

## ORDINANCE NO. 12

### AN ORDINANCE OF THE OJAI BASIN GROUNDWATER MANAGEMENT AGENCY TO PROTECT THE SOUTHWEST UPPER SATURATED ZONE (SWUSZ) FROM GROUNDWATER EXTRACTION AND DEPLETION

**WHEREAS**, the California Legislature has adopted, and the Governor has signed into law, the Sustainable Groundwater Management Act of 2014 ("Act") (Water Code § 10720 et. seq.), which authorizes local agencies to manage groundwater in a sustainable fashion; and

**WHEREAS**, the legislative intent of the Act is to provide for sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local agencies with the authority to sustainably manage groundwater; and

**WHEREAS**, the California Department of Water Resources ("DWR") has designated the 9.2-square-mile Ojai Valley Groundwater Basin ("OVGB") (DWR Basin No. 4-002) as a "high-priority" basin pursuant to the Act; and

**WHEREAS**, the Act identifies the Ojai Basin Groundwater Management Agency ("Agency") as the "exclusive local agency" within its statutory boundaries for purposes of implementing the requirements of the Act for the OVGB; and

**WHEREAS**, on January 6, 2022, the Agency adopted a Groundwater Sustainability Plan ("GSP") for the OVGB consistent with the requirements of the Act; and

**WHEREAS**, the GSP is intended to ensure the OVGB continues to operate within its sustainable yield and does not exhibit "undesirable results" within the GSP's planning and implementation horizon of 50 years; and

**WHEREAS**, the Act defines "undesirable results" as, among other things, depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water; and

**WHEREAS**, the Act considers depletions of interconnected surface water to be significant and unreasonable if such depletions cause a decline or permanent loss of identified Groundwater Dependent Ecosystems ("GDEs"); and

**WHEREAS**, the Act defines GDEs as "ecological communities or species that depend on groundwater emerging from aquifers or on groundwater occurring near the ground surface" (Title 23 CCR Section 351(m)); and

**WHEREAS**, available lithologic, streamflow, and groundwater level and quality data demonstrate the existence of a shallow perched aquifer in the southern and western portion of the OVGB, commonly known as the Southwest Upper Saturated Zone

("SWUSZ"), that is in hydraulic connection with surface water of Lower San Antonio Creek and its tributaries; and

**WHEREAS**, there are potential GDEs in the vicinity of Lower San Antonio Creek and its tributaries which likely rely on groundwater from the SWUSZ for survival; and

**WHEREAS**, the SWUSZ is separated from the deeper confined production aquifers of the OVGB by an extensive clay aquitard (Kear 2005, 2021; OBGMA 2018); and

**WHEREAS**, groundwater levels in the SWUSZ exhibit a stable trend with little seasonal fluctuation or response to groundwater extraction while groundwater levels in the primary production aquifer show the effects of widespread groundwater extraction (Shallow Perched Aquifer and Deep Production Aquifer Groundwater Level Trends; Kear 2021); and

**WHEREAS**, the unique hydrogeologic characteristics of the SWUSZ justify separate management for purposes of protecting potential GDEs reliant on the perched aquifer; and

**WHEREAS**, on March 28, 2022 and February 13, 2023, Governor Newsom signed Executive Orders N-7-22 and N-3-23 ("EOs"), respectively, directing the County of Ventura, prior to approving a permit for a groundwater well or alteration of an existing well in the OVGB, to obtain written approval from the Agency determining that the proposed well would not be inconsistent with the GSP adopted by the Agency and would not decrease the likelihood of achieving a sustainability goal for the OVGB; and

**WHEREAS**, the Governor's EOs do not apply to permits for wells (i) that will provide less than two acre-feet per year of groundwater for individual domestic users, (ii) that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code, or (iii) that are replacing existing, currently permitted wells acquired by eminent domain or under threat of condemnation with new wells that will produce an equivalent quantity of water; and

**WHEREAS**, the Act authorizes the Agency pursuant to the GSP to control groundwater extractions from the SWUSZ (Water Code Section 10726.4(a)(2)) by regulating, limiting or suspending extractions from existing groundwater wells and prohibiting the construction of new groundwater wells completed in the perched aquifer system; and

**NOW, THEREFORE**, given the importance of protecting potential GDEs reliant on the shallow perched aquifer known as the SWUSZ, and minimizing the withdrawal of interconnected groundwater water and surface water, the Board of Directors of the Ojai Basin Groundwater Management Agency do hereby ordain as follows:

## ARTICLE 1. General

### Section 1. Ordinance Name.

This Ordinance shall be known as an "Ordinance of the Ojai Basin Groundwater Management Agency To Protect the Southwest Upper Saturated Zone (SWUSZ) From Groundwater Extraction and Depletion."

### Section 2. Purpose and Intent.

The purpose and intent of this Ordinance is to preserve and protect potential GDEs reliant on the shallow perched aquifer known as the SWUSZ by prohibiting the withdrawal and depletion of groundwater from the SWUSZ.

### Section 3. Periodic Review Procedure.

The Board will periodically review the effectiveness of this Ordinance toward meeting its purpose and intent. This review shall occur at least once every five years. If necessary, this Ordinance will be amended by the Board to ensure that the goals of the Agency are met.

