

University of Colorado Law School

Colorado Law Scholarly Commons

Groundwater: Allocation, Development and
Pollution (Summer Conference, June 6-9)

1983

6-6-1983

Sustaining Aquifer Productivity

Harrison C. Dunning

Follow this and additional works at: <https://scholar.law.colorado.edu/groundwater-allocation-development-and-pollution>



Part of the Administrative Law Commons, Agriculture Law Commons, Dispute Resolution and Arbitration Commons, Energy and Utilities Law Commons, Environmental Law Commons, Evidence Commons, Hydrology Commons, Indian and Aboriginal Law Commons, Law and Economics Commons, Litigation Commons, Natural Resource Economics Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Oil, Gas, and Energy Commons, Oil, Gas, and Mineral Law Commons, Political Science Commons, State and Local Government Law Commons, Taxation-State and Local Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Dunning, Harrison C., "Sustaining Aquifer Productivity" (1983). *Groundwater: Allocation, Development and Pollution (Summer Conference, June 6-9)*.

<https://scholar.law.colorado.edu/groundwater-allocation-development-and-pollution/5>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



Harrison C. Dunning, *Sustaining Aquifer Productivity*,
in GROUNDWATER: ALLOCATION, DEVELOPMENT AND
POLLUTION (Natural Res. Law Ctr., Univ. of Colo. Sch. of
Law 1983).

Reproduced with permission of the Getches-Wilkinson
Center for Natural Resources, Energy, and the
Environment (formerly the Natural Resources Law
Center) at the University of Colorado Law School.

SUSTAINING AQUIFER PRODUCTIVITY

by

Harrison C. Dunning

Professor of Law
University of California at Davis

GROUNDWATER: Allocation--Development--Pollution
Natural Resources Law Short Course
University of Colorado School of Law
Natural Resources Law Center
June 1983

(

(

(

I. INTRODUCTION

This outline deals with aquifer productivity issues as they have arisen in the western United States, with particular emphasis on California.

II. THE NATURAL RESOURCES

A. Ways in which aquifers are productive

B. Threats to aquifer productivity

1. The consequences of overpumping an aquifer

a. Overpumping, overdraft and "safe yield"

b. The legal parameters of safe yield

- Pasadena v. Alhambra, 33 Cal.2d 908,
207 P.2d 17 (1949)

- City of Los Angeles v. City of San
Fernando, 14 Cal.3d 199, 537 P.2d 1250,
123 Cal. Rptr. 1 (1975)

2. The consequences of underpumping an aquifer

3. The Owens Valley experience as an example of conflicting resource objectives

a. Background of the conflict

- KAHRL, WATER AND POWER: THE CONFLICT
OVER LOS ANGELES' WATER SUPPLY IN THE
OWENS VALLEY (University of California
Press, 1982)

b. CEQA (California Environmental Quality Act) litigation

- County of Inyo v. City of Los Angeles,
124 Cal.App.3d 1, 177 Cal. Rptr. 479 (1981)

4. Pollution (other than salinity)

- a. The disparate sources of the law
- b. Lack of integration of the law on depletion of aquifers and the law on pollution of aquifers; contrast with the law of surface water resources

III. DEVELOPMENT OF NEW SUPPLIES AS A MEANS OF SUSTAINING
AQUIFER PRODUCTIVITY

A. Importation of surface waters - some examples

1. Colorado River water to Southern California

- a. Implementing the interbasin transfer
- b. Implementing conjunctive use: the Orange County Water District as an example of the use of fiscal means of control (replenishment assessments - "pump taxes" - and basin equity assessments)

- Orange County Water District Act, Cal.

