



United States Department of the Interior

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In Reply Refer To:
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CA-931

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Memorandum

To: Office of Regional Solicitor, Pacific Southwest Region
(Attn: Erica Niebauer, Attorney)

From: Chief, Branch of Lands Management (CA-930)

Subject: Claim of right to compensation for taking of water rights by the United States—
Valley Wells Ranch, Inc., et al, San Bernardino County, California

Howard K. Starr

This is to request your opinion, comments and recommendations regarding the subject claim based on a water rights dispute between two private parties purportedly involving federal land. Your assistance would be appreciated in support of a response we are preparing to send to Valley Wells Ranch Inc.'s representative.

We are in receipt of a letter from Baker, Donelson, Bearman, Caldwell, & Berkowitz, PC, dated June 30 2006, submitted on behalf of Valley Wells Ranch, Inc., and their consultants, the Windsor Noble Group. Valley Wells Ranch Inc., is claiming that the United States government owes Valley Wells Ranch, Inc., et al, compensation for their water rights, allegedly taken by the government in land acquisitions under the California Desert Protection Act (DPA)¹ and under previous takings.² Valley Wells Ranch perceives the solution to resolving their dispute is to complete a land exchange with BLM California. The BLM is not a party to the dispute and is not contemplating a land exchange with any of the parties at this time.

Background: In 2002, The California & Nevada Water Co. (Mr. Frederick Scheffler) was contacted on becoming involved in a dispute of ownership related to Valley Wells Ranch and water rights. The dispute (between two private parties) purportedly stems from claims tied back to the Mojave Desert through an old Spanish land grant. This issue has arisen several times over the past, perhaps 25 years, and has been presented to BLM by two or more different individuals. In a 2002 request, BLM was asked to take a position on the validity of competing deeds between CalNev and Primmadonna.³ BLM declined to become involved in the private party matter and responded to The California & Nevada Water Co. stating that position in September 2002. BLM's response was coordinated with the Solicitor's Office in Sacramento.

In the past Valley Wells Ranch representatives have offered to exchange claims to water rights and lands for other public land. The claims to ownership likely would cover public land

¹ Section 706 of the DPA addresses Federal Reserved Water Rights.

² BLM California is unaware of any "previous takings."

³ To our understanding Primmadonna is a Nevada corporation.

administered by the BLM California Desert District and the National Park Service's Mojave Preserve.

BLM has never been provided a copy of the alleged original land grant but instead in the past has been provided copies of questionable quitclaim deeds. Prior to The California and Nevada Water Company contacting us in 2002, BLM was presented a "deal" offering transfer of "ownership" of approximately (figures may be wrong or could have changed) 700,000 acre feet of water rights in exchange for a smaller acreage of land, perhaps 50,000 or 100,000 acres of public land to clear up ambiguity in who owns the water rights.

Documentation:

Attached is a copy of our previous letter response dated September 23, 2002,⁴ to The California & Nevada Water Company (Frederick J. Scheffler, President). The documents listed in footnote 5 accompanied the recent letter of June 30, 2006.⁵

⁴ Documents attached to BLM's response dated September 23, 2002:

- (a) Letter dated September 5, 2002, from The California & Nevada Water Co.
- (b) Memorandum of Law dated April 1, 2002

⁵ Documents attached to Baker, et al, letter dated June 30, 2006:

- (a) Exhibits 1 & 2 – maps (black and white) showing vicinity of Valley Wells Ranch property, San Bernardino County;
- (b) Easement document between Sarah and J. Wade Viles and the United States, recorded 04-07-48, Book 2205, page 82, Indexed 200, San Bernardino County records;
- (c) Letter dated October 6, 1978, to McDaniel and Valley Well Ranch from the State of California, Department of Fish and Game, Wildlife Conservation Board;
- (d) Property tax bill for period 07-01-73 – 06-30-74;
- (e) Preliminary title report (Commonwealth Land Title Company), File No. 03204504-609-611M dated as of October 8, 2004, covering the following described land;

The SW¼NE¼ of sec. 25, T. 11 N., R. 12 E., SBM, excepting that portion described on Exhibit B of Schedule of said preliminary title report. Lands left federal ownership under U.S. Homestead Entry Patent Number 1057066 dated 08-29-32. Patent reserved ROW for D/C; patent made subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by local customs, laws, and decisions of the courts.

Preliminary title report (Commonwealth Land Title Company), File No. 03204503-609-611M dated as of October 8, 2004, covering two parcels.

