From: Molly Jackel
To: PermitSonoma-Wells-PublicInput
Subject: Well metering
Date: Tuesday, April 4, 2023 12:09:40 PM

EXTERNAL

Hello!

As a county resident and well owner, I support well metering.
Water is a precious resource, something we shouldn't take for granted, and I think we all need to do our part to ensure we don't misuse it.
Thank you!

Molly Jackel
Sebastopol, CA
mtjackel@mac.com

From:	Kenna Lee
To:	PermitSonoma-Wells-PublicInput
Subject:	please meter wells and require conservation
Date:	Monday, April 3, 2023 10:24:39 PM

EXTERNAL

To the Board of Supervisors,

As a nurse and public health researcher, I beg that you consider the vital importance of measuring what water is used to increase equitable distribution of our shared groundwater resource.

If you have not watched the 26-minute film, Sonoma 2050, I strongly encourage you to do so (https://rahus.org/sococlimate2050/) fro a simple explanation of why immediate action is essential, if difficult.

Please invest political and financial capital in metering wells and requiring common sense limits to what is designated low water use (0.5 aft residential).

Creating a process by which data can inform policy into the future is just good sense.

Thank you,

Kenna Lee
186 Florence Ave
Sebastopol CA 95472

From: Myra Mayesh
To: PermitSonoma-Wells-PublicInput
Subject: Well Ordinance - Today's Meeting
Date: Tuesday, April 4, 2023 7:33:40 AM

EXTERNAL

I am a Santa Rosa resident and concerned citizen about our use of our collective water supply and urge conservation measures be adapted to assure a sustainable future.

I am especially concerned after the unusual rainfall this year that conservation measures will be ignored. This would be both foolish and unethical. We must be proactive is preserving and not misusing water in order to support all residential, wildlife, and agricultural interests that put prioritize sustainability and fairness over selective short term gain and wasteful albeit easier and more profitable means.

I support Gathering information regarding groundwater use, interconnected waterways, impacts of streamflow depletion, instream flows, and other important issues - it is extremely important that clear processes and timelines, with specified deadlines, be built into the ordinance itself to address these gaps, and make informed future decisions possible.

"Low Water Use" for new "ministerial" (across-the-counter) permits for residential use should be 0.5 acre feet per year (afy). The suggested 2 afy is 4 times what is used by an average family

• Our wells and public trust resources are already facing the dire consequences of high use wells without any reasonable limit, and allowing more wells to do the same thing is only going to cause more harm for us. Maintaining the status quo is not in any of our best interests.

Relacement "Wells for Existing Use" must also ensure that nearby wells are not further depleted and adverse impacts to public trust resources are mitigated. It is important that the permitting processes include basic conservation requirements, and in order to plan for a sustainable future, we need information gained by metering and reporting.

Larger uses must undergo discretionary review to meaningfully address contributions to cumulative impacts. The status quo is causing us harm and cannot be allowed to continue.

Groundwater is a shared public resource, and it is time that we all do our part to help ensure the long-term sustainability of our waters for all of our benefit. This means that groundwater users must adopt conservation measures wherever feasible.

• To help make conservation requirements fair, the County should set a reasonable use limit for wells in order to qualify for a ministerial (across-the-counter) permit and allow individuals to meet the requirement in a way that works for their own use.

• In order to protect our groundwater supplies, the County must be clear about which criteria and standards will be applied to permits that will credibly and reliably reduce use.
5) The proposed "Public Trust Review Area" (PTRA) map is not inclusive or fully representative of public trust resources within Sonoma County. Important public trust resources in our three groundwater basins (GSAs), which the State has already identified as over-subscribed, are not receiving necessary protection.
• The PTRA should be as expansive as possible until more information is available that demonstrates that basic requirements of conservation, reduced use, metering and reporting are proven to protect our public trust resources and our long-term groundwater sustainability. Portions of GSAs have not been included in the PTRA without a clear explanation. There are basic things that all well owners in the County would want to do to assure their own reliable water supply - and for the benefit of the entire County.

Mettering &/or monitoring requirements should be required for well permits in the County.

• Metering and reporting of groundwater use is the only way the County can close the existing data gaps and improve models used to make decisions - in order to make informed decisions on how to assure future water supplies and protect public trust resources. This information is particularly important to comprehensively address cumulative impacts that are ongoing and worsening each year.

• Metering for all new and replacement wells in the County would help ensure fairness for all applicants, and is vital to ensuring the County is able to identify when and where to make informed changes to the PTRA.

• The proposal does not include any criteria, terms, thresholds, standards, or identifying information that must be met as part of the discretionary permit process and this needs to be addressed and corrected.

Thank you for your consideration in implementing ordinances that are life preserving, fair, and in the interests of our immediate and long term future.

Sincerely,

Myra J. Mayesh

1234 Kodiak act
Santa Rosa CA 95405

From:	Jaime Neary
To:	BOS; Chris Coursey; Susan Gorin; David Rabbitt; James Gore; district4; Lynda Hopkins
Cc:	PermitSonoma-Wells-PublicInput; Nathan Quarles; Tennis Wick; Christina Rivera; Robert Pennington; Jennifer Klein
Subject:	Russian Riverkeeper"s Comments Re the Sonoma County Well Ordinance Amendment
Date:	Tuesday, April 4, 2023 12:30:49 AM
Attachments:	image001.png Russian Riverkeeper_Comment Letter_SoCo Well Ordinance & PTD (4.4.23).pdf

EXTERNAL

Good morning,

Please find attached Russian Riverkeeper's comment letter regarding the proposed amendment for the Sonoma County Well Ordinance as it relates to the Public Trust Doctrine. Please let us know if you have any questions.

Best,
Jaime

Jaime Neary || Staff Attorney
Russian Riverkeeper
707-723-7781

It's your River—we protect it!

RUSSIAN RIVERKEEPER

April 4, 2023

Chris Coursey, Chair
Sonoma County Board of Supervisors
575 Administration Drive, Room 102A
Santa Rosa, California 95405

Christina Rivera
Chief Administrative Officer
County of Sonoma

Jennifer Klein
Chief Deputy Counsel
Sonoma County

Tennis Wick
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2550 Ventura Avenue
Santa Rosa, CA 95403

Nathan Quarles
Deputy Director, Engineering and Construction
Permit Sonoma

Robert Pennington
Professional Geologist, Natural Resources
Permit Sonoma

Sent via e-mail to: Jennifer.Klein@sonoma-county.org; PermitSonoma-Wells-PublicInput@sonoma-county.org; Nathan.Quarles@sonoma-county.org; Tennis.Wick@sonoma-county.org; Christina.Rivera@sonoma-county.org; Robert.Pennington@sonoma-county.org; bos@sonoma-county.org; chris.coursey@sonoma-county.org; susan.gorin@sonoma-county.org; david.rabbitt@sonoma-county.org; james.gore@sonoma-county.org; District4@sonoma-county.org; lynda.hopkins@sonoma-county.org

RE: Comments on Proposed Amendment to Sonoma County Code Chapter 25B (the Well Ordinance) to Address Public Trust Doctrine

Chair Coursey and Sonoma County Board of Supervisors:

On behalf of Russian Riverkeeper (RRK), I welcome the opportunity to submit this letter regarding Sonoma County's proposed amendment to the County Groundwater Well Ordinance so as to fulfill the County's Public Trust Duties. Russian Riverkeeper is a local nonprofit that has been successfully protecting the Russian River watershed since 1993. Through public education, scientific research and expert advocacy, RRK has actively pursued conservation and protection for the River's mainstem, tributaries and watershed. Our mission is to inspire the community to protect their River home, and to provide them with the tools and guiding framework necessary to do so. For these reasons, we send the following letter.