Water Code App. Sections 40-27, 40-27.1,

40-31.5 (West Supp. 1983)

2. The Central Valley Project

- a. Impact on overdrafting in the San Joaquin Valley

3. The (California) State Water Project

- a. Marketing of the water
- b. Impact on overdrafting in the San Joaquin Valley

4. The Central Arizona Project

- a. Relationship to groundwater overdraft

B. The storage of imported water in aquifers

1. The "public servitude" allowing storage
vis-a-vis overlying landowners

- Niles Sand and Gravel Company v. Alameda
County Water District, 37 Cal. App.3d 924,
112 Cal. Rptr. 846 (1974), cert. denied,
419 U.S. 869 (1975)

2. Allocation of available storage space

- Governor's Commission to Review California
Water Rights Law, Final Report (1978)

3. The importer's right to recapture

- City of Los Angeles v. City of San Fernando,
supra

C. The declining prospects for new imported surface
waters

1. Efforts to link new importations to resolution
of groundwater overdraft problems

D. Development of additional groundwater supplies

1. The Oxnard Plain example

- Fox Canyon Groundwater Management Agency Act,
Ch. 1023, Statutes of 1982 (California)

IV. LIMITS ON PUMPING AS A MEANS OF SUSTAINING AQUIFER
PRODUCTIVITY

A. The theme: limiting total pumping to the safe yield

1. The Southern California groundwater basin
adjudications

2. Allocation of the safe yield

- a. The San Fernando formula
 - City of Los Angeles v. City of San Fernando, supra
 - b. The Sierra Valley formula
 - Sierra Valley Groundwater Basin Act, Cal. Water Code App. Section 119 (West Pamphlet Supp. 1983)
- B. Some variations on the theme
1. Moratoriums or strict limitations on new wells
 - a. Arizona Groundwater Management Act
 - A.R.S. § 45; constitutionality upheld, Town of Chino Valley v. City of Prescott, 131 Ariz. 78, 638 P.2d 1324, appeal dismissed, 102 S. Ct. 2897 (1982)
 - b. Goleta Water District
 - Wright v. Goleta Water District, No. 101485 (Sup. Ct., Santa Barbara County, March 1982)
 2. Elimination or reduction of certain uses
 - a. Unreasonable uses - Niles as an unreasonableness case
 - Niles Sand and Gravel Company v. Alameda County Water District, supra
 - b. Irrigation uses
 - Arizona Groundwater Management Act, A.R.S. § 45
 3. Reduction of exports

- a. County ordinances in California, particularly Inyo County's
 - An Ordinance to Regulate the Extraction of Groundwater within the Owens Valley Groundwater Basin (text attached); City of Los Angeles v. County of Inyo, No. 12908 (Sup. Ct., Inyo County, filed January 16, 1981)
4. The role of water conservation
 - a. Arizona Groundwater Management Act, supra
 - b. California developments
 - Water Resources Conservation and Efficiency Act (Proposition 13, November 2, 1982) (unsuccessful initiative measure)
 - AB 797 (Klehs) (pending urban water conservation measure)
 - ENVIRONMENTAL DEFENSE FUND, TRADING CONSERVATION INVESTMENTS FOR WATER (1983)
 - DAVENPORT & HAGEN, AGRICULTURAL WATER CONSERVATION IN CALIFORNIA, WITH EMPHASIS ON THE SAN JOAQUIN VALLEY (1982)
5. The public trust doctrine: a "new" legal tool for sustaining aquifer productivity?
 - a. Background on the public trust doctrine
 - Symposium, "The Public Trust Doctrine in Natural Resources Law and Management," 14 U.C. Davis L. Rev. 181 (1980)

b. The Mono Lake decision

- National Audubon Society v. Superior Court, 33 Cal.3d 419, 658 P.2d 709, 189 Cal. Rptr. 346; Dunning, "The Mono Lake Decision: Protecting a Common Heritage Resource from Death by Diversion" (to appear in Environmental Law Reporter)
- protection for "stream, lakes, marshlands and tidelands" - what application to groundwater and aquifers?

V. CONCLUSION

- A. The slow movement toward comprehensive water management
- B. Possible impact of new concerns over contaminated drinking water from aquifers

**OWENS VALLEY GROUNDWATER MANAGEMENT
REFERENDUM MEASURE A
Full Text of Ordinance**

**AN ORDINANCE TO REGULATE THE EXTRACTION OF GROUNDWATER
WITHIN THE OWENS VALLEY GROUNDWATER BASIN**

Section 1. The people of the County of Inyo do ordain as follows:

**CHAPTER 7.01
GROUNDWATER EXTRACTION**

Section 7.01.010 Declaration of findings and purpose.

