural water features.

RC Policy A1.6.2: *Support measures to ensure that water users do not unreasonably use groundwater resources.*

4. The County’s 2035 General Plan, Resource Conservation Element, Article III Resource Conservation Policies, B – Agricultural Resources, sets forth various Goals, Policies, and Objectives to protect County agricultural lands. These include the following:

RC GOAL B1

Maintain viable and productive agricultural land within the County, and ensure the long term preservation of the County’s agricultural resources continue to provide a sustainable food supply and supports a vibrant local agricultural economy.

RC OBJECTIVE B1.1

Identify the County’s highest priority agricultural lands that are critical to the County’s agricultural economy, prime soils, and water availability, and emphasize higher preservation efforts for these areas.

5. The State of California, including Kings County and the Tulare Lake watershed are in extreme drought conditions. The Governor issued its most recent Executive Order N-7-22 on March 28, 2022, declaring a state of emergency due to the drought. Certain requirements and restrictions were imposed by the latest order.

6. Sandridge Partners, L.P., owns land in Kings County currently used, or formerly used, for agricultural purposes, and has access to certain ground water under those lands to provide water for the agricultural operations. Sandridge Partners may also have certain ground water and/or surface water rights through various canals and waterways in the County operated by Tulare Lake Canal Co. and others. Other Kings County property owners are similarly situated to Sandridge Partners. The County recently learned that Sandridge Partners, and possibly others, are building substantial water distribution systems, and improving and connecting existing distribution systems. These systems have capacity to transfer large amounts of water out of the County. Sandridge Partners and other landowners with similar rights are for ease of reference referred to as “Landowners”. Additional details are as follows:

a. Existing agricultural County water conveyance structures consist of various above ground trenches and canals, and some underground pipelines.

b. Landowners are seeking to construct new water conveyance structures, either new canals or underground pipelines, which will connect to existing water conveyance structures.

c. Some of the new water conveyance structures have already been constructed, or are under construction.

d. Some of the new water conveyance structures are proposed to be placed on private property and others are proposed to be placed under County rights of way.

e. Some of the new water conveyance structures are proposed to be 48 inch underground pipelines, a structure that is not known to have been used before within Kings County.

f. County issued encroachment permits for some of the new water conveyance structures, not being fully informed of the purpose of the new water conveyance structures or receiving a full description of the water conveyance structure. Encroachment permits are generally considered ministerial, but may be revoked at any time should new information come to light. Issuance of an encroachment permit does not relieve the permittee from obtaining all other necessary permits and environmental clearances. Further, the underlying activity must be consistent with the General Plan and Development Code.

g. No building permits were obtained for any new construction of the known pipelines.

7. The county, has identified concerns with large diameter water conveyance structures, particularly those over 24 inches. With regards to the proposed 48 inch diameter pipeline, the county identified the following potential hazards due to the volume of water that flows through such a pipeline if there is a failure at any one location. A failure may be caused by improper installation, accident, subsidence, or an act of God.

- Flooding on nearby roadways
- Erosion
- Surface water and groundwater contamination
- Damage to private and county property
- Damage to structures or other improvements
- Injury to persons and animals
- Preventing access of emergency response personnel

Limiting pipeline sizes to 24 inch in diameter substantially limits the hazards identified above. By placing an immediate limitation on pipeline sizes to 24 inches, the Community Development

Agency (CDA) will have time to study the viability of larger pipelines and whether standards and conditions can be applied to larger pipelines that will avoid the identified hazards.

8. The potential to export large amounts of water currently available for County users outside of the County to unknown users and for unknown purposes, is inconsistent with the General Plan policies identified above relating to Agricultural Use and Resource Conservation.

9. Statewide and County drought conditions are at urgency levels. In addition to inconsistency with adopted plans and policies, unfettered exportation may be inconsistent with the developing Groundwater Sustainability Plans for the basin. Exportation of water from a basin in overdraft condition will lead to further impairment of the groundwater supply.

10. Additional impairment of the Kings County water supply under the current conditions presents a threat to public health, safety and welfare and presents challenges to the economic viability of the agricultural industry, including the loss of crops, jobs, etc. Agricultural and related industries are a major contributor to the County's economy.

11. The hazards associated with the large diameter pipelines and the possible exportation of water outside the County, interfere with the County's ability to protect the public health, safety, and a welfare of the residents, landowners, and businesses of Kings County.

12. The issuance of encroachment permits, building permits, or any other permits to construct pipelines exporting water outside the County is inconsistent with the General Plan polices and Development Code provisions identified herein.

13. The issuance of encroachment permits for large diameter pipelines violates Water Code section 7033 as they do not conform to standards established by the County.

14. The issuance of encroachment permits for large diameter pipelines interferes with the County's objectives to: ensure maintenance and upkeep of key emergency access routes, and critical facilities and infrastructure to minimize delays or distractions in emergency use; to protect critical infrastructure, including water distribution systems.

