

RESOLUTION NO. 2022-2

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MID-KINGS RIVER GROUNDWATER SUSTAINABILITY AGENCY APPROVING EFFORTS TO ADDRESS GSP RESPONSIBILITIES OUTLINED IN THE RECENT GOVERNOR'S EXECUTIVE ORDER N-7-22 WHICH DECLARES AN EMERGENCY RELATED TO DROUGHT CONDITIONS

- 1) WHEREAS, in September 2014, the Sustainable Groundwater Management Act (“SGMA”) was signed into law, with an effective date of January 1, 2015, and codified at California Water Code, Section 10720 et seq;
- 2) WHEREAS, SGMA is arguably the most significant change to California water law in the last 100 years and provides an Implementation Period of twenty years, from 2020 through 2040, to adjust local conditions to reach sustainability, but does not provide each local area with the funding for the required adjustments and provides no authority over existing surface water rights;
- 3) WHEREAS, the Mid-Kings River Groundwater Sustainability Agency (“MKR GSA”) is a California groundwater sustainability agency formed to implement SGMA in a portion of the Department of Water Resources Bulletin 118 Tulare Lake Subbasin;
- 4) WHEREAS, there have been conditions of chronic groundwater level decline present in the majority of the Tulare Lake Subbasin for several decades as evidenced by multiple evaluations by DWR in versions of Bulletin 118 going back to the early 1980s;
- 5) WHEREAS, due to the multi-decade pattern of chronic groundwater level declines, this condition has become one of the most significant limitation to the viable lifespan of groundwater recovery facilities, and the persistent decline has produced a cycle of somewhat regular well deepening to keep pace with declining levels;
- 6) WHEREAS, local surface and groundwater management agencies, such as the members of the Joint Powers Authority (JPA) that makes up the MKR GSA, have worked for decades to develop programs and facilities to utilize available floodwater available in years like 1983, 1995, 1997, 1998, 2005, 2006, 2011, 2017 and 2019 for groundwater recharge in efforts to address chronic groundwater level declines;
- 7) WHEREAS, the most significant issue relative to the increase in the number of local wells going dry is the occurrence of long critical droughts, like the drought experienced between 1985 – 1991, 2007 – 2009, 2012 – 2016, and the current drought of 2020 – 2022;
- 8) WHEREAS, the Tulare Lake Subbasin's area (~524,000 acres) covers roughly 80% of Kings County.
- 9) WHEREAS, the MKR GSA area is very large and diverse, having fresh groundwater down to a depth of roughly 3,000 feet below ground surface, and having two primary groundwater

aquifers, a semi-confined one above the Corcoran Clay and a confined one below the Corcoran Clay;

10) WHEREAS, agriculture is, by far, the dominant local economy in the region, and the economic wellbeing of every local community is in many ways connected to the local agricultural economy;

11) WHEREAS, landowners that have chosen to live and/or work in rural areas have chosen to take on the responsibility to operate, maintain and, if necessary, replace a groundwater well, have done so with the understanding of persistent local chronic groundwater level declines;

12) WHEREAS, there are many various reasons why local wells go dry beyond regional groundwater level declines, including the emergency conditions that develop in critical drought years, failure due to the age of components, casing failures, issues with the vertical alignment of wells, the plugging of perforations due to local geologic groundwater constituents, and the operation of a proximate well that impacts the water level in the adjacent facility;

13) WHEREAS, significant groundwater management data gaps exist in the Subbasin on matters such as i) databases containing misleading records of historic wells that are no longer in production, ii) the lack of a well registry for active wells, iii) the lack of information on groundwater pumped per well, iv) the lack of records on how deep current active wells are, where they are perforated and which aquifers they draw from, and v) historic groundwater monitoring data which largely comes from ag wells perforated in multiple aquifers;

14) WHEREAS, the MKR GSA has considered all of the known uses of groundwater in the service area and attempted to balance the interests and concerns of users against the impacts of projects and management actions that it believes are needed to adjust the amount of groundwater use and groundwater recharge in the area;

15) WHEREAS, the MKR GSA has developed a Groundwater Sustainability Plan that includes projects and management actions that are just beginning to be implemented as a local assessment-based funding stream has not yet been developed for this relatively new agency;

16) WHEREAS, on March 28, 2022, Governor Gavin Newsom proclaimed that previous states of emergency declared, continued across all counties in California, due to extreme and expanding drought conditions, and that delivery of water by bottle or truck is necessary to protect human safety and public health in those places where water supplies are disrupted;

17) WHEREAS, the Governor’s recent Executive Order N-7-22 from March 28, 2022 contains the following directive in paragraph 9;

*“To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency **shall not**;*

- a) Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or areas of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with an sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; **or***
- b) Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and function of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.*

This Paragraph shall not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code.”