Parcel 1: the North 220 feet of the South 470 feet of the West 160 feet of the NE¼NE¼ of sec. 25, T. 11 N., R. 12 E., SBM, and **Parcel 2:** that portion of the NW¼NE¼ of sec. 25, T. 11 N., R. 12 E., SBM described in m&b. Lands left federal ownership under HE Patent Number 1079865 dated 11-19-35. Patent reserved ROW for D/C; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by local customs, laws, and decisions of the courts.

- (f) Map, "Approximate well locations";

Title Search:

Page 2 of the June 30th letter claims that the interests covered by water rights are legally described as sections 11 through 24 and 26, T. 17 N., R. 14 E. San Bernardino Base and Meridian, San Bernardino County, California. Of the 15 sections of land, Section 16 is state land and therefore we excluded it from the title search. The resulting is 14 sections of federal surface and subsurface, an area totaling 8,960 acres falling wholly within the California Desert Conservation Area designation established by the Federal Land Management and Policy Act of October 21, 1976; 43 U.S.C. 1781.

The BLM California State Office has searched its title records to determine whether (1) the Desert Protection Act of 1994 (DPA) affects any of the 14 sections of federal land and (2) to verify ownership of the surface and subsurface of the land. Of the 8,960 acres, we found only an estimated 23 acres within the NW¹/₄ of section 11, T. 17 N., R. 14 E., SBM fall within the Stateline BLM Wilderness established pursuant to the DPA. We are not aware of the status of any water rights within the 23 acre area, and Valley Wells Ranch has not presented any clear evidence of the location of water rights other than the "approximate well locations" mentioned under footnote 5(f). From our review of the map of well locations, there does not appear to be any wells within the 23 acre area. The remaining 8,937 acres of federal land within the 14 sections otherwise are not affected by the provisions of the DPA.

Additionally, mining claim and geographic (third party rights) reports have been reviewed to determine whether any authorized prior existing rights affect the 14 sections of federal land. The record show one mining claim, number CAMC 237296, claim name **APCEL 004**, is located in the SE¹/₄ of section 20. Eight (8) right-of-way grants were authorized on portions of 12 of the 14 sections of land, for various purposes such as power transmission and telephone/ telegraph lines, oil and gas pipelines, and water facilities.

CONCLUSION:

We have tentatively concluded that there appears to be no validity to Valley Wells Ranch Inc.'s claim of right to compensation for water rights allegedly taken by the United States pursuant to the Desert Protection Act of 1994. Except for 23 acres, none of the 14 sections of federal land described in Valley Wells Ranch Inc.'s letter of June 30th is affected by the DPA. Valley Wells Ranch Inc. must consult with the State of California, Water Resources Control Board, for a determination on existing water rights that affect lands in California.

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- (g) Chain of title;
 - (h) Letter dated 11-11-68, from Chaplin Collins (unsigned) to Secretary of the Interior (Stewart Udall);
 - (i) 1975 Appraisal of Property by Drexel Chapman;
 - (j) Letter, subject: Hydrology Report and Water Rights Review, dated 9-11-90, from George A. Nelson, P.E., State of Nevada to Valley Wells Ranch, Inc.;
 - (k) Letter, re: Water Rights review of Valley Wells Ranch, dated 10-01-90, from Paul Kenner, P.E., State of California to Valley Wells Ranch (George Mitzel, President).

We also reviewed all the documents listed under footnote 5(a) through (k) and assume that Valley Wells Ranch submitted some of the documents in support of a proposed land exchange they are interested in pursuing with BLM, i.e., the two Commonwealth Land Title Company preliminary title reports covering private land. Nonetheless, we are forwarding all the documents submitted by Valley Wells Ranch to you for review.

Please review this information and provide your opinion and recommendations at your earliest opportunity. If you have any questions or need additional information, please contact me at extension 4678 or Dianna Storey at extension 4676.

Attachments (2)

Atch 1 – Master title plat (MTP) and USGS quad map (Stateline Wilderness)

Atch 2 – Blue Folder containing 11 footnoted documents

cc: CA-610, Deputy District Manager, Lands, CDD
CA-690, Field Manager, Needles FO

DStorey:dls:11-15-06:ext 4676

Memorandum of Understanding

Between

San Bernardino County

And

Bureau of Land Management

Regarding County Ordinance No. 3872

Relating To Groundwater Management
In The Unincorporated, Unadjudicated
Desert Region Of San Bernardino County

This Memorandum of Understanding ("MOU") is made and entered into by and between the County of San Bernardino ("County"), a political subdivision of the State of California and the Bureau of Land Management ("BLM").

