

**MCMULLIN AREA GROUNDWATER
SUSTAINABILITY AGENCY
GROUNDWATER EXPORT POLICY**

POLICY NO. 2020-_____

DATE ADOPTED: _____, 2020

1.0 Background

Pursuant to the Sustainable Groundwater Management Act of 2014 (Water Code §§ 10720 *et seq.*) (“SGMA”), the McMullin Area Groundwater Sustainability Agency (“MAGSA”) manages groundwater within a portion of the Kings Subbasin (Basin No. 5-22.08) located in Fresno County and designated as subject to conditions of critical overdraft by the California Department of Water Resources’ (“DWR”) Bulletin 118 – Interim Update (2016). MAGSA’s boundaries are depicted in **Exhibit A**, attached hereto and incorporated herein. Further, MAGSA is responsible for implementing projects and management actions to cooperatively reach sustainability objectives and address sustainable yield and overdraft conditions within the Kings Subbasin and MAGSA. The McMullin Area Groundwater Sustainability Agency Groundwater Sustainability Plan (“MAGSA GSP”) (as adopted November 6, 2019 and submitted to DWR January 28, 2020)¹ identifies management actions and policies to be implemented by MAGSA to reach sustainability within its portion of the Kings Subbasin in a timely manner (see MAGSA GSP at section 6, which is incorporated herein by reference). The relevant portion of the referenced management actions requires policies for management, potential regulation, and the imposition of fees for groundwater export from MAGSA, with the stated preference “that all groundwater supplies within the GSA [be] consumed or retained within the GSA boundary.” (*Id.*)

2.0 Purpose

With the express acknowledgement of MAGSA’s duty to sustainably manage its portion of the Kings Subbasin within its boundaries, and in furtherance of and consistent with the GSP’s stated goal that groundwater extracted from within MAGSA’s boundaries be used within MAGSA for beneficial agricultural irrigation, domestic or industrial purposes, and to reconcile the clear inconsistency associated with said groundwater export from within its boundary, the purpose of this Groundwater Export Policy (“Policy”) is to further clarify and expand upon the Groundwater Pumping Restrictions Management Actions referenced within the GSP, including pumping of groundwater from within MAGSA for any use outside of MAGSA (as more particularly identified at GSP section 6.3.6.1, item GP-1), and to inform the establishment of an implementation methodology for MAGSA to more effectively and equitably oversee, manage, and reasonably regulate extraction of groundwater from within its boundaries. MAGSA expressly excludes from this Policy any local or foreign (imported) surface water stored, recharged and/or banked (as further specified hereafter) by MAGSA, MAGSA’s groundwater banking partners, or MAGSA’s contractors, within MAGSA’s service area pursuant to MAGSA’s Water Banking Policy, Policy

¹ A copy of MAGSA’s GSP can be found at the following web address: <https://www.mcmullinarea.org/wp-content/uploads/2020/02/MAGSA%20GSP%20Final.pdf>.

No. _____, adopted _____, 2020 (hereinafter “MAGSA’s Water Banking Policy”), as it may be amended from time to time.

3.0 Scope

This Policy applies to all current and future extractions of groundwater for exportation from within MAGSA’s boundaries.

