# MCMULLIN AREA GROUNDWATER SUSTAINABILITY AGENCY GROUNDWATER EXPORT POLICY

**POLICY NO. 2020-07**
**DATE ADOPTED:** December 9, 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. 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 ("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 GSP at section 6, which is incorporated herein by reference). The relevant portion of the GSP identifies a preference "that all groundwater supplies within the GSA [be] consumed or retained within the GSA boundary." (*Id.* at 6.3.6.1)

## 2.0 Purpose

The purpose of this Groundwater Export Policy ("Policy") is to authorize the establishment of a framework to implement the objectives identified in the GSP regarding pumping of groundwater from within MAGSA for any use outside of MAGSA. (See GSP section 6.3.6.1, item GP-1). This Policy is consistent with MAGSA's duty to sustainably manage, protect, and maintain the groundwater resouces within its portion of the Kings Subbasin. This Policy further clarifies and expands upon the Groundwater Pumping Restrictions Management Actions referenced within the GSP and provides the guiding framework that will be subsequently implemented through the Board's development of applicable rules and/or regulations.

## 3.0 Definitions

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. Existing Exports: Refers to any continuous export of groundwater from within MAGSA commenced prior to the intial adoption date of this Policy. MAGSA maintains discretion to determine what constitutes an existing export for purposes of this Policy and any subsequently adopted related regulation(s).

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[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.

d. 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).

e. 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."

f. 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."

g. New Exports: Refers to any proposed export of groundwater initiated after the initial adoption date of this Policy. MAGSA maintains discretion to determine what constitutes a new export for purposes of this Policy and any subsequently adopted related regulation(s).

## 4.0 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 Subbasin, consistent with SGMA, for the benefit of water users within the McMullin Area of the Subbasin, and to coordinate with other Groundwater Sustainability Agencies ("GSAs") and management activities throughout the region; and

WHEREAS, groundwater is an essential and indispensible resource for agricultural, environmental, municipal, industrial, domestic, and other uses within MAGSA; and

WHEREAS, the sustainability goal of the Subbasin and MAGSA is to "ensure that, by no later than 2040, the basin is being operated to maintain a reliable water supply for current and future beneficial uses without experiencing undesirable results"; and

WHEREAS, SGMA identified undesireable results as: chronic lowering of groundwater levels, reduction of groundwater storage, seawater intrusion, land subsidence, water quality degradation, and depletions of interconnected surface water; and

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

WHEREAS, pursuant to Water Code § 10730(a), the Board is authorized to impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity; and

WHEREAS, pursuant to Water Code § 10726.4(a)(2), the Board is also authorized to regulate, limit, or suspend groundwater extractions; and

WHEREAS, 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))[2]; and

WHEREAS, DWR has determined that the groundwater resources within the Basin are in a critical state of overdraft, and

WHEREAS the Kings Subbasin Coordination Group[3] determined, in its initial analysis, that MAGSA's portion of the Subbasin is overdrawn in an amount at or near 90,000 acre-feet annually; and

WHEREAS, the Kings Subbasin Coordination Group has assigned to MAGSA a proposed initial 91,100 acre-feet of overdraft responsibility;[4] and

WHEREAS, in assigning this initial proposed responsibility, the Kings Subbasin Coordination Group did not consider impacts to groundwater resources within MAGSA caused by or related to existing export pumping; [5] and

WHEREAS, MAGSA has determined 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, 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 (see GSP at Section 3.3.8 [Historical Water Budget], 3.3.9 [Current Water Budget], 3.3.11 [Quantification of Overdraft], 4.2.1.2 and 4.3.1.2 [Causes of Groundwater Conditions That Could Lead to Undesireable Results], 6.2.4.3 [impact of JID exports]);

WHEREAS, MAGSA has estimated through empirical industry evidence that the export of groundwater extracted from within MAGSA to areas outside of MAGSA's boundaries, in conjunction with other factors including, but not limited to, over-dependency of agriculture on groundwater, collectively has led to the current state of overdraft within MAGSA's boundaries; and

WHEREAS, the continued export of groundwater may also contribute to additional 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, and potentially State intervention if MAGSA's sustainability goals are negatively

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[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).)