RECITALS

A. The protection of groundwater resources within the desert region of San Bernardino County is of great importance to both agencies and the public. The people of the State of California and of the County and the natural resources on public lands depend upon the continued availability of groundwater. Responsible management of groundwater must strive to ensure that extraction does not adversely affect the natural resources that depend upon the desert groundwater systems.

B. The County has adopted Ordinance No. 3872 relating to groundwater management in the unincorporated, unadjudicated desert region of the county that requires permitting and monitoring of certain groundwater extraction wells. Wells located on federal lands are excluded unless otherwise specified by inter-agency agreement. Groundwater extraction on non federal lands have the potential to affect resources on public lands administered by BLM. Likewise, groundwater extraction from public lands could affect non federal resources.

C. The BLM administers groundwater resources on public lands that were reserved to the Federal government by Congress in various laws and by Presidential Executive Order. In particular, Section 706 of the California Desert Protection Act of 1994 reserved a Federal water right to fulfill the purposes of the Act as related to wilderness areas on public lands. This water reservation extends to both public and private areas outside wilderness if extraction of groundwater affects resources within wilderness.

D. The State of California water law provides the regulatory framework for all ground water management and adjudication for all groundwater not specifically reserved to the Federal government. The County has the responsibility under its groundwater management ordinance to regulate groundwater extraction.

E. The purpose of this Memorandum of Understanding is to clarify agency responsibility with respect to groundwater management and monitoring and to incorporate public lands into a coordinated groundwater management regime as provided under County Ordinance No. 3872.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. The Bureau of Land Management (BLM) shall:

- a) Notify the County whenever the BLM receives an application, plan or other proposal that involves groundwater extraction on public lands within the County of San Bernardino;
- b) Require proponents, operators, owners, claimants or permittees to fully comply with San Bernardino County Ordinance No. 3872 for proposed projects on public lands that are situated wholly or partly within San Bernardino County and that propose to extract groundwater, or could otherwise affect groundwater resources prior to commencement of any operations;
- c) When requested, provide technical review and comments to the County for all proposed projects that are situated wholly or partly within San Bernardino County that propose to extract groundwater, or could otherwise affect groundwater resources;
- d) Notify the County in writing when BLM has determined that a proposed groundwater extraction project would affect natural resources of a wilderness area or a federal reserved water right and would require approval by the BLM Authorized Officer;
- e) Solicit technical review and comments from the County regarding all proposed projects affecting groundwater resources that are subject to BLM approval for federal reserved water rights; and
- f) Coordinate with, and respond to, the County in a timely fashion as necessary on all proposed projects subject to this MOU.

2. The County of San Bernardino (County) shall:

- a) Notify the BLM of all applications for permit for groundwater extraction projects that which are subject to San Bernardino County Ordinance No. 3872 and which could affect groundwater beneath, or other natural resources on, public lands administered by BLM;

b) Provide technical review and comments to the BLM regarding all proposed projects affecting groundwater resources that are subject to BLM approval for federal reserved water rights, as may be requested by BLM; and

c) Provide timely processing of permit applications for water extraction on proposed projects requiring approval by the BLM Authorized Officer.

3. The County and BLM agree to:

a) Work cooperatively to ensure that conditions required of proponents, operators, owners, claimants or permittees by the respective agencies will jointly conform to applicable local, state, and federal laws and regulations;

b) When appropriate, prepare joint environmental documents as required under the National Environmental Policy Act and California Environmental Quality Act for projects on public lands which involve the extraction of groundwater;

c) Coordinate their respective enforcement and monitoring activities in order to provide consistency in the application of groundwater extraction permit terms and conditions;

d) Ensure that all groundwater extraction projects, including those initiated by BLM, comply with federal regulations and County Ordinance No. 3872; and

e) Annually provide to the other Party the names of individuals assigned the responsibility to act as a point of contact for notifications and as necessary the names of individuals that will coordinate efforts for specific projects.

4. This MOU applies only to those groundwater extraction projects subject to San Bernardino County Ordinance No. 3872- and to those groundwater extraction projects subject to BLM approval for federal reserved Water rights.

