

IMPLEMENTING RULES AND REGULATIONS
OF THE
MCMULLIN AREA GROUNDWATER SUSTAINABILITY AGENCY
REGULATING EXPORT OF GROUNDWATER IN SUPPORT OF SUSTAINABLE
GROUNDWATER MANAGEMENT

1. Purpose

The purpose of this document is to provide specific instruction to landowners and/or other interested parties regarding the annual permitting process and fees related to the export of groundwater extracted from lands within the boundary of the McMullin Area Groundwater Sustainability Agency (“**MAGSA**”) to any location outside of MAGSA’s boundaries. As a Groundwater Sustainability Agency (“**GSA**”), properly organized pursuant to the Sustainable Groundwater Management Act of 2014 (Water Code §§ 10720 et seq.) (“**SGMA**”), MAGSA is authorized to adopt rules, regulations, ordinances, and resolutions for purposes of fulfilling its obligations as a GSA. (Water Code § 10725.2(b).) MAGSA adopts these Implementing Rules and Regulations pursuant to this authority.

2. Scope

These Implementing Rules and Regulations apply to any and all groundwater extracted from within MAGSA’s boundaries that is transported/exported outside of the MAGSA’s boundaries, with the exception of those exports that qualify under the exceptions provided herein, which include *de minimus* use and extraction of water deposited and withdrawn from MAGSA’s Groundwater Banking facilities. Certain owners of parcels that are located both within and without MAGSA’s boundaries may be exempted from the fees provided herein, but will be required to obtain permits and report exports. Nothing in these Rules and Regulations determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights. MAGSA finds and determines that these implementing provisions aid in the prohibition of the waste of water, assist in the reduction of the unsustainable use of groundwater, and that reasonable restriction on the export of groundwater is an action that furthers the mandates of the California Constitution, California statutes and specifically SGMA.

3. Recitals

WHEREAS, pursuant to SGMA, MAGSA manages groundwater within a portion of the Kings River Subbasin (Basin No. 5-22.08) (“**Subbasin**”) located in the County of Fresno and designated as subject to conditions of critical overdraft by the California Department of Water Resources’ Bulletin 118 – Interim Update (2016); and

WHEREAS, the MAGSA service area, which is depicted in **Exhibit A** and also known as and referred to herein as the “**McMullin Area**,” is located within the County of Fresno and covers 120,635 acres within the Subbasin; and

WHEREAS, MAGSA is a Joint Powers Authority created by the McMullin Area

Groundwater Sustainability Agency Joint Powers Agreement (“**JPA**”) entered among the County of Fresno, Raisin City Water District, and Mid-Valley Water District to serve as the Groundwater Sustainability Agency (“**GSA**”) for the McMullin Area pursuant to SGMA.

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 GSAs and management activities throughout the region; and

WHEREAS, SGMA authorizes MAGSA to adopt rules, regulations, ordinances, and resolutions for the purpose of groundwater sustainability (Wat. Code, § 10725.2), in conjunction with the provisions contained within its groundwater sustainability plan (“**GSP**”), including: (1) requiring that the use of every groundwater extraction facility within MAGSA’s management area be measured by a water-measuring device satisfactory to MAGSA (Wat. Code, § 10725.8); (2) controlling groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations (Wat. Code, § 10726.4); and (3) to enforce, pursuant to its authority under SGMA or any other applicable laws, its requirements and collect fees (Wat. Code, § 10726.8); and

WHEREAS, SGMA further authorizes MAGSA to impose fees, including permit fees and fees on groundwater extraction and other regulated activity to fund the costs of its groundwater sustainability program, including, but not limited to, investigations, inspections, compliance assistance, enforcements, and program administration, including a prudent reserve (Wat. Code, § 10730(a)); and

WHEREAS, pursuant to the Kings Subbasin Coordination Agreement, the Kings Subbasin Coordination Group assigned MAGSA the responsibility to address 91,100 AF of the total 122,000 AF of overdraft for the entire Kings Groundwater Subbasin; and

WHEREAS, Groundwater is an essential and indispensable resource for agricultural, environmental, municipal, industrial, domestic, and other uses within the McMullin Area; and

WHEREAS, MAGSA has determined that the export of groundwater extracted from within the McMullin Area 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 3.3.8, 3.3.9, 3.3.11, 4.2.1.2 and 4.3.1.2, and 6.2.4.3); and

WHEREAS, MAGSA has estimated through the best available empirical 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, research and analysis conducted by MAGSA indicates that the continued export of groundwater, without reasonable mitigation, may also contribute to additional negative economic impacts within MAGSA, including, but not limited to: the potential 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 potential State intervention if MAGSA’s sustainability goals are negatively 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 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 shall use any collected export fees to fund the costs of implementing its GSP; and

WHEREAS, consistent with its GSP and its Groundwater Export Policy, **Policy No. 2020-07**, adopted on December 9, 2020, the provisions of which are incorporated herein by reference as if set forth herein, MAGSA shall regulate groundwater pumped within MAGSA’s boundaries that is exported and used outside of the McMullin Area through an annual permitting process subject to fees as set forth herein;

WHEREAS, the aforementioned Groundwater Export Policy contains language specifying adoption of clarifying implementing regulations to carry out its stated intent;

NOW, THEREFORE, BE IT RESOLVED that the following Implementing Rules and Regulations shall provide the clarifying implementing regulation as specified in the said policy, shall be effective upon adoption, and shall remain in effect until further modified or rescinded.

