

ZONE 7 BOARD OF DIRECTORS
Water Resources Committee

Monday, October 6, 2014
4:00 p.m.

Location: Boardroom
Zone 7 Administration Building
100 North Canyons Parkway
Livermore, CA 94551

Director Greci
Director Palmer
Director Stevens

A G E N D A

1. Public Comment on Items Not on Agenda
2. Proposed Well Ordinance
3. Verbal Comments
4. Adjournment



ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7

100 NORTH CANYONS PARKWAY • LIVERMORE, CA 94551 • PHONE (925) 454-5000 • FAX (925) 454-5727

ORIGINATING SECTION: GROUNDWATER SECTION
CONTACT: MATT KATEN

AGENDA DATE: October 6, 2014

ITEM NO. **2**

SUBJECT: Proposed Well Ordinance

SUMMARY:

- Zone 7 has actively managed a well permitting program under the terms of County Ordinance 73-68 since 1973.
- After comparing the Alameda County Ordinance with the State's Model Well Standards Ordinance and several other county and water district well ordinances, staff feels that the Alameda County ordinance is too general and does not provide adequate protection for the groundwater basins within Zone 7's jurisdiction.
- Staff has prepared a draft Zone 7-specific well ordinance (Ordinance) to supersede the County's Ordinance within Zone 7's service area and enhance groundwater protection in Eastern Alameda County.
- The Ordinance provides details on when a permit is required and what well construction standards apply, and what steps the Agency will take to enforce the Ordinance's provisions.
- The Ordinance fully conforms to the State's Model Well Standards Ordinance.
- The Ordinance provides for the Zone 7 Board to set and maintain its own well permit fee schedule, independent of the County's permit fee schedule.
- Adopting the well ordinance before the end of the calendar year strengthens the Agency's position for maintaining local control over the groundwater basin under new state legislation.
- The Ordinance has been reviewed by the Tri-Valley cities and water retailers and Director Figuers.
- AB 1125 provides Zone 7 the authority to adopt this well ordinance for the unincorporated areas of its service area. The Cities within Zone 7 jurisdiction will have to adopt the ordinance or otherwise delegate the authority to Zone 7 to administer the ordinance within their respective jurisdictions.

FUNDING:

Since the Well permitting program is funded from Fund 100-Water Enterprise, revenue from the Well Permit fees will be deposited into Fund 100-Water Enterprise.

RECOMMENDED ACTIONS:

Discuss and provide direction.

ATTACHMENTS:

- Internal Memo providing additional background and discussion
- Draft Well Ordinance

Interoffice Memo

Date: October 6, 2014
To: Jill Duerig, General Manager
From: Matt Katen, Principal Geologist, Groundwater Section
Subject: Proposed Well Ordinance

The following provides additional background and discussion of the above-referenced agenda item.

BACKGROUND:

In 1967, the State enacted legislation requiring Cities and Counties to adopt ordinances to govern well standards particularly in critical areas of high populations and large groundwater basins. Alameda County adopted a well ordinance (Ordinance 73-68) in July 1973 and later incorporated it into its General County Ordinance Code (Chapter 6.88 (Water Wells)).

In June 1973, by resolution, the City of Livermore authorized Alameda County Flood Control and Water Conservation District (ACFCWCD) to administer and enforce the County Ordinance within the city (Resolution 76-73). Likewise, the City of Pleasanton granted ACFCWCD jurisdiction within the city to administer and enforce the County ordinance in February 1974 (Ordinance No. 720). The City of Dublin adopted the County's ordinance by reference and designated Zone 7 as the administering agency in February 1988 (Ordinance 3-88).

In 1989, pursuant to California Water Code Section 13801, the State Water Resources Control Board (Water Board) developed and adopted a Model Well Ordinance for counties, cities and water districts having permit authority over well drilling to use as a minimum standard template or to adopt as their own. Those that had an existing ordinance that substantially conformed with the model ordinance could continue to use their existing ordinance.

DISCUSSION:

Zone 7 has actively managed a well permitting program under the general terms of the County's Well Ordinance since 1973. Over the last several years, staff has been working on developing a draft Zone 7 well ordinance to enhance groundwater protection in Eastern Alameda County. The objectives of this effort include the following:

- Adopt a local well ordinance that fully conforms to the State's Model Well Standards Ordinance. Staff believes the County's Ordinance is too general and its provisions fall short of those in the State's Model Ordinance;
- Provide details on when a permit is required, what well construction standards apply, and what steps the Agency will take to enforce the ordinance's provisions;
- Increase the protection of the valley's groundwater supplies by adopting certain well construction and destruction requirements specific to known local hydrogeologic and environmental conditions;
- Provide authority to the Zone 7 Board to set and maintain its own well and soil boring permit fees independent of the County's permit fee schedule; and
- Strengthen the Agency's position for maintaining local control over the groundwater basin under new state legislation (SB 1319, SB 1168 and AB 1739) by adopting a new well ordinance before the end of this calendar year.

To develop the Zone 7 well ordinance (Ordinance), Staff reviewed current well ordinances from three neighboring counties (San Mateo, Santa Cruz and San Joaquin), and three Bay Area water districts (Alameda County Water District, Santa Clara Valley Water District, and Scotts Valley Water District), and selectively borrowed ordinance provision language from each. Staff then made sure that the draft ordinance fully adheres to the State's Model Well Standards Ordinance and California Water Code. The review process also included routing drafts to the local cities (Livermore, Pleasanton, and Dublin), DSRSD and California Water Service Company, and to Directors Stevens and Figuers for comments and edits.