As a precedential act within the State of California, Sonoma County now has the opportunity to set a strong example of how best to manage groundwater resources to protect our shared public trust resources from adverse impacts caused by unsustainable groundwater extraction. In addition to protecting the shared public trust resources that make Sonoma County a great place to live—including the fish, wildlife, and recreational opportunities provided by our rivers and streams—from the adverse impacts of groundwater extraction, an effective well ordinance update will help

ensure long-term water security for all County residents and help make rural residents more resilient to a changing climate and increased drought. Though this amendment is geared towards fulfillment of the County's Public Trust duties, there are a multitude of components that will provide much needed benefit to residential users as well.

It is well documented that groundwater resources throughout Sonoma County are oversubscribed, and that unsustainable groundwater extraction is not only threatening water security and human health of Sonoma County communities, but it is also negatively impacting the rich public trust resources valued by our diverse communities. Overuse of our shared groundwater resources leads to the depletion of surface flows and reduced cold water flows that would otherwise help make our rivers and creeks safe to recreate in and drink from, for locals and tourists alike, while also leading to the destruction of essential fish and riparian habitat that is essential to maintaining healthy fish and wildlife populations. These devastating losses have, and will continue to have, resounding impacts everywhere in our County including: the loss of tourism and our robust recreation economy, loss of our local salmon fishery, loss of habitats of cultural and historical importance, reduced groundwater quality, and more dry wells.

We appreciate and recognize the tremendous work and effort committed by County staff to develop a robust and effective ordinance meant to fulfill its trustee duties and address the problems identified above. We have been following the County-convened technical and policy working groups' efforts—via limited publicly accessible meetings—and appreciate the hard work and long hours members of these groups have contributed. We also appreciate the County's recognition of its public trust duty to protect salmon and other species in Sonoma County's creeks and rivers, as well as confirmation of its duty to mitigate water extractions that harm public trust resources (including rejection when necessary).

The County must take measures to strengthen groundwater pumping protections and not allow the unsustainable status quo to continue. The County's duty is to identify and evaluate adverse impacts of groundwater extraction on public trust resources, and to mitigate those impacts to the extent feasible. To fulfill its obligations, the County must base groundwater extraction permitting decisions on reliable scientific information and robust modeling regarding the impacts of a proposed well, both individually and cumulatively with all other existing groundwater extractions. In addition, the County must develop and implement a program that provides continuing oversight on both existing and proposed water wells to ensure that all users take necessary steps to mitigate the impacts of groundwater extraction on public trust resources.

This letter highlights our key issues and concerns regarding the County's proposed Amendment. We seek to ensure that the County's public trust resources are protected from the adverse impacts of unrestricted groundwater pumping in accordance with State common law and in furtherance of this County's long-term water security for *all* groundwater users.

I. Legal Background

A. The California Constitution

Art X, § 2

> "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare...." (emphasis added)

B. The Public Trust Doctrine

Rooted in common law, the Public Trust Doctrine recognizes the public's right to certain natural resources and protects the public's right to use and enjoyment of those resources in perpetuity. Because the PTD is based in common law, this means that the PTD is created, developed, and enforced by the judicial branch rather than the legislative, so the extent of the applicability of the PTD can only be determined by state court decisions. The PTD requires the sovereign, or state, to hold in trust designated resources for the benefit of the people. Traditionally, the public trust applied to commerce, fishing and navigability in the United States, but protections have since been expanded in California. In California, protections have been extended to the protection navigable surface waters, non-navigable tributaries of those waters, aquatic resources, birds and other wildlife, recreation, and the preservation of trust lands in their natural state for habitat, scientific study, and aesthetic purposes.[1] As a common law doctrine, the scope of the PTD and its definitions vary between states, and are wholly dependent on the evolution of case law in each respective state.

In 1884, the California Supreme Court held that the PTD applied to inland waters.[2] In 1971, the California Supreme Court noted that the state holds the power to possess and improve waterways that were commercially navigable when California joined the Union in 1850, whether or not title has since passed to a private party.[3] According to the court, the state may possess and improve these waters for the "preservation and advancement of public uses."[4]

In 1983, the California Supreme Court expanded the PTD to non-navigable streams.[5] This expansion stems from the Court's interpretation of the principles in *Gold Run Ditch* to apply to a situation where diversions from a non-navigable tributary impairs the trust values of a downstream river or lake. Specifically, the Court held that the PTD also applied to the extraction of waters that impair downstream trust values.[6]

The same Court held that the "State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible....and to preserve, so far as consistent with the public interest, the uses protected by the

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[1] *See* S.F. Baykeeper Inc. v. State Lands Com., 242 Cal.App.4th 202, 233 (2015).
[2] People v. Gold Run Ditch & Mining Company, 66 Cal. 138, 151–52 (1884).
[3] Marks v. Whitney, 6 Cal. 3d 251, 260–61 (1971).
[4] *Marks,* 6 Cal.3d at 261.
[5] National Audubon Society v. Superior Court, 33 Cal.3d 419 (1983).
[6] *Audubon,* 33 Cal.3d at 436.

trust."[7] This is a duty of continuing supervision meaning public trust resources must be continually considered in relation to protected resources, and where feasible, eliminate impacts to navigable waters.[8]

In 2018, a California appellate court held that the PTD also applies to extractions of groundwater that adversely impact a navigable waterway.[9] The court reasoned that the determinative fact was not the nature of the activity (discharge, diversion, or extraction) or the water involved in the activity (navigable, non-navigable or groundwater), but rather whether the activity results in impacts to a PTR.[10]

The same 2018 appellate court also held that the Sustainable Groundwater Management Act of 2014 ("SGMA") does not "occupy the field" or "replace or fulfill public trust duties."[11] In enacting SGMA, "the Legislature went out of its way to state that SGMA supplements and does not alter the common law. . . . [T]hey coexist and neither occupies the field to the exclusion of the other."[12]

i. Public Trust Resources

In 1971, the California Supreme Court expanded the scope of the public trust beyond navigation, commerce, and fisheries to include environmental and aesthetic purposes.[13] The Court held that public uses of areas are flexible enough to encompass changing public needs, and therefore, the State isn't to be limited to past determinations on what is an appropriate public use.[14] Thus, the Court stated that because of the public's recognition in the importance of preserving public trust areas in their natural state "so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area. It is not necessary to [] define precisely all the public uses which encumber [public trust waters]."[15]

With respect to waterways that meet California's public right of navigation definition for navigability, the public may use those waters for a wide variety of recreational activities such as boating, fishing, hunting, swimming, bathing, standing, wading along the waterfront, anchoring, picnicking, bird watching, and nature study.

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[7] *Audubon,* 33 Cal.3d at 446–47.
[8] *See* Environmental Protection Information Ctr. v. Cal. Dept. of Forestry & Fire Protection, 44 Cal.4th 459, 515 (2008).
[9] Environmental Law Foundation (ELF) v. State Water Resources Control Board, 26 Cal.App.5th 844 (2018).
[10] *ELF*, 26 Cal.App.5th at 858–59.
[11] *ELF*, 26 Cal.App.5th at 867.
[12] *ELF*, 26 Cal.App.5th at 854.
[13] *Marks,* 6 Cal.3d at 260.
[14] *Marks,* 6 Cal.3d at 259.
[15] *Marks,* 6 Cal.3d at 259–60.

ii. Navigable Waters

Under California law, the public has a general legal right to access and enjoy California's navigable waterways at any point below the high-water mark.[16] While there are several navigability tests under state and federal laws, a waterway is "navigable" for purposes of the California public right of navigation if it is "capable of being navigated by oar or motor-propelled small cr[]aft."[17] Tidelands, whether or not they can support small craft, and submerged lands, collectively sometimes referred to as sovereign or public trust lands, are also considered navigable.[18] Generally, the public has a legal right to access and use such waters for commerce, navigation, fishing, recreation, and other court identified uses in the public interest.[19]

