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Staff

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

**Board of Supervisors
Special Meeting Action Summary**

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
ALL MEMBERS PRESENT



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.

Catherine Venturella, Clerk of the Board stated that the Board received a letter from Marshall Whitney with Whitney, Thompson & Jeffcoach and the letter will become part of the permanent record for the minutes of today's meeting.

Andrew Hermans, People's and Settlers Ditch Company General Manager stated that he has concerns for the proposed urgency Ordinance and the plans for their own pipeline project.

Nathan George, Sandridge Partners stated that he has concerns that the Board is meeting to adopt an urgency ordinance on the same issue that is being heard in courts right now and this could have been placed on a regular meeting on Tuesday not on a Friday afternoon. He stated that the urgency ordinance seems to be addressing one individual and does not address hypothetical problems and is contrary to the County's own Legislative Platform recently adopted.

III. CLOSED SESSION

4:15 P.M. – 4:54 P.M. – ♦ **Significant exposure to litigation: (1 case) Interim Urgency Ordinance [Govt. Code Section 54956.9 (d)(2)(e)(1)]**

Report out: Diane Freeman, County Counsel stated that the Board decided in closed session that they will not be proceeding with the Urgency Ordinance today and will work with staff to address existing policies and statutes in Ordinance and place the item on a future agenda.

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. **[Reso 22-027]**

ACTION: APPROVED AS PRESENTED (DV, RF, RV, CP, JN-Aye)

**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.

THE ITEM WAS PULLED FROM THE AGENDA BY THE BOARD.

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.



WHITNEY
THOMPSON &
JEFFCOACH

Marshall C. Whitney
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Kristi D. Marshall
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April 1, 2022

County of Kings, Board of Supervisors
ATTN: Clerk of the Board of Supervisors
bosquestions@co.kings.ca.us
1400 W. Lavey Boulevard
Hanford, CA 93230

Re: *Special Meeting Agenda, April 1, 2022 Item IV*

Honorable Board of Supervisors:

We are counsel for Sandridge Partners, LP and late yesterday afternoon were provided with a copy of the Agenda for the Special Meeting set for Friday, April 1, 2022, at 4:00 p.m. purporting to address the need for an interim emergency ordinance declaring a moratorium on constructing agricultural pipe greater than 24 inches in diameter in Kings County.

The Unlawful Anti-Irrigation Ordinance

It is clear from the staff report and proposed findings in support of the purported interim emergency ordinance (hereinafter, “the Anti-Irrigation Ordinance”) that the ordinance is directed solely at halting our client’s construction of an irrigation pipeline on private property and preventing our client from watering crops *within* Kings County. The Anti-Irrigation Ordinance is arbitrary and capricious, a gross exceedance of the County’s legislative authority, a clear infringement on our client’s equal protection and substantive due process rights and constitutes a regulatory taking. Such an ordinance, if adopted, would be *void ab initio* and would likely subject the County and the members of the Board of Supervisors to significant liability for the harms caused to our client.

The staff report and findings, despite vague allusions to “landowners” who may be constructing pipelines throughout the County more broadly, clearly establish that the County is aware of only one such project and, in fact, identifies our client *by name* as the developer of that irrigation pipeline. Indeed, the County knows of our client’s irrigation pipeline project because, as the staff report and findings admit, the County has issued encroachments permits to our client for pipeline construction. Thus, there can be no doubt that this “emergency” ordinance is directed solely at our client, which is a clear violation of equal protection and substantive due process rights, and constitutes unlawful discrimination. Moreover, the effect of this arbitrary Anti-Irrigation Ordinance constitutes an unlawful attempt to prevent our client, and our client alone, from using private water rights to irrigate crops *in* Kings County.

Moreover, the staff report and findings provide no evidence of any irrigation project by our client or other “landowners” attempting or intending to transport water out of the County. Simply making this specious accusation, without any facts to support it, completely fails to justify the adoption of the Anti-Irrigation Ordinance. Additionally, all of the “hazards” identified as the basis for prohibiting our client’s project are completely arbitrary and apply equally to any system of conveying water.