For the Draft Ordinance, staff defined the areas where a permit is needed for soil borings of 10-feet or greater to coincide with the boundaries of DWR's three defined groundwater basins (Livermore Valley Groundwater Basin, Sunol Valley Groundwater Basin and Tracy Groundwater Basin) within the Zone 7's service area as depicted in Department of Water Resources (DWR) Bulletin 118-1. Also during the process, staff updated the areas where special well construction requirements are necessary to prevent vertical spreading of contamination. Staff also developed a potential permit fee schedule based on actual and projected permit activity and projected staff costs. The Ordinance provides for the Agency to periodically revise both, the special requirement areas and the permit fee schedule without having to revise the ordinance.

Zone 7's authority to create its own well ordinance comes from Act 20 of the California Uncodified Water Code ("District Act") which gave the authority to Alameda County Flood Control and Water Conservation District. Section 36(4) of Act 20 provides the Zone 7 Board authority and autonomy to govern matters solely affecting Zone 7 independent of the Alameda County Board of Supervisors who govern the other nine zones of the ACFCWCD. The Cities within Zone 7's jurisdiction will have to adopt the ordinance or otherwise give Zone 7 the authority to administer the ordinance within their respective jurisdictions, as they did before.

Passage of the ordinance requires at least two meetings of the Board of Directors held at least five days apart; one for its introduction and a second for its adoption. One full reading of the ordinance is required at either of the two meetings except when, after reading the title, further reading of the ordinance is waived by regular motion adopted by majority vote. An ordinance summary or a one-quarter page display advertisement of the ordinance must be published in a newspaper of general circulation in the county at least five days prior to the meeting at which the ordinance is to be adopted and once within 15 days after adoption of the ordinance. By default, the ordinance will become effective 30 days from the date of its adoption. Staff recommends introduction of the Ordinance at the October 15, 2014 Board meeting and adoption at the November 19, 2014 Board Meeting, following the noticing process.

ORDINANCE NO. 2014-__

WELL ORDINANCE

The Board of Directors of Zone 7 of the Alameda County Flood Control & Water Conservation District hereby ordains as follows:

Ordinance 2014-_____ regulating the classification, construction and destruction of wells and other soil borings; requiring the destruction of abandoned or unused wells; establishing a well permit process; and adopting well construction and destruction standards is hereby adopted.

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage, and before the expiration of fifteen (15) days after its passage, shall be published once with the names of the members voting for and against the same in a newspaper of general circulation, printed, published and circulated in the District.

Introduced at a regular meeting of the Board of Directors held on the ____ day of ____, 2014 and passed and adopted by the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District, State of California on the ____ day of ____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

President of the Board of Directors
of Zone 7 of the Alameda County Flood Control and
Water Conservation District, State of California

Judy Rector, Secretary of the Board of Directors

ZONE 7 WATER AGENCY WELL ORDINANCE 2014-__

An ordinance of Zone 7 Water Agency regulating the classification, construction and destruction of wells and other soil borings; requiring the destruction of abandoned or unused wells; establishing a well permit process, adopting well construction and destruction standards.

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SECTION 9 – APPEALS

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SECTION 1 - PURPOSE

As applied to wells located within Zone 7 of the Alameda County Flood Control and Water Conservation District (“Zone 7 Water Agency” or the “Agency”), it is the purpose of this ordinance to establish standards, rules and regulations concerning the classification of existing wells, the construction of new wells, the repair, reconstruction or deepening of existing wells, and the abandonment or destruction of wells, including water wells, monitoring wells, cathodic protection wells, and exploratory boreholes. It is the intent of this Ordinance to prevent wells and excavations from causing pollution or contamination of groundwater, or otherwise jeopardizing the health, safety, or welfare of the people of the Agency.

SECTION 2 - DEFINITIONS

Except as otherwise required by the context of this ordinance, the terms used in this ordinance shall have the same meaning as in Chapter 10 of Division 7 of the California Water Code (Sections 13710, et seq.) and the Department of Water Resources Bulletin 74-81 and subsequent supplements or revisions. Words used in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural, and the plural the singular. Section headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section.

“Abandoned Well” is any well defined by one or more of the following:

- a) A well, other than a monitoring well, which has been out of service continuously for 12 months or more, and does not meet the definition of an “inactive well” or “standby well”.
- b) A monitoring well from which no measurement or sample has been taken for a period of 12 months unless owner demonstrates intention of future use and maintains the well as “inactive well.”
- c) A well that is in such a state of disrepair that it cannot be made operational for its intended purpose.
- d) A test hole or exploratory boring 24 hours after construction and testing work has been completed.
- e) A cathodic protection well that is no longer functional for cathodic protection purpose(s).
- f) Any boring that cannot be satisfactorily completed as a well.

“Active Well” means a well that has been utilized at least once in the preceding 12 months for the extraction, sampling or monitoring of groundwater or soil vapor.

“Agency” shall mean Zone 7 Water Agency.