Implementing Rules and Regulations

1. **No Export Without Annual Permit and Payment of Fees**: No “**Person**” (which as used herein refers to a person, firm, corporation, or governmental agency, except an agency of the United States, to the extent, if any, that federal law preempts this chapter) may export outside of the MAGSA boundary any groundwater extracted by any artificial means from within the MAGSA boundary, directly or indirectly, in any given “**Water Year**” (October 1 through September 30) without first obtaining a written permit and paying the required fees as provided herein.
2. **Annual Application**: Any Person that desires to export groundwater from the McMullin Area during the upcoming Water Year must first submit to MAGSA an application for a permit on forms provided by MAGSA accompanied by a request for environmental review, as required by applicable MAGSA guidelines established and updated from time to time, and the fees set forth herein, which may be revised from time to time by the MAGSA Board of Directors

(“**Board**”). An application to export groundwater from the McMullin Area must include, but is not limited to, the following:

- A. Location(s), maximum extraction rate(s), depth(s) and all other information required in the Water Well Drillers’ Report (California Water Code, section 13751) of each well, including observation wells owned by the extractor;
- B. Planned monthly extraction rate, and beginning water elevation depth of each well proposed for operations;
- C. Delineation of the time periods in which each well is proposed for operation;
- D. Total estimated amount of water to be exported during the subject Water Year;
- E. Location(s) outside of the MAGSA boundary to which water is to be exported and planned use;
- F. Description of the adverse environmental effects of the extraction, by individual well, groups of wells (if applicable), and by the extractor’s entire operation’s cumulative effects;
- G. Description of any proposed mitigation measures designed to offset any adverse environmental effects of the extraction;
- H. Description of the intended beneficial uses of the extracted groundwater and related surface supplies, by individual well, groups of wells (if applicable), and by the extractor’s entire operation;
- I. Description by quantification and location of each end use of the needs of the extractor which the extraction is designed to meet;
- J. Description of alternatives available to the extractor to meet the needs for which the extraction is proposed, including any available types and amounts of water conservation.

3. Review of Application:

- A. Within thirty (30) days of submission of an application, MAGSA’s General Manager shall make an initial determination of whether the application is complete or incomplete. Should the application be deemed incomplete, the General Manager shall advise the applicant of any steps necessary to complete the application and provide a reasonable deadline not to exceed ninety (90) days, to complete the application. If the application is not completed by the deadline, it shall be denied.
- B. Once the application is deemed complete, and upon the determination that an appropriate level of environmental review has been completed, the application shall be considered by the Board at a noticed public meeting. At the Board’s 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

Board to make any appropriate required findings for approval. The Board may request any additional information it deems necessary for its decision, the cost of which, if any, shall be borne by the applicant. The Board shall also hear relevant evidence presented by other interested persons and entities, other MAGSA staff, and the public. Formal rules of evidence shall not apply during the public review but the Board may establish such rules as will enable the expeditious presentation of the matter and relevant information thereof.

- C. The Board shall consider all effects that the granting of the application would have on the Subbasin including, but not limited to, whether granting the application would cause or contribute to chronic lowering of groundwater levels, overdraft, reduction of groundwater storage, degraded water quality, land subsidence, or surface water depletions. MAGSA staff may also review the application and make a recommendation to the Board, which shall address the forgoing issues as well as whether granting the application will operate to the injury of: the reasonable and beneficial uses of overlying groundwater users within the McMullin Area; or a water replenishment, storage or restoration project operated in accordance with statutory authorization.

4. Findings Necessary to Approve Export Permit:

- A. The permit will be granted by the Board only if:

- i. A simple majority of the total membership of the Board finds and determines that:

- a. The proposed exportation subject to the conditions as provided herein will not significantly or unreasonably cause or increase chronic lowering of groundwater levels, overdraft, reduction of groundwater storage, degraded water quality, land subsidence, or surface water depletions within the area of the Kings Subbasin below the McMullin Area; and
 - b. The proposed exportation subject to the conditions as provided herein will not significantly or unreasonably operate to the injury of the reasonable and beneficial uses of overlying groundwater users within the McMullin Area or a water replenishment, storage, or restoration project operated in accordance with statutory authorization; and

- ii. The Applicant submits fifty percent (50%) of the estimated total fees.