- 18) WHEREAS, upon receipt of Governor’s Executive Order N-7-22, Kings County stopped issuing well permits, other than domestic and municipal permits, due to both of the requirements in paragraph 9;
- 19) WHEREAS, upon further discussions with Kings County staff, it appears that the County does not have the ability to make the determination in paragraph 9b as those topics are not part of current County ordinances, and the determination cannot technically be made at the permitting stage given that neither the landowner nor the driller know a) the depth to which the well will be drilled, b) the soil layers and soil properties encountered at the new well location, c) the static groundwater in the well or the yield of the well after development, d) the motor size or pump bowls that will be outfitted on the well, or e) how the landowner will operate the new well;
- 20) WHEREAS, previous efforts have been conducted to document disadvantaged community water supply infrastructure needs in the larger Tulare Lake Basin area, particularly those disadvantaged communities that do not have centralized municipal water systems and rely on individual domestic wells per home. The general conclusion of these previous efforts has been that the development of a community system should have been pursued, and continued to be the primary issue, as groundwater recovery infrastructure was unnecessarily unreliable.

Given all of the previous statements of understanding, BE IT RESOLVED that:

- A) The MKR GSA views its primary responsibility as the adjustment from the long-term trend in local groundwater conditions coming into the SGMA Implementation Period (pre 2020 trend) and the active management necessary to eventually accomplish long-term sustainability by the end

of the Implementation Period in 2040. However, the agency does not view its responsibility as encompassing all of the existing issues associated with the long-term trend preceding the SGMA Implementation Period.

B) The MKR GSA understands that the service area is currently experiencing the third consecutive year of drought (WY 2020 – 2022). Due to the lack of available surface water, all parties in the Subbasin are heavily relying on groundwater to sustain their existing water uses, which is putting significant strain on the groundwater system as evidenced by the annual declines in groundwater levels. However, the MKR GSA currently understands that the number of well permits being requested by landowners in Kings County has not risen to the levels experienced during the 2012 – 2016 drought.

Kings County Well Permits			
CY	Domestic	Ag	Total
2001	78	53	170
2002	69	78	188
2003	94	70	215
2004	75	74	210
2005	101	73	199
2006	71	55	158
2007	38	29	213
2008	36	35	221
2009	53	44	242
2010	32	39	163
2011	25	20	137
2012	27	38	159
2013	25	44	249
2014	51	120	381
2015	67	147	414
2016	80	82	389
2017	64	73	176
2018	60	81	202
2019	38	67	177
2020	58	77	178
2021	87	81	211

The issue in the MKR GSA is not a groundwater availability issue, as there are very deep and plentiful groundwater aquifers in this area. The issue relates to the infrastructure that allows landowners to access the available supplies, below their properties, given the long-term groundwater level declines that have been experienced in the area for decades. Generally, what has been observed to date, is that the well infrastructure in the area was significantly deepened through the 2012 – 2016 drought such that the number of replacement wells currently being drilled is not overloading the available number of well drillers.

C) The MKR GSA is concerned with how the Governor's EO might or might not fit with SGMA. The language in the EO does not seem to be consistent with the terms commonly used in SGMA (i.e. Sustainability Goal, Sustainable Management Criteria, conditions that are Significant and Unreasonable, Critical Infrastructure, Undesirable Results, Minimum Thresholds, Measurable Objectives), and while SGMA promotes local control and implementation as guided through technical justification, these concepts don't seem to be prominent in the Governor's EO. Also, the SGMA process has been required to be very open and to receive significant input from all stakeholders. It is the current understanding of the MKR GSA that none of the Counties in the South Valley, nor any of the GSAs in that same area were consulted related to the Governor's EO prior to its issuance or his view of emergency conditions.

D) The MKR GSA is concerned with whether the Governor's EO appropriately handles existing groundwater rights, as limiting the groundwater use of any existing groundwater user, during the current drought conditions, would lead to significant impacts. There is no information in the EO to establish that local conditions in the MKR GSA have become an emergency, or a required method of evaluation to make that case. Also "groundwater law" seems to heavily rely on the concept of correlative rights in an aquifer shared by users. Not allowing a current ag or industrial user of groundwater to modify or re-drill a well to continue their use of groundwater seems speculative, given that there has been no groundwork laid that the party is over-using groundwater, that the use is any less significant than other existing uses, that the use is from the same aquifer as other users, or that the use is damaging to other parties. Similarly, the EO did not attempt to establish a method to evaluate whether a party that needed to deepen a well should justifiably use some lesser amount of groundwater than was used before, given the stated emergency condition. Also, any quantifiable protection of "health, safety and the environment" from the denial of a well permit would seem to be highly speculative given the information available at the time of permit issuance.

