

ATTACHMENT G

FINDINGS

Appeal of Boundary Bend Well Permit #23-22W on APN 061-130-003

Upon due consideration of the facts presented in the staff report and at the public hearing held on April 8, 2025 for Well Permit # 23-022W, the Yolo County Board of Supervisors finds that the appeal of Annie Main was timely filed but that the appeal should be denied and that the approval of Well Permit #23-022W should be affirmed for the reasons set forth below (each FINDING is shown in italics followed by a summary of the supporting evidence).

Timeliness of the Appeal

1. *The appeal was timely filed pursuant to Yolo County Code 6-8-8.807.*

According to the Yolo County Code (YCC), "All decisions, determinations, and actions of the Enforcement Officer as to applications for permits may be appealed to the Board by any aggrieved person." (YCC, Sec. 6.8-806.) However, such an appeal must be filed within 30 days after the Enforcement Officer renders a decision, which in this case was the issuance of the well permit (YCEH Permit #23-022W included as Attachment B) on December 13, 2024. (YCC, Sec. 6.8-807.) Annie Main filed an appeal challenging the issuance of well permit #23-022W with the County on Monday, January 13, 2025. The appeal was filed 31 days after the permit was approved. Because the 30th day fell on Sunday, January 12, 2025, the time period to file an appeal ended on the next non-weekend/holiday, which was Monday, January 13, 2025. This conclusion is consistent with the rules that typically apply in calculating deadlines in court and other legal matters, which provides that if the last day to act falls on a holiday, then that day is excluded, meaning the deadline is extended until the next non-holiday. To conclude otherwise would have effectively shortened the 30-day period for an appeal to be filed by two days or required submission on a date when County offices were closed, neither of which are consistent with County practice in counting appeal time periods under the County Code or State law. (See, e.g., Code of Civ. Proc. sections 10 and 12-12b [defining "holidays" as Saturdays, Sundays, legally recognized holidays, and days when county or other public offices are closed]); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 694-695 [CEQA 30-day review period ending on Labor Day holiday improperly truncated review and should have been extended to the next business day that county offices were open].)

Well Permit #32-022W Meets the Ministerial Requirements for Approval

2. *Well Permit #23-022W meets all applicable requirements for new agricultural well permits.*

The County's Division of Environmental Health (also known as "Yolo County Environmental Health" or "YCEH") is the local enforcement agency responsible for issuing permits for groundwater wells in the County. New agricultural well permits must satisfy three general criteria for approval: (1) compliance with County construction requirements in YCC, Title 6, Chapter 8, Article 10; and as required by Urgency Ordinance No. 1569 adopted by the Board of Supervisors on October 22, 2024: (2) minimum separation distances from other wells; and (3) verification as required by the applicable groundwater sustainability agency to determine consistency with the applicable groundwater sustainability plan (GSP). Well Permit #23-022W satisfies all three requirements:

- a. Compliance with the Construction Requirements in YCC, Title 6, Chapter 8, Article 10 - YCEH reviews well permits for consistency with the Yolo County Code and other regulatory requirements, including Department of Water Resources Bulletin 74 (Water Well Standards), to protect the quality of groundwater for public health reasons and to ensure the safe construction of wells. Such requirements include ensuring required setback distances from septic systems and hazardous substance operations, as well as special construction specifications, such as seal thickness and depth. The application demonstrated compliance with all construction requirements under the YCC and the California Well Standards. (See Attachment B to the Staff Report, pg. 1.)
- b. Minimum Well Separation Distances - At the time Well Permit #23-022W was submitted, the Governor's Executive Order (EO N-7-22
- c. and later replaced by EO N-3-23) for well permits was still in place and Well Permit #23-022W was reviewed as a "replacement well," which was not subject to the well separation distances otherwise applicable to new agricultural wells so long as the replacement well met other conditions, such as being located within 100-feet of the well being replaced. The EO process was refined and revised over the next year and was ultimately replaced with Urgency Ordinance No. 1569 on October 22, 2024 after the EO was terminated. However, the well separation distances applicable to all non-exempt wells (primarily new agricultural wells not qualifying as a replacement well) have remained the same pursuant to the analysis developed by the County's outside consultant, Luhdorff & Scalmanini Consulting Engineers (LSCE). The minimum well separation distances developed by LSCE are intended to minimize impacts to neighboring wells and were developed with consideration of the local hydrogeology and the typical characteristics of wells installed within the County. The documentation

