

**BEFORE
THE BOARD OF DIRECTORS
FOR THE COUNTY OF MADERA
GROUNDWATER SUSTAINABILITY AGENCY
MADERA SUBBASIN**

In the Matter of)	Resolution No.: <u>2022 - 145</u>
)	
THE SUSTAINABLE)	RESOLUTION ESTABLISHING THE
GROUNDWATER MANAGEMENT)	AUTHORITY FOR THE IMPOSITION OF
ACT)	PENALTIES ON THOSE WHO EXTRACT
)	GROUNDWATER IN EXCESS OF AN
Madera Subbasin)	ALLOCATION
)	
_____)	

RECITALS

WHEREAS, the Sustainable Groundwater Management Act, Water Code sections 10720-10737.8 ("SGMA") was signed into law on September 16, 2014.

WHEREAS, SGMA requires that each groundwater basin be managed by a Groundwater Sustainability Agency ("GSA"), or multiple GSAs, and that such management be pursuant to an approved Groundwater Sustainability Plan ("GSP"), or multiple GSPs.

WHEREAS, the County of Madera ("County") is the exclusive GSA for the portions of the Madera Subbasin (Basin No. 5-22.06) in the San Joaquin Valley Groundwater basin, as defined by Bulletin 118 from California's Department of Water and Natural Resources ("DWR"), that are in unincorporated areas of Madera County and not otherwise covered by another public agency (hereinafter "County GSA").

WHEREAS, the County Board of Supervisors is the ex officio Board of Directors (hereinafter "Board") for the County GSA.

WHEREAS, the consumptive use of groundwater within the County GSA boundaries exceeds the available sustainable yield, and the GSP for the Madera Subbasin identified demand reduction as a critical management action to achieve SGMA objectives.

WHEREAS, under SGMA a GSA has the authority to limit extractions from groundwater wells, establish groundwater extraction allocations, authorize temporary and permanent transfers of groundwater extraction allocations, and a GSA may adopt rules, regulations, ordinances, and resolutions to further these ends.

WHEREAS, on December 15, 2020, at a duly noticed public meeting, the Board adopted the Allocation Approach in the subbasins by resolution, adopted a resolution for an approach to allocating groundwater (the "Allocation Approach") in the subbasins.

WHEREAS, the Allocation Approach includes access to groundwater categorized classified using two designations:

- a. A "sustainable yield" of native groundwater, that is, water that naturally exists in the subbasins from seepage and percolation; and
- b. "Transitional water" that is continued overdraft of the subbasins but will incrementally decrease during the GSP implementation period.

WHEREAS, the Allocation Approach is a process whereby sustainable yield access is offered to overlying groundwater rights users every five years, and whereby participation will include (a) the opportunity to pump a designated quantity of sustainable yield within each year, (b) the opportunity to pump a designated quantity of transitional water within each year, and (c) the requirement to pay for the consumptive use of sustainable yield and transition water based upon a rate structure that is to be established.

WHEREAS, the Allocation Approach allows the County GSA's per-acre (parcel-based) allocations of sustainable yield and transition water to be shared within designated "farm units," so as to allow flexibility and reflect real-world farming conditions in which resources are shared among commonly operated or managed lands.

WHEREAS, the allocation approach includes monitoring of evapotranspiration ("ET") and the ET of applied water ("ETAW") for designated "farm units" and the comparison of ETAW to assigned allocations, where such services will be provided through a contract between the County and third party experts with multiple parties performing quality assurance and quality control.

WHEREAS, in furtherance of the Allocation Approach, on June 8, 2021, the County GSA Board of Directors adopted Resolution 2021-069, providing for a per-acre allocations of SY and TW for enrolled eligible parcels within each County GSA based on best available data, to be limited to the use within the eligible parcel or within a County GSA approved farm unit, that represents a combination of eligible parcels (the "Allocations").

WHEREAS, pursuant to Resolution 2021-069, an eligible parcel includes agricultural lands that are (1) currently irrigated as of June 8, 2021, (2) were last irrigated as recently as January 1, 2015, but now may otherwise be non-irrigated (e.g. fallowed or idle), (3) are part of active irrigated agricultural operations or permitted confined animal operations (e.g. equipment storage area or milking parlors), or (4) can demonstrate to the satisfaction of the County GSA that irrigation will occur in the following calendar year, and whereby in determining what constitutes an eligible parcel, the County GSA may rely upon (1) Madera County Assessor records, (2) satellite or aerial imagery, (3)

evapotranspiration analysis performed by a remote sensing service, (4) County GSA staff inspection, and (5) the submittal by parcel owner or representative of pertinent documentation when enrolling the eligible parcel into the GSA Allocation Approach and acceptance of associated requirements imposed therein, any and all of which must be to the satisfaction of the County GSA.