The Board of Supervisors does hereby find and declare as follows:

(a) The groundwater basin of the Owens Valley has historically supplied the people and land of Inyo County with spring flow water and a high water table, which has sustained vegetation and wildlife in an otherwise desert environment.

(b) The groundwater basin of the Owens Valley forms a significant water resource of the State of California, which must be managed in trust for the benefit of the State's entire population, and must be conserved so that it may be perpetually placed to the reasonable and beneficial use of all its potential users.

(c) The groundwater basin of the Owens Valley must be managed and operated for the maximum long-range benefit of the environment, as well as for municipal and agricultural uses, by removing and mitigating all adverse environmental effects caused by groundwater extraction and surface water diversion by whatever feasible means are available.

(d) In recent years the groundwater basin of the Owens Valley has not been managed in consonance with the findings declared in (a), (b) and (c) above, as a consequence of which unnecessary and excessive drawdown of the groundwater table has occurred. Together with other adverse environmental effects, producing detriment to the people, health and economy of the County of Inyo, the lowering of the water table has directly led to a loss of vegetation and indirectly to a reduction in irrigated acreage. As a consequence of the recent environmental changes, the California Department of Water Resources in Bulletin 118-80 has identified the Owens Valley as an area of special concern.

(e) Inyo County has a paramount right and duty to govern the management and extraction of resources within its jurisdiction in order to protect the health, welfare and safety of the citizens of Inyo County.

(f) In order to protect its people, environment and economy, the County of Inyo must adopt a systematic regulation of extractions from the groundwater basin of the Owens Valley; this regulation must consider environmental and economic factors in the area of origin and the area of use, coordinated use of surface and groundwater resources, and the implementation of water conservation and other feasible preferred alternatives to extraction.

(g) To implement the systematic regulation of groundwater extractions, the County of Inyo must undertake the preparation of a water management plan for both groundwater and the inherently integrated surface water resources of the Owens Valley.

Section 7.01.020 Definitions and Establishments

(a) "Director" means the Director of the Inyo County Water Department, hereby established by enactment of this ordinance. The Director will be appointed by the Board of Supervisors to serve at its pleasure and will report to the County Administrative Officer of the County of Inyo. The Director is empowered to employ such staff as necessary and approved by the Board of Supervisors.

(b) "Administration of the extraction permit application" includes the processing and evaluation of all permit applications, inspection of the execution of permits that have been granted, the performance of technical studies necessary to effectuate the purposes of this chapter, the performance of professional services necessary to execute the purposes of this chapter, and the preparation of a water management plan.

(c) "Water Management Plan" refers to a document to be prepared by the Inyo County Water Department and approved by the Inyo County Board of Supervisors; the plan will address the

extraction and allocation of the groundwater of the Owens Valley and the correlative distribution of that basin's surface water; the plan will form the basis for the approval, denial, and/or terms and conditions of each groundwater extraction permit.

(d) "Water Commission" or "Commission" refers to a board appointed by the Board of Supervisors pursuant to this ordinance. The Commission shall be composed of five members, all residents in the Owens Valley Groundwater Basin. Each member of the Water Commission will be appointed for a term of four years with the initial periods of appointment determined by lot to produce staggered terms.

(e) "Person" means any person, firm, corporation, or governmental agency (except the United States government to the extent that federal law preempts this ordinance).

(f) "Groundwater" means all water contained within the zone of saturation.