4.0 Definitions²

- a. Basin/Subbasin: Refers to the Kings Subbasin, as identified in DWR’s Bulletin 118 as Basin No. 5-22.08.
- b. Board: Refers to the MAGSA Board of Directors.
- c. Groundwater: Shall have the same definition as provided by SGMA, Water Code section 10721(g), which provides: “water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels unless included pursuant to [Water Code] Section 10722.5.”
- d. MAGSA Groundwater: Refers to groundwater that is pumped, removed, or extracted from a groundwater well or extraction facility located on land within MAGSA’s boundaries that is not otherwise exempt from this Policy.
- e. Groundwater Extraction Facility: Shall have the same definition as provided by SGMA, Water Code section 10721(h), which provides: “a device or method for extracting groundwater, by natural or artificial means.”
- f. Export of Groundwater: Refers to the extraction of groundwater from any groundwater well or extraction facility within MAGSA’s boundaries for transport and/or use outside of the boundaries of MAGSA. Export of groundwater includes activities by which groundwater underlying lands within MAGSA’s boundaries may, through one or more exchanges or transactions, be directly or indirectly conveyed or transferred for use outside of MAGSA’s boundaries (i.e. charged against MAGSA’s water balance or groundwater supply).
- g. Existing Exports/Exporter: Refers to any continuous, longstanding (for a term longer than one year) export of groundwater from within MAGSA commenced prior to the initial adoption date of this Policy. MAGSA maintains discretion to determine what constitutes an existing export or exporter for purposes of this Policy and any subsequently adopted related regulation(s).
- h. New Exports/Exporter: Refers to any proposed export of groundwater initiated after the initial adoption date of this Policy. MAGSA maintains discretion to determine what

² Definitions are intentionally arranged in logical, rather than alphabetical, order.

constitutes a new export or exporter for purposes of this Policy and any subsequently adopted related regulation(s).

5.0 Findings and Declarations.

The MAGSA Board makes the following findings and declarations in support of the enactment of this Policy:

a. General Policy Authority:

Pursuant to SGMA, MAGSA is authorized and required to adopt rules, regulations, ordinances and resolutions for the purpose of meeting the requirements of SGMA (Water Code § 10725.2), and is empowered to control groundwater extractions by regulating, limiting, or suspending groundwater extractions³ (Water Code § 10726.4(a)(2));

b. Conditions of Critical Overdraft within the Kings Subbasin and MAGSA:

- i. DWR has determined that the groundwater resources within the basin are in a critical state of overdraft, and it has been further determined by the Kings Subbasin Coordination Group⁴ in its initial analyses that MAGSA’s portion of the critically overdrafted Kings Subbasin is overdrawn in an amount at or near 90,000 acre-feet annually;
- ii. MAGSA, through its GSP, has identified areas of critical overdraft within MAGSA, in part due to dependency of agriculture on groundwater in MAGSA, and also due to groundwater exports. (See MAGSA’s GSP at Section 6.2.4.3.)
- iii. MAGSA acknowledges that pursuant to the Kings Subbasin coordination efforts through the Kings Subbasin Coordination Group, MAGSA has been “assigned” a proposed initial 91,100 acre-feet of overdraft responsibility,⁵ and such value does not take into consideration existing export pumping, such as exports by the James Irrigation District (“JID”);⁶
- iv. MAGSA finds that consideration of impacts to groundwater resources within MAGSA caused by or related to existing export pumping, such as by JID, was left undetermined by the Kings Subbasin Coordination Group, in anticipation that

³ Any such limitation on extractions adopted and/or imposed and/or enforced by MAGSA “shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.” (Water Code § 10726.4(a)(2).) Likewise, local agencies are not authorized to make binding determinations of the water rights of any person or entity. (Water Code § 10726.8(b).)

⁴ The Kings Subbasin Coordination Group is comprised of the seven GSAs organized and overlying the Kings Subbasin, including: MAGSA, Central Kings GSA, James GSA, Kings River East GSA, North Fork Kings GSA, North Kings GSA, and South Kings GSA.

⁵ This figure is to be compared to water budget results and updated in the future.

⁶ See Kings River Region SGMA Updates Overdraft Responsibility, available at: <https://www.mcmullinarea.org/wp-content/uploads/2018/11/overdraft-responsibility.jpg> (hereafter “Kings Overdraft Responsibility”).