WHEREAS, on August 17, 2021, the County GSA Board of Directors adopted Resolution 2021-113, making refinements to the Allocations (the "Allocation Refinements"). The refinements included a provision (No. 12) whereby if a participant in the Allocation Approach intends to appeal the County GSA-determined ETAW, such appeal shall be based upon use of a flow meter, and the participant shall (1) demonstrate that the flow meter was installed and maintained per the manufacturer's specifications, and (2) provide an engineer-certified calibration report where such calibration occurred within the last two calendar years of the appeal. The flow meter volume shall be recorded at least monthly, and a photograph of each meter reading shall be taken and submitted to the County GSA for verification purposes. An independent third party will evaluate the flow meter installation and records to determine if the flowmeter records will be accepted as measurement for determining if a grower exceeded the allocation.

WHEREAS, Water Code section 10725.2, part of SGMA, authorizes a GSA to "perform any act necessary or proper to carry out the purposes of this part," including the adoption of "rules, regulations, ordinances, and resolutions for the purpose of this part, in compliance with any procedural requirements applicable to the adoption of a rule, regulation, ordinance, or resolution by the groundwater sustainability agency."

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WHEREAS, pursuant to Water Code section 10725.4(a)(4) “a groundwater sustainability agency may conduct an investigation...to monitor compliance and enforcement,” and pursuant to Water Code section 10731, following such an investigation the County GSA “...may make a determination fixing the amount of groundwater production from the groundwater extraction facility at an amount not to exceed the maximum production capacity of the facility for purposes of levying a groundwater charge,” and if “a water-measuring device is permanently attached to the groundwater extraction facility, the record of production as disclosed by the water-measuring device shall be presumed to be accurate unless the contrary is established by the groundwater sustainability agency after investigation.”

WHEREAS, subdivision (a)(1) of Water Code section 10732, part of SGMA, provides that “(a) person who extracts groundwater in excess of the amount that person is authorized to extract under a rule, regulation, ordinance, or resolution adopted pursuant to Section 10725.2, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per acre-foot extracted in excess of the amount that person is authorized to extract.” Also, “(l)iability under this subdivision is in addition to any liability imposed under paragraph (2) and any fee imposed for the extraction.”

WHEREAS, subdivision (a)(2) of Water Code section 10732 provides that “(a) person who violates any rule, regulation, ordinance, or resolution adopted pursuant to Section 10725.2 shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) plus one hundred dollars (\$100) for each additional day on which the violation continues if the person fails to comply within 30 days after the local agency has notified the person of the violation.”

WHEREAS, subdivision (b)(1) of Water Code section 10732 provides that a GSA “may bring an action in the superior court to determine whether a violation occurred and to impose a civil penalty described in subdivision (a).” Subdivision (b)(2) of this section provides that a GSA “may administratively impose a civil penalty described in subdivision (a) after providing notice and an opportunity for a hearing.” Subdivision (b)(3) states that “(i)n determining the amount of the penalty, the superior court or the groundwater sustainability agency shall take into consideration all relevant circumstances, including, but not limited to, the nature and persistence of the violation, the extent of the harm caused by the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.”

WHEREAS, subdivision (c) of Water Code section 10732 provides that “(a) penalty imposed pursuant to this section shall be paid to the groundwater sustainability agency and shall be expended solely for purposes of this part.”

WHEREAS, subdivision (d) of Water Code section 10732 provides that “(p)enalties imposed pursuant to this section are in addition to any civil penalty or criminal fine under any other law.”

WHEREAS, pursuant Water Code sections 10725.2 and 10732, as set forth above, the Board desires through the passage of this Resolution to provide the GSA with the authority and discretion to impose civil penalties on those persons or entities, including farm units, who extract groundwater in excess of the amount that a person or entity is authorized to extract under the Allocation Approach, and to provide a system for the administration of such penalties.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Madera, State of California, sitting as Board of Directors for the County of Madera GSA for the Madera Subbasin, as follows:

1. The recitals set forth above are found to be true and correct and are incorporated herein by reference. Furthermore, the Board has duly considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Board.

2. As an alternative to appealing the County GSA's determination of ETAW as defined in Resolution 2021-113, a grower may request to be pre-approved for use of a groundwater flow meter data for determining ETAW. To be eligible for such approval, a grower must first have all irrigated parcels registered within IrriWatch. For all registered parcels that a grower intends to have ETAW determined using a groundwater flow meter, the grower must provide the County GSA with the following, which will be reviewed by the County GSA and any County-designated third party as determined necessary by the County GSA:

- a. A map depicting the exact location of groundwater well(s) and parcel(s) and field(s) served by the well(s);
- b. Photographs and a meter installation report for the well(s) serving the parcel(s);
- c. A compliant meter calibration report or results of a field flow test conducted by a County GSA approved vendor for each well;

- d. An estimate of efficiency for the irrigation system on the field(s);
- e. An attestation that that the designated well(s) only serve the identified parcel(s) or field(s); and
- f. An attestation of the validity that all submitted information represents current conditions for the well(s).