California's "public right of navigation" applies to waterways where the underlying land is currently or was formerly state-owned, and also to waterways where the underlying land is privately owned and has never been state owned.[20] By using criteria less restrictive than those applied under the federal tests, the California definition of navigability embraces a broader scope of waterways, including smaller lakes and streams as well as artificially created waterways.[21] Under the California definition, a waterway is navigable if it is "capable of being navigated by oar or motor-propelled small craft.[22] "[M]embers of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark on waters of this state which are capable of being navigated by oar or motor-propelled small craft."[23]

Under the *California public right of navigation* definition, navigability is a context-specific question of fact.[24] The duration of navigability *in fact* required to make a waterway navigable *in law* is not definitive.[25] Waters do not have to be navigable year-round to be navigable for public

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[16] People ex rel. Baker v. Mack, 19 Cal.App.3d 1040, 1050 (1971).
[17] *Mack*, 19 Cal.App.3d at 1050.
[18] People ex inf. Webb v. Cal. Fish Co., 166 Cal. *576,* 596 (1913); *see also Marks*, 6 Cal.3d at 259; Phillips Petroleum v. Mississippi, 484 U.S.469 (1988); CAL. PUB. RES. CODE § 6301.
[19] *Marks*, 6 Cal.3d at 259; *see also Mack*, 19 Cal.App.3d at 1050.
[20] *See* Bohn v. Albertson, 107 Cal. App. 2d 738 (1951); *Mack*, 19 Cal. App. 3d at 1050 (the question of title to the riverbed is not relevant); *see also* Hitchings v. Del Rio Woods Rec. & Park Dist., 55 Cal.App.3d 560, 571 (1976) ("The ownership of the bed is not determinative of public navigational rights, nor vice-versa."); Forestier v. Johnson, 164 Cal. 24, 34 (1912) ("Whenever a navigable channel or navigable water may extend over any tideland granted by the state under these statutes the public right of navigation therein is not destroyed, the purchaser takes subject thereto, and he has no right to enjoin or prevent any citizen from exercising the public rights incident thereto.").
[21] *See* Richard M. Frank, *Forever Free: Navigability, Inland Waterways, and the Expanding Public Interest*, 16 UC DAVIS L. REV. 579, 589–90 (1983).
[22] *Mack*, 19 Cal.App.3d at 1050.
[23] *Mack*, 19 Cal.App.3d at 1050.
[24] *Hitchings*, 55 Cal.App.3d at 565 ("Navigability is essentially a question of fact, and must in each case be determined on the factual circumstances of the particular waterway.").
[25] *Hitchings*, 55 Cal.App.3d at 570 ("The duration of navigability in fact required to make a stream navigable in law cannot be stated with precision; the characteristics of the stream and circumstances of its suitability for public use will vary from case to case, and remain a factual question..."); *see also* 68 Ops.Cal.Atty.Gen. 268 (1985).

use or access purposes.[26] For instance, in *Hitchings v. Del Rio Woods Recreation & Park District*, a stretch of the Russian River that was navigable in fact for nine months of the year was deemed navigable in law.[27] The court's rationale was to uphold any period sufficient to make the river "suitable, useful, and valuable as a public recreational highway."[28] The duration of navigability required to make a waterway suitable, useful, and valuable as a public recreational highway depends on the unique circumstances of each case.[29]

However, the legislature need not designate a waterway as navigable for the waterway to be legally "navigable" under the *federal test for state title*, *federal regulatory authority* test, or *California public right of navigation* test.[30] The test for public recreational navigability in California is not whether a waterway is *designated* as navigable but whether the waterway is *navigable in fact* by small craft.[31]

iii. Responsible Parties

"A county is a legal subdivision of the state and references to the 'state' may include counties. ... Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and 'may not approve of destructive activities without giving due regard to the preservation of those resources.'"[32]

The public trust doctrine in California derives from the state's role as trustee over tidelands, submerged land and land underlying inland navigable waters, which the state and its grantees (including cities) hold for public trust purposes.[33]

A county "shares responsibility for administering the public trust and may not approve of destructive activities without giving due regard to the preservation of these resources."[34] A county bears "a public trust duty to consider the impacts of new wells . . . when it issues permits for construction of the wells."[35] If a county finds that "issuance of well permits will result in

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[26] *Hitchings,* 55 Cal.App.3d at 571; *see also* Bess v. Cnty. of Humboldt, 3 Cal.App.4th 1544, 1549 n2 (1992) (explaining that the fact that river is only navigable during certain seasons does not make it non-navigable); Bohn v. Albertson, 107 Cal.App.2d 738, 749 (1951) (noting floodwaters can be legally navigable); *see also* Chowchilla Farms v. Martin, 219 Cal. 1, 36–38 (1933); Miller & Lux v. Madera Canal and Irrigation Co., 155 Cal. 59, 76 (1909); Mammoth Gold Dredging Co. v. Forbes, 39 Cal.App.2d 739, 752 (1940).
[27] *Hitchings*, 55 Cal.App.3d at 570–71.
[28] *Hitchings*, 55 Cal.App.3d at 570–71.
[29] *Hitchings*, 55 Cal.App.3d at 570.
[30] *See Mack*, at 1048–49; *see also* Newcomb v. City of Newport Beach, 7 Cal.2d 393, 399 (1936) (finding Newport Bay was a navigable waterway even though it was not so designated in the code); *Gold Run Ditch*, 66 Cal. at 151 (holding state legislature may not divest the people of their rights in the state's navigable waters); 68 Ops.Cal.Atty.Gen. 268 (1985) ("In Harbors and Navigation Code sections 101–106, the Legislature has designated certain waterways as being navigable . . . [this] does not, however, preclude other waters from being found to be navigable in law or in fact.").
[31] *Mack,* 19 Cal.App.3d at 1048–49.
[32] *ELF,* 26 Cal.App.5th at 867–68. *See also* Cal. Const. art. XI, § 1, subd. (a).
[33] People v. California Fish Co., 166 Cal. 576, 584 (1913).
[34] *ELF*, 26 Cal.App.5th at 868.
[35] *ELF*, 26 Cal.App.5th at 854.

extraction of groundwater adversely affecting the public's right," the county has a duty to "protect public trust uses when feasible."[36]

Fulfillment of a responsible party's duties "should not be taken in some fragmentary and publicly invisible way,"[37] even though there is not set procedural matrix for agency compliance. Nor, can the importance of the public trust be diluted by treating it like any other Article X beneficial use.[38] Rather, "[t]he obligations a government may have as . . . trustee are more complex and demanding than its general obligation to act for the public benefit."[39]

C. California Environmental Quality Act

The California Environmental Quality Act ("CEQA") plays a critical role in ensuring local agencies do their part in protecting the environment and preventing environmental degradation. CEQA discloses projects' environmental impacts to decision makers; identifies ways to reduce or avoid environmental impacts; and requires feasible alternatives or mitigation measures. This process informs the public of the agency's reasons for approving projects with significant environmental impacts, fosters interagency coordination regarding project review, and enhances public participation in the planning process. At the heart of the CEQA process is the Environmental Impact Report (EIR). If an activity qualifies as a project under CEQA, an EIR must be done unless an exemption applies. Even when a particular exemption applies, there are exceptions to the exemptions that require an EIR regardless of exemption status.

Here, the County's adoption of the Proposed Amendments is not exempt from CEQA, for the following reasons, *among others*:

1. The CEQA Exemptions relied on do not apply if "the cumulative impact of successive projects of the same type in the same place, over time is significant." There is no dispute that extraction of groundwater in Sonoma County, as authorized by the well ordinance, has had and will continue to have significant cumulative impacts.
2. The specific CEQA Exemptions for actions by regulatory agencies to protect natural resources or the environment (Exemptions 7 and 8) do not apply here, where the County expressly admits that its act is not based solely on protecting the environment but is instead based, at least in part, on "ensuring adequate water supply for existing and domestic uses."