5. It is expressly stipulated and agreed to by both parties that each and every provision in the Memorandum of Understanding is subject to the laws of the State of California, the laws of the United States, and to the delegated authority assigned in each instance.

6. Nothing in this agreement shall be construed as obligating either party hereto in the expenditure of funds, or the future payment of money, in excess of appropriations authorized by law.

7. The parties will accomplish all cooperative work under the provisions of this memorandum or supplemental memorandum or cooperative agreements without discrimination against any employee, or applicant for employment, because of race, creed, color, or national origin.

8. This Memorandum of Understanding shall become effective when signed by the designated representatives of the parties hereto and shall remain in force until

terminated by mutual agreement, or by either party upon thirty days notice in writing to the other of its intention to terminate upon a date indicated.

9. This Memorandum of Understanding shall be periodically reviewed at the request of either party to resolve any existing or potential problems and to make amendments as necessary to ensure both the workability of the agreement and consistency with county, state, and federal statutes and regulations, or for any other purpose mutually agreed upon by the parties.

10. This MOU may only be modified or amended by written instrument executed by both parties.

Approved this date, _____.

District Manager, California Desert District
For Bureau of Land Management

For San Bernardino County

ORDINANCE NO. 3872

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING ARTICLE 5 TO CHAPTER 6 OF DIVISION 3 OF TITLE 3 OF THE SAN BERNARDINO COUNTY CODE RELATING TO GROUNDWATER MANAGEMENT IN THE UNINCORPORATED, UNADJUDICATED DESERT REGION OF THE COUNTY.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Article 5 is added to Chapter 6 of Division 3 of Title 3 of the San Bernardino County Code, to read:

Article 5

Desert Groundwater Management

Sections:

- 33.06551 Purpose.
- 33.06552 Scope and Exclusions.
- 33.06553 Definitions.
- 33.06554 Permits.
- 33.06555 Notice of Pending Decision.
- 33.06556 Appeals.
- 33.06557 Violations, Remedies and Penalties.

33.06551 Purpose.

(a) The protection of groundwater resources within San Bernardino County is of utmost importance. The public health, safety and general welfare of the people of the State of California and of the County depend upon the continued availability of groundwater through ensuring that extraction of groundwater does not exceed the safe yield of affected groundwater aquifers, considering both the short and long-term impacts of groundwater

1 extraction, including the recovery of groundwater aquifers through natural as well as
2 artificial recharge. The protection of the groundwater resource within San Bernardino
3 County also includes the consideration of the health of individual aquifers and the continued
4 ability of those aquifers to store and maintain water.

5 (b) The protection of groundwater resources within the unincorporated and
6 unadjudicated desert region of San Bernardino County is of particular importance due to:

7 (1) the existence of vast aquifers that underlie those areas that have not
8 been overdrafted;

9 (2) the relative lack of significant natural recharge in those areas when
10 compared to the mountain areas and other less arid areas of the County; and

11 (3) the lack of regulatory or judicial oversight of the groundwater aquifers
12 within the unadjudicated desert region, which oversight would serve to ensure the
13 groundwater safe yield and health of the aquifers.

14 (c) This Article protects the groundwater resources of San Bernardino County in
15 order to ensure the health of that resource. This Article is intended to be consistent with
16 the California Constitution, Article 10, section 2 (water rights), and Article 11, section 7
17 (police powers).

18 (d) This Article augments and supplements the Groundwater Management
19 authority the County may otherwise have pursuant to the Groundwater Management Act,
20 California Water Code section 10750, et seq.

21
22 **33.06552 Scope and Exclusions.**

23 (a) This Article shall only apply to those groundwater aquifers that have not been
24 adjudicated by judicial decree, which are located outside of the jurisdictional boundaries of
25 the Mojave Water Agency and Public Water Districts within the Morongo Basin and which
26 are situated in the unincorporated desert region of the County, described as that area of the
27 County lying west of the Colorado River and the California-Nevada state line, north of the
28 San Bernardino-Riverside county line, south of the San Bernardino-Inyo county line and

1 east of Fort Irwin Military Reservation, the Mojave Water Agency, the Marine Air Ground
2 Task Force Command Center, Twentynine Palms Water District and the City of Twentynine
3 Palms.

