

# **Voluntary Land Repurposing Program Rules**

**December 13, 2022**

# Voluntary Land Repurposing Program Rules

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## Voluntary Land Repurposing Program Rules

### Definitions

- **Madera County GSA.** The exclusive Groundwater Sustainability Agency for the portions of the Madera Subbasin, Chowchilla Subbasin, and Delta-Mendota Subbasin that are not in other GSAs.
- **GSPs.** Groundwater Sustainability Plans.
- **SGMA.** Sustainable Groundwater Management Act.
- **Owner.** The legal landowner of a parcel or the legal landowner's designated agent.
- **GSP Fee.** The per acre fee established under the Proposition 218 process at the public Madera County Board GSP Fee Hearing on June 21, 2022.
- **Allocation Approach.** The calculation and allocation of Sustainable Yield and Transitional Water as specified in Madera County Resolutions 2021-069 and 2021-113.
- **Repurposed Land Agreement.** The legal contract between an entity and the Madera County GSA describing the terms and obligations of both parties. Also referred to as Agreement.
- **Repurposed Land.** Lands that voluntarily enter into a Land Repurposing Agreement with the Madera County GSA.
- **Enrolled Acre.** An acre of land that pays the GSP Fee and is eligible to receive a Sustainable Yield and Transitional Water allocation as specified in Madera County Resolutions 2021-069 and 2021-113.
- **Voluntary Land Repurposing Program (VLRP).** The program that pays landowners willing to forgo the use of an allocation on specified lands and repurpose those lands to other non-irrigated uses.
- **VLRP Water.** The quantity of water available from lands that forgo Sustainable Yield and Transitional Water allocation by entering into a Repurposed Land Agreement.
- **Parcel-Field.** A unique identifier that specifies the Assessor Parcel Number (parcel) and field boundary, as defined in the Madera County GSA water tracking geospatial information.
- **Participant.** An eligible landowner that enters into a Repurposed Land Agreement with the Madera County GSA.
- **Farm Unit.** The defined areas of irrigated land (Parcel-Fields) managed as a single unit under the Madera County GSA Allocation Approach.

### GSA Documents Referenced

- Madera County Resolution 2021-069
- Madera County Resolution 2021-113

## **Voluntary Land Repurposing Program Rules**

### **Madera County SGMA Background**

The County of Madera is the exclusive GSA (“Madera County GSA”) for the portions of the Madera Subbasin, Chowchilla Subbasin, and Delta-Mendota Subbasin that are not otherwise covered by another water district or public agency. Including the three Groundwater Sustainability Agencies (GSAs) that are managed by the County of Madera, there are fourteen total GSAs within the County working to implement Groundwater Sustainability Plans (GSPs).

Groundwater overdraft in Madera County was estimated at approximately 260,000 acre-feet per year under 2015 cropping and historical hydrologic conditions. The GSPs covering the Madera County GSA in the Chowchilla, Madera, and Delta-Mendota Subbasins specified a series of projects and management actions to enhance supply or reduce groundwater demand that will be implemented to achieve sustainable groundwater conditions by 2040.

To enhance supply, the Madera County GSA is developing groundwater recharge projects and evaluating importing new surface water supplies from Sites Reservoir. The initial phases of groundwater recharge projects are currently under development with \$8.4 million in funding support from the 2018 Department of Water Resources Sustainable Groundwater Management Grant Program Implementation Round 1. Under Round 1 of the 2021 Sustainable Groundwater Management Grant Program, Madera County secured an additional \$3.7 million for groundwater recharge project development.

To reduce groundwater demand, the Madera County GSA has implemented groundwater allocations for enrolled acres. It is also developing a potential groundwater market and a land repurposing program. Planned demand management specified in the GSPs is approximately 90,000 acre-feet per year (AFY) in the Madera Subbasin, 28,000 AFY in the Chowchilla Subbasin, and 2,000 AFY in the Delta-Mendota Subbasin portions of the Madera County GSA . This document defines and describes the rules for the land repurposing program.

The land repurposing program is being developed to achieve a portion of the planned demand management in Madera County GSA. The program is now funded by a Proposition 218 fee (the “GSP Fee”) that was adopted under the Proposition 218 process at the public Madera County Board GSP Fee Hearing on June 21, 2022. The GSP Fee was not approved for the portions of the Madera County GSA in the Chowchilla Subbasin. As such, the land repurposing program is only being developed and implemented in the portions of the Madera County GSA in the Madera or Delta-Mendota Subbasins.

### **Overview of the Voluntary Land Repurposing Program**

The land repurposing program is a voluntary program available to landowners in the portion of the Madera County GSA in the Madera and Delta-Mendota Subbasins. Initial program planning was supported by a Sustainable Agricultural Lands Conservation (SALC) program grant. The program was referred to as the “SALC Program” in initial Madera County GSA planning documents. The program is now referred to as the “Voluntary Land Repurposing Program” (VLRP) to emphasize that it is voluntary and requires repurposing lands from currently irrigated uses to other non-irrigated uses.