While commendable in its intent to protect public trust resources, the County's actions here are not exempt from CEQA.

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[36] *ELF*, 26 Cal.App.5th at 853–54.
[37] *Baykeeper*, 242 Cal.App.4th at 234.
[38] Environmental Defense Fund v. East Bay Municipal Utility Dist., Cal. Super. Ct., No. 425955 (1973).
[39] Zack's, Inc. v. City of Sausalito, 165 Cal.App.4th 1163, 1176 (2008).

II. Key Issues and Recommendations

With the above understanding, our key issues, concerns, and recommendations are highlighted here:

1. **The cumulative impacts of groundwater pumping on public trust resources have not been adequately considered or addressed in this proposed ordinance. A robust process to identify and mitigate the cumulative impacts, of both existing and new wells, to public trust resources is necessary.**

It is widely known that the cumulative impacts of groundwater extraction are already negatively impacting our public trust resources and residents of Sonoma County. These impacts were most recently put in the spotlight during the 2020–2022 dry period when our region was faced with unprecedented well failures, while simultaneously having to respond to historic reductions in available surface waters.

As curtailments were implemented, individuals turned to groundwater resources to supplement the loss of their surface waters; and in the absence of County regulation, most took enough to fully supplement those losses instead of reducing use. This further compounded negative impacts on our public trust resources and those without the means to dig deeper and bigger wells. What had once been a reliable backup to low precipitation years, was no longer an option for numerous property owners throughout the County.

It is important to note that these impacts have been steadily getting worse over the last few decades—the impacts are just becoming more frequent, more obvious, and are now occurring at a larger scale that can no longer be avoided. As the County continues to permit groundwater wells with no caps on use, fails to gather information necessary to make informed decisions on mitigating and preventing adverse impacts, and little to no intent to fully analyze individual or cumulative well impacts, these adverse impacts will continue to harm the many for benefit of the few.

With climate change leading to more extreme periods of weather, the County's decision to ignore cumulative impacts is only to the long-term detriment of the County—its public trust resources, its residents, and its local economy.

Recommendation:

- The County must require metering and quarterly reporting by all groundwater well types (i.e. low-water use, replacement, and new) and uses (i.e. residential, agriculture, commercial, industrial, and municipal). There can be zero exceptions.
- The County must place scientifically based use limits on all ministerial permit pathways to ensure cumulative impacts are mitigated to extent feasible.

- The County must commit to expand groundwater level monitoring both inside and outside of the proposed PTRA. Failure to observe changes outside of the PTRA will hinder any necessary adaptive management measures until it is too late.

2. **Defining "low-water use" wells at 2 acre-feet per year (afy) is not protective of public trust resources or residential well users. Nor is the failure to assign a use cap for replacement of "existing use" wells seeking ministerial eligibility.**

The County has provided no factual basis to support its conclusion that a "low water use" well, as currently proposed, will satisfy its public trust duties. In fact, the exemption set out at 25B-4(e)(6) would allow the County to approve a significant number of low volume wells via the ministerial pathway without considering whether those wells will cause or exacerbate an adverse impact to public trust resources, or whether such an impact is mitigated to the extent feasible. This decision to set a low water use well at 2 afy was arbitrary, not related to protection of public trust resources, and equates to a significant amount of water per parcel.

Instead, the County determined that 2afy was a sufficient low water use via its reliance on an administrative SGMA fee study that identified 2afy as a "de minimis" use for purposes of setting fees and metering requirements. However, at no point did this decision involve consideration for impacts of 2afy to our public trust resources. Further, the Public Trust Doctrine is a distinctly separate legal construct, and the County has provided no technical support as to how 2afy is protective of public trust resources. Therefore, using 2afy as the basis for establishing a "low water use" ministerial well permitting category is inappropriate. Ministerial permits are meant to provide a streamlined process that is based on objective criteria, which means that it is especially important that the proper analysis is completed now, before the pathway itself is established.

During the Working Group meetings, County staff described this "low water use" category as applicable to "small rural residences" with the idea that it is important to not overly burden those users that rely on groundwater for basic human health and safety needs—an important consideration to make. However, 2afy of water equates to roughly 1,785 gallons per day or about 450 gallons per capita per day for a household family of four. For comparison, State Water Code Section 10609.4 and recent reports by the State Legislation and Department of Water Resources, all recommend "the standard for indoor residential water use [] be 55 gallons per capita daily" or lower. Under the proposed 2afy, this would be enough water to meet the needs of 32 individuals, or more likely, provide a significant amount of outdoor irrigation without any public trust analysis. 2afy is not a low water use, and cumulatively, is likely to continue to cause further harm to surface flows public trust resources are reliant on by lowering groundwater levels, threatening existing well production, and limiting the ability for potential future groundwater development.

In contrast, defining low water use as 0.5afy would be far more consistent with the State's identified needs for residential uses. Equating to approximately 110 gallons per

capita per day for each member of a household family of four, 0.5afy would still allow for about 200 GPD of water for outdoor uses.

To otherwise define low-water use as 2afy, in effect, allows the status quo to continue (i.e. significant groundwater development ministerially permitted without adequate analysis and monitoring), and does not address existing, cumulative overdraft issues. This is unreasonable and is not in furtherance of the County's trustee duties. In short, a 2afy threshold does not represent "low-water use," will not encourage groundwater conservation or discourage waste, and is unlikely to adequately address future impacts to public trust resources and already existing wells.

Given the uncertainty regarding how even small amounts of groundwater extraction might impact our public trust resources, the County should use the more protective and conservative 0.5afy per year to define "wells for low water use," and as a threshold for a ministerial permitting pathway.

For reasons similar to those identified above for "low water use" wells, the proposed ministerial pathway for "wells for existing uses" must have a cap placed on use for eligibility. There must be measurable and demonstrative conditions imposed as part of any ministerial permitting process in order to ensure the status quo is not maintained, and adverse impacts to public trust resources are mitigated to extent feasible. This is particularly important when an estimated 90+% of all permits will be going through the ministerial process and not discretionary review. Without basing ministerial pathways on available information and doing the necessary public trust analysis, the County is excusing the past pumping behaviors that got us to where we are today. This has proven unsustainable and harmful to our public trust resources, and effective changes must be made now.

Recommendation:

- We recommend use of 0.5afy for "low-water use" residential wells in conjunction with metering and reporting requirements, as well as quantifiable conservation measures.
- The "Wells for Existing Use" ministerial pathway should be limited to replacement wells that support a legally established existing use,[40] not including commercial agricultural operations, and up to 2afy in use. This helps ensure larger uses over 2afy—even if existing—undergo discretionary review to meaningfully address contributions to cumulative impacts.

3. **Failing to require metering and reporting for all groundwater wells in Sonoma County, and especially all groundwater wells within the PTRA, is the County choosing to ignore advice of the Working Groups, State and Federal Resource Agencies, stakeholder interests, and the County's own acknowledged need to take informed action to protect our public trust resources and ensure County residents**

[40] For legally established land uses that existed as of October 4, 2022, as proposed by the County.

are not continually at risk of their wells going dry without recourse or significant notice. There can be no exceptions.

The County must not provide any exceptions to groundwater well applicants, of any kind, when it comes to requiring regular use metering and quarterly reporting. Throughout this process there has been considerable mention of all the existing data gaps and how decisions should not be made without that information. Yet, the County is choosing to not close those gaps. It cannot be both ways.

Failure to require metering and quarterly reporting of *all* groundwater well types and uses means the Public Trust resources cannot be fully protected, the County cannot fulfill its affirmative Public Trust Duties, and the long-term water sustainability of our region will continue on its downward trend. In effect, the County is saying that the existing data gaps and inability to effectively manage groundwaters for the protection of public trust resources is acceptable.