4 (b) This Article shall not apply to any well operated by any district or person
5 where the district or person has performed both of the following:

6 (1) adopted a groundwater management plan pursuant to Water Code
7 section 10750, et seq. ("AB 3030 Plan") which adheres to "groundwater safe yield" and
8 "aquifer health" limitations, as those terms are defined in section 33.06553 of this Code or
9 has otherwise developed and instituted a County-approved groundwater management,
10 monitoring and mitigation plan associated with its extraction of water that is consistent with
11 guidelines developed by the County; and

12 (2) executed a Memorandum of Understanding ("MOU") or other binding
13 agreement with the County which:

14 (A) requires the parties to share groundwater monitoring information
15 and data and to coordinate their efforts to monitor groundwater resources in the County;
16 and

17 (B) ensures that the measures identified in the AB 3030 Plan or
18 County-approved groundwater management, monitoring and mitigation plan are fully
19 implemented and enforced. Such MOU or agreement must remain enforceable in order to
20 provide for an exclusion from this Article.

21 (c) This Article shall not apply to the following:

22 (1) groundwater wells subject to the Lower Colorado Water Supply Project.

23 (2) groundwater wells within the jurisdictional boundary of the Mojave
24 Water Agency, including public water agencies within the Morongo Basin.

25 (3) groundwater well operations approved before the effective date of this
26 Article as part of a currently valid and complied with Conditional Use Permit or well
27 construction permit. Owner must provide evidence or certification the well was drilled prior
28

1 to the existence of permit requirements or was permitted prior to the effective date of this
2 ordinance.

3 (4) groundwater wells used in conjunction with mining operations for which
4 a currently valid and complied with mining reclamation plan has been established.

5 (5) groundwater wells associated with an agricultural operation, where the
6 cumulative extraction from all of the agricultural wells from such an operation is less than
7 1,100 acre-feet per year and where the water is used on site and allowed to percolate into
8 the ground, resulting in some return flow to the underlying aquifer.

9 (6) groundwater wells which replace abandoned wells if (i) proof of
10 abandonment for the existing well is shown, (ii) the replacement well casing is not larger in
11 diameter than the abandoned well, and/or (iii) the pumping capacity of the replacement
12 well is no more than the pumping capacity of the abandoned well.

13 (7) non-agricultural wells with casings smaller than ten inches in diameter
14 or those to be pumped for less than thirty (30) acre feet per year. Notwithstanding the
15 foregoing exemption, this Article shall apply to a non-agricultural well that is proposed on a
16 parcel on which other wells are located and where the total production of all wells on-site is
17 greater than fifty (50) acre feet per year. The term, "parcel" shall include all parcels within
18 any one groundwater aquifer in which the same person or persons have a common
19 ownership interest.

20 (8) groundwater wells located on Federal lands unless otherwise specified
21 by inter-agency agreement. Notwithstanding the foregoing exclusion, this Article shall apply
22 to groundwater wells located on privately held lands, which are within the boundaries of a
23 National Park, Preserve or Monument or any other Federal designation.

24

25 **33.06553 Definitions.**

26 The following terms related to groundwater management are defined as follows:

27 (a) "AB 3030 District": A district which has adopted a plan pursuant to the
28 Groundwater Management Act.

1 (b) "Aquifer": A geologic formation that stores, transmits and yields significant
2 quantities of water to wells and springs.

3 (c) "Aquifer Health": The geologic integrity of the affected aquifer, its storage
4 capacity and the quality of water within the aquifer, including the quality of water for a
5 drinking water supply.

6 (d) "Code": The San Bernardino County Code.

7 (e) "District": Excluding a city wholly or in part located within the boundaries of
8 the County, any district or political subdivision whose primary function is the irrigation,
9 reclamation or drainage of land or the diversion, storage, management or distribution of
10 water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife
11 enhancement, flood control or power production purposes.

12 (f) "Enforcement Agency": The Enforcement Agency for San Bernardino County
13 may be the Board of Supervisors or the Director of the Department of Public Health,
14 Environmental Health Services Division.

15 (g) "Groundwater": All water beneath the surface of the earth within the zone
16 below the water table in which the soil is completely saturated with water, but does not
17 include water which flows in known and definite channels.

18 (h) "Groundwater Management Act": California Water Code section 10750, et
19 seq.

20 (i) "Groundwater Safe Yield": The maximum quantity of water that can be
21 annually withdrawn from a groundwater aquifer (i) without resulting in overdraft (ii) without
22 adversely affecting aquifer health and (iii) without adversely affecting the health of
23 associated lakes, streams, springs and seeps or their biological resources. The safe yield of
24 an aquifer can be increased by management actions such as artificial recharge, including
25 infiltration and other similar actions.