Lastly, contrary to the conclusory statements in the findings, the Anti-Irrigation Ordinance would be completely contrary to, inconsistent with, and frustrate the goals, policies, and objectives of the County General Plan. For example, by preventing our client from using private water rights to irrigate private crops *within* Kings County, simply because the water flows through a pipe of a certain diameter, the Anti-Irrigation Ordinance would arbitrarily frustrate the following General Plan Land Use Policies:

- 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.

Objections and Explanation

Please accept this is as the formal objection on behalf of our client, Sandridge Partners, LP. Initially, we object to such an interim ordinance on the following grounds:

1. Pursuant to Government Code § 65858(a), the Board has not identified sufficient facts supporting the existence of an urgency. Rather, the urgency is contrived, and the ordinance is an improper attempt to gain leverage by a party represented by Supervisor Pedersen’s wife’s firm;

2. Pursuant to Government Code §65858(a) the Board is required to and has not identified sufficient facts supporting its conclusion that the construction or continued construction of agricultural pipelines with a diameter greater than 24” may conflict with any contemplated general plan, specific plan, or zoning proposal that the Board is considering or studying or intends to.
3. As discussed above, the Anti-Irrigation Ordinance is wholly contrary to, inconsistent with, and would frustrate important agricultural policies in the General Plan. As stated in the General Plan, “Kings County remains a predominantly agricultural based County which ranked 8th in the State in 2007 for agricultural product value. Of the County’s 1,391 square miles, approximately 90.2 percent of all land is devoted to agricultural uses. In 2008, the gross value of agricultural crops and products was \$1,760,168,000 and represents a major component of Kings County’s economy.” Adopting the Anti-Irrigation Ordinance would fly in the face of Kings County’s history as a predominantly agricultural community, and would be contrary to the General Plan’s agricultural policies.
4. Any interim moratorium would have the very real risk of conflicting with the regulatory scheme under consideration for ground water pumping by the state mandated GSA’s authorized to develop rules and procedures for ground water pumping in the sub-basins within Kings County;
5. The identification of pipelines with a diameter greater than 24” appears arbitrary and capricious and targeted to interfere with an existing pipeline construction of Sandridge as to which Sandridge has incurred substantial expense. Indeed, as stated above, Sandridge’s pipeline is the only pipeline project identified by the County as subject to the Anti-Irrigation Ordinance. The arbitrary nature of the ordinance is further established by the fact that, pipelines of 24” or less, as well as ditches, which the findings acknowledge permeate the County, could cause the same hypothetical harm identified as the basis for adopting the ordinance. Specifically, pipelines of any diameter and ditches may cause:
 - 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

Moreover, conveying water out of the County can be just as easily accomplished using ditches or smaller diameter pipelines, if that were a legitimate concern here. To truly address the alleged evils identified in the findings, the County would need to outlaw the conveyance of water.

6. The adoption of any such “urgency” ordinance would not accord my client its due process and would wrongfully interfere with its ongoing farming activities at time of dire need for water, effectively acting as a taking of property without due process should the ordinance be adopted and crops lost.
7. The Anti-Irrigation Ordinance is unlawfully discriminatory. (*Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 336; *Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 338.) The California courts have consistently held that ordinances cannot single out one property or landowner for the purpose of thwarting the owner’s development plans. As stated in *Wilkins*, the County “cannot unfairly discriminate against a particular parcel of land, and the courts may properly inquire as to whether the scheme of classification has been applied fairly and impartially in each instance.” (29 Cal.2d at p. 338.) Moreover, “where ‘spot zoning’ or other restriction upon a particular property evinces a discriminatory design against the property user, the courts will give weight to evidence disclosing a purpose other than that appearing upon the face of the regulation.” (*G & D Holland Construction Co. v. City of Marysville* (1970) 12 Cal.App.3d 989, 994.) In *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, shortly before a state unemployment insurance office opened, the city adopted two urgency zoning ordinances regulating “public service office buildings.” (37 Cal.App.3d at 242.) The court of appeal found these ordinances were “clearly discriminatory; they are obviously aimed at stopping the establishment of the unemployment insurance office, even though the pre-existing zoning would permit the use.” (*Id.* at 243.)
8. The Anti-Irrigation Ordinance violates equal protection and due process rights. Our client, like every landowner and farmer in the County, is entitled to equal protection of the law. (See *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 42 Cal.App.4th 543, 686). The Anti-Irrigation Ordinance, which is targeted specifically at our client and is based on pure speculation and completely arbitrary “hazards” violates substantive due process because the ordinance bears

“no substantial relation to the public health, safety, morals, or general welfare.”
(*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 541, original italics.)