Metering and quarterly reporting (at minimum and if not real-time) must be a basic requirement for all well types. These requirements are necessary to ensure timely enforcement can occur, data gaps are closed, models can be updated with the most accurate information, cumulative impacts can be addressed, and adaptive management can occur. This information is particularly important to ensuring compliance with any restrictions on groundwater pumping (i.e. "low-water users) and to comprehensively address cumulative impacts that are ongoing and worsening each year.

Analyzing whether streamflow depletion impacts may result from a proposed well requires significant data, including an understanding of current groundwater use within the watershed where the proposed well is located. Future streamflow depletion analysis will likely rely on groundwater/surface water models, and models are only as good as the data used to populate them. Excluding required metering for residential wells using up to an average of 1,876 gallons per day will likely result in a large volume of future groundwater extraction that will be untracked and remain unverified, increasing uncertainty in the County's impact analysis. This will compromise the County's ability to protect current well owners, public trust resources, and ESA-listed species.

There are numerous grant opportunities available to help improve broadband access throughout the County, as well as to help pay for any metering and reporting requirements. Funding should not be a reason to omit these requirements.

Urban water users are already subject to these basic requirements and have been for decades. Groundwater well users should not be treated any differently, especially when it is a collective resource that belongs to all of us.

In fact, similar metering and reporting requirements are already being required of consumer water companies which rely heavily on groundwater wells. These requirements have not proven burdensome or financially crippling, with many such consumer water

companies running on budgets less than $20,000 and still able to comply with metering, monitoring, and quarterly reporting requirements.

It is in the best interest of every single residential groundwater user that *all* groundwater wells be metered so that the County is able to take protective actions that ensure residential wells are not going dry due to the over extraction of their neighbors. It is in the common good for all of us to better understand how our shared resources are used so that we can protect our shared resources effectively now and, in the future. Groundwater management has historically been wrought with inequities and it is time this is rectified for the sake of our residential users, our small family farms and homesteads, and our public trust resources. The County has the authority to require metering and quarterly reporting of all groundwater well types and uses. The County must use that authority now.

Recommendation:

- Section 25B-12: The County must require real-time and/or quarterly reporting by all groundwater well types and uses.
- The County must use this data to conduct timely enforcement for the protection of all groundwater well types and uses, as well as our public trust resources.
- The County must use this data to update models in a timely manner to inform adaptive management needs.
- The County must make all reasonable use data publicly available to ensure adequate oversight and subsequent enforcement in the face of limited staffing and funding.
- The County must apply for grants and create a fund for assisting low-income and disadvantaged communities fulfill these ordinance requirements. This includes the necessary expansion of broadband access to facilitate real-time reporting.
- Metering for all new and replacement wells in the County helps ensure fairness for all applicants, and is vital to ensuring the County is able to identify when and where adaptive changes to the PTRA are necessary.

4. **The proposed "Public Trust Review Area" (PTRA) is not inclusive or fully representative of public trust resources within Sonoma County. As such, important public trust resources within Sonoma County are not receiving necessary protection.**

Identification and use of buffers to protect public trust resources from groundwater pumping must be based in clear scientific analysis. This analysis must consider temporal changes in water demands, seasonal variations, local geography, surface water changes, and cumulative impacts. The current proposal appears to be standardized and is not reflective of site-specific conditions.

> *Stream buffer distances were discussed extensively during Working Group meetings (and are mentioned in both the Summary Report and the Sonoma County*

Well Ordinance Public Trust Review Area Delineation document). However, they are not specifically mentioned or described in the proposed ordinance itself.

According to the Summary Report, "The proposed Public Trust Review Area covers approximately 313-square miles (18% of the county) with "stream buffer areas" accounting for approximately 94 square miles. Areas within "stream buffers" include the Gualala River and tributaries, and the Austin, Freezeout, Jenner Gulch, Sheephouse, Pena, Gill, Crocker, Sausal, Bidwell, Porter, Willow, Adobe, and portions of the Salmon Creek and Maacama Creek watersheds. The Summary Report for the proposed ordinance also states, "In Medium risk areas, the Public Trust Review Area consists of stream buffers of 100, 250 or 750 feet designed to be protective of acute streamflow depletion impacts from near stream wells." The ordinance does not address where and how these different buffer distances will be applied. Furthermore, the Sonoma County Well Ordinance Public Trust Review Area Delineation technical support document does not clearly describe the analysis used to establish these buffer determinations and does not provide a meaningful technical justification for how these distances will be protective of public trust resources.

Recommendation: The proposed ordinance should provide the criteria for implementing specific buffer distances in order to clearly define where the buffer zones will apply and what the distance will be. Additionally, the technical support documentation should be updated to include a discussion on the analysis used to determine how and why these distances will be protective of public trust resources.

Failure of Sonoma County to Consider Historical Overdrafting of Waterways Within the PTRA& PTRA Omissions

The County has determined that they will conduct any required public trust analysis only within the Public Trust Review Area (PTRA). For this reason, it is extremely important that the scope of the PTRA be robust and all-inclusive so that public trust resources are not omitted from important protections. It is also important that adaptive management and monitoring procedures, as mentioned throughout this letter, be drafted to ensure that the PTRA is a living document and continually be updated with new information to protect our public trust resources.

First, the County has seemingly decided that the mainstem Russian River and Dry Creek are not worthy of public trust analysis, and thus have omitted them from the PTRA. This seems to have stemmed from the fact that flows in these two areas are regulated via dam release. However, both areas are not only navigable-in-fact, but they also serve as important conduits to Coho and Steelhead habitat areas. Further, both areas are teeming with groundwater wells and are not immune to the impacts of unregulated groundwater pumping. By failing to include these two areas in the PTRA, the County is essentially saying that it is okay for groundwater pumping to continue as is, despite known interconnectedness and adverse impacts, because any resulting reduction in surface flows will just be made up by additional dam releases. Choosing to omit the mainstem also means that groundwater pumpers in this area are not subject to important conservation,

metering, monitoring, and reporting requirements. Public Trust resources are being directly harmed by these surface water losses as dam managers are frequently forced to be reactive to instream deficiencies. Plus, by forcing additional dam releases to occur to make-up for losses caused by groundwater pumping, there is less, quality water available to be released later in the season. Therefore, the entire system is losing as a result. As such, the County must add these areas to the PTRA.

Secondly, it is understood that using Coho and Steelhead habitat as a proxy for identifying the location of Public Trust Resources, and subsequent mapping of the PTRA, was the easiest route considering the extremely short timeline staff were expected to work within for such a complex issue. That said, this has resulted in certain areas not receiving any Public Trust review and being omitted from the PTRA, even though the Public Trust Doctrine does not distinguish between types of resources (i.e. there are no low, medium, or high quality) like the County has chosen to do so. Going forward and as part of the adaptive management process, it is recommended that the County take a closer look at individual public trust resources and their locations throughout the County and amend the ordinance as necessary. As such, it is extremely important that adaptive management processes identify this specific need so that it is properly addressed.

The County's use of a ten-year summer average to inform the streamflow depletion component of the PTRA mapping fails to consider historical streamflow levels. As a result, the County is ignoring the fact that many of the streams throughout Sonoma County are currently overdrafted, and have been that way for several years now; especially in the summer months (July to September), like the County is now using to determine estimate streamflow depletion levels. We are concerned that use of this three-month average may underestimate the degree of streamflow depletion, since depletion impacts are likely greatest when the highest depletion rate coincides with the lowest discharge of the season.

In the face of climate change, with extreme variations in precipitation (e.g., temporal change in demand needs to make-up for loss of spring precipitation, etc) and demand needs (e.g., curtailment of surface water use leading to increased groundwater pumping, etc), this decision fails to capture the likely chance of adverse impacts caused by groundwater pumping outside of July to September to our public trust resources. As a result, the County's methodology is heavily skewed against ensuring protect streamflows from groundwater pumping. Instead of protecting public trust resources, the County is excusing past behaviors and maintaining the status quo in these areas to the continued detriment of our public trust resources.