(g) "Owens Valley Groundwater Basin" means that area of the Owens Valley within the County of Inyo, California; beginning at the intersection of the Mono County Line and the western boundary of the Inyo Range portion of the Inyo National Forest; thence generally southerly and easterly along the western boundary of the Inyo Range portion of the Inyo National Forest to the intersection of the southerly boundary of the Inyo Range portion of the Inyo National Forest and the eastern boundary of Range 36 East; thence southerly along the eastern boundary of Range 36 East to the southern boundary of Township 14 South; thence along a line bearing 135 degrees to the intersection of that line with the eastern extension of the southern boundary of Township 16 South; thence westerly along the southern boundary of Township 16 South and its extension to the intersection of that boundary with the eastern boundary of the Sierra Nevada Range portion of the Inyo National Forest; thence generally northerly along the eastern boundary of the Sierra Nevada Range portion of the Inyo National Forest to the intersection of that boundary with the Mono County Line; thence easterly along the Mono County Line to the point of beginning.

(h) "Groundwater extraction" means removal of groundwater by artificial means from the groundwater basin, or reduction by artificial means of natural recharge from surface water into the groundwater basin.

(i) "Groundwater table" means the level of the surface of saturation within the aquifer.

(j) "Well" means any artificial excavation constructed by any method for the purpose of extracting water from or injecting water into the underground, for making tests or observations of underground conditions, or any other wells whose regulation is necessary to fulfill the purpose of this chapter. Wells shall not include:

1. Oil and gas wells, except those wells converted to use as water wells; or
2. Wells used for the purpose of:
 - a. Dewatering excavation during construction, and
 - b. Stabilizing hillside or earth embankments.
3. Test or exploratory holes for soil testing, mineral exploration, or seismic exploration where such holes are less than twenty-five feet deep; and
4. Holes or excavation for soil percolation tests where such holes are less than ten feet deep.

Section 7.01.030 Water Management Plan and Groundwater Extraction Standards.

This ordinance shall authorize the County of Inyo to undertake the preparation of a Water Management Plan for the groundwater and related surface water resources of the Owens Valley and to develop groundwater extraction standards. Both surface and groundwater will be included in the water management plan to the extent that they are interchangeable in terms of their use. The water management plan will identify and quantify the water resources of the Owens Valley Groundwater Basin and will specify water use programs which are consistent with the health and welfare of the County's citizens and, to the extent feasible, with the County's land use plans and the needs of the parties holding water rights. The Water Management Plan and all permits and exemptions granted pursuant to this chapter, to the extent practically feasible, shall be consistent with and shall implement the following groundwater extraction standards.

(a) The paramount protection of Inyo County's citizens, environment and economy.

(b) Correction or mitigation of observed significant environmental damage.

(c) Maintenance of the groundwater table at a depth that will support natural vegetation and

MEASURE A ORDINANCE, CONTINUED

wildlife, minimize air pollution and enable natural springs to flow.

(d) Maintenance of the groundwater table at a depth that will not cause excessive drilling or pumping costs for other groundwater users.

(e) Preservation of groundwater quality.

(f) Imposition, whenever feasible, of measures to avoid or mitigate anticipated adverse environmental effects, including but not limited to the use of surface water in the Owens Valley Groundwater Basin.

(g) Satisfaction of the needs of the extractor, taking into consideration the extractor's alternative sources of supply and its conservation policies and practices.

(h) Satisfaction to the extent feasible of the needs of the agricultural sector of the Owens Valley through the distribution of water for local irrigation and to increase the acreage devoted to agriculture other than open range.

(i) Reduction in the extent to which ground levels sink as a consequence of groundwater extraction.

(j) Consideration of the needs and practices of all water users in the state, and the status of the state's entire water resources.

(k) Consideration of guidance received from governmental agencies other than the applicant.

(l) Results and adequacy of the extractor's environmental monitoring program.

Section 7.01.031 Plan: Process.

The Director and his staff and/or consultants will draft the Water Management Plan; the Commission will review the document and hold public workshops, and stipulate modifications as necessary. The Plan will be approved by the Board of Supervisors only after the Commission has completed its review and the Board has held public hearings. No more than nine (9) months will elapse between the authorization of this ordinance and approval of the Plan by the Board of Supervisors, unless the Board of Supervisors determines that there is good cause for an extension of the time necessary for preparing the Water Management Plan. The Plan can be modified as needed, but only as authorized by the Board of Supervisors after the appropriate public hearings. Both the Water Commission and the Board of Supervisors may recommend modifications.