9. The Anti-Irrigation Ordinance constitutes a regulatory taking. (See *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124.) There is no question that our client has a “legitimate property interest” in using its own water to irrigate its own crops on its own private property. Further, the Anti-Irrigation Ordinance, by preventing our client from irrigating its crops, would substantially interfere with our clients “legitimate property interest” and have a massive economic impact on our client by causing hundreds of acres of crop loss. Lastly, the character of the County’s action here “amounts to a physical invasion” of our clients property, because the Anti-Irrigation Ordinance not only prohibits the County from issuing permits for our client’s irrigation pipeline, it expressly prohibits the “establishment, development, construction, or expansion of agriculture pipelines greater than 24 inches in diameter within the unincorporated areas of the County of Kings” by any “person” thus unlawfully interfering with private rights on private property without compensation.
10. We feel obligated to warn the County of the potential consequences of unlawfully discriminating against our client and infringing on equal protection and due process rights. Indeed, the County, and any individuals found responsible may be held financially liable for the damage caused by prohibiting our client from using private water rights to water private crops. (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564-65 [recognizing “equal protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment”]; *Bateson v. Geisse* (9th Cir. 1988) 857 F.2d 1300, 1303-1304 [finding that the city and individual city council members were liable for violating the applicant’s substantive due process rights because they arbitrarily withheld a building permit]; *Del Monte Dunes at Monterey, Ltd. v. City of Monterey* (9th Cir. 1990) 920 F.2d 1496, 1508 [substantive due process claims where city council allegedly changed course and rejected project that city staff had found met all required conditions]; *Harris v. County of Riverside* (9th Cir. 1990) 904 F.2d 497, 502 [finding a procedural due process violation where a general plan amendment “exceptionally affected” the landowner “on an individual basis” by “severely altering the permissible use” of his land].)
11. *In Ellis v. City of Burlingame* (1963) 222 Cal.App.2d 490 (Ellis), a landowner obtained two building permits from the City’s department of public works. One to construct a bathhouse and the other to construct a swimming pool. (Id. at p. 494.) A City Building Inspector later granted permission to construct the

bathhouse and renewed the permit for the pool for an additional 90 days. When Ellis sought a second renewal of the permit for the pool, her request was denied due to the City finding alleged violations of the building and zoning codes with the bathhouse. (*Id.* at pp. 494-495.) The court found that “it is apparent that it was the intent of the city officials to deny appellant a permit to which she was clearly entitled as a means of coercing her to comply with separate and entirely unrelated provisions of the building code and of the applicable zoning ordinance.” (*Id.* at p. 497.) Moreover, the court held that “the conduct of respondent building inspector, in denying appellant a new or renewal permit, constituted an intentional and arbitrary refusal to perform a ministerial act” and that “[i]t follows as a necessary corollary of the above that respondent building inspector was clearly liable for any damages sustained by appellant as a result of the denial of the permit.” (*Id.* at p. 498.) Here, as admitted in the findings, the issuance of encroachment permits is a ministerial act, the County cannot arbitrarily target our client’s irrigation system to prevent the watering of our client’s crops by denying ministerial permits.

