

**MCMULLIN AREA GROUNDWATER
SUSTAINABILITY AGENCY
GROUNDWATER DATA POLICY**

POLICY NO. 2020-06

DATE ADOPTED: September 2, 2020

1.0 Purpose

The purpose of this Groundwater Data Policy (“Policy”) is to establish a methodology for the McMullin Area Groundwater Sustainability Agency (“MAGSA”) to receive data from landowners and to respond to data requests that ensure the confidentiality of the data is maintained.

2.0 Scope

This Policy applies to all groundwater data that are currently in the possession of MAGSA or that MAGSA will acquire in the future.

3.0 Recitals

WHEREAS, MAGSA is a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Gov’t Code section 6500 et seq.) and acts pursuant to that authority; and

WHEREAS, it is MAGSA’s mission to sustainably manage, protect and maintain the groundwater resources within the McMullin Area of the Kings Subbasin consistent with the Sustainable Groundwater Management Act of 2014 (Water Code section 10720 et seq.) (“SGMA”) for the benefit of water users within the McMullin Area of the Kings Subbasin, Basin No. 5-22.08 as identified in the Department of Water Resources’ (“DWR”) Bulletin 118 and designated as subject to conditions of critical overdraft, and to coordinate with other Groundwater Sustainability Agencies (“GSAs”) and management activities throughout the region; and

WHEREAS, pursuant to Water Code section 10725.2, the MAGSA Board of Directors is authorized to adopt rules, regulations, ordinances and resolutions for the purpose of complying with SGMA;

WHEREAS, MAGSA, in carrying out its mission, has need to acquire groundwater data, including, but not limited to, well location, well construction, geological information, water quality, water level data and extraction quantity (pumping data) from its landowners within the McMullin Area, and to compile and manage that data in a Confidential Data Management System; and

WHEREAS, MAGSA has and plans to continue developing and/or acquiring confidential, technical and proprietary information related, but not limited to, well location, well construction, geological information, groundwater level data and extraction quantity (pumping data), groundwater production data and groundwater quality information for the McMullin Area

(“Confidential Information”) and desires to ensure that the Confidential Information that may be disclosed to MAGSA is treated in the strictest confidence consistent with the requirements of the law; and

WHEREAS, such Confidential Information is not general public knowledge, is proprietary and/or confidential and is being disclosed on a limited basis under the terms and conditions of this Policy and/or any data privacy agreement made directly by and between MAGSA and any MAGSA landowner; and

WHEREAS, MAGSA finds that any Confidential Information collected from private well owners within its jurisdiction is required and necessary for implementation of MAGSA’s Groundwater Sustainability Plan (“GSP”) pursuant to SGMA; and

WHEREAS, the MAGSA Board of Directors finds it to be in the best interest of the GSA and its landowners to adopt a Groundwater Data Policy to promote and protect the privacy rights of individuals in the administration and implementation of its GSP and compliance with SGMA generally; and

WHEREAS, MAGSA has engaged the services of certain consultants who may also provide advice to parties potentially adverse to MAGSA, and it is the intent of this agreement to confirm the limitations of the use of Confidential Information, and define the type of information that may be disclosed, to whom the information may be distributed, and when/how the information may be distributed; and

WHEREAS, the California Public Records Act (Gov’t Code §§ 6250 et seq.) (“CPRA”) declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state; and

WHEREAS, notwithstanding the intent, the CPRA also exempts numerous types of information from public disclosure, including:

1. Geological and geophysical data (Gov’t Code § 6254(e));
2. Disclosure of a public record to a public agency pursuant to an agreement to treat the material as confidential (Gov’t Code § 6254.5(e); and
3. Any information where, based on the particular facts of the case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record (Gov’t Code section 6255); and

WHEREAS, MAGSA finds that such Confidential Information is exempt from public disclosure but may be disclosed on a limited basis pursuant to the statutory provisions cited above; and

WHEREAS, MAGSA, as a public agency subject to the CPRA, is in need of a written policy for acquisition of data from its landowners and to respond to internal and external data requests that ensure the confidentiality of the data are maintained.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Any groundwater data containing Confidential Information provided to MAGSA under a claim of confidentiality shall be marked by MAGSA as confidential.
2. All Confidential Information submitted to MAGSA shall be pursuant to a confidentiality agreement for MAGSA to treat the Information as confidential.
3. MAGSA shall maintain all groundwater data as confidential, pursuant to the claims at the time of submission. Only persons authorized in writing by the Executive Director/General Manager of MAGSA shall obtain the Confidential Information on behalf of MAGSA and only for the purposes that are consistent with this Policy and existing law.
4. MAGSA may assert any applicable exclusion or privilege, either on its own behalf or on behalf of a landowner.
5. MAGSA may not disclose any data to the public without the express authorization of the submitting landowner, unless otherwise authorized pursuant to a consent authorization and/or other agreement between MAGSA and the consenting landowner.
6. MAGSA shall immediately notify a submitting landowner of any request for information from a member of the public in order to allow sufficient time to assert any exclusions or privileges that may be available by law.
7. If any information is required to be disclosed pursuant to law or court order, MAGSA shall work to comply with the disclosure request while limiting the disclosure in a manner to preserve the confidential and proprietary nature of the Confidential Information, as allowed by existing law.
8. MAGSA may disclose Confidential Information to a public agency only if: (1) the public agency requires the information to perform its legally mandated duties; and (2) the public agency agrees in writing to protect the confidentiality of the Confidential Information and to limit disclosure to only those persons who are employed or retained by the agency and who have signed an agreement to maintain the confidentiality of the records.