

Groundwater Extraction Allocations Policy and Procedures

1. Findings

- 1.1 Portions of the Tule and Tulare Subbasins (collectively, the “Subbasins”) are located within the Tri-County Water Authority (“TCWA”) Groundwater Sustainable Agency’s jurisdictional boundaries and have been designated by the California Department of Water Resources as high priority groundwater basins that are subject to critical conditions of overdraft.
- 1.2 TCWA adopted groundwater sustainability plans (“GSPs”) for the Subbasins consistent with the Sustainable Management Groundwater Act (“SGMA”) for the purpose of managing the Subbasins to address undesirable results including chronic lowering of groundwater levels and land subsidence.
- 1.3 A management action in the GSPs includes establishing groundwater extraction allocations based on the Subbasin’s sustainable yield in order to mitigate the undesirable results while water projects are being developed and implemented.
- 1.4 TCWA’s adaptive management approach set forth in its GSPs allows TCWA to make adjustments as more information is obtained, which reduces the currently-identified data gaps. Adaptive management provides flexibility where decisions can be adjusted with the ultimate goal of providing for sustainable management of the Subbasins.
- 1.5 The provisions in this Policy and Procedures for Groundwater Extraction Allocation (“Policy and Procedures”) are transitional measures while projects are implemented to provide supplement water supply to achieve sustainability of the Subbasins and does not determine or alter water rights under common law or any provision of law (Water Code §10720.5(a)).
- 1.6 The Policy and Procedures 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.

2. Policy

Undesirable results, including overdraft conditions and land subsidence within the TCWA’s jurisdiction area, must be mitigated in phases while projects to provide additional water supplies to the area are being developed and implemented.

3. Purpose and Approach

To assist landowners transition extractions to the basin-wide sustainable yield, allocations will be phased based on periodic reviews of the GSPs. TCWA established five (5) categories of water available to landowner’s account for registered parcels in the TCWA’s water accounting program. All qualified registered parcels will be eligible to receive a sustainable yield allocation. In addition to the sustainable yield allocation, qualified irrigated land, initially based on the 2018 Land IQ crop data, will be eligible to receive

Overdraft Transitional Tier 1 Groundwater Allocation subject to a civil penalty. If a landowner determines that an error has occurred in the determination of eligibility for Overdraft Transitional Tier 1 Groundwater Allocation, they may dispute the determination of the 2018 Land IQ crop data with crop records for 2018 and 2019 from the Irrigated Lands Regulatory Program or Dairy Program.

Priority of use will be as listed below:

1. Sustainable Yield Allocation / Sustainable Yield Carryover
2. Landowner Developed Credit
3. AWD Groundwater Mitigation Credit (Angiola Water District Only)
4. Overdraft Transitional Groundwater Tier 1 Allocation
5. Overdraft Groundwater Tier 2

4. Definitions

- 4.1 “2018 Land IQ Crop Data” means crop and vegetation data generated in 2018 from satellite and aerial imagery, land cover classification and analysis, and crop and vegetation mapping.
- 4.2 “AWD Groundwater Mitigation Credit” means any recharge credit available to Angiola Water District (“AWD”) under existing agreements for purchases of water used by the AWD landowners which subsequently recharges the Subbasins.
- 4.3 “Carryover” means the sustainable yield allocation amount remaining unused from the prior 5-year block which can be added to the following 5-year block.
- 4.4 “Civil penalty” means a penalty payment per acre-feet for groundwater extraction above the sustainable yield.
- 4.5 “De minimis extractor” means a person who extracts two acre-feet or less per year. For the purpose of herein Policy and Procedures, an owner or operator with less than 5 acres of land is considered a de minimis extractor unless it is demonstrated that the owner or operator extracts more than two acre-feet per year. (See, Water Code §10721(e).)
- 4.6 “Extractions” means removing groundwater through groundwater extraction facilities for reasonable and beneficial use(s).
- 4.7 “Good standing” means landowners who have complied with any and all policies and procedures and ordinances of TCWA, while not subject to any form of violation, late fee, penalty or lien.
- 4.8 “Groundwater” means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water. (Water Code §10721(g).)
- 4.9 “Groundwater extraction facility” means a device or method for extracting groundwater from within a basin. (Water Code §10721(h).)
- 4.10 “Imported Water” means any water, surface or groundwater, that enters into TCWA boundaries for direct irrigation.