Section 7.01.040 Permit.

No person, firm, corporation, or governmental agency (except an agency of the United States government to the extent federal law preempts this ordinance), shall within the Owens Valley Groundwater Basin extract water from that basin by any artificial means without first obtaining a written permit as provided for in this chapter.

Section 7.01.041 Permit: Application.

An extractor of groundwater shall file its application for a permit to the Director of the Inyo Water Department and in that application shall include the following data for the pumping year ending on March 31 of the year following the year of application.

(a) Location, maximum extraction rate, depth and all other information required in the Water Well Drillers Report (Section 13750, California Water Code) of each well including observation wells owned or controlled by the extractor.

(b) Location, planned monthly extraction rate, and depth of each well proposed for operations.

(c) Delineation of the time periods within the Owens Valley Groundwater Basin in which each well is proposed for operation.

(d) Description of the adverse environmental effects of the extraction, by individual well, groups of wells (if applicable), and by the extractor's entire operation.

(e) Proposed or feasible use or change in related operations of surface water, if any, including uses designed to mitigate or eliminate the adverse environmental effects described in (d) above.

(f) Intended beneficial use of the extracted groundwater and related surface supplies, by individual wells, groups of wells (if applicable), and by the entirety of the extractor's operation.

(g) A description by quantification and location of each end use of the needs of the extractor which the extraction is designed to meet.

(h) A description of alternatives available to the extractor to meet the needs described in (g) above, including specifications and quantification of the alternative of water conservation.

Section 7.01.042 Permit: Process During Interim Period.

In the time period between the enactment of this ordinance and the final approval of the Water Management Plan, Inyo County will implement an interim permit process for groundwater pumping. All persons extracting groundwater must submit the necessary application and data as required under Section 7.01.041 of this ordinance within thirty (30) days of notification by the Department. Notification shall be provided by publication in a newspaper of general circulation in Inyo County, and posting at the Courthouse in Independence and the County Services Building in Bishop. No more than three (3) weeks after receipt of the applications, the Director will recommend approval, denial, or approval with stipulated conditions of the permit to the Commission. No sooner than three (3) weeks after the receipt of the applications, the Commission will hold public hearings on all those applications to extract groundwater which have been timely received. Within two (2) weeks after the close of the hearings, the Commission shall issue its decision conditionally granting or conditionally denying each application. The permits will be conditional pending completion of the Water Management Plan. In reaching its decision the Commission shall be bound by the standards set forth in Section 7.01.030 above. There will be no appeal from the interim decisions of the Commission.

Section 7.01.043 Permit: Process After Adoption of Water Plan.

Permit application shall be made, reviewed, and adjudicated according to the following process:

(a) Not later than one month after the adoption of the water management plan, and not later than February 1 of each calendar year thereafter, the applicant shall submit to the Water Department five (5) copies of its application for extraction as described above. The application form shall be developed by the Director and shall be made available to all potential applicants. The Director, for good cause, may increase the number of copies required.

(b) Within three (3) working days after the time for filing applications has passed, the Director shall forward a copy of each application, together with a request for guidance or comments, to the affected county departments including but not limited to, the District Attorney, the County Counsel, the Planning Department, the Public Works Department, the County Health Officer and the Agricultural Commissioner of Inyo County, and to the Department of Water Resources, State Water Resources Control Board, South Lahontan Regional Water Quality Control Board, Great Basin Air Pollution Control District, U.S. Forest Service, Bureau of Land Management, Inyo-Mono Association of Government Entities and any other governmental agency requesting such opportunity.

(c) Upon receipt of the permit application, the Director shall review the application with the affected county departments including those listed in (b) above.

(d) Not later than six (6) weeks after the date on which applications are due, the Director shall prepare a recommendation to the Commission for approval, denial and/or the enforcement of specific terms and conditions of each groundwater pumping permit application. The Director may recommend that the application be placed on a consent calendar. The Director's recommendation shall be consistent with the groundwater management plan and shall be based upon a review of hydrologic, environmental and economic consequences of the proposed groundwater pumping.