As such, the County must continue to evolve the scope of the PTRA so that it is protective of all public trust areas. Identified omissions, such as those noted here, must be addressed in future technical workgroups and incorporated into the well ordinance itself. To account for climate induced changes to groundwater pumping needs, the County should be looking at historical averages for each season and identifying acceptable streamflow depletion levels for each. Groundwater pumping impacts are not limited to July through September only.

Recommendation:

- The County should expand the PTRA to include the mainstem Russian River and Dry Creek, as they are both navigable waters and subject to the Public Trust Doctrine.
- To account for climate induced changes to groundwater pumping needs, the County should be looking at historical averages for each season and identifying acceptable streamflow depletion levels for each. Groundwater pumping impacts are not limited to July through September only.
- The County must do the analysis demonstrating how the use of buffers will protect public trust resources to extent feasible. This analysis must include consideration of: temporal changes in water demands, seasonal variations, local geography (e.g., number of days it takes for an adverse impact to be felt beyond the buffer), surface water changes (e.g., drought and curtailments), and cumulative impacts.
- GSAs appear to have been omitted from the PTRA without clear justification, and should be added back in.
- By choosing to split Public Trust Resources into high, medium, and low categories, the County is arbitrarily saying some public trust resources are more valuable than others and that only some are deserving of protection. This is not how the Public Trust Doctrine applies, and all resources should be treated the same.
- Steelhead habitat should be treated equal to Coho habitat.
- We recommend the County require groundwater level monitoring on all wells in the PTRA that supply water for any commercial, industrial, institutional, or non-subsistence agricultural purpose. In conjunction with this, we recommend the establishment of a County funded and managed network of monitoring wells to provide feedback necessary to timely identify and address acute and long-term overdrafts impacting streamflow.

5. **The effectiveness of Level 1 & Level 2 conservation requirements toward minimizing or mitigating the negative impacts of groundwater pumping is currently unknown because the County has not shown to what level they will reduce or prevent adverse impacts or provide benefit to public trust resources. This deficiency extends to other measures (e.g., "Net Zero Increase") the County has arbitrarily deemed are sufficient to access a ministerial permitting pathway.**

   Groundwater extraction throughout Sonoma County is currently unsustainable and has been for multiple years. Today, most managers recognize that use reductions are key to reversing these impacts and achieving long-term sustainability; however, many remain hesitant to take effective measures necessary to actually achieve these reduction needs. The County must overcome this hesitancy if it wants to protect our public trust resources and ensure the long-term sustainability of our shared groundwaters for *all* County residents.

The Policy and Technical Working Group members all agreed that proposed Level 1 and Level 2 water conservation requirements need to be implemented as a base requirement for groundwater pumping. However, there was no agreement that these measures would be sufficient to fulfill Public Trust needs, on their own or in conjunction with other measures, as there was no quantification or assessment of how effective or to what degree implementing these measures would avoid adverse public trust impacts associated with new or replacement wells. Similarly, there was no quantification or assessment of the currently proposed "Net Zero Increase" approach pathway to a ministerial permit.

As currently proposed, conservation measures are being proffered as the solution to addressing known and future adverse impacts of over extraction of groundwaters within Sonoma County. However, there is no showing by the County that Level 1 & 2 conservation measures will present quantifiable reductions necessary to mitigate and protect against adverse impacts to extent feasible. Instead, the County has decided that it is sufficient that some unknown amount of reduction may occur via some unverifiable conservation measures, by some unknown number of wells and in unknown locations, with unknown impact to ongoing and future adverse impacts. As drafted, it is unrealistic to think this is an acceptable method of protecting our public trust resources.

We are not against conservation measures or the importance of requiring basic conservation measures of all groundwater users. These are important requirements to include, but for the County to say these unquantified measures, as proposed, will address the adverse impacts to extent feasible and are appropriate for a ministerial pathway is incongruous with the Public Trust Doctrine. Nor will this decision help ensure long-term sustainability for County residents that are unable to participate in the "race-to-the-bottom" as groundwater extractions continue to increase. Doing the quantification for any proposed mitigation measures is critically important given the County's proposal to use these and other unquantified measures to achieve a ministerial permit.

Because standardizing conservation measures across a variety of properties can prove difficult and will present a wide-range of mitigation, we would strongly suggest the County use a pre-established threshold to determine ministerial compliance. To mitigate adverse impacts to extent feasible, groundwater needs to be used more conservatively and the amount of reduction necessary to protect public trust resources must be quantified, following an analysis of all available information. Any required and/or discretionary choice in conservation measures must be measurable, demonstrative, and verifiable to ensure that groundwater pumping does not continue at the same rate or higher.

It is important that the County also ensure actions are taken to verify any conservation requirements otherwise any requirements are likely to have even less impact than expected. This was clearly seen over the last couple of years when state and local governments requested users reduce use by 15%, but without any verification or deterrent, use actually increased in some areas and efforts were never fully achieved.

Requiring a pre-established threshold based on all available information would also help ensure that all applicants are incentivized to implement conservation measures that work

for them. This is important because it would help address the need for all applicants to reduce use, while moving the onus away from those that may not have taken certain enumerated measures due to financial circumstances.

Further, many of the proposed conservation measures (e.g., low flow toilets/showerheads, faucet aerators, etc.) are already built into CA Building Code and have been a best practice for at least a decade now, with many with the means choosing to voluntarily implement them already. Any reduction in use is important, but it is unlikely the proposed measures will be significant enough to protect public trust resources or mitigate adverse impacts of groundwater pumping to extent feasible.

For similar reasons, "Net Zero Impact" should not provide a direct path to a ministerial permit as currently drafted because it is not based in empirical data with identified benefits to address adverse impacts; and significant levels of discretion are involved. Instead, a net zero showing must be viewed in compilation with multiple other on-site factors (e.g., amount of use, local geology, proximity to waterway, depth of well, methods implemented, etc.), which requires discretionary review. This is particularly true for any uses over 0.5 acre-feet. As such, in practice and as currently drafted, this would be another method of allowing existing use to continue without actual mitigation or limit.

Lastly, it is important to note the proposed vineyard irrigation limit of 0.6 afy per acre for new vineyards or existing use amount is seemingly high in comparison to actual water use on an efficient vineyard property. Rather, and as noted by well drillers on the Working Group, efficient vineyards are using approximately 1/4 to 1/3 afy per acre. Thus, allowing 0.6 afy per acre would seemingly encourage waste and less efficient water use by vineyards, and should be lower. If 0.6afy is more applicable to orchards, then the County should create different thresholds for each to help ensure that water use is increasingly efficient.

Therefore, it is difficult to support the inclusion of these requirements as a method to minimize impacts to the public trust for a ministerial permit that can extract up to 2 afy of groundwater.

Recommendation:

- As part of an adaptive management process, the County should commit to collecting additional data to evaluate and quantify the benefits of Level 1 and Level 2 Conservation Requirements and the "Zero Net Increase" approach to evaluate their suitability for offsetting potential adverse impacts. These measures should not solely qualify applicants for a ministerial permit until the potential cumulative impacts to public trust of up to 2 afy of groundwater extraction per well can be better understood.
- The County should require any imposed and/or discretionary conservation measures be measurable, demonstrative, and verifiable to ensure that groundwater pumping does not continue at the same rate or higher.