[3] 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.

[4] This figure is to be compared to water budget results and updated in the future.

[5] *See* Kings River Region SGMA Updates Overdraft Responsibility, and the included notes section, available at: https://www.mcmullinarea.org/wp-content/uploads/2018/11/overdraft-responsiblity.jpg.

impacted, which could in turn result in a reduction of agricultural jobs, increasing unemployment and economic hardship, and reduced ability for MAGSA to conserve groundwater supplies for future years; and

WHEREAS, it is MAGSA's declared continued preference, intent, and stated goal that all groundwater 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's boundaries; and

WHEREAS, MAGSA has estimated that a policy imposing extraction fees and/or otherwise regulating groundwater exports from within MAGSA will contribute to mitigation of overdraft by ensuring that groundwater supplies are retained within its boundaries, and has estimated, subject to additional analysis (without limitation) that such a policy may result in the retention of as much as 25,000 additional acre-feet groundwater within the boundaries of the GSA (see GSP at Section 6.3.6.8); and

WHERAS, MAGSA has determined that such fees and/or other regulation may present one of several critical tools potentially enabling it to sustainably manage its portion of the Kings Subbasin consistent with SGMA; and

WHEREAS, the GSP provides that MAGSA "may consider a fee structure and incentives study to determine the best strategy for curbing groundwater overdraft without causing inequitable economic impact" (GSA Section 6.3.5.1); and

WHEREAS, MAGSA seeks to ensure that all those that produce groundwater from within MAGSA's boundaries are equitably incentivized to address the impacts on critical groundwater overdraft; and

WHEREAS, MAGSA further finds that there may be limited circumstances in which a MAGSA landowner may have urgent or emergency need to use groundwater developed from groundwater extraction facilities located within MAGSA's boundaries on lands owned by that landowner outside of, but immediately adjacent to, MAGSA's boundaries (see MAGSA's GSP at p. 3-39); and

WHEREAS, MAGSA finds that such emergency and/or exceptional circumstances affecting owners of land within MAGSA's boundaries must also be subject to fees and reasonable regulation to equitably disincentivize the increased production of groundwater supplies from within its boundaries.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

As part of MAGSA's overall statutory obligation to mitigate groundwater overdraft, provide protections for its groundwater supply, avoid undesireable results related to groundwater extraction, and ensure that groundwater remains available to MAGSA landowners to the maximum extent possible for use within its boundaries, consistent with MAGSA's GSP, it shall hereafter, in furtherance of those statutory obligations, be MAGSA's policy:

1. To reasonably regulate the production of groundwater extracted within its boundaries for export outside of the McMullin area of the Subbasin;

2. To equitably account for existing exports of groundwater;

3. To require those who export, or those who hereafter seek to export groundwater from within MAGSA's boundaries to first apply, qualify for, and obtain a permit issued in furtherance of this Policy from MAGSA's Board, consistent with other reasonable rules and regulations that may be adopted from time to time, and to comply with the conditions of authorization imposed by the Board in its ultimate approval thereof, if applicable;

4. To adopt a per-acre-foot export fee or charge on all new and existing export of groundwater, in an amount to be determined and imposed through subsequent action;

5. To allow the Board discretion for reasonable exception to this Polcy to permit new export of groundwater, so long as such exports are limited in time and quantity, and subject to reasonable regulation consistent with MAGSA's GSP and this Policy, so as not to hamper MAGSA's efforts to otherwise sustainably manage, protect, and maintain the groundwater resources within the McMullin Area of the Subbasin, consistent with SGMA; and

6. To exclude from the imposition of export fees under this Policy any water that is imported or otherwise held for banking pursuant to MAGSA's Water Banking Policy, including, in particular, water banked by MAGSA and its groundwater banking partners (subject to relevant Board approval).

**7.0 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 9th day of December, 2020, by the following vote:

Directors:

AYES: Abercrombie, Batth, Cameron, Pacheco, Singh

NOES:

ABSENT:

Jeevan Singh, Chairperson

ATTEST:

Matthew H Hurley, Board Secretary

Approved as to legal form and effect:

Legal Counsel

Exhibit "A"