E) The MKR GSA views that it does not have any jurisdiction over surface water. However, the MKR GSA also views that the surface water deliveries, generally from local agencies, ditch companies and private growers, have the effect of benefitting all wells that are relatively close to local earthen canals that pump from the aquifer above the Corcoran Clay. The MKR GSA service area has been blessed to have some available surface water that has been delivered in each of the last two years. Also it appears that surface water deliveries will be made in local earthen canal systems later this summer. The seepage that occurs from operating earthen canals does not happen due to the efforts or rights of the landowners along the local canals, however the recharge to groundwater can be observed in their wells. This does not seem to be acknowledged in the Governor's EO.

F) The MKR GSA views Kings County as the local agency in charge of local well permitting, as they derive the authority for this activity from the State. The County also has several existing ordinances that relate to well permitting for things like set-backs from a number of facilities, required sanitary seals, inspection during construction, and submittal of a Well Completion Report. The MKR GSA is a local agency, developed consistently with SGMA, which is pursuing efforts consistent with the Groundwater Sustainability Plan (GSP) for the area, and does not have the

authority to permit wells. Currently, the MKR GSA does not have any policies regarding groundwater wells or permitting in the service area, and SGMA makes domestic wells pumping less than two acre-feet per year outside of the jurisdiction of GSA (viewed as de minimis).

G) The MKR GSA views that efforts and process described in this resolution to be initial efforts that can be immediately implemented in response to the Governor's EO N-7-22. There was no communication to local agencies about this EO prior to its issuance, so these initial efforts are based on what is currently understood about local conditions and the local view of requirements. Future efforts may change and pursue other approaches as conditions change or as clarification is provided regarding the meaning of various requirements.

H) The MKR GSA directs staff to contact each local municipal water supply system in the service area (City of Hanford, Armona CSD, Home Garden CSD, Hardwick WC, and potentially local County Schools) and request information on their most recent monitored groundwater levels, the relative depth of their groundwater wells, and whether they view the current conditions as the "emergency" described by the Governor's EO N-7-22.

I) The MKR GSA directs staff to make a formal request of Kings County for all well permit info from January 1, 2022 to present in order to conduct an investigation into the issues being experienced by applicants for domestic and municipal wells. The intent would be to have the GSAs consultant contact all domestic and municipal well applicants and gather additional information to better understand current conditions being experienced in the MKR GSA area of the Tulare Lake Subbasin.

J) In response to the Governor's EO N-7-22, the MKR GSA will require all landowners in the service area with active wells from January 1, 2015 to present to immediately register those wells with the MKR GSA, provide the Well Completion Report for the construction of those wells, and grant access to MKR GSA staff, as needed, to monitor groundwater extraction facilities for the purposes of compliance with the Governor's EO N-7-22 and SGMA. This information is critical in addressing a key SGMA "data gap" in the area.

K) The MKR GSA will develop and provide information from the 2020 Tulare Lake GSP, and any future GSP updates, to Kings County, the local well permitting agency, on the most recent groundwater levels measured in various areas, information on regional long-term groundwater level declines over time, and recent groundwater declines in previous drought years that landowners should considered in light of the current drought conditions and the expected conditions during the SGMA Implementation Period. This information will be provided as a recommendation, as local owners will continue to make their own decisions based on their situation and views of what is advisable.

L) The MKR GSA views that it can "verify that groundwater extraction from a proposed well would not be inconsistent with any sustainable groundwater management program established in the 2020 Tulare Lake Subbasin GSP adopted by the Mid-Kings River GSA and would not decrease the

likelihood of achieving a sustainability goal for the Tulare Lake Subbasin in the Mid-Kings River GSA area, as described in the 2020 Tulare Lake Subbasin GSP” under the following conditions:

