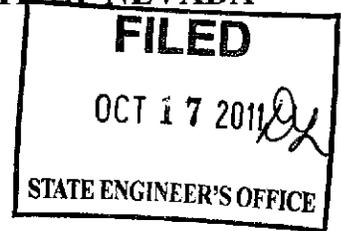


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 81108
FILED BY Estill Ranches LLC
ON August 25, 20 11



PROTEST

Comes now Lassen County, California

Printed or typed name of protestant

whose post office address is 707 Nevada Street, Suite 5, Susanville, CA 96130

Street No. or PO Box, City, State and ZIP Code

whose occupation is County Government

and protests the granting

of Application Number 81108, filed on August 25, 20 11

by Estill Ranches LLC for the

waters of a new well situated in Lassen County, CA

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

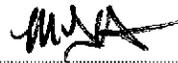
- 1. The proposed point of diversion is in Lassen County (portion Section 10, Township 38 North, Range 17 East, M.D.B. & M.) which is outside the jurisdiction for appropriation by the Nevada State Engineer.
- 2. The applicant has not secured the permit required by Lassen County Code Section 7.28.030 to drill a new well, nor has the permit required by Lassen County Code Section 17.01.030, to export groundwater from Lassen County to Washoe County Nevada been secured.
- 3. Construction of the proposed pipeline may require a building permit pursuant to Lassen County Section 12.24.010 and California Building Code Section 105.1

THEREFORE the Protestant requests that the application be

See Attached

Denied, issued subject to prior rights, etc., as the case may be

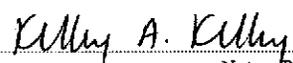
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed 
 Agent or protestant
 Maurice L. Anderson
 Printed or typed name, if agent
 Address 707 Nevada Street, Suite 5
 Street No. or PO Box
 Susanville, CA 96130
 City, State and ZIP Code
 (530) 251-8269
 Phone Number
 manderson@co.lassen.ca.us
 E-mail

STATE ENGINEER'S OFFICE
2011 OCT 17 PM 1:13
RECEIVED

Subscribed and sworn to before me this 12th day of October, 20 11




 Notary Public
 State of California
 County of Lassen

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
 ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**An Ordinance Adding TITLE 17 to the
Lassen County Code Regarding the Extraction and
Exportation of Groundwater from Lassen County**

RECORDED
2011 OCT 17 PM 1:13
STATE ENGINEER OFFICE

The Board of Supervisors of the County of Lassen, State of California, DO
ORDAIN AS FOLLOWS:

SECTION 1. Title 17, comprising Chapter 17.01 is hereby added to the Lassen County
Code to read as follows:

TITLE 17. GROUNDWATER.

ARTICLE 1. DECLARATION OF FINDINGS AND PURPOSE.

Section 17.01.010 Regulation of the Extraction for Exportation of Groundwater from
Lassen County.

The Board hereby finds and declares:

- (a) The groundwater underlying Lassen County has historically provided the people and lands of Lassen County with water for agricultural, domestic, municipal and other purposes.
- (b) The Board recognizes the principle developed in the case law of California that water may be appropriated from a groundwater basin if the groundwater supply is surplus and exceeds the reasonable and beneficial needs of overlying users.
- (c) It is essential for the protection of the health, welfare, and safety of the residents of the County, and the public benefit of the State, that groundwater resources of Lassen County be protected from harm resulting from the extraction of groundwater for use outside the

County.

- (d) Much of the farm production of the County depends upon the use of groundwater to produce field and vegetable crops which significantly contribute to the gross value of all agricultural crops produced in the County.
- (e) Much of the water supply for residential needs in the County is provided by groundwater.
- (f) The groundwater of Lassen County is and will be a vital part of future water use in the County.
- (g) The County seeks to foster prudent water management practices to avoid significant adverse overdraft-related environmental, social, and economic impacts. It is therefore essential for the protection of the County's important groundwater resources that the County require a permit to extract groundwater for use outside the County. The Chapter requires a permit for the export of groundwater outside the County and is not intended to regulate groundwater in any other way.
- (h) In adopting this Chapter, the County in no way intends to limit either the County or other public entities, including the Modoc-Lassen Flood Control District, in managing groundwater under the Groundwater Management Act, the Honey Lake Valley Groundwater Basin Act, the Long Valley Groundwater Basin Act, the Willow Creek Valley Groundwater Basin Act, the Surprise Valley Groundwater Basin Act, and any other applicable laws in a manner consistent with any groundwater management plan adopted by the County or the districts.

ARTICLE 2. DEFINITIONS.

Section 17.01.020 Definitions.

- (a) "Groundwater Management Act" means Water Code §§10750 et. seq.
- (b) "Aquifer" means a geologic formation that stores, transmits and yields any quantity of water to wells and springs.
- (c) "Board" means the Board of Supervisors of Lassen County.