3. For any person or entity subject to the jurisdiction of any County GSA, including any "farm unit," that extracts groundwater in excess of the amount that person or entity is authorized to extract, as that amount is determined pursuant to Resolution 2021-113 for the Allocation Refinements, the County GSA is authorized to impose the following penalty:

A. A civil penalty not to exceed \$100 per acre-foot in calendar year 2023, increasing by \$100 per acre-foot per calendar year to a maximum of \$500 per acre-foot for the total acre-feet extracted in excess of the amount that person or entity is authorized to extract for the subject parcel or farm unit.

B. In determining the amount of the penalty, the County GSA shall take into consideration circumstances including, but not limited to, the nature and persistence of the violation, the extent of the harm caused by the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.

4. The penalties to be imposed pursuant to Section 3 of this Resolution shall be imposed after the provision of notice to the affected property owner, and shall become due within thirty (30) days of the date of the notice, with an opportunity for the violator to be heard as set forth herein:

A. Any dispute regarding the imposition of a civil penalty under Section 3 shall be presented in writing by the affected property owner to the Director of the Department of Water and Natural Resources for the County of Madera ("Director") within thirty (30) days of having been provided notice by regular mail or electronic mail of the violation. All appeals and data submitted to support an appeal will be maintained by the County GSA and are public information. An independent consultant with expertise in agricultural irrigation will review the matter as presented and issue a written determination ("Determination") within a reasonable time period. Unless otherwise provided for, the Determination shall be issued to the affected property owner by electronic means.

B. The affected property owner may, within 20 days of the date of the mailing of the Panel's Decision on the Application, file an appeal ("Appeal") of the Decision to the Board through written or electronic communication to the Chief Clerk to the County Board of Supervisors. Unless otherwise stipulated between the Board and the affected property owner, the Appeal hearing shall take place within 45 days of the date that the Appeal was filed. The formal rules of evidence shall not apply to the Appeal hearing. The Board shall rule on the Appeal by roll call vote, and a majority vote of the entire Board is required to either grant or deny the appeal. The Board's hearing shall be recorded electronically, and such recording, along with the Board's written minutes and any materials presented to the Board either in favor or in opposition to the Appeal, shall constitute the record of proceedings for the Appeal.

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5. A penalty imposed pursuant under this Resolution shall be paid to the County GSA and shall be expended solely for the purposes of SGMA. If the responsible party made a written dispute to the County GSA regarding the penalty, as set forth in Section 4, such party shall have 30 days from the date of mailing of the Determination, Decision, or the Board's determination of an Appeal, to pay the penalties determined by the County GSA. In the event the responsible party fails to pay the penalty when due, the County GSA may take any actions permitted by law to collect the unpaid penalty, which shall accrue interest at a rate of six percent per year, commencing thirty days after the penalty becomes due and continuing until paid.

6. The amount of any unpaid penalty, plus any other costs as provided in this Resolution or by law, may be declared a lien on the real property owned by the responsible party within the County GSA that is the subject of the penalty, as follows:

A. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be mailed by first class mail, postage prepaid, to the last known address; and

B. When a public official representing the County GSA records a lien listing delinquent unpaid penalties with the County Clerk-Recorder's office, the lien shall specify the amount of the lien, the date of the code violations, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name of the owner of the parcel according to the last equalized assessment roll; and

C. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge and release of the lien

shall be prepared by the public official.

7. The amount of an unpaid penalty, plus any other costs as provided by this Resolution or by law, may be declared a special assessment against the real property owned by the responsible party within the County GSA that is the subject of the penalty. The amount of the assessment shall not exceed the amount of penalty imposed for the violation, plus any cost authorized this Resolution or by law. A representative of the County GSA may present a resolution to the Board to declare a special assessment, and, upon passage and adoption thereof, shall cause a certified copy to be recorded with the County Clerk-Recorder's office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected and shall be subjected to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary property taxes.

8. Penalties imposed pursuant to this Resolution are non-exclusive, and therefore are in addition to any civil penalty or criminal fine that may be imposed under any other law.

9. The Director is hereby authorized and directed to take further actions as may be necessary to implement the intent and purposes of this Resolution.

10. The provisions of this Resolution shall become effective on January 1, 2023.

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The foregoing Resolution was adopted this 27TH day of SEPTEMBER, 2022, by the following vote.



Director Frazier voted:	<u>yes</u>
Director Rogers voted:	<u>no</u>
Director Poythress voted:	<u>yes</u>
Director Gonzalez voted:	<u>yes</u>
Director Wheeler voted:	<u>yes</u>

Tom Wheeler
Chairman, Board of Directors

ATTEST:

Helen Scrivner
Clerk; Board of Directors

Approved as to Legal form:
COUNTY COUNSEL

By Reena