MAGSA would account for said export pumping through policy adoption and reasonable regulation during implementation of MAGSA's GSP;⁷

c. Negative Impacts to MAGSA as a Result of Groundwater Export:

- i. MAGSA finds that groundwater is an essential and indispensable resource for agricultural, municipal, industrial, and domestic uses within MAGSA;
- ii. MAGSA finds that the export of groundwater extracted from within MAGSA to areas outside of MAGSA's boundaries contributes to undesirable groundwater conditions within MAGSA, including but not limited to: conditions of critical groundwater overdraft (see MAGSA's GSP at Section 6.2.4.3), the lowering of groundwater levels, subsidence, degradation of water quality and unreasonable inhibition of MAGSA's potential for success in achieving sustainability through implementation of its GSP pursuant to SGMA;
- iii. MAGSA finds that the export of groundwater extracted from within MAGSA to areas outside of MAGSA's boundaries, in conjunction with other factors such as dependency of agriculture on groundwater, contributes to negative economic impacts within MAGSA, including but not limited to: the loss of arable land to unnecessary and excessive fallowing, a decline in property values, increased pumping costs due to lowering of groundwater levels, premature replacement or reconfiguration of domestic and/or agricultural wells due to declining groundwater levels, damage to conveyance and other capital infrastructure, State intervention if MAGSA's sustainability goals are negatively impacted, increasing unemployment and economic hardship due to a reduction of agricultural jobs, and reduced ability for MAGSA to conserve groundwater supplies for future years;

d. MAGSA's Responsibility to Protect Groundwater Within MAGSA:

- i. To protect the limited groundwater resources within MAGSA from further diminution, it is MAGSA's declared continued preference, intent and stated goal that all water underlying MAGSA's service area should, to the maximum extent allowed by law, be available for use by MAGSA landowners for beneficial overlying uses on lands within MAGSA;⁸
- ii. MAGSA finds that protection and reasonable regulation of groundwater supplies through this Policy, and anticipated related regulation(s) accounting for and mitigating against undesirable impacts from new and existing groundwater exports from within MAGSA's boundaries, is in the best interest of MAGSA's landowners and the groundwater basin underlying MAGSA;
- iii. MAGSA's GSP provides that a policy addressing groundwater exports from within MAGSA, such as this Policy and any related supporting regulation(s) adopted

⁷ See notes section of the Kings Overdraft Responsibility document, linked at fn. 6 of this Policy.

⁸ Refer to Section 7.0 of this Policy for express exemptions to this Policy.

hereafter, may allow for as much as 35,000 additional acre-feet to be retained within the boundaries of the GSA, and thus may present one of several critical tools potentially enabling MAGSA to sustainably manage its portion of the Kings Subbasin consistent with SGMA;

e. Approval of New Exports in Exceptional Circumstances:

- i. MAGSA finds that there may be limited circumstances in which a MAGSA landowner may have urgent or emergency need to use MAGSA groundwater developed from groundwater extraction facilities within MAGSA on lands owned by that landowner outside of, but immediately adjacent to, MAGSA's boundaries (see MAGSA's GSP at p. 3-39 ["It can be assumed that property owners located along the boundaries of the MAGSA area may pump small amounts of groundwater from within the area to irrigate adjacent parcels located outside the area"]);
- ii. MAGSA finds that it may authorize, through formal action, new exports in limited quantities for emergency and/or exceptional circumstances, including but not limited to: permitting by MAGSA pursuant to this Policy; payment of export fees; and/or metering and data sharing (see MAGSA's GSP at Section 6.3.6.1: ["If deemed necessary, the [MAGSA] Board of Directors may adopt policies and implement regulations and fees in order to address groundwater exports from within the GSA, in order to ensure that all groundwater is consumed or retained within the GSA boundary" to the maximum extent allowed by law]);
- iii. MAGSA finds that exportation of groundwater in such limited circumstances is not likely to unduly burden the ability of other landowners to enjoy the benefit of sustainably managed groundwater supplies because such use will be temporary, of a reasonably limited quantity, and conditioned on consistency with MAGSA's GSP and this Policy;

f. MAGSA Authority to Impose Fees For Regulating Groundwater Exports:

- i. MAGSA is authorized to impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity (Water Code § 10730(a));
- ii. MAGSA's GSP (see Sections 6.3.6.1 & 6.3.6.7) contemplates fees or charges for new and existing exports and/or regulation thereof, with the stated goal of ensuring that groundwater supplies within the GSA are consumed or retained within the GSA boundary to the maximum extent allowed by law in order to "mitigate overdraft by ensuring groundwater supplies are consumed or retained within the GSA boundary";
- iii. MAGSA's sustainable groundwater management activities and programs, through implementation of its GSP, are funded by landowner fees and charges and are intended to be utilized for management actions and projects within MAGSA, which are not currently imposed on exports or exporters of groundwater, and thus do not

appropriately account for the negative export-related impacts on critical groundwater overdraft, including, but not limited to, economic impacts incurred by landowners and groundwater users within the MAGSA area as a result of new and existing groundwater exports;

- iv. MAGSA finds that it is in the best interest of its landowners to equitably account for negative impacts caused by groundwater exports through adoption of a per-acre-foot fee or charge on all new and existing exports of groundwater, in an amount to be determined and imposed through subsequent related regulation(s); and
- g. Permit and Fees for Existing Exports:

MAGSA finds that existing exporters of groundwater, such as JID, may continue their existing exports, but only by applying for and obtaining a permit issued by the MAGSA Board, compliant with any and all adopted related regulation(s) and any terms and conditions imposed by the MAGSA Board consistent with this Policy, and upon payment of any reasonable export fees in accordance with any export fee schedule adopted and imposed by the MAGSA Board from time to time;

- h. MAGSA Authority to Require Metering and Data Reporting for Exports:

MAGSA finds that, pursuant to SGMA (Water Code § 10725.8), it is authorized to and may require installation of water measurement devices satisfactory to MAGSA on every groundwater extraction facility within its management area used for the export of groundwater, and to require the reporting to MAGSA of any and all data collected from the water measurement devices used for groundwater export pursuant to a schedule adopted by MAGSA.

6.0 Policy Statement.

Consistent with the findings and declarations contained in Section 5.0, above, it shall hereafter be the stated Policy of the MAGSA in the best interest of its landowners, to:

- a. Manage impacts of groundwater overdraft by regulating groundwater exports;
- b. Protect its groundwater supply so that it remains available to MAGSA landowners to the maximum extent possible for use within the GSA, consistent with MAGSA's GSP;
- c. Reasonably regulate and discourage new export of groundwater for use outside of MAGSA, while equitably accounting for existing exports of groundwater, such that groundwater remains available to the greatest extent possible for extraction and reasonable use within MAGSA's boundaries by MAGSA's landowners, and to manage critical overdraft to sustainability within MAGSA; and
- d. Require (in a manner consistent with the intent of this Policy) anyone attempting to export groundwater from within MAGSA to first apply, qualify for and obtain a permit issued in furtherance of this Export Policy from MAGSA's Board of Directors, consistent with other reasonable rules and regulations which may be adopted from time

to time, and comply with the conditions of authorization imposed by the MAGSA Board in its ultimate approval thereof, if applicable.

7.0 Exemptions.

MAGSA expressly exempts from this Policy any water stored, recharged and/or banked by:

- a. MAGSA;
- b. MAGSA’s groundwater banking partners (with MAGSA approval);
- c. MAGSA’s contractors (with MAGSA approval); and/or
- d. Any other person, entity or public agency with express written authorization from MAGSA within MAGSA’s service area pursuant to MAGSA’s Water Banking Policy.

8.0 Enactment.

This Policy shall become effective and be in full force on and after its passage and adoption.

The foregoing Groundwater Export Policy was passed and adopted by the Board of Directors for the McMullin Area Groundwater Sustainability Agency, at a regular meeting thereof held on the ____ day of _____, 2020, by the following vote:

Directors:

AYES:

NOES:

ABSENT:

Chairperson, Board of Directors
McMullin Area Groundwater Sustainability Agency

ATTEST:

MATTHEW H. HURLEY

Approved as to legal form and effect:

Legal Counsel

EXHIBIT "A"

DRAFT