“Agricultural Well” or “stock well” means any well used solely to supply water for irrigation or other agricultural purposes.

“Annular seal” is the seal between the conductor casing or borehole and the well casing.

“Aquifer” or “Water-bearing zone” means a body of strata that is sufficiently permeable to conduct groundwater and to yield significant quantities of water to wells and springs.

"Board" shall mean the Board of Directors of Zone7 Water Agency.

"Boring" or "Soil boring" or "Exploratory borehole" or "Test hole" means any uncased excavation or boring greater than ten (10) feet in depth, used to determine engineering, geological, geophysical or geochemical properties of subsurface materials. The District does not intend for pits, potholes, trenches, excavations for foundation and basements, root-zone piezometers, or similar excavations to be included in this definition.

"Cathodic Protection Well" means any artificial excavation in excess of ten (10) feet deep constructed by any means for the purpose of installing anodes or electrical equipment for the protection of metallic facilities in the ground from corrosion.

"Construction, reconstruction, deepen" means to dig, drive, bore, drill, or deepen a well, or to re-perforate, remove, replace, or extend a well casing.

"Contamination" means an impairment of the quality of the waters or soil to a degree that creates a hazard to the public health through poisoning or through the spread of disease. Contamination shall include any contaminants in excess of background levels and/or the applicable standard currently promulgated by the State of California for drinking water and/or which is the subject of a cleanup order issued by the Regional Water Quality Control Board, San Francisco Bay Region.

"Contamination hazard" means a condition created by wells or deep excavations that will or may foreseeably cause contamination to spread to uncontaminated waters.

"Contractor" or "Well contractor" means any person or company possessing a C-57 Water Well Contractor's License in accordance with the provisions of the California Business and Professions Code, Section 7000, *et. seq.*, and Water Code Section 13750.5.

"County" means the County of Alameda.

"Destruction of well" or "Abandonment of well" means the proper filling, sealing, or otherwise rendering unusable a well that is no longer serving its intended purpose or has become hazardous to public health or safety, so as to assure that the groundwater is protected and to eliminate a potential physical hazard.

"Domestic water supply well" is any water well used to supply potable water for domestic needs (e.g., drinking, cooking, washing, bathing, etc.) of an individual residence or business or a private system of four or less service connections.

"District" shall mean the Zone 7 Water Agency.

"General Manager" shall mean the General Manager of the Agency or his/her designee.

"Geothermal heat exchange wells" are wells constructed to return to the ground, in a closed-loop system, water that has been used as a heat exchange fluid in air conditioning or heating processes. Geothermal heat exchange wells include Ground-source heat-pump wells. Such wells or boreholes are not intended to produce water or steam.

“Inactive well” or “Standby well” means a well that has not been used for a period of 12 months or more but has been properly secured, protected, and maintained in an inactive condition in accordance with this ordinance’s requirements, for a period not to exceed five years.

“Injection well” or “Recharge well” is any well constructed to introduce water into the underground as a means of replenishing ground water basins.

"Inspecting Officer" shall mean a person designated by the General Manager and authorized to ensure that the provisions of this Ordinance are enforced.

“Irrigation supply well” is any water well used to supply water for irrigation, livestock operation or other agricultural purposes not including any uses of domestic water.

“Modify” or “Repair” means the deepening or enlargement of a well or the perforation or replacement of a casing or sealing-off of aquifers, or other work to alter, improve or maintain the integrity of the well and its water-producing capacity.

“Monitoring well” means a well constructed exclusively for observing groundwater levels and flow conditions, obtaining samples for determining groundwater quality, or for evaluating hydraulic properties of water-bearing strata. Monitoring wells are sometimes referred to as observation wells and/or piezometers. “Monitoring well” also means any “water well” that is used for monitoring purposes.

“Owner” means the owner of the land on which the well is located.

“Person” means any person, association, firm, corporation, municipality, public agency or special district.

“Permit” or “Well Permit” means a permit issued by the Agency pursuant to this Well Ordinance.

“Public nuisance” means any well which threatens to impair the existing water quality of groundwater or otherwise jeopardize the health or safety of the public.

“Repair” means the deepening or enlargement of a well or the perforation or replacement of a casing or sealing-off of aquifers, or other work to improve or maintain the integrity of the well and its water producing capacity.

“Water quality” is a term used to describe the chemical, physical, and biological characteristics of water with respect to its suitability for a particular purpose. The same water may be of good quality for one purpose or use, and bad or poor for another, depending upon its characteristics and the requirements for the particular use.

“Well” or “water well” means any cased or uncased boring for the purpose of extracting, injecting or monitoring groundwater. This definition shall include agricultural wells, test wells, monitoring wells, piezometers and observation wells. This definition shall not include: (a) oil and gas wells, or geothermal wells constructed under the jurisdiction of the Department of Conservation, except those wells converted to use as water wells; or (b) wells used for the

purpose of dewatering excavations during construction or stabilizing hillsides or embankments that will be removed as part of the excavation.

“Wellhead Protection” is a program where specific well siting, well design and well construction standards, and possibly land use restrictions, are implemented to effectively reduce the risk for existing or potential future surface contamination from degrading groundwater quality.

“Well Standards,” refers to the California Department of Water Resource’s Bulletins 74-81 and 74-90, any supplements or amendments thereto, as well as any regulations adopted by the Agency in support of this Ordinance.

