

RESOLUTION NO. 21-01

**BEFORE  
THE BOARD OF DIRECTORS  
OF TRI-COUNTY WATER AUTHORITY  
RESOLUTION OF THE TRI-COUNTY WATER AUTHORITY APPROVING THE  
POLICY AND PROCEDURES FOR GROUNDWATER EXTRACTION ALLOCATION**

WHEREAS, on August 29, 2014, the California Legislature passed comprehensive groundwater legislation contained in Senate Bills 1168 and 1319 and Assembly Bill 1739. Collectively, those bills, as subsequently amended, enacted the Sustainable Groundwater Management Act (“SGMA”). SGMA became effective on January 1, 2015; and

WHEREAS, Tri-County Water Authority (“TCWA”) Groundwater Sustainability Agency (“GSA”) adopted a groundwater sustainability plans (“GSPs”) for the Tule Subbasin on December 18, 2019, and for the Tulare Lake Subbasin on January 22, 2020, consistent with SGMA. The Tule and Tulare Lake subbasins (collectively, “Subbasins”) are located within the San Joaquin Valley Groundwater Basin; and

WHEREAS, SGMA, as codified in California Water Code Section 10726.4, grants authorities to GSAs to regulate groundwater extractions by (a) limiting extractions from individual groundwater wells and other means, including establishing groundwater extraction allocation (Water Code §10726.4(a)(2)); to temporarily and permanently transfer groundwater extraction allocations within the GSAs boundaries (Water Code §10726.4(a)(3)); and to establish accounting rules (Water Code §10726.4(a)(4)) with the overall goal of sustainably managing groundwater basins. (See Water Code §10720.1); and

WHEREAS, the GSPs recognize that the Subbasins are in a state of overdraft and undesirable results, including land subsidence, must be mitigated through projects and management actions, which includes reduction in groundwater extractions; and

WHEREAS, the GSPs’ adaptive management approach for sustainably managing the Subbasins as more information is obtained which reduces the currently-identified data gaps, allows for a flexible management approach where decisions can be adjusted with the ultimate goal of providing for sustainable management of the Subbasins. In particular, the Tule Subbasin GSP states as follows:

In recognition of the data gaps that exist in water levels, water quality, subsidence measurements, groundwater pumping, and groundwater storage, TCWA will implement an adaptive management approach that will take into consideration actual changes in groundwater conditions resulting from proposed projects, potential impacts from future extreme drought periods, impacts of climate change, and unknown impacts resulting from project and management actions taken by TCWA and adjacent GSAs. This may result in the need for more extreme measures being implemented. The ability to make adjustments as more information is obtained, which reduces the currently-identified data gaps, allows for a flexible

management approach where decisions can be adjusted to ensure a better outcome for all groundwater users.

WHEREAS, the rainfall data for central San Joaquin Valley posted by NOAA National Weather Service show below normal rainfalls for the winter of 2020 (Oct. 0 inch; Nov. 0.13 inches; Dec. 0.54 inches) indicative of drought condition in 2021. Coupled with new data on the water budget (i.e., the sustainable levels of the Subbasins), TWCA Board is exercising its flexible management authority in the GSP to ensure that all undesirable results of the Subbasins, including subsidence, overdraft and lowering of groundwater levels are mitigated within the SGMA's 20-year sustainability timeframe. (Water Code §10727.2(b)(3)(A)); and

WHEREAS, the State Water Resources Control Board ("SWRCB") may intervene should the SWRCB determine that the Subbasins are not being managed in a manner that will likely attain their sustainability (Water Code §10735.2(a)(5)(A)(i)); and

WHEREAS, the provisions in the Policy and Procedures for Groundwater Extraction Allocation are transitional measures for sustainable management of the Subbasins while projects are being developed and implemented to provide supplemental water supplies and do not determine or alter water rights under common law or any provision of law (Water Code §10720.5(a)); and

WHEREAS, SGMA authorizes a GSA to impose civil penalty not to exceed five hundred dollars (\$500) per acre-foot for extraction of groundwater in excess of the amount the person is authorized under a rule, regulation, ordinance or resolution adopted by that GSA (Water Code §10732(a)(1)) and any such penalty is for the sole purpose of regulating conduct, specifically to regulate the use of groundwater in a manner to achieve sustainability of the Subbasins and not for the purpose of generating revenue (See, e.g., *California Taxpayers Assn. v. Franchise Tax Board* (2010) 190 Cal. App.4<sup>th</sup> 1139), and is not considered a regulatory fee or property-related service subject to Article XIII C or Article XIID of the California Constitution; and

WHEREAS, TCWA sought public input of the Policy and Procedures for Groundwater Extraction Allocation through public workshops before TCWA's Advisory Committee on October 2, 2020, October 28, 2020, November 18, 2020 December 16, 2020, and January 27, 2021; and before the TCWA Board of Directors on January 14, 2021 and February 18, 2021; and

WHEREAS, the TCWA Board of Directors finds that the proposed Policy and Procedures for Groundwater Extraction Allocation is consistent with its GSPs and with SGMA to further the sustainability goal for the Subbasins within its jurisdiction; and


WHEREAS, the Policy and Procedures for Groundwater Extraction Allocation is exempt from the California Environmental Quality Act ("CEQA") pursuant to Water Code Section 10728.6 and CEQA Guidelines Sections 10561(b)(3), 15307 and 15308; and

WHEREAS, the primary goal of the Policy and Procedures for Groundwater Extraction Allocation is to achieve sustainability of the limited natural groundwater resource of the Subbasins in order to allow sustainable, reasonable and beneficial uses of this resource for agriculture and other uses. The Policy and Procedures promotes continued agricultural operations through the herein regulations in order to sustainability manage the finite natural groundwater resources in attempts to assure the availability of this resource in the long-term.

NOW THEREFORE BE IT RESOLVED, on 18th day of February 2021, the TCWA Board of Directors does hereby

1. Adopt the Policy and Procedures for Groundwater Extraction Allocation.
2. Adopt the foregoing recitals as true and correct.
3. The adoption of the Policy and Procedures for Groundwater Extraction Allocation is categorically exempt from CEQA review pursuant to CEQA Guidelines section 15307 as the action of a regulatory agency acting to protect natural resources.
4. The adoption of the Policy and Procedures for Groundwater Extraction Allocation is categorically exempt from CEQA review pursuant to CEQA Guidelines section 15308 as the action of a regulatory agency acting to protect the environment.
5. The adoption of the Policy and Procedures for Groundwater Extraction Allocation is exempt from CEQA review under the “common sense exemption,” set forth in CEQA Guidelines section 15061(b)(3).
6. The categorical exemptions applicable to adoption of the Policy and Procedures for Groundwater Extraction Allocation are not subject to any applicable exception, including the “unusual circumstances” exception.
6. The Executive Director is hereby authorized to file with the applicable County clerk’s offices the Notice of Exemption for the Policy and Procedures for Groundwater Extraction Allocation in conformance with the procedures provided for the filing of such notices in CEQA and the CEQA Guidelines.

Approved this day, the 18th of February 2021.

  
\_\_\_\_\_, Chairman  
Board of Director

ATTEST:

  
Deanna Jackson  
Executive Director