(e) No sooner than eight (8) weeks after the date on which applications are due, the Inyo County Water Commission will hold public hearings on all applications to extract groundwater which have been timely received. As soon as the time for filing applications has passed, and in no event less than seven (7) days prior to this hearing, the applicants shall be notified of public hearings on groundwater extraction applications and notices of these hearings and a description of all applications received shall be published in at least one newspaper of general circulation in Inyo County, and posted in the Courthouse in Independence and the County Services Building in Bishop.

(f) At the public hearings conducted by the County Water Commission, the Director shall present his recommendations. The applicant, any affected federal, state or local agency, any person adversely affected by the application, and any citizens of the County of Inyo may appear to testify, in writing or orally or both, in favor or against the application. The hearings will remain open for a maximum of two (2) weeks.

MEASURE A ORDINANCE, CONTINUED

(g) If an application appears on the consent calendar recommended by the Director and no member of the Commission objects, that application, without further proceedings described in subdivision (f) through (m) of this section, shall be deemed approved. If any member of the Commission objects to an item on the consent calendar, it shall be removed from that calendar and subject to the hearings and determination process of this section.

(h) Within three (3) weeks after the close of the hearings described above, the Commission shall issue its decision granting, denying, or conditionally granting each application. Three affirmative votes shall be required to grant or conditionally grant an application. In rendering its decision, the Commission shall be bound by the standards set forth in Section 7.01.030 above and the Water Management Plan. If a permit is granted, it shall designate for each well the amounts of groundwater extraction authorized in the term of the permit.

(i) Within fourteen (14) days after the Commission renders its decision, the applicant or any person adversely affected by the application, upon payment of a reasonable fee set by resolution of the Board of Supervisors, may appeal the Commission's decision to the Board of Supervisors. Said appeal shall be in writing and shall specify in detail the grounds on which the appeal is based.

(j) No later than fourteen (14) days after the filing of the last of any appeals permitted by this section, the Board of Supervisors shall conduct a public hearing of any applications so appealed; provided, however, that notice of the time and place of such hearing shall be provided at least seven (7) days in advance to the applicant and any person requesting such notice and by publication in a newspaper of general circulation in Inyo County, and posting at the Courthouse in Independence and the County Services Building in Bishop. Prior to commencement of the hearing, the Board may dismiss any appeal found to be lacking in substance.

(k) The record of the Commission hearing shall be incorporated as the record of the Board hearing, although the Board may call witnesses if it so desires, and shall receive other testimony or records presented to it. In determining each application, the Board of Supervisors shall be bound by the same standards that apply to the Commission as specified in subdivision (h) of this section.

(l) The filing of an appeal pursuant to this section shall not stay the decision of the Commission being appealed, unless the Board of Supervisors for good cause states in writing orders such a stay pending its own determination of the application.

(m) The Board shall hear the appeals for not more than two (2) weeks and render a final decision not more than two (2) weeks after the conclusion of its public hearing. Three affirmative votes shall be required to modify, reverse or vacate the decision of the Commission.

Section 7.01.044 Permit: Duration

Each permit for extraction issued shall be effective for a period not to exceed one (1) year, commencing no earlier than April 1st of each year. All permits shall expire on March 31st of the subsequent year, except those expressly exempted by the Commission.

Section 7.01.045 Permit: Modification

By application filed on May 1st, August 1st, or November 1st, a groundwater extractor, or the Director on his or her own motion, may seek modification of a permit in accordance with the procedure outlined in Section 7.01.042 above. A permit may be modified to increase or decrease the amounts, location, times of extraction, or use of groundwater.

Section 7.01.050 Reports: Extraction

Each groundwater extractor to whom a permit for extraction has been granted, unless expressly exempted by the Commission, shall, for the terms of that permit, render monthly reports as follows:

(a) By the 15th of each month of the permit year, a report listing each well operated, the quantity of water extracted by each well during the preceding month, projected amounts of water to be extracted from each well and from all the extractor's wells inclusive for each month of the remainder of the permit year, and the use and location of use of the extracted groundwater from each well and the related surface water.