and methods used to develop the minimum well separation distances are included in Attachment A to the staff report and are incorporated here by reference.

The County has applied the more restrictive well separation distance requirements to Well Permit #23-022W that would have applied whether it was reviewed under the prior EO well permitting requirements in 2023 as a new (non-replacement) well or under Urgency Ordinance No. 1569. The proposed well will have a 12" casing with a pumping capacity with an approximate pumping capacity of 325 gallons per minute (gpm), resulting in a minimum separation of at least 250' from other wells for wells within the Valley Floor Areas of the County, which is the case with Well Permit #23-022W. The map provided with the application shows that the proposed well has a separation distance of at least 750' from other wells. Accordingly, the proposed well meets the required minimum separation distances from nearby wells.

- d. GSA Verification- YSGA issued a verification letter for the proposed well and confirmed no additional verification review was required. (Attachment C.) The County confirmed, consistent with the original review of Well Permit #23-022W that the proposed well is of like capacity to the well being replaced. Although the well permit indicated the new well would have a 12" casing and the well being replaced had a 10" casing, further inspection at the site, including an Environmental Health Specialist, confirmed with measurements that the casing size of the well being replaced is also 12" – indicating a similar pumping capacity to the well being replaced.
3. *Because Well Permit #23-022W meets the requirements of Urgency Ordinance and YCC, the permit must be approved and the additional grounds asserted in the Appeal are not a proper basis for denying a ministerial permit.*

A well permit application that meets these objective requirements is a ministerial permit and must be issued. (See YCC, Sec. 6-8.802(a) [“The permits required by the provisions of this chapter shall be granted, or be granted upon condition, if the applicant meets the standards for the activities or project contained in or determined as set forth in this chapter.”]; YCC, Sec. 6-8.809 [“Upon hearing the appeal, the Board shall grant the permit, or grant the permit upon conditions, if it is found that the project or activity applied for meets the standards contained in or determined as set forth and described in this chapter.”].)

The appeal raises the following specific challenges to Well Permit #23-022W: (1) The replacement well was issued without on-site verification; (2) the well permit is in violation of the Governor’s Executive Order (EO) for replacement wells; (3) the permit

applicant began drilling without a valid permit; (4) the well undermines Subbasin sustainability goals; and (5) Focus Area concerns. However, none of the grounds cited in the appeal authorize denial of the appeal for the additional reasons provided below:

- a. On-Site Verification/Replacement Well Status. The well casing and location were confirmed with a physical inspection by YCEH staff on November 15, 2024 before the well permit was issued on December 14, 2024. (See Attachment C, pg. 4 [Email from Greg Walker, YCEH: “[W]e measured the casing of the old well that will be destroyed and concluded that it is in fact a 12” casing instead of 10”].) YCEH’s Director has confirmed that it is not unusual with well permits to have some variances in actual locations or casing sizes. In such instances, staff completes a physical inspection. That was done here, confirming that the well being replaced has a casing size of 12” (not 10” as previously indicated) and YCEH will perform an inspection to confirm proper abandonment of the well. In addition, Well Permit #23-022W is subject to a minimum separation of at least 250’ from other wells based on the estimated pumping capacity. The proposed well site, as confirmed by YCEH, is more than 750’ from neighboring wells and satisfies the applicable County well separation requirements.