“Well Ordinance” or “this ordinance” means Ordinance 2014-__, of the Agency

SECTION 3 – JURISDICTION

3.1 Applicable Area

This Ordinance shall apply to all territory lying within the jurisdictional limits of Zone 7 Water Agency, except for those portions where wellhead protection authority has been assigned to another agency through a “Services Agreement” between the agencies. Areas lying within the incorporated cities of Livermore, Pleasanton and Dublin shall be included if each respective municipality has adopted the provisions of this Ordinance by reference thereto in a City ordinance or resolution, and have designated Zone 7 Water Agency as the administering agency.

Special Requirement Areas

The Agency may designate areas where special well construction techniques and/or well seal(s) are required to prevent spreading of contaminants or mixing of water between water-bearing zones. These areas are typically areas where one or more underlying aquifers of differing water quality are separated from each other by a zone of low permeability. Where an applicant proposes well construction, reconstruction, or destruction work in such an area, the Agency may require the applicant to provide a report prepared by a registered Professional Geologist or registered Professional Civil Engineer (California Business and Professions Code Sections 7850 and 6762 respectively) that identifies the affected water-bearing and non-water bearing strata, as well as the zone(s) of contamination or poor quality water, and recommends construction techniques and seal location(s) designed to prevent the spread of the contamination or poor quality water by the well or during well construction.

SECTION 4 - PROHIBITIONS

4.1 Invalid or No Permit

No Person within the jurisdictional limits of the Agency shall construct, modify, repair, reconstruct, deepen, abandon or destroy any well, or dig, drill or drive any soil boring that may intersect groundwater without possession of a valid permit issued by the Agency unless exempted by law or as provided for in this Ordinance. A valid permit is also required before digging, drilling, driving or sealing any soil boring greater than ten (10) feet in depth within the Agency’s jurisdictional limits of the Livermore Valley, Sunol Valley and San Joaquin Valley

(Tracy Subbasin) groundwater basins as defined in the most current version of the California Department of Water Resources (DWR) Bulletin 118. .

4.2 Unsecured Well Openings

No Person shall knowingly permit the existence on premises in his or her ownership or possession and control of any well opening or entrance, which is not sealed or secured in such a way as to prevent the introduction of contaminants to underground water supplies through open wells.

4.3 Contaminated Water Production

No well intended to produce or monitor fresh groundwater shall be perforated in multiple water-bearing units if contamination, pollution or poor quality water could enter the well from one unit and move to other units penetrated by the well and degrade groundwater quality, unless otherwise approved by the Agency.

4.4 Abandoned Wells

No Person within the limits of the Agency shall knowingly permit the existence of any abandoned well on premises in his or her ownership or possession and control.

4.5 Wasting Groundwater

No Person shall engage in the indiscriminate pumping and discharge of groundwater in a wasteful manner without reasonable purpose.

SECTION 5 - PERMITS

5.1 Permit Requirement

Every person within the jurisdictional limits of the Agency proposing to dig, drill, bore, drive, repair, deepen or destroy any well, or any soil boring that may intersect groundwater, shall, before commencing the work, apply for and receive a permit as provided in this ordinance to do the work, unless exempted herein, or by law, or by waiver issued by the Agency. A valid permit is also required before digging, drilling, boring, driving or sealing any soil boring that is greater than 10 feet in depth within the Agency's jurisdictional limits of the Livermore Valley, Sunol Valley and San Joaquin Valley (Tracy Subbasin) groundwater basins as defined in the most current version of the California Department of Water Resources (DWR) Bulletin 118. No property owner shall be unreasonably denied the right to install a well or soil boring on his property. No permit is necessary to replace or repair well equipment if the well casing is not being modified, the depth is not being changed, or the effectiveness of the annular seal is not being compromised.

5.2 Emergency Work

Emergency work required on short notice to maintain drinking water or agricultural supply systems may proceed without a permit. However, in such cases, the person responsible for the emergency work shall:

- a) Apply for a permit within three (3) working days after commencement of 'emergency work,' and pay the normal applicable permit fee(s);
- b) Satisfy the Agency that such work was urgently necessary; and
- c) Demonstrate that all work performed was done in conformance with the technical standards established pursuant to Section 6 (Standards) of this Ordinance.

Emergency repairs include the construction of a new well, or the repair, deepening or sealing of an existing well. In all such cases, the owner or contractor must file a written statement that this was an emergency repair and the reason for the repair within three (3) days after such repairs are begun, excluding weekends and holidays. The statement shall be accompanied with payment of the normal applicable permit fee(s). The final determination as to whether to issue such permit under the stated emergency conditions will be made by the Agency. In making the determination, the District will consider such factors and circumstances as: the timing and nature of the emergency, the threats or risks associated with delaying the work to procure a permit, and supporting documents.

5.3 Permit Application

Permits required by this Ordinance shall be subject to general conditions set forth in this Ordinance, as well as any additional site-specific conditions identified by the Agency pursuant to Section 3.2. The Agency shall prescribe and provide a standard form of application for permits under the terms of this Ordinance. The application form shall contain space for the name and address of the applicant; together with such information that in the judgment of the Agency is necessary to establish the location of the well, the purpose of the permit, and the extent of any proposed work. When required by the Agency, drawings and specifications for any proposed work shall accompany the application form and shall be detailed enough to demonstrate compliance with the standards.