Section 7.01.051 Reports: Environmental Monitoring

Unless expressly exempted by the Water Commission

(a) Each groundwater extractor shall provide by the 15th of each month a record of water level measurements taken in the preceding month in all operating and observation wells under the control of the extractor. All measurements shall be made in a manner approved by the Director.

(b) Each groundwater extractor shall allow the Director to analyze water quality samples taken from those wells and at those periods specified by the Director. All samples shall be taken in a manner approved by the Director.

(c) Each groundwater extractor shall provide all other such reports as reasonably required by the Director.

Section 7.01.060 Fees

The Board of Supervisors by resolution shall adopt fees for administration of the extraction permit system, which fees shall be assessed annually against each person, firm, corporation, or governmental agency (except an agency of the United States government to the extent that federal law preempts this ordinance), which owns or controls a well within the Owens Valley Groundwater Basin. The assessments shall be based upon the number of acre feet of pumped groundwater applied for in the application, and shall only be used for administration of the water management plan and the groundwater extraction permit system, including maintenance of a reasonable reserve. Fees shall be in two classes: the first class for applications to extract water for local municipal and domestic use, in-valley recreational and wildlife enhancement, and local irrigation; provided that no surface diversions are affected; and the second class for applications to extract water for all other uses. Fees of the first class shall be set lower than fees of the second class, to compensate for the lower costs of evaluating and administering applications of the first fee class.

Section 7.01.070 Exemption: General

Each of the following extractors is hereby declared to be exempt from the reporting provision of Sections 7.01.050 and 7.01.051, except the initial registration of wells, well location, intended amount of annual extraction, intended use, and location of use of the groundwater.

(a) Any extractor who in any year commencing April 1 extracts less than five (5) acre feet and devotes that extraction to its own reasonable and beneficial use in the Owens Valley Groundwater Basin and does not sell or exchange water to other users.

(b) Any extractor who does not sell or exchange water and who extracts for irrigation for agriculture on the surface of the Owens Valley Groundwater Basin an area of less than twenty (20) acres, not to exceed a total of one hundred (100) acre feet of groundwater per year.

Section 7.01.071 Exemptions: Modifications

The Director may recommend further exemptions but only the Commission may grant further exemptions. However, the Director also may recommend the removal of any exemption authorized by this chapter if he or she finds in writing that the extraction in question or cumulative effect of exempted extractions produced a significant negative effect on the environment. Only the Commission may remove an exemption and only then after a duly noticed public hearing. Any person denied an exemption pursuant to this section may appeal said decision to the Board of Supervisors which by a vote of three or more members may grant the appeal and declare the exemption.

Section 7.01.080 Inspection

The Director or his or her representative, with good cause, may at any and all reasonable times enter any and all places, property, enclosures and structures, for the purposes of making examinations and investigations to determine whether any provision of this chapter is being violated. Upon twenty-four (24) hours notice, all extractors shall make available to the Director of the Inyo County Water Department or his or her representative, at the extractor's principal place of business or other convenient location within the Owens Valley, the original of all logs, reports, data, analysis of data, or other records maintained on their groundwater extractions.

Section 7.01.090 Violation: Stop Order

In the event that an extraction is taking place contrary to the terms of this chapter, the Director may order the extraction stopped by posting a stop order at the site of the unauthorized extraction. No further extraction shall take place after the posting of the stop order until such time as the stop order is removed by the Director.

(CONTINUED ON NEXT PAGE)

MEASURE A ORDINANCE, CONTINUED

Section 7.01.100 Violation: Civil Penalty.

Any extractor who violates any provision of this chapter, whether or not a stop order has been issued, shall be subject to a civil penalty not to exceed \$500.00 per acre-foot of water unlawfully extracted.

Section 7.01.101 Violation: Criminal Penalty.