YCEH inspections are also conducted throughout the drilling process to confirm the location is consistent with the final application and that the case size is also as approved in the well permit.

- b. Compliance with the Governor’s EO. The Governor’s EO well permitting requirements were terminated prior to the approval of Well Permit #23-022W and therefore the EO doesn’t apply. (EO N-3-24, September 5, 2024). Nevertheless, the County has continued similar requirements to those required by the EO for well permits with the adoption of Urgency Ordinance No. 1569. Specifically, the EO required only that the County find that:
 - The proposed well is consistent with any applicable Groundwater Sustainability Plan (GSP) and will not decrease the likelihood of achieving a groundwater basin sustainability goal, and
 - The well will not likely interfere with the operation and function of existing nearby wells and is not likely to cause land subsidence that impacts nearby infrastructure.

Under the EO procedures in place when well permit #23-022W was submitted, the result would have been the same. If the well did not meet the County’s requirements for a replacement well, it would have been subject to the same well separation distances required under Urgency Ordinance No. 1569. Similarly, YSGA

verification was required under both the EO and Urgency Ordinance No. 1569. YSGA has confirmed its earlier EO verification in place at the time Well Permit #23-022W was submitted. Nor is the alleged non-use of the prior well relevant in light of overlying water rights, which are not lost with non-use.

- c. Drilling Without a Valid Permit. The history of Well Permit #23-022W and the July 2024 drilling incident and issuance of a Stop Work Notice are further outlined in the staff report. The applicant explained the error and confusion that led to the misunderstanding that a well permit had been issued. The County acknowledges that a well permit was initially issued in March 2023 and then rescinded via email when it was determined the well met the then-applicable replacement well siting requirement within 100' of the well being replaced, which would otherwise have required the well to satisfy the LSCE well separation distance requirements. The applicant complied with the Stop Work Notice and has complied with the stay of the final well permit pending completion of the appeal. The July 2024 violation is not a proper ground to deny the permit.

- d. Undermining of Subbasin Sustainability Goals. YCEH reviews well permits for consistency with the Yolo County Code and compliance with well separation distances. The GSAs are responsible for the sustainability of the groundwater basin and administering their respective groundwater sustainability plans (GSPs). In light of this distinction, the County process under Urgency Ordinance No. 1569 requires review of agricultural well permits (and other non-exempt wells) by the applicable GSA, which is YSGA for most Yolo County wells, including Well Permit #23-022W. Specifically, Urgency Ordinance No. 1569 requires YCEH to submit all new agricultural well permits (unless they qualify for an exemption) to the YSGA for wells within the Yolo Subbasin “for review and verification in accordance with the review procedures of the pertinent GSA to determine whether the proposed well is consistent with the GSP.” YCEH followed this process and received the requisite verification letter from YSGA, which concluded that the proposed well “is consistent with the adopted Yolo Subbasin Groundwater Sustainability Plan and will not decrease the likelihood of achieving the sustainability goals for the [Yolo] Subbasin.” YSGA again confirmed that the verification was valid on November 19, 2024, thus satisfying Urgency Ordinance No. 1569’s requirement that the proposed new well is consistent with the GSP. (See “Agricultural Well Permit Review per Yolo County Ordinance 1569” dated December 13, 2024 and included with Attachment B to the Staff Report; Attachment C [YSGA Verification Letter and Email].)_

- e. YSGA Review; Focus Areas. The Focus Area review is under YSGA’s purview and was developed after Well Permit #23-022W was submitted. However, YSGA

reviewed the well permit in November 2024 and confirmed its prior verification for the new well, which YCEH's site inspection confirmed will have the same 12" casing size as the well being replaced. As noted above, this determination is within YSGA's purview. This process of submitting the well permit to the YSGA was followed and the YSGA confirmed on November 19, 2024 that its "written verification is still valid." (See Attachment C, pg. 4.) As such, Well Permit #23-022W satisfied the County's applicable requirements and must be approved.