### Section 4. Definitions.

As used in this Ordinance, the following terms shall have the meanings stated below:

- A. **"Agency"** means the Ojai Basin Groundwater Management Agency.
- B. **"Aquifer"** means a geologic formation or structure that yields water in sufficient quantities to supply pumping wells or springs. A confined aquifer is an aquifer with an overlying less permeable or impermeable layer.
- C. **"Board"** means the Board of Directors of the Ojai Basin Groundwater Management Agency.
- D. **"Extraction"** means the act of obtaining groundwater by pumping or other controlled means.
- E. **"Extraction facility"** means any device or method (e.g., water well) used for extraction of groundwater within a groundwater basin or aquifer.
- F. **"Groundwater"** means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water.

G. **"Groundwater basin"** means a geologically and hydrologically defined area containing one or more aquifers, which store and transmit water yielding significant quantities of water to extraction facilities.

H. **"Operator"** means a person who either owns or operates a groundwater extraction facility with the written approval of the owner. In the event the Agency is unable to determine who operates a particular extraction facility, then "operator" shall mean the person to whom the extraction facility is assessed by the County Assessor, or, if not separately assessed, the person who owns the extraction facility or the land upon which it is located.

I. **"Person"** includes any state or local governmental agency, private corporation, firm, partnership, individual, group of individuals, or, to the extent authorized by law, any federal agency.

J. **"Shallow perched aquifer"** means the water bearing area that is located between the earth's surface and the clay aquitard that exists above the deeper confined production aquifers of the OVGB.

K. **"Southwest Upper Saturated Zone"** or **"SWUSZ"** means the shallow perched aquifer located in the in the southern and western portion of the OVGB, the areal extent of which is depicted on Attachment 1, incorporated herein and made a part of this Ordinance by reference.

## ARTICLE 2. PROHIBITION ON EXTRACTION

### Section 1. Prohibition.

In order to protect the Southwest Upper Saturated Zone (SWUSZ) from groundwater extraction and depletion, no person shall (1) perforate the well casing of any extraction facility in the shallow perched aquifer for the purpose of extracting groundwater from the SWUSZ; and (2) operate any extraction facility that penetrates the shallow perched aquifer in a manner and for the purpose of extracting groundwater from the SWUSZ.

### Section 2. Exceptions.

The prohibitions set forth in Article 2, Section 1 of this ordinance shall not apply to:

1. Extraction facilities drilled exclusively for dewatering or remediation which discharge legally to surface waters.
2. Monitoring wells that do not extract more than 500 gallons of water annually for purging and sampling as directed by a public agency having authority over such operations.
3. Dry wells or wells used to direct stormwater into the SWUSZ for the purpose of recharging the shallow perched aquifer.

4. Extraction facilities that function as surface water diversions permitted by and/or registered with the State Water Resources Control Board by extracting water that is flowing in a known and defined channel and not percolating groundwater of the OVGB.

### **Section 3. Hardship Exemption.**

The Board, on a case-by-case basis, shall have the authority, upon a showing of good cause by an applicant or other person with standing, to waive the requirements of this Ordinance. "Good cause" shall mean a factual and evidentiary showing by the applicant that the prohibitive effect of this Ordinance, if not waived, will (1) deprive the applicant of substantially all reasonable use of their property under the Fifth Amendment of the U.S. Constitution or Article I, Section 19 of the California Constitution; or (2) result in a violation of an applicable California state or federal law. Any such request for a waiver shall be filed with the Agency including all supporting materials intended to demonstrate "good cause."

### **ARTICLE 4. WELL SEALING REQUIREMENTS**

Any extraction facility that penetrates the shallow perched aquifer and is completed in the deeper confined production aquifers of the OVGB shall be equipped with an annular seal in accordance with County of Ventura standards to preclude communication between the SWUSZ and the production stream of any well.

### **ARTICLE 5. VIOLATION**

Any person who intentionally violates this Ordinance is guilty of an infraction and may be required to pay a fine not to exceed five hundred dollars (\$500).

Any person who negligently or intentionally violates this Ordinance may also be liable civilly to the Agency for a sum not to exceed one thousand dollars (\$1,000) per day for each violation, in addition to any other penalties that may be prescribed by law.

### **ARTICLE 6. ENFORCEMENT**

The Agency may take any actions authorized by law, to enforce the terms and provisions of this Ordinance.

### **ARTICLE 7. TERMINATION DATE**

This Ordinance shall remain in full force and effect until repealed by action of the Board.

## ARTICLE 8. APPLICATION

The provisions of this Ordinance shall be read in conjunction with and complement all other Agency Ordinances and Resolutions and shall apply to all operators within the boundaries of the Agency.

## ARTICLE 9. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance and its implementing rules and regulations are for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares and determines that it would have passed this Ordinance and its implementing rules and regulations irrespective of the fact that any one or more sections, subsection, sentences, clauses or phrases may be determined to be unconstitutional or invalid.

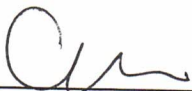
## ARTICLE 10. EFFECTIVE DATE

This Ordinance shall become effective on the thirty-first (31<sup>st</sup>) day after adoption.

PASSED, APPROVED AND ADOPTED THIS 25 day of September, 2023.

ATTEST

  
Richard Hajas, President

  
Cece VanDerMeer, Secretary

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

NOTE: Adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Guidelines Sections 15307 and 15308 as it is an action taken by a regulatory agency, as authorized by state law, to ensure the maintenance, restoration, or enhancement of natural resources and the environment, for the protection of water resources and GDEs reliant thereon, and does not have the potential for causing a significant effect on the environment, and the County remains responsible for CEQA review of each extraction facility permit as the lead permitting agency.