Within fourteen (14) calendar days after receipt of a completed Application for a Well Permit, the Agency shall either grant, conditionally grant, or deny the Well Permit. A Well Permit shall not be issued if, in the judgment of the Agency, the Well may jeopardize the health, safety, or welfare of the people of the District.

There shall be compliance, at the Applicant's expense, with the California Environmental Quality Act if, in the Agency's opinion, there may be significant effect(s) on the environment or the resources of the District.

5.4 Contractor's License Requirement

All construction, reconstruction, or destruction work on wells shall be performed by a person who possesses an active C-57 Water Well Drilling Contractor's License in accordance with the provisions of the California Business and Professions Code, Section 7000, *et. seq.*, and Water Code Section 13750.5.

5.5 Fees

The Agency may require fees to cover Agency costs for the review of applications, issuance of permits, Board hearings of appeals, review of material submitted and inspection of work under

this Ordinance. Such fees shall be adopted and updated from time to time by Zone 7 Board resolution. At the recommendation of the General Manager and approval by the Board, all or any part of the fees and costs of compliance with this Ordinance may be waived by the Agency in accordance with such guidelines and procedures as may be established by the Board.

5.6 Location of Permit

It shall be the responsibility of the permittee to maintain a copy of the permit on the drilling site during all stages of construction or destruction.

5.7 Limitations

When the Agency issues a permit pursuant to this Ordinance, it may condition the permit in any manner necessary to carry out the purposes of this Ordinance. The Agency reserves the right to impose other conditions that, in its sole discretion, are necessary to adequately protect and manage the groundwater basin. Conditions may include, but are not limited to, construction requirements and such quantity and quality testing methods as the Agency finds necessary.

5.8 Abandoned Wells

As a condition of a construction or reconstruction permit, any abandoned wells on the property shall be destroyed in accordance with standards provided in this ordinance.

5.9 Proper Disposal of Drilling Fluids

Drilling fluids and other drilling materials used in or generated by the permitted work shall be handled safely, and their disposal shall be in accordance with the law.

5.10 Term of Permit and Completion of Work

Work authorized by a permit issued pursuant to this Ordinance shall be completed by the date set out in the permit. The work shall begin within ninety (90) calendar days from the date of issuance of the permit unless a different starting date is stated in the permit. If the work is not so begun, the permit shall become void. If at any time the General Manager determines that any delay in the prosecution or completion of the work authorized is due to lack of reasonable diligence on the part of the permittee, the General Manager may, following due notice to the permittee and an opportunity to be heard, revoke the permit. The General Manager may, upon good cause being shown, extend the permit for an additional maximum period of six (6) months.

5.11 Expired Permits

Upon expiration of any well permit issued pursuant to this Well Ordinance, no further work may be done in connection with the construction, repair, reconstruction, or abandonment of a well until such permit has been renewed or a new well permit for such purpose is secured in accordance with the provisions of this Well Ordinance.

5.12 Suspended or Revoked Permits

The Agency may suspend or revoke any permit issued pursuant to this Ordinance, whenever it finds that, the permittee or his agent has violated any of the provisions of this Ordinance, or has

misrepresented any material fact in his application or other supporting documents for such permit. Upon suspension or revocation of any well permit issued pursuant to this Well Ordinance, no further work may be done in connection with the construction, repair, reconstruction, or abandonment of a well unless and until such permit has been reinstated or a new well permit is secured. Prior to ordering any permanent revocation, the Agency shall give the permittee an opportunity for a hearing thereon, after reasonable notice. The hearing shall be before the General Manager or his designated representative. An appeal may be made as set forth below.

5.13 Ordered Additional Work

Upon suspending or revoking any permit, the Agency may order the permittee to conduct any work reasonably necessary to protect the underground waters from pollution or contamination, if any work already done by the permittee has left a well in such a condition as to constitute a hazard to the quality of the underground waters. No permittee or person who has held any permit issued pursuant to this Ordinance shall fail to comply with any such order.

5.14 Wells Installed Without Permit

5.14.1 Cease and Desist Orders: Upon determining that a well has been installed, or a boring advanced without the required permit or permits, the General Manager may issue a cease and desist order by certified mail to the owner of the property where the well or boring is located, requiring the owner to immediately cease use of the well or boring. The owner or his agent must then obtain such permits as are necessary to destroy the well or boring, or legalize its use.

5.14.2 Penalty Fee: Except as provided in Section 5.2 (Emergency Work), any person who shall commence any work for which a permit is required by this Ordinance without having obtained a permit, shall be required, if subsequently granted a permit for this work, to pay double the standard permit fee.

5.14.3 Abatement Actions: Any person who shall commence any work for which a Well Permit is required by this Well Ordinance without having obtained a Well Permit, shall be required, if subsequently NOT granted a Well Permit for this work, to either destroy the unpermitted well or to reimburse the Agency for any costs to abate a nuisance created by the unpermitted well.

5.15 Guarantee of Performance

The Agency may require the applicant to post a cash deposit or bond guaranteeing compliance with the terms of this Ordinance, in an amount determined by the Agency, if the General Manager deems it necessary to protect the Agency and public against faulty or uncompleted work. The amount shall not exceed the total estimated cost of the work. The deposit or bond will be returned or released when the work has been completed to the satisfaction of the Agency.