- 4.11 “Irrigated lands” means lands irrigated by groundwater using a groundwater extraction facility(ies) for the active production of plant crops or livestock for market and uses incidental hereto. The 2018 Land IQ Crop Data will be initially used to determine whether a parcel is an irrigated land for the purpose of herein Policy and Procedures.
- 4.12 “Landowner developed credit” means an amount of water credited to landowner account for a water project or projects that has (have) been developed by a landowner and has (have) been determined by TCWA to help mitigate one or more undesirable results of either the Tule or Tulare Subbasin. Projects may include, but are not limited to, water banking and recharge projects, or other approved projects that benefit groundwater sustainability. The amount of credit to be added to any such landowner account shall be at the sole determination of the TCWA Board of Directors based on technical data and other supportive documentation. The TCWA Board of Directors shall be the final arbiter of establishing landowner developed credit to be added to a landowner account.
- 4.13 “Landowner water banking or recharge project” means any project developed and implemented by a landowner to reduce groundwater extraction or increase groundwater recharge to benefit either the Tule or Tulare Subbasin. Any landowner developed credit derived from landowner water banking or recharge project shall be determined by the TWCA Board of Directors based on technical and other data which must demonstrate that the project helps mitigate one or more undesirable results of either the Tule or Tulare Subbasin.
- 4.14 “Leave behind” means the amount of remaining allocation not subject to sustainable yield carryover.
- 4.15 “Overdraft Transitional Tier 1 Groundwater Allocation” means an allocation of groundwater extraction in rolling 5-year blocks to qualified irrigated lands above the sustainable yield allocation and subject to Tier 1 civil penalty to allow landowners a transitional period to alter their respective operations or to develop a landowner water banking or recharge project to help mitigate one or more undesirable results of either the Tule or Tulare Subbasin.
- 4.16 “Overdraft Tier 2 Groundwater” means groundwater extraction above the Overdraft Transitional Tier 1 Groundwater Allocation subject to Tier 2 civil penalty.
- 4.17 “Qualified registered parcel” means land qualified to receive sustainable yield allocation because the land meets the following criteria: (a) is a registered parcel; and (b) is in good standing with TWCA.
- 4.18 “Qualified irrigated land” means land qualified to receive Overdraft Transitional Tier 1 Groundwater Allocation because the land meets the following criteria: (a) is qualified to receive sustainable yield allocation; and (b) is an irrigated land based initially on the 2018 Land IQ Crop Data.
- 4.19 “Registered parcel” means a parcel, 5 acres or larger, registered in the TCWA’s water accounting program.

- 4.20 "Sustainable yield" means the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result. (Water Code §10721(w).)
- 4.21 "Sustainable yield allocation" means the maximum quantity of groundwater extraction allotted to landowners of qualified registered parcel based on the sustainable yield of the Subbasins, calculated over rolling five (5) year periods that can be used on that parcel before civil penalty is imposed.
- 4.22 "Tier 1 civil penalty" means civil penalty amount due by a landowner or operator of qualified irrigated land at a rate of \$125/acre-feet for use of Overdraft Transitional Tier 1 Groundwater Allocation, which is above the sustainable yield allocation.
- 4.23 "Tier 2 civil penalty" means civil penalty amount due by a landowner of qualified irrigated land at a rate of \$500/acre-feet of extracted groundwater for any exceedance of groundwater extraction above the Overdraft Transitional Tier 1 Groundwater Allocation's yearly cap or 5-year water block allocation cap.
- 4.24 "Transfer" means groundwater allocation sold or otherwise acquired from one landowner to another landowner of qualified registered parcel which will be added to that recipient's landowner account. Any transfer credit shall be established by the TWCA Board based on technical data and other information which must demonstrate that the transfer will not worsen one or more undesirable results of either the Tule or Tulare Subbasin. The TCWA Board of Directors shall be the final arbiter of determining the transfer credit to be deducted from transferor's landowner account and added to transferee's landowner account.
- 4.25 "Undesirable result" means one or more of the following effects caused by groundwater conditions occurring throughout the basins: (a) chronic lowering of groundwater levels; (b) significant and unreasonable reduction of groundwater storage; (c) significant and unreasonable seawater intrusion; (d) significant and unreasonable degraded water quality; (e) significant and unreasonable land subsidence; and/or (f) depletions of interconnected surface water.