- B. The Board shall comply with the California Environmental Quality Act (“**CEQA**”) in consideration of a request for an export permit. If the permit is to be granted, the Board may impose appropriate conditions and/or mitigation measures upon the permit so as to prohibit overdraft or other undesirable results or adverse conditions, and may impose other conditions, within its statutory authority, that it deems necessary for the health, safety, and welfare of the people of the McMullin Area.

- 5. Limitation of Groundwater Export: Permits for the export of groundwater shall limit groundwater export to no more than the demonstrated reasonable historical use by the extractor.

6. Mitigation: Notwithstanding the foregoing elements of permit review, the Board may issue the permit if it finds that the applicant has provided for mitigation that will offset any adverse effect that would be produced to a less than significant and/or unreasonable level, in its sole discretion.

7. Reporting: All Persons, including Public Water Agencies that export groundwater from the McMullin Area, unless subject to one of the exceptions to these Rules and Regulations, shall cause to be prepared and submitted to the MAGSA General Manager quarterly status reports, within fifteen (15) days of the end of each quarter, and an annual report, no later than **October 15** of each year, detailing the quantities of water exported from the McMullin Area. The General Manager shall develop and recommend forms be adopted by the Board that detail the required information to be monitored and reported, including without limitation water level and pumping data, or other data necessary for any other method to determine groundwater production and export.

8. Fees: Annual permits for the export of groundwater shall require the permit holder to pay to MAGSA the fees pursuant to the schedule below, with an initial estimated payment of fifty percent (50%) due in advance of approval of an application, and final payment of the entire and corrected amount due no later than **October 15** of each year:

Year	\$/AF Export Fee
2022	\$285
2023	\$360
2024	\$425
2025	\$485
2026	\$535
2027	\$580
2028	\$615
2029	\$650
2030	\$657
2031	\$695
2032	\$715
2033	\$735
2034	\$750

2035	\$760
2036	\$775
2037	\$790
2038	\$805
2039	\$820
2040	\$840

9. Exemptions from Permitting Process and Fees: This permitting process and related fees shall not apply to:
- A. *De minimis* extractors, as defined by Water Code section 10721(e) to mean those who extract, for domestic purposes, two-acre feet of groundwater or less per year; or
 - B. Export of water that has been deposited in and withdrawn from any MAGSA-owned or operated Groundwater Banking facility.
10. Exemptions from Export Fees: Although annual permits and reporting shall be required, the following shall not be subject to the fees provided herein:
- A. The continued export of groundwater for reasonable and beneficial use by existing MAGSA landowners who, at the time of the approval of these Rules and Regulations, own a single and/or contiguous property that is both inside and outside the boundary of the McMullin Area and have existing wells located within the McMullin Area that provide water for use on the existing property, including those portions located outside the McMullin Area. The use of water subject to this exemption is limited to the continued reasonable and beneficial use on the same parcel(s) of land and may **not** be exported for sale or use at any other location.
11. Suspension of Exemptions. The foregoing exemptions may be suspended by the Board of Directors in their sole discretion for reasonable cause.
12. No Change to Rights: Nothing in this Resolution determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights. MAGSA finds and determines that these implementing provisions aid in the prohibition of the waste of water, assist in the reduction of the unsustainable use of groundwater, and that reasonable restriction on the export of groundwater is an action that furthers the mandates of the California Constitution, California statutes and specifically SGMA.

13. Enforcement:

A. MAGSA's General Manager shall have the primary responsibility for implementation and enforcement of the permitting process provided pursuant to these Rules and Regulations. The General Manager shall have authority to investigate any activity subject to these Rules and Regulations. Compliance will be determined based upon the submission of a technical report to the General Manager on a form provided by MAGSA. The General Manager is authorized to:

- i. Enforce the prohibition of any activity that is determined to be in violation of these Rules and Regulations or any related rules or regulations adopted by the Board by pursuing injunctive relief from the Court or through any other legal means; or
- ii. Revoke a permit upon a finding that a permit holder is exporting groundwater in violation of their permit.

B. MAGSA expressly reserves the right to pursue all legal remedies to enforce compliance with these Rules and Regulations, including imposition of appropriate fines and/or other assessments against the offending party.

14. Appeal. Any interested person or entity may appeal an administrative determination made by the General Manager under these Rules and Regulations, including a finding that an application is complete or incomplete or suspending or revoking a permit.

- i. Administrative appeals under this section must be made in writing, must clearly set forth the reasons why the appeal ought to be granted, and must be received by the General Manager within fifteen days of the postmark date on the envelope that transmits the administrative determination. Any appeal that is not timely filed will be deemed ineffective and the administrative determination that is being appealed will become final.
- ii. The General Manager shall fix a reasonable time for the hearing of an appeal of an administrative determination, and shall provide written notice of the appeal hearing to the appellant and all interested parties. The Board shall hear the appeal and issue a decision within thirty days after the hearing. The Board may take any appropriate action upon the original administrative action that was appealed, including granting or denying the appeal in whole or in part, or imposing, deleting, or modifying the permit conditions. The decision of the Board shall be final.