- i) If the well permit is for a well replacement, that the applicant provide the MKR GSA the location and Well Completion Report for the well being replaced, so that the location and construction of that well can be reviewed and understood.
 - ii) That the applicant is fully aware of the Governor’s Executive Order N-7-22, that the order’s primary intent is to “protect health, safety and the environment”, and that if at any point the MKR GSA views that the issuance of the replacement permit endangers health, safety or the environment, then the verification will not be provided.
 - iii) That the applicant has made him or herself fully aware of the current groundwater conditions in the area, the long-term groundwater level declines, the most recent annual level declines during drought years, the expected conditions during the SGMA Implementation Period as described in the Tulare Lake GSP and is prepared to developed a well based on their situation and their views of what is advisable.
 - iv) That any currently operable well within 1,000 feet of the well site be located by the applicant, identified by type (agricultural, domestic, municipal, industrial, other) to the extent possible, and that those adjacent landowners be asked by the applicant for well depth information so that it can be reviewed.
 - v) That the well be outfitted with a totalizing flow meter and the MKR GSA be allowed to enter the property and check the flow rate and amount pumped from the well periodically.
 - vi) That the landowner agree to install facilities as necessary to limit or “throttle” the well, if necessary, while the Governor’s emergency declaration exists.
 - vii) That the applicant is aware that the MKR GSA’s verification does not shield him or her in any way from any credible complaint made from an adjacent landowner that can document that the operation of the well is impacting the water level in the adjacent landowner’s well. The applicant acknowledges that the MKR GSA views this as a matter between landowners that can sometimes be resolved through cooperation or negotiation, but sometimes has to be resolved in court.
- M) The MKR GSA understands there is a parallel process that Kings County must administer, as described in EO N-7-22, paragraph 9b. Related to that, the MKR GSA would make the following statements related to paragraph 9b requirements:
- i) The determination required in paragraph 9b appears to be impossible to develop given the information available to the County during the permit stage (prior to construction).
 - ii) The centralized municipal water systems for local cities like Hanford and communities like Armona, Home Garden and Hardwick employ wells that are intentionally drilled deep, into the confined aquifer below the Corcoran Clay, because of geologic quality concerns in the shallower zones. These wells do not

appear to currently be at risk because the infrastructure does not rely on shallow groundwater supplies.

- iii) In the case of agricultural or industrial replacement wells, if the replacement well is in approximately the same relative location, its impact on other nearby wells should be similar to the original well.
 - iv) In the case of a new agricultural or industrial well or a replacement agricultural or industrial well in a different location on the property, if the well is at least 660 feet from any other existing well owned by a different party or was primarily perforated in a deeper zone than existing domestic wells that were owned by different parties, this would seem to meet the MKR GSA's understanding of the intent of EO N-7-22.
 - v) Subsidence has been an issue in the Hanford-Visalia-Tulare area for many decades, as evidenced by numerous USGS technical reports on the matter. The primary issue appears to be that the geologic properties of the soils in this area are susceptible to subsidence, and as groundwater levels decline subsidence is a byproduct. However evaluating whether an individual well is causing subsidence is often very difficult given how many others are also pumping from the same zones. Recent modeling by Stanford University has suggested that a significant portion of the subsidence being currently experienced in the area is a legacy issue that has compounded over time. The GSA does not know of any technical method to evaluate whether a proposed well with an assumed total depth and an assumed flow rate along with assumed soil characteristics would be likely to cause subsidence.
- N) The MKR GSA will charge applicants requesting verification of a County well permit a fee of at least \$50 per permit to cover staff time and expenses. If the effort for a permit increases to require additional staff time or consultant services, those costs will be passed on to the applicant as well.
- O) The MKR GSA views that landowners that have both a domestic well on their property as well as an agricultural or industrial well are not the landowners targeted for protection in the Governor's EO N-7-22. The MKR GSA views the use on that parcel as a combination of uses by the landowner that cannot be split apart by the agency.
- P) The MKR GSA will encourage local partnering agencies to proceed with groundwater recharge projects as quickly as possible in the hopes that they will be ready for the fall season that will hopefully bring a wetter year and available supplies for groundwater recharge.

Passed and adopted by the following vote at a meeting of the Board of Directors of the Mid-Kings River Groundwater Sustainability Agency on Tuesday, April 19, 2022.

AYES: Barry McCutcheon, Steven P. Dias, Michael Murray and Diane Sharp


NOES: None

ABSTAIN: None

ABSENT: None

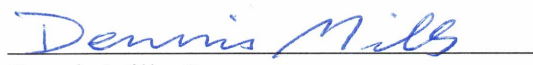

Barry McCutcheon, Board Chair

ATTEST:


Dennis Mills, Secretary

CERTIFICATION

I do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the Board of Directors of the Mid-Kings River Groundwater Sustainability Agency held on Tuesday, April 19, 2022.


Dennis Mills, Secretary