5. Procedures

5.1 Determination of Sustainable Yield Allocation.

- 5.1.1 All owners of land 5 acres or larger must register their respective parcels in TCWA's water accounting program in order to qualify for sustainable yield allocation.
- 5.1.2 Sustainable yield allocation will be available to every qualified registered parcel, 5 acres or larger, for reasonable and beneficial use within the TCWA's jurisdictional boundaries. Sustainable yield allocation will be harmonized across TCWA's jurisdictional boundaries. Sustainable yield allocation is based on available documentation, data and analysis in TCWA's GSPs; and will be

coordinated with other applicable GSAs with jurisdiction in the Subbasins. Sustainable yield allocation will be continually evaluated and is subject to adjustment at each five-year GSP update.

- 5.1.3 Sustainable yield allocation is allotted in 5-year blocks. A landowner's sustainable yield allocation may qualify for carryover to add to the landowner account for the subsequent five-year block.
- 5.1.4 A landowner may transfer his/her sustainable yield allocation, or a portion thereof, to another landowner with qualified registered parcel within the TCWA jurisdictional boundaries; or the Tule Subbasin or the Tulare Lake Subbasin subject to coordination with the appropriate Tule or Tulare Subbasin GSAs and with approval by the TCWA Board of Directors.
- 5.1.5 Transfers and carryovers within the TCWA jurisdictional boundaries will be added to the appropriate landowner accounts in the TCWA's accounting program subject to approval by the TCWA Board of Directors.
- 5.1.6 All transfers must be approved by the TCWA Board of Directors; and all transfers outside TCWA jurisdictional boundaries must be approved by TCWA and the GSA with jurisdiction and comply with all relevant subbasin regulations. TCWA will keep an account of all transfers in the TCWA water accounting program.
- 5.1.7 Only qualified registered parcels are afforded sustainable yield allocation and all non-qualified lands, other than de minimis extractors, must cease extraction of groundwater until such time the lands become qualified.

5.2 Landowner Developed Credits

- 5.2.1 Landowner developed credits may be developed through landowner water banking or recharge projects or other approved projects that help mitigate one or more undesirable results of either the Tule or Tulare subbasin. Landowner developed projects must be approved by and registered with TCWA to be eligible for landowner developed credit. The TCWA Board of Directors shall be the final arbiter of determining landowner developed credit to be added to a landowner account.
- 5.2.2 In order to protect the Subbasins from undesirable results, a percentage of any landowner water banking or recharge projects will remain with TCWA. The amount of leave behind will depend on the place of use of the landowner developed credit generated from the water banking or recharge project. TCWA will adopt a separate banking policy to establish the leave behind amount.
- 5.2.3 Sustainable yield allocation transfers between landowners of qualified registered parcels must be documented and approved by the TCWA Board of Directors. The TCWA Board of Directors shall be the final

arbiter of determining the transfer credit to be deducted from transferor's landowner account and added to transferee's landowner account.

- 5.2.4 All transfers purchased from outside of TCWA boundaries must be approved by both GSAs with jurisdiction and comply with all relevant subbasin regulations of both GSAs. TWCA will develop a separate policy and procedures for transfers from outside of the TCWA jurisdictional boundaries.
- 5.2.5 All landowner developed credit will be maintained in TCWA water accounting program.
- 5.3 AWD Groundwater Mitigation Credit will be reported to TCWA yearly and may be distributed to Angiola Water District's ("AWD") or AWD landowners in the TCWA accounting program in accordance with AWD's policy upon its approval by the TCWA Board of Directors, which must occur prior to establishing an account for the AWD or the AWD landowners in the TCWA water accounting program.
- 5.4 Overdraft Transitional Groundwater Tier 1 Allocation
 - 5.4.1 Overdraft Transitional Groundwater Tier 1 Allocation will be available to qualified irrigated lands within the TCWA jurisdictional boundaries based on the 2018 Land IQ crop data. Qualified irrigated lands will be eligible to receive Overdraft Transitional Groundwater Tier 1 Allocation for the duration of the program subject to a civil penalty. Overdraft Transitional Groundwater Tier 1 Allocation, including a yearly cap and a 5-year block cap, will be allotted at the beginning of each 5-year block.
 - 5.4.2 For the first 5-year block, the yearly cap will be 3.4 AF/Acre.
 - 5.4.3 The Overdraft Transitional Groundwater Tier 1 Allocation, in its entirety or portions thereof, may be transferred between landowners of qualified irrigated lands within TCWA subject to the TCWA Board of Directors' approval. If transferred, the credit may be added to the transferee's Overdraft Transitional Groundwater Tier 1 Allocation Credit. The TCWA Board of Directors shall be the final arbiter of determining the transfer credit to be deducted from transferor's landowner account and added to transferee's landowner account. The transfer recipient will not be allowed to carryover the credit received from any such transfer to the subsequent 5-year block.
 - 5.4.4 Extractions above the sustainable yield allocation up to the Overdraft Transitional Groundwater Tier 1 Allocation will be imposed the Tier 1 civil penalty of \$125/AF for the first 5-year block, and the civil penalty will be issued to applicable landowners on a quarterly basis. Groundwater extractions exceeding the Overdraft Transitional Groundwater Tier 1 Allocation yearly cap will be imposed as Tier 2