Any person who violates any provision of this chapter with intent to do so, whether or not a stop order has been issued, shall be guilty of a misdemeanor, punishable by fine not exceeding \$500.00 per violation, or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment; and any extractor shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted, and for each and every separate well with which any such violation is committed, continued, or permitted; and for each such subject violation of day or well, shall be subject to the same punishment as for the original offense.

Section 7.01.200 Severability.

If a court of competent jurisdiction holds this Chapter or any of its provisions invalid, or application of this Chapter or any of its provisions invalid as to any person, the remaining valid portions of this Chapter and its valid application to other persons shall continue in full force and effect, to the end that portions or applications held invalid shall be severable; but if this Chapter or any provision of this Chapter is held inapplicable to any person that has extracted more than one-third of the groundwater extracted from the Owens Valley Groundwater Basin in the 10 years preceding the enactment of this Chapter, then, for the duration of that holding, that portion of this Chapter held inapplicable to such an extractor shall become inapplicable to all extractors, to the end that any portion of this Chapter not applicable to at least one-third of the groundwater extraction shall be inapplicable to all. In the event that Section 7.01.060 is declared invalid because it establishes fees of two classes, that Section shall be then deemed reenacted to provide for all fees to be of a single class.

Section 7.01.201 Amendments.

The Board of Supervisors may amend this chapter or any of its provisions.

Section 2. Upon enactment of Chapter 7.01, the Clerk of the Board of Supervisors will pursuant to the California Environmental Quality Act of 1970 immediately file with the County Clerks of Inyo and Los Angeles Counties a negative declaration based upon the initial study dated May 19, 1980, prepared by the County's planning consultants.

IMPARTIAL ANALYSIS BY COUNTY COUNSEL OWENS VALLEY GROUNDWATER MANAGEMENT REFERENDUM MEASURE A

A "YES" vote on this proposal will authorize the County to establish a water commission composed of five residents of the Owens Valley, who will be charged to prepare a management plan for the Owens Valley Groundwater Basin, and then use that plan to grant or deny permits for groundwater extraction within the Valley. The water commission would remain accountable to the people through their Board of Supervisors, inasmuch as the commission would be appointed by the Board, and all decisions of the water commission, whether in adopting or amending a management plan, or approving or disapproving groundwater pumping in the basin, would be subject to final action by the Board of Supervisors.

The ordinance would require all pumpers to submit an annual report on their intended extraction, and to finance the administration of the ordinance through a fee based upon the amount of water extracted. The average small rancher, and any domestic user not selling its water to others, would pay the lowest fee, and annually submit one brief report on a form provided by the County. Larger extractors would be required to submit more extensive reports, depending upon how much water was pumped and whether or not it would be used at the place of extraction. The larger extractors would pay a larger fee, because they would be extracting more water; and those extractors who took water from one part of the Valley to be used in another part of the Valley or out of the Valley altogether would pay a yet higher fee to underwrite the higher cost of evaluating such complex water use.

Under existing law there is no regulation of groundwater pumping in the Owens Valley. This proposed ordinance would establish a County department charged with the duty of managing the Owens Valley Groundwater Basin for the benefit of the public as a whole. The ordinance also provides both civil and criminal penalties for violations, and gives the power to the Board of Supervisors to amend at any time.

The ordinance becomes inoperable if it is held to be inapplicable to a water extractor who has extracted more than one-third of the water from the Owens Valley Groundwater Basin in the prior ten years preceding the enactment date.

Creation of the water department and commission will not in itself produce any environmental effects. Therefore, this ordinance would not in any event require a full environmental impact report (EIR). Subsequent actions, such as adoption and application of a water plan would likely affect the environment and therefore require preparation of an EIR then. Whether adoption of interim controls might also require an EIR should be decided when the interim controls are considered. To guarantee preparation of subsequent environmental documentation, while preparing no EIR at this time, the ordinance legally adopts the consultants' environmental study.

A "NO" vote on this measure is a vote against the establishment of groundwater management by ordinance in the Owens Valley.

s/Dennis L. Myers
County Counsel