- The County should do the analysis necessary to quantify the amount of impact their required conservation measures will have on public trust resources. Namely, the extent to which required measures will be protective of public trust resources and mitigate any possible adverse impacts.
- To protect public trust resources, the County must require offsets and other mitigation measures, based on quantifiable and verifiable information, to restore flows that are necessary to avoid and minimize harm to public trust resources and uses in navigable and non-navigable waters.
- The County should require any imposed and/or discretionary conservation measures be measurable, demonstrative, and verifiable to ensure that a scientifically determined reduction that is protective of public trust resources is achieved.
- The County should require that applicants affirm any conservation measures will be *new* to a parcel prior to ministerial approval in order to ensure a reduction in use will occur, and the status quo is not allowed to persist.
- To create an easily identifiable baseline for all ministerial permits and ensure that requirements are equal for all applicants, we recommend use of a pre-established threshold to determine ministerial compliance, similar to that which the State has identified for urban water users.
    - We recommend a limit of 55 GPD in accordance with State Legislature Health and Human Safety determinations for indoor use, plus another 40 GPD for any irrigation needs.
- We recommend that a similar quantifiable reduction be required of discretionary permit applicants as well.
- It is recommended that the "Net Zero Increase" ministerial pathway be removed until further scoping and identification of specific criteria and outcomes are completed. Identified methods of achieving this exception have not undergone a separate public trust analysis or other quantification, as such there is no objective basis for the County to rely on in satisfying its Public Trust duties.

6. **A "replacement well" must be further limited to ensure that existing wells are not perpetually excluded from any public trust analysis, and existing and ongoing adverse impacts are not allowed to continue indefinitely.**

   A "replacement well" and subsequent application of the ministerial process, should be limited to those wells that are truly a replacement due to structural failures and very limited alternate situations with caps on use. Failure to do so ensures that existing wells will continue to be excluded from any public trust analysis, and existing and ongoing adverse impacts will be allowed to continue indefinitely.

   It is important that the County take a precautionary approach to permitting replacement wells to ensure that known harms, caused by existing wells, to public trust resources and residential wells are addressed. It is widely known that streams and the species that rely on riparian habitat are being negatively impacted by groundwater pumping, and have been for some time. By permitting a ministerial "replacement" well exception for

"existing uses," with no real limit or condition, the County is allowing known issues to continue indefinitely. Use limits and other reasonable measures addressed in this letter are necessary for all replacement wells to ensure the status quo does not persist.

Until more information is known about cumulative impacts and what is necessary to balance the groundwater budget, the County should further restrict replacement wells to wells that are of the same: depth, pump rate, type of use, and location. Any change in these parameters must require the well fall within another ministerial exception or be subjected to the full discretionary process.

Recommendation:

- The County must impose a cap on use (e.g., 2afy) for any legally established existing uses, not including commercial agriculture, in place before October 4, 2022.
- The County must condition conservation requirements for all replacement wells.
- The County must require mandatory metering and reporting for all replacement wells in order to qualify for any ministerial processes.
- The same limitations must be placed on so-called "additional wells" as well, otherwise it is in fact a new well.
- If a replacement well does not comport with any of these recommendations, then it must go through the discretionary permitting process for site specific impacts to be addressed.

7. **The County must plan for and adopt clear enforcement language to ensure that necessary mitigations required under this ordinance are actually in place, public trust resources are protected to extent feasible, and residential well users have recourse for unrestricted groundwater pumping that negatively impacts their own existing uses.**

The County does not seem to have taken steps to improve upon and thus, adequately address the importance of enforcement within this well ordinance. This is a significant omission as no ordinance is effective without actual, deterrent-based enforcement. Clear enforcement language is necessary to assist County Staff on what their roles are, but also to ensure that public trust resources are being protected from unlawful groundwater pumping. Currently, County Staff have determined that neighbor-on-neighbor reporting and the use of map-based estimates are sufficient to determine well compliance. This method has already been shown wholly inadequate to bring enforcement action or ensure that one groundwater well user is not harming another without recourse, let alone our sensitive public trust resources. Residential well users have been making complaints about cumulative impacts and high use wells negatively impacting their own use, but there has been no recourse to assist these users, nor does there appear to be one. That is simply unacceptable.

Effective enforcement means that permit conditions must be verified by County Staff. We recognize there is likely not enough available staff to do site-visit verifications for all

wells. However, there should be an established randomized process that requires Staff visit at least 10 groundwater wells each quarter to verify permit compliance and ensure no changes of use. This randomized process must be inclusive of all well types, all well uses, and all well ages. If non-compliance is found, then Staff must take enforcement action.

It is also important that any well applicants that claim they are State Water Board regulated, because they are pumping surface waters, be required to sign a certification to that effect under perjury of law. These certifications must then be shared with the applicable State Water Board department. It has been observed that during drought years some well owners will inform the State Water Board that they are now pumping groundwater, not surface water to avoid curtailment action when in actuality, it is still surface waters being pumped because pump location did not change. Improved communication between agencies and implementation of property owner certifications will help prevent this abuse from happening, and will ensure that unlawful pumping is not occurring to detriment of our public trust resources.

To ensure the effectiveness of this well ordinance and public trust resources are being protected, the County must ensure strong enforceable measures are in place and that Staff has the authority to act.

Recommendation:

- The County must include language ensuring enforcement actions are timely, actionable, and publicly available. Enforcement actions must also be sufficient to act as a deterrent against possible violation.
- Section 25B-4(d)(5): We believe that requiring an appeal be made within 10 days of a decision made by the Enforcing Agency is an unrealistically short time interval for resource agencies (including NMFS and CDFW), impacted parties, and other interested stakeholders to respond. Any appeal of a decision will likely involve complex hydrogeologic analysis to identify and evaluate the potential for streamflow depletion effects on freshwater organisms and their ecosystems. We recommend the County extend the decision appeal response period, to at least 45 days so that all interested parties have a suitable time period to analyze the submitted analysis.
- Section 25B-4(e)(5): We recommend the County require proof from the well permit applicant and/or landowner demonstrating that any well qualifying for ministerial permitting under Section 25B-4(e)(5) is understood by the California State Water Resources Control Board to be diverting water under a valid California surface water right, and that the party make an affirmative statement to that affect.

8. **Adaptive management is key to the long-term success of the County's well ordinance and protection of public trust resources. Due to the current lack of available information regarding groundwater use, interconnected waterways, impact of streamflow depletion on protected resources, instream flows, and other**

important related issues, it is extremely important that clear processes and timelines be built into the ordinance itself to address these gaps, conduct subsequent analysis, identify PTRA scope needs, and future application.

It is recognized that County Staff were operating under extreme circumstances to revise and draft a proposed well ordinance designed to bring the County into compliance with its Public Trust duties. With numerous topics to cover, and many of them quite contentious, it was expected that not all issue areas would be fully discussed or met with consensus in the Working Groups. For this reason, it is extremely important that the County include specific adaptive management language with specific issues and tasks identified, as well as actionable timelines for each.

A strong adaptive management process must direct County Staff to regularly review and update modeling in response to the gathering of new information and the closing of data gaps (e.g., via robust metering, monitoring, and reporting requirements). This is necessary to ensure that the County is able to respond to new information in a regular and effective manner. As a result, the County's response to groundwater pumping impacts, especially cumulative impacts, can be finetuned as data gaps are closed to provide resource protections to fullest extent feasible. With the County subject to mandatory housing quotas, the growing popularity of ADUs, and the natural evolution of land use changes, there will be an ever-increasing demand on our available water resources. Incorporating a regular review process that accounts for these and other changes in the County is vital to ensuring long-term sustainability and that future demands do not cause further adverse impact to public trust resources.

It is important that regular technical review of all available information and the ordinance language itself also be part of this adaptive management process, as this will help ensure the well ordinance is protective of public trust resources to fullest extent feasible. Technical review must also include a directive to review and incorporate the latest studies on things like: climate change, conservation, groundwater recharge, evapotranspiration, and anthropogenic responses to reduced supply. As climate change continues to impact our region and limited water resources it is important that our water system is reviewed as a whole and not in isolation of each other—there is no imaginary boundary between groundwaters and surface waters. As such, it is important that these ongoing changes are continually being considered and added to any modeling and discretionary review processes. This ordinance must continue to evolve in response to our climate and subsequent changes in human behavior.