26 (j) "Overdraft": The condition of a groundwater supply in which the average
27 annual amount of water withdrawn by pumping exceeds the average annual amount of
28

1 water replenishing the aquifer in any ten (10) year period, considering all sources of
2 recharge and withdrawal.

3 (k) "Person": Any state or local government agency, private corporation, firm,
4 partnership, individual, group of individuals or, to the extent authorized by law, any federal
5 agency.

6 (l) "Recharge": Flow to groundwater storage from precipitation, irrigation,
7 infiltration from streams, spreading basins and other sources of water.

8

9 **33.06554 Permits.**

10 (a) Requirement for Permit. Except as otherwise excluded from the application of
11 this Article and in addition to any applicable permitting requirements for well construction,
12 reconstruction, abandonment and destruction pursuant to the provisions of the San
13 Bernardino County Code, no person, district or other entity acting as principal, agent or
14 employee, shall locate, construct, operate or maintain any new groundwater well within the
15 desert region of San Bernardino County, as identified in section 33.06552(a), without first
16 filing a written application to do so with the Enforcement Agency and receiving and retaining
17 a valid permit as provided herein. This permit is a discretionary permit under the California
18 Environmental Quality Act (CEQA, Public Resources Code section 21000, et seq.).

19 (b) Application for Permit. Applications for permits under this Article shall be
20 submitted to the Enforcement Agency in a format prescribed by the Enforcement Agency,
21 and shall be of sufficient detail to allow the determinations set forth in subsections (c) and
22 (d) of this section to be made. Applications shall include the following information:

23 (1) A plot plan depicting the location of the proposed well(s) on a section
24 map depicting the location of the following items within 1/2 mile of the well(s):

25 (A) property lines, location and ownership of all parcels and
26 easements;

27 (B) all intermittent, perennial, natural or artificial bodies of water or
28 watercourses;

1 (C) notable nearby geographic features (faults, etc.);

2 (D) all other wells; and

3 (E) landfills, septic systems or other liquid or solid waste facilities.

4 (2) Proposed well diameter, depth and completion interval (screen or
5 perforation locations) for proposed well(s).

6 (3) Well design capacities for proposed well(s).

7 (4) Anticipated groundwater safe yield of the affected groundwater aquifer.

8 (5) Anticipated static and pumping levels.

9 (6) Anticipated water quality.

10 (7) The intended use of groundwater from the proposed well(s).

11 (8) The proposed months of operation of the proposed well(s) (year-round,
12 irrigation months, etc.).

13 (9) The proposed pumping cycles (one eight-hour/day cycle, two six-
14 hour/day cycles, etc.).

15 (10) Estimated annual pumpage from the proposed well(s) in acre-feet.

16 (11) System description (irrigation, domestic, etc.).

17 (12) Anticipated return flows (deep percolation, runoff, etc.).

18 (13) The estimated rate of natural recharge to the affected groundwater
19 aquifer(s) calculated in accordance with generally accepted scientific methodologies and as
20 deemed appropriate by the Enforcement Agency.

21 (14) A description of the affected groundwater aquifer(s) including estimated
22 storage capacity and the overall quality of water within the aquifer.

23 (15) Other information as may be reasonably necessary for the County to
24 determine the potential effects of the proposed well operations on the groundwater safe
25 yield and aquifer health of the affected aquifer.

26 (16) Supporting documentation, where available, for all of the foregoing
27 items.

28

1 (c) Permit Review.

2 (1) Procedure: Administrative Review or Public Hearing.

3 (2) Reviewing Authority: The Director of the Department of Public Health,
4 Environmental Health Services Division, shall be the reviewing authority for Permit
5 applications except in the following circumstances:

6 (A) Where the Director of the Department of Public Health,
7 Environmental Health Services Division refers the proposal to the Board of Supervisors for
8 public hearing review procedures.

9 (B) Where the proposal is filed concurrently with an application
10 subject to Board of Supervisors public hearing review procedures.

11 (3) Where the Director of the Department of Public Health, Environmental
12 Health Services Division is the reviewing authority, the procedure shall be considered to be
13 Administrative Review and notice shall be provided pursuant to section 33.06555 herein.