C. The Need for a Moratorium.

1. A moratorium on the issuance of permits for large diameter agricultural pipelines will allow the CDA to investigate the potential public health, safety, and welfare risks identified herein, and determine whether such pipelines should be regulated through a development

application with specific conditions and determinations related to the risks posed by the pipelines.

2. If, prior to investigating the issue, and the potential drafting and Board consideration and approval of such regulations, agriculture pipelines greater than 24 inches in diameter are allowed to be established, developed, or constructed in the County, such uses may be established in areas, or operated in a manner, that would conflict with prospective regulations to be considered and studied by the County, and would therefore undercut the purpose of the proposal to study and adopt new regulations regarding the installation of agriculture pipelines greater than 24 inches in diameter, all to the detriment of the public health, safety, and welfare.

3. The establishment, development, construction, or expansion of agriculture pipelines greater than 24 inches in diameter, and the continued approval of use permits, variances, building permits, encroachment permits, or any other applicable entitlements authorizing their establishment, development, construction, or expansion, would result in a current and immediate threat to the public health, safety and welfare, because such uses threaten to cause the harmful effects identified above within the unincorporated area of the County of Kings, and because such uses may frustrate the accomplishment of the goals of regulations for the agriculture pipelines greater than 24 inches in diameter that the County will consider and study. It is therefore necessary to adopt this ordinance to prohibit their establishment, development, construction, maintenance, or operation during the period of such consideration and study.

4. In addition to the potential hazards to the health, safety, and welfare to persons and property in the County, the amount of surface water and groundwater that could potentially be exported from the county in a pipe exceeding 24 inches in diameter would be detrimental to the health, safety, and welfare of the County, in that it would encourage and facilitate significant water transfers that would exacerbate already critical surface and ground water shortages throughout the County for residential, commercial, agricultural, and industrial purposes.

5. It is necessary to investigate the potential public health, safety, and welfare risks identified herein with the exportation of large amounts of ground water and surface water outside the County. Such potential exportation must be evaluated for consistency with County plans and polices, the Tulare Lake Basin Groundwater Sustainability Plan, and State law. The investigation will determine whether regulations should be adopted governing that exportation,

as identified in the General Plan. Any activity or project that might conflict with prospective regulations to be considered and studied by the County would undercut the purpose of the proposal to study and potentially adopt new regulations regarding the exportation of water outside the County, all to the detriment of the public health, safety, and welfare.

SECTION 2: URGENCY ORDINANCE TEXT.

Based upon the foregoing Authority and Findings, the following urgency provisions are adopted:

Prohibition on Large Diameter Agricultural Pipelines. No Person shall cause or permit the establishment, development, construction, or expansion of agriculture pipelines greater than 24 inches in diameter within the unincorporated areas of the County of Kings, nor shall any Development Application be accepted, filed, processed, issued or approved for any project related to the establishment, development, construction, or expansion of such an agricultural pipeline greater than 24 inches in diameter during the term of this moratorium ordinance.

For the purpose of this section the following terms shall have the following meanings:

(a) "Development Application" shall mean an application for any permit or approval to be issued by any County of Kings officer, department or other agency, including subdivisions, use permits, variances, building permits, encroachment permits, or any other entitlement for use.

SECTION 3: DIRECTION TO CDA.

CDA is directed to investigate and study the issues identified herein and to issue a preliminary report regarding large diameter pipelines and water exportation outside of the County in accordance with County Code of Ordinances section 19-17, and Development Code Article 21, pertaining to Development Code text amendments.

This study is in addition to the report required for adoption or extension of an urgency ordinance.

SECTION 4: REPORT.

The County Administrative Officer or his/her designee is directed to issue a written report describing the measures taken by the County to alleviate the conditions which have led to the adoption of this ordinance, at least 10 days prior to the expiration of this ordinance.

SECTION 5: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstances is for any reason held to be invalid by a court or competent jurisdiction, such provision shall be

deemed severable, and the invalidity thereof shall not affect the remaining provisions or other applications of the Ordinance which can be given effect without the invalid provision or application thereof.

SECTION 6. URGENCY, DURATION AND PUBLICATION.

This ordinance is adopted by the Board of Supervisors pursuant to the California Constitution, article XI, section 7 and Government Code sections 25123(d) and 65858 by a four-fifths or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in Section 2 above. This ordinance shall expire and be of no further force or effect 45 days after its adoption, unless it is extended pursuant to Section 65858. Before the expiration of 15 days after the adoption of this ordinance, a summary hereof shall be published once, with the names of the members of this Board voting for or against the same in the Hanford Sentinel, a newspaper of general circulation published in the County of Kings.

The foregoing ordinance was introduced and adopted at a meeting of this Board of Supervisors of the County of Kings held on April 1, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Joe Neves, Chairman of the Board of Supervisors
County of Kings, State of California

WITNESS my hand and seal of said Board of Supervisors this 29th day of March, 2022.

Catherine Venturella, Clerk of the Board of Supervisors