civil penalty. Block civil penalty will be approved by the Board of Directors before each 5-year block allocation.

<u>Water Blocks</u>	<u>Tier 1</u>
a) 2021 – 2025	12 AF/Acre
b) 2026 – 2030	7.5 AF/Acre
c) 2031 – 2035	5 AF/Acre
d) 2036 – 2040	2.5 AF/Acre

5.5 Overdraft Groundwater Tier 2

5.5.1 Overdraft Groundwater Tier 2, which is groundwater extraction above the Overdraft Transitional Groundwater Tier 1 Allocation, will be available to the qualified irrigated lands that qualified for Overdraft Transitional Groundwater Tier 1 Allocation, subject to Tier 2 penalty. Groundwater extraction that exceeds the yearly cap or the 5-year water block allocation will pay an initial civil penalty amount of \$500.00/AF. The penalty rate will be approved by the TCWA Board of Directors at the end of each 5-year block to be imposed for the following 5-year block. Civil penalty for groundwater extractions exceeding the yearly cap will be issued the Tier 2 civil penalty the first quarter of the following calendar year. Groundwater extractions exceeding the 5-year sustainable yield allocation, that were not imposed the Tier 2 civil penalty for exceeding the yearly cap, will be imposed and issued Tier 2 civil penalty in the first quarter of each 5-year block.

6. **Imported Water**

6.1 Any landowner within the TCWA which utilizes imported water shall cause to be reported from the applicable water entity, the diversion of imported water to direct irrigation.

7. **Landowner Water Banking or Recharge Project**

7.1 Landowners may voluntarily develop and implement landowner water banking or recharge project to benefit the Tule or Tulare Subbasin. In developing and implementing any such project, the landowner shall be solely responsible for complying with all applicable Federal, State and local laws, rules, regulations, ordinances and policies, including but not limited to the California Environmental Quality Act. At the request of TCWA, landowner responsible for any such project shall provide TCWA with a copy of any permit, order, agreement, environmental review document or any other records indicating compliance with applicable laws.

7.2 A landowner developing and implementing water banking or recharge project shall be solely responsible for determining the nature, location and extent of the facilities necessary for the banking or recharge project, and all associated

costs and expenses, including design, permitting, construction, operation, maintenance, repair and replacement shall be the sole responsibility of the landowner.

- 7.3 A landowner developing and implementing landowner water banking or recharge project shall indemnify, defend and hold harmless TCWA, its Board of Directors, officers, employees, and agents for any damage or claim or claim of damage of any nature whatsoever associated with or related to landowner water banking and recharge project, including but not limited to property damage or personal injury or death.

8. SGMA Penalties and Civil Remedies. Any landowner or operator who violates the provisions of the herein Policy and Procedures is subject to the criminal and civil sanctions set forth in SGMA. TWCA may commence or sustain any civil action or proceeding, either at law or in equity, to enforce any of the provisions of the GSPs, or any policy and procedures promulgated therefrom, or to enjoin or restrain any violation thereof, or to collect any sums of money, including penalties, fees, charges and/or assessments, on behalf of the TCWA. The provisions of this Section 7 are to be supplementary and complementary to all of the provisions of SGMA, other state law, and any law cognizable at common law or in equity; and nothing herein shall be read, interpreted or construed in any manner so as to bar or limit TWCA from seeking any remedy to which it may otherwise be entitled.

9. Enforcement Policy and Procedures. Any penalties or fines imposed shall be subject to the procedures set forth in the Enforcement Policy and Procedures.

10. Action Against TCWA. Nothing contained in the herein Policy and Procedures shall constitute a waiver by TCWA or estop TCWA from asserting any defenses or immunities from liability as provided in law, including but not limited to those provided in Division 3.6, Title 1 of the Government Code.