- (d) "Commission" means the Planning Commission of the County of Lassen.
- (e) "County" means the County of Lassen.
- (f) "Director" means the Director of Community Development or his designee.
- (g) "District" means an entity wholly or in part located within the boundaries of the county, which is a purveyor of waters for agricultural; domestic, or municipal use.
- (h) "Groundwater" means all water beneath the surface of the earth which is capable of being extracted, and includes, but is not limited to, water occurring in a defined pool or aquifer.
- (i) "Hydraulic gradient" means the slope of the water table.
- (j) "Hydrology" means the origin, distribution, and circulation of water through precipitation; stream flow; infiltration; groundwater storage, and evaporation.
- (k) "Overdraft" means the condition of a groundwater supply in which the amount of water withdrawn by pumping exceeds the amount of water replenishing the supply over a period of time and also the point at which extractions from the supply exceed its safe yield plus any temporary surplus.
- (l) "Percolation" means the movement of water through the soil to the groundwater table.
- (m) "Permeability" means the capability of the soil or another geologic formation to transmit water.
- (n) "Piezometric surface" means the surface to which the water in a confined aquifer will rise.
- (o) "Porosity" means voids or open spaces in alluvium, other soils and/or rocks that can be filled with water.
- (p) "Recharge" means flow to groundwater storage from precipitation, irrigation, infiltration from streams, spreading basins and other sources of water.
- (q) "Safe Yield" means the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing overdraft or adverse water quality conditions or an undesirable result. The phrase "undesirable result" is intended to refer to a lowering of the

groundwater levels resulting in, or tending to result in, the eventual depletion of or the substantial diminution of the supply of water. Specifically, "safe yield" is the amount of water which can be withdrawn without:

- (1) Exceeding in any calendar year the long-term mean annual water supply of the basin (considering all sources of recharge and withdrawal);
 - (2) Lowering water levels so as to make further drilling of water wells uneconomical;
 - (3) Causing water pumped from the basin to deteriorate below drinking water standards;
 - (4) Violating water rights or restrictions in pumpage in the groundwater basin as established by court adjudication or application of state or federal law;
 - (5) Other observable environmental damage.
- (r) "Specific Capacity" means the volume of water pumped from a well in gallons per minute per foot of drawdown.
- (s) "Spreading Water" means discharging native or imported water to a permeable area for the purpose of allowing it to percolate to the zone of saturation. Spreading, artificial recharge and replenishment all refer to operations used to place water in a groundwater table.
- (t) "Transmissivity" means the rate of flow of water through an aquifer.
- (u) "Usable Storage Capacity" means the quantity of groundwater of acceptable quality that can be economically withdrawn from storage.
- (v) "Water Table" means the surface or level where groundwater is encountered in a well in an unconfined aquifer.
- (w) "Water Year" means the year beginning March 1 and ending the last day of the following February.
- (x) "Zone of Saturation" means the area below the earth surface in which the soil is completely saturated with groundwater.
- (y) "Export" means exportation via a pipeline, and/or natural or artificial water

channel.

ARTICLE 3 . PERMIT PROCESS.

Section 17.01.030 Permit Required for Export for Use Outside County.

It shall be unlawful to extract groundwater underlying County, directly or indirectly, for use of that groundwater so extracted, outside County boundaries, without first obtaining a Permit as provided in this Chapter. The extraction of groundwater to replace a surface water supply to be transferred for use outside County boundaries shall be considered an indirect extraction of groundwater for purposes of this section, which shall require a Permit. This Chapter shall not apply for the extraction of groundwater (1) to prevent the flood of lands or (2) prevent the saturation of the root zone of farm land, or (3) for use within the District boundaries of a District which is in part located within County and in part in another County(s) where such extraction quantities and use are consistent with historical practices of the District, or (4) for extractions to boost heads for portions of District facilities, consistent with historical practices of the District, or (5) for use on lands outside the County which are contiguous and in the same ownership to lands within the County from which the groundwater is extracted, where such extraction quantities and the use are consistent with historical practices of the landowners. The applicant shall have the burden of supporting an assertion of an historical practice with competent evidence.

Section 17.01.031 Application for a Permit; Fees.

An application for a Permit shall be filed with the Director and shall contain all information required by the Director. Concurrently, a request for environmental review shall be filed as required by applicable County guidelines. The application for a permit and request for environmental review shall be accompanied by the fees which shall be established from time to time by Board Resolution. The applicant shall bear the burden of proof in this process.

Section 17.01.032 Procedures for Processing.

