

DAKOTA COUNTY BOARD OF COMMISSIONERS

Scheduling Of Public Hearing To Receive Comments On Proposed Interim Ordinance Establishing Temporary Moratorium To Prevent Groundwater Diversion From Dakota County

Meeting Date: 4/7/2020	Fiscal/FTE Impact:
Item Type: Regular-Action	<input checked="" type="checkbox"/> None <input type="checkbox"/> Other
Division: Physical Development	<input type="checkbox"/> Current budget <input type="checkbox"/> Amendment requested
Department: Environmental Resources	<input type="checkbox"/> New FTE(s) requested
Contact: Grover, Valerie	Board Goal: A healthy environment with quality natural areas
Contact Phone: (952) 891-7019	Public Engagement Level: N/A
Prepared by: Grover, Valerie	

PURPOSE/ACTION REQUESTED

Schedule a public hearing for May 5, 2020, at 9:00 a.m. to receive comments on a proposed interim ordinance establishing a temporary moratorium on construction of new wells that have the potential to divert large quantities of groundwater out of Dakota County. This is under the authority of the Well and Water Supply Management Ordinance (Ordinance No. 114).

SUMMARY

Dakota County has administered Ordinance No. 114, Well and Water Supply Management, through a Delegation Agreement with the Minnesota Department of Health to manage and operate a well regulatory program since its initial adoption on December 20, 1988. The purpose of Ordinance No. 114 is to establish standards for the construction, reconstruction, sealing, maintenance, and regulation of wells to protect groundwater and the environment and to promote the health, safety, and welfare of the public. Ordinance No. 114 has been amended four times (1992, 1995, 1998, 2019). The last amendment was adopted by the County Board on November 12, 2019.

In 2019, a commercial enterprise proposed to pump 500 million gallons per year of groundwater from Dakota County and ship it by rail to sell in the southwestern United States. Exporting millions of gallons of groundwater from Dakota County could deplete the County's future water supply for human uses and damage its natural ecosystems.

Current Minnesota Statutes and Rules and Dakota County Ordinance 114 do not adequately address the construction of wells for the purpose of bulk water exportation/ diversion out of state. There is insufficient information at this time to understand what the impacts on public health and the environment would be if millions of gallons of groundwater were removed from Dakota County watersheds. Since the intent of Ordinance No. 114 is to protect groundwater and the environment, additional time to study the matter is required to ensure adequate protection and apply appropriate ordinance revisions.

The interim ordinance will establish a 365-day moratorium prohibiting the construction on new wells estimated to use a water volume greater than 10,000 gallons per day or 1,000,000 gallons per year for the following proposed water uses:

- Commercial/Industrial Water Supply
- Other Water Supply
- Agriculture/Food Processing

The moratorium will not apply to permits required to replace existing wells if the existing well fails.

RECOMMENDATION

Staff recommends that the Dakota County Board of Commissioners schedule a public hearing for 9:00 a.m. on May 5, 2020, either in the Boardroom of the Dakota County Administration Center, 1590 Highway 55, Hastings, Minnesota, or via telephone or other electronic means to receive comments on the proposed interim ordinance (Attachment A).

EXPLANATION OF FISCAL/FTE IMPACTS

None.

Supporting Documents:
Attachment A: Interim Ordinance

Previous Board Action(s):

RESOLUTION

WHEREAS, it is a goal of the Dakota County Board of Commissioners to maintain County ordinance regulatory authority that effectively minimizes potential adverse impacts to the public's health, safety, and welfare and the environment of Dakota County; and

WHEREAS, Dakota County has administered Ordinance No. 114, Well and Water Supply Management, through a Delegation Agreement with the Minnesota Department of Health to manage and operate a well regulatory program since 1988; and

WHEREAS, the purpose of Ordinance No. 114 is to establish standards for the construction, reconstruction, sealing, maintenance, and regulation of wells to protect groundwater and the environment and to promote the health, safety, and welfare of the public; and

WHEREAS, in 2019, a commercial enterprise proposed to pump 500 million gallons per year of groundwater from Dakota County and ship it by rail to sell in the southwestern United States; and

WHEREAS, exporting millions of gallons of groundwater from Dakota County could deplete the County's future water supply for human uses and damage its natural ecosystems; and

WHEREAS, current Minnesota Statutes and Rules and Dakota County Ordinance 114 do not adequately address the construction of wells for the purpose of bulk water exportation/ diversion out of state; and

WHEREAS, Dakota County Environmental Resources Department Staff, in consultation with the Dakota County Attorney's Office, has prepared an interim ordinance establishing a moratorium temporarily prohibiting the construction on new wells that will use greater than 10,000 gallons per day or 1,000,000 gallons per year for commercial/industrial water supply, other water supply, and agriculture/food processing, with the exception for replacement of existing wells; and

WHEREAS, a public hearing is requested for May 5, 2020, at 9:00 a.m. to receive comments on the Industrial Well Moratorium; and

WHEREAS, meetings of the County Board are held in the Boardroom, Administration Center, 1590 Highway 55, Hastings, MN, except due to the ongoing impacts from the COVID-19 virus, the Board is conducting public meetings via telephone or other electronic means pursuant to Minn. Stat. § 13D.021 and will continue to do so long as it is not practical or prudent to hold in-person meetings because of the COVID-19 health pandemic emergency declared under Minn. Stat. Chapter 12 by the Minnesota Governor Tim Walz and the Dakota County Board of Commissioners pursuant to Res. No. 20-139; and

WHEREAS, updated information on the manner of the public meeting can be found on the Dakota County website at www.dakotacounty.us; and

WHEREAS, the public may submit comments for the public hearing via email to CountyAdmin@co.dakota.mn.us; and

WHEREAS, if the May 5, 2020, County Board meeting is conducted via telephone or other electronic means, Dakota County will provide the public the ability to participate and hear all discussion and comments during the public hearing by telephone or other electronic means; and

WHEREAS, Dakota County continues to work to improve the technology and process for remote participation for public meetings during this local emergency and will provide notice of any change in the process.

NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby schedules a public hearing for May 5, 2020, at 9:00 a.m. in the Boardroom, Administration Center, 1590 Highway 55, Hastings, MN or via telephone or other electronic means; and

BE IT FURTHER RESOLVED, That staff will work with the Minnesota Department of Natural Resources and Minnesota Department of Health to study the potential impacts on public health and the environment if millions of gallons of water were removed from Dakota County watersheds and bring recommendations to the County Board for consideration.

County Manager's Comments:

- Recommend Action
- Do Not Recommend Action
- Reviewed---No Recommendation
- Reviewed---Information Only
- Submitted at Commissioner Request



County Manager

Reviewed by (if required):

- County Attorney's Office
- Financial Services
- Risk Management
- Employee Relations
- Information Technology
- Facilities Management

ORDINANCE NO. _____**AN ORDINANCE ESTABLISHING A 365-DAY MORATORIUM PROHIBITING THE CONSTRUCTION, INSTALLATION OR PERMITTING OF SPECIFIC INDUSTRIAL PROCESSING WELLS IN DAKOTA COUNTY****SECTION 1.00 APPLICABILITY**

This ordinance applies to specific Industrial Processing Wells in Dakota County, Minnesota.

SECTION 2.00 PURPOSE

Dakota County has administered Ordinance No. 114, Well and Water Supply Management, through a delegation agreement with the Minnesota Department of Health to manage and operate a well regulatory program since its initial adoption on December 20, 1988. The purpose of Ordinance No. 114 is to establish standards for the construction, reconstruction, sealing, maintenance, and regulation of wells to protect ground water and the environment and to promote the health, safety and welfare of the public. Ordinance No. 114 has been amended four times (1992, 1995, 1998 and 2019).

Ordinance 114 applies to regulating the construction, reconstruction, operation, maintenance, repair, permanent sealing, and annual maintenance permitting in the county of:

- Any well used:
 - As a private water-supply well
 - As part of a non-community public water system as defined in 40 C.F.R.141.2 (e.g. wells serving schools, parks, motels, restaurants)
 - For irrigation
 - For agricultural, commercial, or industrial water supply
 - For heating or cooling, including groundwater thermal exchange devices but excluding bored geothermal heat exchangers
 - For environmental wells
 - For dewatering wells
- Any other wells listed in the Delegation Agreement between the Minnesota Department of Health and Dakota County.

Dakota County is also in the process of developing a Groundwater Plan under Minnesota Statute 103B.255 to replace the Groundwater Plan that was previously incorporated into the County's Comprehensive Plan. The Groundwater Plan will address water quantity, water quality, water education, and governance. Because groundwater supplies 90% of the County's water supply, one priority of the Ground Water Plan is to safeguard the County's water supply.

In 2019, a commercial enterprise proposed to pump 500 million gallons of groundwater per year from Dakota County and ship it by rail to sell in the southwestern United States. Exporting millions of gallons of groundwater from Dakota County could deplete the County's future water supply for human uses and damage natural ecosystems.

Current Minnesota Statutes and Rules, as well as Dakota County Ordinance No. 114, do not adequately address the construction of wells for bulk water exportation. Currently, insufficient information exists to understand the impacts to public health and the environment if millions of gallons of water are removed from Dakota County watersheds. Additional time is needed to study the impacts of bulk water exportation and to determine whether the pending water plan ensures sufficient groundwater levels to support the County's growing population, agriculture, and industry, and determine whether other regulatory measures to ensure sufficient groundwater supplies to support human uses are needed, and to determined what modifications, if any, are needed to Ordinance No. 114.

SECTION 3.00 MORATORIUM ESTABLISHED

In accordance with the purpose set forth above and pursuant to the authority of Minnesota Statutes 394.34 (Interim Zoning) and the jurisdictional authority of the Dakota County Well and Water Management Ordinance (Ordinance No. 114), and the County's Groundwater Plan, a moratorium on the construction, installation, or permitting of new wells estimated to use a water volume greater than 10,000

gallons per day or 1,000,000 gallons per year for the following proposed Minnesota Department of Natural Resources (DNR) water uses and types :

- Commercial/Industrial Water Supply
- Other Water Supply
- Agriculture/Food Processing

This ordinance does not apply to existing wells or replacement of existing wells.

SECTION 4.00 EFFECTIVE DATE

The moratorium shall be in effect for 365-days commencing _____, 2020.

ATTEST:
COUNTY OF DAKOTA, STATE OF MINNESOTA

Jenny Reynolds
Sr. Admin. Coordinator to the Board
DATE:_____

Mike Slavik, Chair
Dakota County Board of Commissioners
DATE:_____

Approved as to Form:

Approved as to Execution:

Helen R. Brosnahan
Assistant County Attorney
DATE:_____

Helen R. Brosnahan
Assistant County Attorney
DATE:_____