14 (d) Conditions of Approval. Plans shall be submitted to the Enforcement Agency
15 demonstrating compliance with the standards of this Article. No permit shall be issued
16 unless the Enforcement Agency determines, based upon the available data, that the well(s)
17 constructed and operated as proposed, would not result in exceeding the groundwater safe
18 yield of the relevant aquifers. Permits may include conditions and requirements found by
19 the Enforcement Agency to be reasonably necessary to accomplish the purposes of this
20 Article, including, but not limited to, conditions requiring groundwater management,
21 mitigation and monitoring by the applicant.

22 (e) Environmental Review. Prior to taking an action to approve an application for
23 a permit, the Enforcement Agency shall make the environmental findings required under
24 the California Environmental Quality Act.

25 (f) Denial. The Enforcement Agency shall deny the application where it
26 determines that the standards of this Article have not been met; where the well operations
27 proposed in the application would result in exceeding the groundwater safe yield of the
28 relevant aquifers considered individually or in conjunction with other existing wells.

1 (g) Permit Fees. The hourly rates for administering the provisions of this Article
2 are established under the provisions of the San Bernardino County Code Schedule of Fees.

3 (h) Permit Suspension/Revocation or Modification. Permits may be issued only
4 for so long as the well operations do not exceed the groundwater safe yield of the relevant
5 aquifers. Permits will be suspended, revoked or modified if the Enforcement Agency
6 determines that continued operations under the permit would result in overdraft of the
7 relevant aquifers.

8 (i) Administrative Variances and Special Circumstances. The County may grant
9 an administrative variance from any provision of this Article due to special circumstances or
10 hardship. The County may describe alternative requirements where submitted documents
11 as may be reasonably required by the County provide substantial evidence that a
12 modification of the requirements in this Article will not endanger the general public health
13 and safety and strict compliance would be unreasonable in view of all of the circumstances.

14 (j) Inspection and Monitoring. The Enforcement Agency may, with consent or a
15 warrant if required, at any and all reasonable times enter any and all places, property,
16 enclosures and structures for the purposes of making examinations and investigations to
17 determine whether any provision of this Article is being or has been violated.

18
19 **33.06555 Notice of Pending Decision.**

20 (a) Upon receipt of a request for a decision, the reviewing authority shall cause
21 notice to be given specifying the time and place at least ten (10) calendar days prior to the
22 date of the scheduled decision by the following applicable methods:

23 (1) Notice shall be published once in a newspaper of general circulation in
24 the respective community of the proposal for decisions using the Public Hearing procedure.

25 (2) Notice shall be given by first class mail to any person who has filed a
26 written request for a specific application.

1 (3) Notice shall be given by first class mail or delivery to all property
2 owners within one (1) mile of the external boundaries of the parcel of the proposed
3 extraction for decisions using the Public Hearing or the Administrative Review procedures.

4 (4) Notice may be given in such other manner as is deemed necessary or
5 desirable.

6 (b) Said notice shall include sufficient information to give those receiving the
7 notice a reasonable opportunity to evaluate the implications of the proposal and to
8 participate in the decision making process.

9 (c) Ownership and addresses of properties shall be determined from the latest
10 equalized tax assessment role or from other records of the County Assessor or County Tax
11 Collector, whichever contains more recent information.

12 (d) If during a public hearing, items are continued by the reviewing authority to a
13 specific date, the items shall not be re-noticed unless specifically requested by the
14 reviewing authority.

15
16 **33.06556 Appeals.**

17 (a) Prior to its effective date, a decision made in accordance with the provisions
18 of this Code by a reviewing authority other than the County Board of Supervisors may be
19 appealed by the applicant or other affected party, as follows:

20 (1) Applications for an appeal to the Board of Supervisors shall be made
21 on forms supplied by the Enforcement Agency. Applications for appeals shall be
22 accompanied by a written statement of the grounds upon which the appeal is based. The
23 appeal application shall identify:

- 24 (A) the subject permit application;
- 25 (B) the specific decision, condition of approval or other matter being
26 appealed;
- 27 (C) the date of such action;
- 28 (D) the justification for the appeal; and

1 (E) any remedy or solution for which the appellant petitions.

2 (2) A uniform fee established by the Board of Supervisors shall be paid to
3 the County upon the filing of each appeal.

4 (3) A properly filed application for appeal stays proceedings in the matter
5 appealed until a decision is rendered on the appeal.

6 (4) An application for an appeal must be submitted to the Clerk of the
7 Board of Supervisors within fifteen (15) days after a notice of decision is mailed by the
8 Enforcement Agency to the applicant.