- (a) The Director shall review the application to determine whether it is complete for purposes of proceeding under the County guidelines adopted pursuant to the California Environmental Quality Act requirements. Within ten (10) calendar days of filing of the permit application, the Director shall post a notice on the County's public bulletin boards that an application has been filed, shall send a copy of the notice to the Districts and Cities within the County which have lands overlying or adjacent to the location of the extraction and to any interested party who has made a written request to the Director for such notice within the last twelve (12) calendar months.
- (b) The Director may review the matter of the application with the affected County departments, with the staff of the State Department of Water Resources, with the staff of the respective Regional Water Quality Board - Lahontan Region or Central Valley Region, and with any interested local water agency within whose boundary the proposed activity will occur. If the applicant is applying to pump groundwater from a District, City, or the unincorporated territory in which a groundwater management plan has been adopted pursuant to the Groundwater Management Act, the Director shall consider a groundwater management plan or any other relevant information provided by the District, City, or other local agency. Any interested person or agency may provide comments relevant to the matter of the extraction of groundwater. Comments shall be submitted within thirty (30) days of the date of mailing the notice of filing the permit application.
- (c) The environmental review shall be undertaken in accordance with the California Environmental Quality Act and County guidelines. All costs of the environmental review shall be the responsibility of applicant.
- (d) Upon completion of the environmental review, the Director shall forward the application together with any written comments received, environmental documentations and the Director's recommendations, to the Commission. Upon

receipt of the Director's recommendation, the Commission shall conduct a public review on the issuance of the permit which shall be noticed pursuant to Government Code §6061 and may not be held within fifteen (15) days of the time that the Commission receives the recommendation from the Director.

- (e) The Commission shall hear the application in accordance with the provisions for public review and shall make recommendations to the Board. The scope of the recommendations extends to any relevant matter that may be considered by the Board, including but not limited to, the effects that granting the permit application would have on the affected aquifer, each of the findings required of the Board, any appropriate conditions to be imposed, and any mitigation offsetting any adverse effect.
- (f) Upon receipt of the Commission's recommendation, the Clerk of the Board shall conduct a public review on issuance of the permit which shall be noticed pursuant to Government Code §6061. The Board shall hear the application in accordance with the provisions for public review and shall consider matters required to be considered during public review, including but not limited to the effects that granting the permit application would have on the affected aquifer, make each of the findings on matters required for granting a permit, any appropriate conditions to be imposed, and any mitigation offsetting any adverse effect.

Section 17.01.033 Review Concerning Issuance of Permit.

The hearing bodies, whether Commission or Board, shall conduct the public review in accordance with this section.

- (a) Formal rules of evidence shall not apply to the public review of the application, but the hearing body may establish such rules as will enable the expeditious presentation of the matter and relevant information thereto. At the public review, the applicant shall be entitled to present any oral or documentary evidence relevant to the application, and the applicant shall have the burden of proof of

establishing the facts necessary for the required findings. The hearing body may request any additional information it deems necessary for its decision, the cost of which, if any, shall be borne by the Applicant. The hearing body shall also hear relevant evidence presented by other interested persons and entities, the Director, other County staff, and the public. The hearing body shall consider all effects that the granting of the permit application would have on the affected aquifer including, but not limited to, the hydraulic gradient, hydrology, percolation, permeability, piezometric surface, porosity, recharge, safe yield, specific capacity, spreading water, transmissivity, usable storage capacity, water table and zone of saturation.

Section 17.01.034 Granting of Permit.

The Permit may only be granted if the Board finds and determines that the extraction will not cause or increase an overdraft of the groundwater underlying the County, will not adversely affect the long term ability for storage or transmission of groundwaters within the aquifer, will not (together with other extractions) exceed the safe yield of the groundwater underlying the County and will not otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users, or will not result in an injury to a water replenishment, storage, or restoration project operating in accordance with statutory authorization. If the Permit is to be granted, the Board shall impose appropriate conditions upon the Permit so as to prohibit overdraft or other adverse conditions, and may impose other conditions that it deems necessary for the health, safety and welfare of the people of the county. Upon granting of a permit an economic severance fee shall be imposed, the purpose of which is to replace the economic loss to the citizens of Lassen County of the revenue lost from all activities which are discontinued or precluded by water export. Other conditions in the permit shall include, but are not limited to, requirements for observation and/or monitoring wells. Notwithstanding the foregoing, the Board may issue the Permit if the Board finds that the applicant has provided for mitigation which will offset any adverse effect that is determined to exist.

Section 17.01.035 Reapplication After Denial.

Reapplication for a permit which has been denied by the Board may not be filed with the Director until the following Water Year and must be accompanied with information that demonstrates a significant change in conditions in the groundwater and/or change in the proposed extraction.

Section 17.01.036 Challenge to Approved Permit.