12. Moreover, because the issuance of an encroachment permit is a non-discretionary approval, as admitted by the findings, our client may seek a writ of mandate under Code of Civil Procedure section 1085 to compel the County to comply with its ministerial and mandatory duty to process the building permit. (See *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413-414 [“Since the City Council’s duty relative to the final tract map was administrative and ministerial, under the provisions of Code of Civil Procedure section 1085, the issuance of a writ of mandate is the proper procedure to compel the City Council to perform its ministerial act”]; see also *Ellis, supra*, 222 Cal.App.2d at p. 497; *Munns v. Stenman* (1957) 152 Cal.App.2d 543, 557 [traditional mandamus to compel issuance of building permit where “[t]he duty imposed upon the building department is ministerial and mandatory”].)
13. Finally, should the County insist on abusing its legislative authority to target a single landowner (i.e., our client, as identified in the findings), judicial review of that action would be under the non-deferential “independent judgment” prong of Code of Civil Procedure, section 1094.5, with no deference to the County’s decision or rationale. (See *HPT IHG-2 Properties Trust v. City of Anaheim* (2015) 243 Cal.App.4th 188, 199 (*HPT IHG-2*) [“The ultimate question in each case is whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking judicial power”] italics original; see also *301 Ocean Ave. Corp. v. Santa Monica Rent Control Bd.* (1991) 228 Cal.App.3d 1548, 1557 (applying independent judgment standard where the board’s “interference affects the preexisting use of appellant’s property”).) As stated above, our client has a vested right to continue the lawful construction of its pipeline, and the County

may not add new conditions to that continuing use of the encroachment permits obtained to surpass county roadways. (*HPT IHG-2, supra*, 243 Cal.App.4th at p. 199.) “Interference with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance.” (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529.)

14. As the impacted landowner targeted by this unlawful ordinance, Sandridge should have been consulted by the CDA or County staff prior to the issuance of this ordinance to see if the proposed pipeline would actually cause the manufactured dangers expressed in the agenda report and ordinance.
15. If the Board is concerned about the exportation of water outside of the County or groundwater pumping, it should direct staff to investigate the exportation of water by J.G. Boswell Company and Boswell-controlled entities prior to the issuance of this ordinance. The lack of reference in the ordinance to the use of groundwater and/or large diameter pipelines by Boswell or Boswell-controlled entities, no doubt the single largest pumper of groundwater in the County, is evidence of the arbitrary and discriminatory nature of this ordinance. Frankly, it suggests that a party to civil litigation is attempting to use the County to gain an anti-competitive advantage and aid it in litigation.
16. If the Board votes on this matter, Supervisor Pederson should recuse himself from voting on the issue, due to his conflict of interest, since his wife is a partner at the firm of Herr, Pedersen & Berglund, counsel for Tulare Lake Canal Company and J.G. Boswell, parties in a matter directly relevant to this issue and who are likely the genesis of this proposed ordinance.

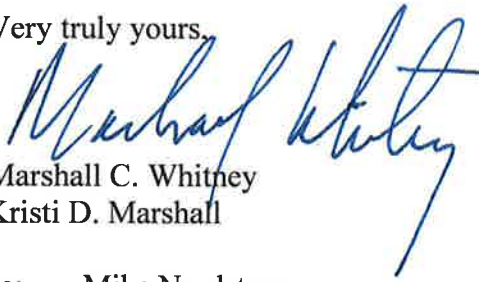
Additionally, the agenda is insufficient to provide the notice required by due process as to whether such a moratorium may require CEQA analysis before its implementation. Accordingly, any such public approval would appear to need an analysis of its environmental impacts requiring some level of CEQA analysis. The Agenda does not address such concerns and Sandridge reserves its right to object to such actions on this basis unless proper CEQA compliance is demonstrated.

Please understand that this “urgency” ordinance and the timing of it on the same day as a hearing before the Kings County Superior Court on the application of Tulare Lake Canal Company seeking to enjoin Sandridge from completing its pipeline construction constitutes an attempted end-run around the jurisdiction of the Superior Court by Tulare Lake Canal Company. This is borne out in the Background discussion of the moratorium which simply fails to discuss any other pipeline construction or utilization other than Sandridge’s pipeline. The Board should not allow the County’s processes to be drawn into a proxy war between private landowners. We intend to have a representative electronically present at the meeting, despite it being coincidentally set for the

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same date and time in which we are otherwise set to be in court on similar/related issues. Notwithstanding, we request that this letter also be made part of the record of the meeting. Above all, we ask that the Board not adopt the proposed interim emergency ordinance.

Very truly yours,



Marshall C. Whitney
Kristi D. Marshall

cc: Mike Nordstrom
Tiffany Wright
Nathan George