9 (5) Within thirty (30) days of the acceptance of an application for an
10 appeal, the Clerk of the Board of Supervisors shall set the matter for hearing and shall give
11 notice of the date, time and place of the hearing to the appellant, the applicant and to any
12 other party who has requested in writing to be so notified.

13 (6) Upon hearing the appeal, the Board of Supervisors shall consider the
14 record and such additional evidence as may be offered and may affirm, reverse or modify in
15 whole or in part the decision appealed. The Board of Supervisors is subject to all of the
16 criteria, findings and requirements imposed by this Code upon the original decision maker.

17
18 **33.06557 Violations, Remedies and Penalties.**

19 It shall be unlawful for any person or entity to violate any provision of this Article. All
20 enforcement procedures, remedies and penalties of Chapter 1 of Division 3 of Title 3 of this
21 Code shall apply to this Article and are in addition to all others provided by law.

22
23 SECTION 2. The Board of Supervisors declares that it would have adopted this
24 ordinance and each section, subsection, sentence, clause, phrase or portion of it
25 irrespective of the fact that any one or more sections, subsections, sentences, clauses,
26 phrases or portions of it be declared invalid or unconstitutional. If for any reason any portion
27 of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall
28 remain valid and enforceable.

1
2 SECTION 3. The Board of Supervisors declares that the terms and
3 implementation of this ordinance shall not constitute, and are not intended to constitute, any
4 determination regarding the water rights of any persons subject to the ordinance, including
5 but not limited to any correlative rights of overlying landowners.

6
7 SECTION 4. This ordinance shall become effective thirty (30) days after its
8 adoption.

9
10 
11 _____
12 FRED AGUIAR, Chairman
13 Board of Supervisors

14 SIGNED AND CERTIFIED THAT A COPY OF THIS
15 DOCUMENT HAS BEEN DELIVERED TO THE
16 CHAIRMAN OF THE BOARD

17 J. RENEE BASTIAN,
18 Clerk of the Board of Supervisors
19 of the County of San Bernardino

20 
21 _____

22 STATE OF CALIFORNIA)
23) ss.
24 COUNTY OF SAN BERNARDINO)

25 I, J. RENEE BASTIAN, Clerk of the Board of Supervisors of the County of San
26 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
27 Supervisors of said County and State, held on the 29th day of October, 2002 at which
28 meeting were present Supervisors: Bill Postmus, Jon D. Mikels, Dennis Hansberger, Fred
Aguiar

and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

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AYES: Postmus, Mikels, Hansberger, Aguiar

NOES: None

ABSENT: Eaves

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of
the Board of Supervisors this 29th day of
October, 2002.

J. RENEE BASTIAN,
Clerk of the Board of Supervisors of the County
of San Bernardino, State of California

Nora Hernandez
Deputy

Approved as to Form
Aron K. Marks, County Counsel

By *[Signature]*
Deputy

Date: 10-21-02

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: San Bernardino County Planning Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0182

Clerk of the Board of Supervisors
County of San Bernardino
385 North Arrowhead Avenue, Second Floor
San Bernardino, CA 92415-0130

CLERK OF THE BOARD

OCT 31 2002

Receipt #212686

**COUNTY OF
SAN BERNARDINO
Applicant**

Project Description

Applicant: San Bernardino County
Proposal: An ordinance to amend Title 3 of the San Bernardino County Code relative to groundwater management in the unincorporated, unadjudicated Desert Region of the County.
Index: CW1-849N
Community: Desert Region
Location: Desert Region

San Bernardino County
Name

385 N. Arrowhead Ave.
Address

San Bernardino, CA 92415

(909) 387-4147
Phone

Representative

Name

Address

Phone

Randy Scott
Lead Agency Contact Person

(909) 387-4147
Area Code/Telephone Number

Exempt Status: (check one)

- Ministerial [Sec. 21080(b)(1); 15268];
- Declared Emergency [Sec. 21080(b)(3); 15269(a)];
- Emergency Project [Sec. 21080(b)(4); 15269(b)(c)];
- Categorical Exemption. State type and section number: CEQA Guidelines Section 15061(b)(3)
- Statutory Exemptions. State code number: _____

Reasons why project is exempt: This amendment to Title 3 of the County Code does not have the potential to cause a significant effect on the environment.

Ara Hernandez
Signature (Public Agency)

OCT 29 2002
Date

Deputy Clerk
Title

Signed by Lead Agency Signed by Applicant

Date received for filing at OPR: _____