- (a) Any interested party or public entity may challenge the continuation of an Approved Permit during the term of the Permit when information exists that:
- (1) there is a violation of the conditions of the Permit, or
 - (2) the Permit was not issued in accordance with the procedural requirements of this Chapter, or
 - (3) extraction of groundwater pursuant to the permit:
 - i) causes or increases an overdraft in the basin or
 - ii) brings about or increases salt water intrusion, or
 - iii) adversely affects the long-term ability for storage or transmission of groundwaters, or
 - iv) exceeds the safe yield of the groundwaters, or
 - v) operates to the injury of the reasonable beneficial uses of overlying groundwater users, or
 - vi) results in an injury to a water replenishment, storage, or restoration project operating in accordance with statutory authorization.
- (b) A challenge pursuant to this section is commenced by filing a written request with the Director which alleges any of the above situations and generally describes the supporting facts for such allegation. In such event, the Director shall within ten (10) days of receipt of such challenge, give notice of the challenge to the Commission, the Permittee, Appellant, to any interested party who filed a written request for such notice within the past 12 months, and the Districts and Cities,

within the County, which have boundaries overlying or immediately adjacent to the location of the Permitted extraction. Commission and Board reviews shall be held on the matter following the procedures set out in Sections 17.01.033 and 17.01.034. The recommendations and decision may be to deny the challenge, grant the challenge and terminate the Permit, or to establish modified conditions to the Permit.

- (c) The standard for review shall be substantial evidence. The burden of proof is upon the person or entity filing the challenge.

Section 17.01.037 Duration of Permit.

All Permits shall be valid for a term set by the Board, not to exceed three (3) Water Years from the date of the issuance of the Permit. For purpose of calculation; the Water Year in which the Permit is granted shall not be counted in determining the three year time period if less than four months remain in the then Water Year. Provided, however, nothing contained in this Ordinance nor in the conditions of the Permit shall be construed as to give exclusive right to groundwater to Permittee nor establish a compensable right in the event that the Permit is subsequently discontinued or modified by the Board after a hearing on a challenge to the Permit.

Section 17.01.038 Limitation of Permit.

The Permit process of this Chapter is not to be construed as a grant of any right or entitlement but rather the Permit evidences that the health, welfare, and safety of the residents of the County will not be harmed by the extraction and exportation of groundwater outside the County boundaries. The Permit in no way exempts, supersedes, or replaces any other provisions of federal, state, and district or local laws and regulations including but not limited to Water Code §1220, the Groundwater Management Act, the Honey Lake Valley Groundwater Basin Act, the Long Valley Groundwater Basin Act, the Willow Creek Valley Groundwater Basin Act and any actions provided for in California groundwater law, well drilling and maintenance or building permit requirements.

ARTICLE 4. INSPECTION.

Section 17.01.040 Inspection.

The Director, 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 violated.

ARTICLE 5. EFFECTIVE DATE.

Section 17.01.050 These provisions of this Ordinance shall be effective as to the unincorporated portions of the County within thirty (30) days of its passage. The provisions of this Ordinance shall become effective in the incorporated portions of the cities within Lassen County upon adoption of each city by an Ordinance which makes the provisions of this Ordinance applicable to the incorporated area or which independently establishes an Ordinance incorporating compatible provisions.

ARTICLE 6. VIOLATIONS.

Section 17.01.060 Civil Penalty.

The County may elect to proceed with a civil action against a violator, including injunctive relief. Any person or entity who violates this Chapter shall be subject to fines of up to \$5,000 per separate violation. A person shall be deemed to have committed separate violations for each and every day or portion thereof during which any such violation is committed, continued, or permitted as well as for and each and every separate groundwater well with which any such violation is committed, continued, or permitted.

ARTICLE 7. SEVERABILITY.

Section 17.01.070 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reasons held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Board hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION 2. This Ordinance shall take effect and be in force thirty (30) days after its passage, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published once in The Lassen County Times, a newspaper of general circulation, printed and published in the County of Lassen, with the names of the members of the Board of Supervisors voting for and against the same.

PASSED and ADOPTED this 26th day of January, 1999 by the Board of Supervisors of the County of Lassen, State of California by the following vote of said Board:

AYES: Supervisors Chapman, Pyle, Keefer, Dahle, McCain
NOES: None
ABSENT: None

Jim Chapman
Chairperson of the Board of Supervisors

ATTEST:
BY: *Meresa Regal*
Clerk of the Board

APPROVED AS TO FORM:
Dated: 1-20-99

In accordance with Section 25103 of the Government Code of the State of California a copy of this document has been delivered to the Chairman of the Board of Supervisors, County of Lassen on
1-26-99
By: *Regal*
Clerk (Deputy Clerk) of the Board of Supervisors

Dean Murano
Lassen County Counsel