5.16 Liability

Permittee shall assume all responsibility and liability for, and defend, indemnify and hold harmless the Agency, its Directors, officers, agents and employees from all claims, demands,

suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with any work or activity of the Permittee or the failure of the Permittee to perform Permit obligations. Permittee shall at its own cost, expense and risk defend any and all actions, suits, or other legal proceedings brought or instituted against Agency, its directors, officers, agents and employees in connection with or arising from acts or omissions of Permittee, its employees, contractors and agents during work done pursuant to a permit issued by Agency, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.

5.17 Waivers and Variances

The Agency shall have the power under the following specified conditions to grant a waiver or variance from any provision of the standards and to prescribe alternative requirements in their place:

5.17.1 Special Circumstances: There must be, in a specific case, a special circumstance where practical difficulties or unnecessary hardship would result from the strict interpretation and enforcement of any standard.

5.17.2 Intent of Ordinance Not Compromised: The granting of such a waiver or variance shall be consistent with the purposes of this Ordinance.

5.18 Inspections

The well site, location, material and methods used may be inspected by the Agency's Inspecting Officer at any time prior to or during or following construction or destruction of any well. The purposes of these inspections are to:

- a) Determine whether there are any site conditions that warrant further consideration before issuing a permit;
- b) Verify that proper depths, materials and methods are being used for seal placement;
- c) Determine whether the well was completed in accordance with this ordinance.

5.18.1 Required Notice: The Inspecting Officer shall be informed a minimum of three (3) working days before commencing any field work, and a minimum of twenty-four (24) hours prior to sealing the annular space, or the wellbore in the case of a well destruction. Drillers who anticipate completing a well construction or destruction in less than one day shall also give the 3-day and 24-hour notifications to the Inspecting Officer along with the anticipated time for sealing operation to commence.

5.18.2 Waived Inspections: If the Inspecting Officer wishes to allow a seal to be placed or a well destroyed without him or her being present, the driller shall seal the well in accordance with the standards of this Well Ordinance and any permit conditions. A request for a waiver of inspection can be granted if the permittee has arranged for a Professional Geologist or Professional Civil Engineer to provide the inspection and submit a signed and stamped letter attesting to the

quality of the work. No seal shall be placed or a well destroyed until the Inspecting Officer gives permission to proceed.

5.19 Completion Report

A copy of the "Report of Completion" (Water Well Driller's Report, Department of Water Resources Form 188) required by California Water Code Section 13751, shall be submitted by the permittee to the Agency within thirty (30) calendar days of construction, alteration, or destruction of any well. This report shall document that the work was completed in accordance with the Well Standards and all additional permit conditions. Any additional information or data required as a permit condition shall be submitted at the same time. This information will become public information to the extent permitted by law.

5.20 Requirements of Other Agencies

Nothing in this Ordinance shall be deemed to excuse any person from compliance with the provisions of California Water Code Sections 13750 through 13755 relating to notices and reports of completion or any other federal, state, or local reporting regulations.

SECTION 6 - STANDARDS

All water wells, monitoring wells, geothermal heat exchange wells, and cathodic protection wells shall be constructed, reconstructed, repaired, destroyed, inactivated or converted in accordance with the standards set by this Ordinance and any associated guidelines or regulations, and by state law, and by the latest revisions and supplements of Department of Water Resources Bulletins 74-81 and 74-90.

In addition, the following local standards apply:

6.1 Annular Seals

All wells shall have a grout seal in the annular space. In no case will an outer casing or conductor casing be an acceptable substitute for a seal.

6.2 Exclusion of Contamination

All water wells shall be designed and constructed to exclude contamination as follows:

6.2.1 Sealed Wellhead: All well openings and entrances, including wellheads, top of casing, sounding ports and tubes, and gravel fill ports and tubes shall be secured and maintained with water tight seals or caps in such a way as to prevent the introduction of surface contaminants to underground water supplies through these well openings.

6.2.2 Sealing-off Strata: In areas where a well penetrates more than one aquifer, and one or more of the aquifers contains or is suspected to contain poor-quality water, pollutants or contaminants that could move through the borehole during well construction or operation and could significantly degrade water quality in the other aquifer(s), the aquifer(s) producing such poor-quality water shall be

sealed off or ‘isolated’ to prevent entrance of the poor-quality water into the well or its migration to other aquifer(s).

It is recognized that in some instances production or monitoring may be desired from areas, aquifers, and/or depths, which contain poor quality water. It is not the intent of these standards to preclude such situations so long as the integrity of the fresh water supplies is maintained. Final judgment on well constructions that would cause intermingling of waters of different qualities shall be at the discretion of the Agency. The depths and specifications of the unperforated casing(s) and seal(s) needed to prevent the entrance of poor-quality water or its migration into other aquifers must be approved by the Agency.

- 6.2.3 Backflow Prevention:** All supply wells not discharging to the atmosphere shall be equipped with an automatic backflow prevention device approved by the Agency to protect the well from return flow contamination. Agricultural well irrigation systems, including those used for golf courses which employ chemical feeders or injection systems shall also be equipped with a backflow prevention device approved by the Agency. In the event a well is used on a property served by a public water system, there shall be installed between the dwelling unit or structure being served water and the meter box or distribution system a backflow prevention device approved by of the agency having jurisdiction over the public water system.