The County should also require language directing Staff to develop a plan to collect and analyze information needed to develop a comprehensive modeling program for effectively addressing and mitigating the impacts of new, replacement, and existing wells and associated extraction on public trust resources. Such a program is needed to ensure everyone does their share to protect and manage the public trust and County Staff should be required to implement such a plan within the two to three years.

Recommendation:

- The County must include in binding language that regular technical review of all available information is supported and completed in a timely manner, so necessary amendments that are protective of public trust resources to fullest extent feasible are made.
- The County must include in binding language that the latest studies on climate change, conservation, groundwater recharge, evapotranspiration, and anthropogenic responses to reduced supply will be properly considered in any ongoing modeling and discretionary review processes.
- The County must establish a clear and repeatable method of analysis to identify adverse impacts to public trust resources for both the ministerial and discretionary permit processes. The County must also have a clear method of analysis to determine necessary mitigations to address adverse impacts to extent feasible once identified.

9. **There are several inconsistencies between the Summary Report and the proposed language that should be addressed by Staff prior to language adoptions. These inconsistencies and omissions are fairly significant as they are key to any permit issuance, enforcement, and other necessary action by Staff and applicants. These must be rectified such that the proposed ordinance is not hindered in achieving its purpose.**

Identified Inconsistencies & Omissions:

- The Summary Report identifies the use of 100, 250, & 750 ft stream buffers in Moderate Risk Areas, but these buffers do not appear to have been included in the Ordinance language.
- The Summary Report refers to High and Medium Risk Areas to determine which buffer is applicable and what level of streamflow depletion has been deemed acceptable by Staff. These same components are not included in the proposed ordinance language.
- The proposal does not include any criteria, terms, thresholds, or identifying information that must be met as part of the discretionary permit process.
- County staff must further review the proposed ordinance language to ensure that purpose and intent put forth in the Summary Report and Technical Working Group Report are clearly incorporated into the ordinance itself.

IV. Conclusion

The issues we have identified in this letter are important for County Staff and the Board of Supervisors to address in order to protect public trust resources to extent feasible and ensure adverse impacts are being sufficiently mitigated. The County has an affirmative duty to protect public trust resources within the county—a responsibility that the citizens of this State and County have deemed to be of the highest importance. As our climate and water demands

continue to change, it is increasingly important that the duty owed to our public trust resources is not forgotten, ignored, or minimized due to political disagreement.

Under this affirmative duty, the County has the authority to amend this well ordinance to be protective of public trust resources and must do so. This includes the authority, and important need, to ensure the status quo is not allowed to persist for groundwater wells, and that metering and reporting is required for all groundwater well types and uses. Though the County has taken steps to address these needs, there is still a heavy skewing of protections that will in effect only maintain the status quo with few, if any, improvements to the well-being of our public trust resources or provide protection to residential wells already going dry. As such, the County is excusing past behaviors and maintaining the status quo in these areas to the continued detriment of our public trust resources and County residents.

The time to protect our public trust resources and water supplies is now. Every day we observe other parts of California and the arid West having to deal with water shortages, environmental harms, and loss of economic and cultural benefits. To avoid similar circumstances, action must be taken today. We must plan now to have a future where our creeks and rivers, salmon, wildlands, farms, communities, and water supply are protected and sustained for future use.

Please let us know if you have any questions.

Sincerely,

[redacted]

Jaime Neary
Staff Attorney
Russian Riverkeeper

[redacted]

Don McEnhill
Executive Director
Russian Riverkeeper

From: PHILLP RUSSELL
To: PermitSonoma-Wells-PublicInput
Subject: my concerns
Date: Tuesday, April 4, 2023 10:55:11 AM

EXTERNAL

Hello!

I have lived on Pepper Rd in Petaluma for 41 years and have relied on a well for my water all of that time.
I started to get concerned when I saw all the vineyards being planted around sonoma Co. Now I am further concerned about the pot farms which take up even more water. Would be so sad to have us old timers lose our water.
So happy you are addressing these issues, as we certainly cannot take our ground water for granted.

Thank you,
RuthAnn Russell
804 Pepper Rd

From: Florence Sheffer
To: PermitSonoma-Wells-PublicInput
Subject: Well water metering
Date: Tuesday, April 4, 2023 3:54:41 PM

• Residences should stay within the reasonable limit of 0.5 afy if seeking a simple permit pathway. Extenuating circumstances could dictate a greater need, but a 2 afy threshold does not represent "low-water use" by any commonsense reading. It will not encourage groundwater conservation or discourage water waste, and it is unlikely to adequately address future impacts to public trust resources and our existing wells.

Metering &/or monitoring requirements should be required for new well permits in the County.
• Metering and reporting of groundwater use is the only way the County can close the existing data gaps and
improve models used to make decisions - in order to make informed decisions on how to assure future water
supplies and protect public trust resources.

Thank you,

Florence Sheffer
Cell/text 707-483-5439
Mail@Florencesheffer.com

From:	Phyllis Tajii
To:	BOS; Robert Pennington; Christina Rivera; Tennis Wick; Nathan Quarles; PermitSonoma-Wells-PublicInput; Jennifer Klein
Subject:	Comments on the Sonoma County Code Chapter 25B (the Well Ordinance)
Date:	Monday, April 3, 2023 11:17:53 PM
Attachments:	Sonoma County Well Ordinance- Letter to BOS, April 3, 2023.pdf

EXTERNAL

Dear Sonoma County Board of Supervisors and County Staff,

The attached letter is written on behalf of Sonoma County Japanese American Citizens League regarding the process to amend the Sonoma County Code Chapter 25B (the Well Ordinance).

Thank you for your time,
Phyllis Tajii
President, Sonoma County Japanese American Citizens League

JACL
Japanese American Citizens League
Sonoma County Chapter
sonomacountyjacl@gmail.com

April 3, 2023

Christina Rivera
Clerk of the Board of Supervisors
575 Administration Drive, Room 102A
Santa Rosa, CA 95403

Tennis Wick
Director, Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

Nathan Quarles
Deputy Director, Engineering and
Construction
Permit Sonoma

Robert Pennington
Professional Geologist, Natural Resources
Permit Sonoma

Submitted via Email: Jennifer.Klein@sonoma-county.org;
PermitSonoma-Wells-PublicInput@sonoma-county.org; Nathan.Quarles@sonoma-county.org;
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SUBJECT: Comments on the Process to Amend Sonoma County Code Chapter
25B (the Well Ordinance)

Dear Sonoma County Board of Supervisors,

The Sonoma County Japanese American Citizens League (JACL) has been following the discussion and decisions to amend the Sonoma County Well Ordinance and we thank you for gathering public comment in a process that can help ensure long-term water security for all county residents.

The JACL, the oldest and largest Asian American Pacific Islander civil rights organization in the U.S. was formed in 1929 to protect and fight for the rights of Japanese Americans. The Sonoma County chapter was founded in 1934. Today, one of our missions is to advocate for all the communities that are facing prejudice and discrimination by sharing with the community the Japanese Americans' historical experience and their stories.

Sonoma County JACL is greatly concerned how the consequences of inadequate well regulations would impact low-income, underserved residents the hardest. For example, wells running dry or contaminated water due to reduction of the aquifer could result in higher food costs and the need to purchase water, causing those with the least ability to afford the added costs to suffer the most.

The United States Environmental Protection Agency defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys: the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."

With that in mind, the Sonoma County JACL urges the Sonoma County Board of Supervisors to consider comments from all facets of the community when making decisions and to carefully evaluate the decision's impact on the community's underserved residents.

As we navigate the future in the age of climate change, ensuring groundwater sustainably and equitably managed for the benefit of all the inhabitants, both wildlife and humans for generations to come, is one of the challenges. The Sonoma County Board of Supervisors has a chance to set an example, showing how to properly protect resources for all and how Sonoma County is a great place to live.

Sincerely,

Phyllis Tajii
President, Sonoma County JACL