6.3 Backfilling Boreholes

Backfilling work on exploratory borings, as defined herein, shall be subject to requirements equivalent to those for the destruction of abandoned monitoring wells.

6.4 Sampling Access

All water wells shall be maintained in such a manner that groundwater quality samples and depth-to-water measurements can be readily collected.

6.5 Abandoned Wells

Any person owning property upon which an abandoned well is located shall obtain a permit to destroy the well and shall destroy it or cause it to be destroyed within ninety (90) days of its discovery, or shall temporarily “inactivate” the well by filing an Intent of Future Use document with the Agency and maintaining it in accordance with the rules and regulations for “inactive and standby wells”. As a condition of a well construction or reconstruction permit, any abandoned wells on the same property shall be destroyed in accordance with standards provided in this Ordinance.

6.6 Destruction of Wells

The General Manager is authorized, after reasonable efforts, to eliminate pollution, nuisance, contamination hazard or safety hazard, or to enforce the permanent abandonment by destruction of any well that is polluted, a nuisance, or is so located as to become polluted or contaminated or is a contamination hazard or a safety hazard. The General Manager is authorized to destroy any

such well and to recover the cost of the destruction from the owner of the property on which the well is located.

6.7 Inactive or Standby Wells

If the owner intends to cease use of a well for a period of twelve (12) months or more, he shall inform the Agency. Such a well shall be protected from any source of contamination while the well is temporarily out of service. The owner shall maintain such a well as required in the rules and regulations adopted pursuant to this Ordinance pertaining to “inactive and standby wells.” If planned or actual inactivation exceeds five years, then more permanent action, such as destruction, shall be mandated. If Agency determines that an “inactive or stand-by well” has not been maintained pursuant to the rules and regulations, then the well will be considered “abandoned” and subject to the requirements for “abandoned wells” including its proper destruction.

6.8 Well Status Determinations

The final determination as to the status of a well will be made by the Agency

SECTION 7 - VIOLATIONS

7.1 Citation, Infraction or Misdemeanor

Any person who violates any of the provisions of this Well Ordinance, or fails to satisfy the terms of a Well Permit issued hereunder, is subject to being issued an administrative citation or charged with committing an infraction or a misdemeanor; where upon conviction of the latter is punishable by such penalties as the Board shall from time to time set by ordinance.

7.2 Civil Enforcement

Any violation or threatened violation of this Ordinance may also be redressed by civil action. In addition to being subject to prosecution, any person who violates any of the provisions of this Well Ordinance may be made the subject of a civil action. Appropriate civil action includes, but is not limited to, injunctive relief and cost recovery.

7.3 Public Nuisance Finding

Notwithstanding any other action or penalty provided by law, any violation of this Ordinance shall be deemed a public nuisance, and the General Manager may commence action or proceedings for the abatement, removal and/or enjoinder thereof in any manner provided by law.

7.4 Remedies Cumulative

The remedies available to the Board to enforce this Well Ordinance are in addition to any other remedies available under ordinance or statute, and do not replace or supplant any other remedy but are cumulative thereto.

SECTION 8 - ENFORCEMENT

8.1 Right of Entry and Inspection

Representatives of the Agency shall have the right to enter upon any property at reasonable times to investigate any condition which appears to indicate the existence of a public nuisance as defined in this Ordinance. The representative shall, upon first presenting his credentials and identifying himself as an employee of the Agency, be permitted to examine the property, take such samples, make such tests, and take such other steps reasonably necessary for the proper investigation of the suspected nuisance. If the property is unoccupied, a reasonable effort will be made to locate the owner or other person having charge or control of same. If entry is refused, recourse will be had to such remedies as are provided by law to secure entry.

8.2 Order of Nuisance Abatement

In the event a well subject to this Ordinance is found to be a public nuisance or constructed, repaired, reconstructed or destroyed contrary to the terms of this Ordinance or a permit issued for such well pursuant to this Ordinance, the General Manager may order the abatement of said well as a nuisance in accordance with the provisions of this Ordinance or pursuant to the provisions of the Water Code of the State of California. Similarly, if a well has been constructed without a Well Permit, the General Manager may order the abatement of said well as a nuisance in accordance with the provisions of this Well Ordinance or pursuant to the provisions of the Water Code of the State of California. In either case, the General Manager will send written notice to the owner of the land as shown on the most recent equalized assessment roll or to the permittee, at his address listed on the permit, which notice shall state the manner in which the well is in violation, what corrective measures must be taken, and the time within which such correction must be made.

8.3 Recording Notice of Violation

If the corrections listed in the notice given pursuant to Section 8.2 are not made as required in said notice, the General Manager with the approval of the Board of Directors, and after a reasonable opportunity for the person notified to be heard by said board, may record a Notice of Violation with the Office of the County Recorder. The owner(s) of the property, as revealed by the assessment roll, on which the violation is situated and any other person responsible for the violation shall be notified of the recordation, if their respective addresses are available.

8.4 Removal of Notice of Violation

If a Notice of Violation was recorded with the County Recorder, the Agency shall submit a Removal of Notice of Violation to the County Recorder when:

- a) It is determined by the Agency, after review, that no violation of this Well Ordinance exists; or
- b) All required and corrective work has been completed and approved by the Agency.

8.5 Abatement by Agency

If the corrections listed in the notice given pursuant to Section 8.2 are not made as required in said notice, the General Manager with the approval of the Board of Directors, and after a reasonable opportunity for the person notified to be heard by said board, may abate the condition and the cost thereof shall be charged against the permittee's deposit or bond, the person notified, or assessed against the subject property upon which the well is located as a lien pursuant to California Government Code Section 25845.

8.6 Emergency Abatement

If the General Manager finds that the condition or operation of a well subject to this chapter is, by its operation or maintenance, causing significant irreparable degradation to the groundwater, and that it is impracticable to notify the owner or permittee, he may abate the condition without giving notice as required in Section 8.2, and the cost thereof shall be charged against the permittee's deposit or bond, the owner of the land as shown on the last equalized assessment roll, or assessed against the subject property upon which the well is located as a lien pursuant to California Government Code Section 25845.

SECTION 9 - APPEALS

Any person aggrieved by the refusal to issue a permit, by the terms of a permit, revocation or suspension of a permit, denial of request for variance or by any Agency decision made under this Ordinance, shall have the right of review and appeal.

9.1 Appeals to General Manager

The aggrieved person may, upon written request, have the matter reviewed by the General Manager. The written request shall be made within ten (10) days after the denial, revocation, suspension, or agency decision. Upon receipt of such a written request, the General Manager shall schedule the same for review within thirty (30) calendar days and give applicant at least fourteen (14) calendar days' written notice of the time and place of said review unless applicant agrees to a lesser time.

9.2 Appeals to Board of Directors

If the applicant is not satisfied with the results of the review by the General Manager, an appeal may be presented to the Zone 7 Board of Directors. The appeal to the Board shall be in writing and made within ten (10) calendar days after the General Manager's review is completed. It shall specify the grounds upon which it is taken, and shall be accompanied by a filing fee if and as established by the Board. The Agency Secretary shall set the appeal for hearing within fifteen (15) days following the filing of the appeal, and shall notify the appellant, in writing, of the time so set at least five (5) days prior to the hearing. After the hearing, the Board may affirm, reverse in whole or in part, or may modify the order or determination appealed from. The action of the Board shall be final and conclusive.

SECTION 10 - SEVERABILITY

If any section, subsection, paragraph, subparagraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; and

the Board declares that this Ordinance and each section, subsection, paragraph, subparagraph, sentence, clause, and phrase thereof would have been adopted irrespective of the fact that one or more of such section, subsection, paragraph, subparagraph, sentence, clause, or phrase be declared invalid or unconstitutional.

Draft

To develop the Zone 7 well ordinance (Ordinance), Staff reviewed current well ordinances from three neighboring counties (San Mateo, Santa Cruz and San Joaquin), and three Bay Area water districts (Alameda County Water District, Santa Clara Valley Water District, and Scotts Valley Water District), and selectively borrowed ordinance provision language from each. Staff then made sure that the draft ordinance fully adheres to the State's Model Well Standards Ordinance and California Water Code. The review process also included routing drafts to the local cities (Livermore, Pleasanton, and Dublin), DSRSD and California Water Service Company, and to Directors Stevens and Figuers for comments and edits.

For the Draft Ordinance, staff defined the areas where a permit is needed for soil borings of 10-feet or greater to coincide with the boundaries of DWR's three defined groundwater basins (Livermore Valley Groundwater Basin, Sunol Valley Groundwater Basin and Tracy Groundwater Basin) within the Zone 7's service area as depicted in Department of Water Resources (DWR) Bulletin 118-1. Also during the process, staff updated the areas where special well construction requirements are necessary to prevent vertical spreading of contamination. Staff also developed a potential permit fee schedule based on actual and projected permit activity and projected staff costs. The Ordinance provides for the Agency to periodically revise both, the special requirement areas and the permit fee schedule without having to revise the ordinance.

Zone 7's authority to create its own well ordinance comes from Act 20 of the California Uncodified Water Code ("District Act") which gave the authority to Alameda County Flood Control and Water Conservation District. Section 36(4) of Act 20 provides the Zone 7 Board authority and autonomy to govern matters solely affecting Zone 7 independent of the Alameda County Board of Supervisors who govern the other nine zones of the ACFCWCD. The Cities within Zone 7's jurisdiction will have to adopt the ordinance or otherwise give Zone 7 the authority to administer the ordinance within their respective jurisdictions, as they did before.

Passage of the ordinance requires at least two meetings of the Board of Directors held at least five days apart; one for its introduction and a second for its adoption. One full reading of the ordinance is required at either of the two meetings except when, after reading the title, further reading of the ordinance is waived by regular motion adopted by majority vote. An ordinance summary or a one-quarter page display advertisement of the ordinance must be published in a newspaper of general circulation in the county at least five days prior to the meeting at which the ordinance is to be adopted and once within 15 days after adoption of the ordinance. By default, the ordinance will become effective 30 days from the date of its adoption. Staff recommends introduction of the Ordinance at the October 15, 2014 Board meeting and adoption at the November 19, 2014 Board Meeting, following the noticing process.