## Voluntary Land Repurposing Program Rules

The VLRP program (including the initial SALC-funded work) has been developed with extensive stakeholder input at a series of public workshops, board presentations, informal meetings, and GSA-hosted “office hour” sessions. Recent VLRP program meetings included:

- September 20, 2022: Public workshop (virtual and in person) to recap foundational SALC planning, discuss VLRP development, and solicit stakeholder input on key VLRP parameters.
  - A public stakeholder survey was live during the meeting through September 27, 2022 to solicit additional written feedback from participants.
- October 6, 2022: Board presentation summarizing VLRP program development.
- October 26, 2022: Public workshop (virtual) to summarize initial program feedback, present program development, provide an interactive exercise for developing a VLRP bid, and solicit additional stakeholder feedback.
  - A public stakeholder survey was live during the meeting through November 1, 2022 to solicit additional written feedback from participants.

In addition to current VLRP meetings and stakeholder input, the foundational SALC-funded program held a series of meetings starting on July 17, 2020. A total of fifteen (15) formal meetings, workshops, or board presentations were held. Additional office hours, informal meetings, and one-on-one meetings were held with stakeholders. All of the stakeholder feedback has been considered in VLRP development. These meetings are documented in the SALC report available on the Land Repurposing page of the GSA (county) website.

The VLRP is a voluntary and compensated agreement between Madera County GSA and the landowner or owner designee (“Owner”). The Owner agrees to forgo irrigation and forfeit their allocation of groundwater on a portion of their lands (“Repurposed Lands”) in exchange for compensation from the Madera County GSA and applying certain specified management requirements on the Repurposed Lands. The Owner and the Madera County GSA execute a standard agreement (“Repurposed Land Agreement”) that specifies the duration, compensation, and other terms.

The Madera County GSA is responsible for the administration and implementation of the VLRP. This document describes the VLRP rules. The Madera County GSA will review and update the program rules over time to ensure that the program is consistent with the GSP and meets sustainable groundwater management requirements.

## VLRP Rules

The VLRP program starts with an interested Owner determining eligibility for the VLRP, including which lands would be eligible. The Owner then determines which lands would be offered to the program. During the enrollment period the Owner submits a bid/application to the Madera County GSA to enter lands into the VLRP. The Madera County GSA receives bids/applications from all interested Owners, ranks those bids according to the process defined in subsequent sections of this document, and notifies Owners whether their applications were selected. Owners that are selected for the VLRP then enter into an agreement with the Madera

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County GSA for a defined term, and are subject to the management requirements defined in this document.

The VLRP program will be managed separately for the Madera Subbasin and Delta-Mendota Subbasin portions of the Madera County GSA. All of the rules, process, and procedures described in this document apply individually to each Subbasin (Delta-Mendota and Madera). The Chowchilla Subbasin is not eligible for the VLRP at this time.

This section describes the VLRP rules:

- Owner and Land Eligibility
- Solicitation and Application Process
- Selection Process
- Management Requirements
- Monitoring Verification
- Payment Terms
- Termination
- Allocation of VLRP Water
- Modification Process

### Owner and Land Eligibility

This section describes who is eligible to participate in the VLRP.

To be eligible to apply to the VLRP, the applicant must be the Owner (or the Owner's designee) of the lands being considered for the program.

Lands that are eligible to participate in the VLRP must be eligible to receive a groundwater allocation of both Sustainable Yield and Transitional Water and be subject to the GSP Fee, as defined in Madera County Resolution 2021-069 and 2021-113. These lands are referred to as "Enrolled Acres" in the Madera County GSA. Eligible Enrolled Acres must be in the Madera Subbasin or Delta Mendota Subbasin.

There is no minimum acreage requirement for the VLRP. However, eligible Enrolled Acres must be a defined Parcel-Field in IrriWatch or other Madera County GSA water tracking and management software. Portions of a Parcel-Field are not eligible for the VLRP.

Requirements for a Parcel-Field to be eligible for the VLRP are summarized as:

- It is wholly located within the Madera Subbasin or the Delta Mendota Subbasin of the Madera County GSA;
- It is Enrolled Acres and therefore eligible for a groundwater allocation within the Madera County GSA;
- It must not be delinquent on local, state property taxes, assessments, and fees;

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- At this time, full Parcel-Fields must be entered; no partial fallowing is accepted. Madera County GSA has sole responsibility for determination of eligibility.

To be eligible for the VLRP an Owner must:

- Be in compliance with Madera County GSA rules and regulations.
- Be the landowner or the designated agent of the landowner.

## VLRP Annual Solicitation Period and Application Process

Madera County GSA will announce each VLRP solicitation round according to the Schedule of Activities as described in Attachment A. Unless otherwise announced, the Madera County GSA will accept applications starting October 1 of each year. The application period will typically close on November 1.

The key information provided on an application includes the Owner name, Parcel-Field, size of the Parcel-Field, desired duration of the VLRP contract, and the bid price. The bid price reflects what the Owner is willing to accept in exchange for repurposing the Parcel-Field.

The VLRP solicitation announcement will launch a public outreach process by the Madera County GSA. This will include summarizing key program objectives, rules, changes in rules, and describe how interested Owners can apply for the upcoming year.

An eligible Owner (or Owner designee) may apply to participate in the VLRP for eligible Parcel-Fields during the open application period. To be considered for the VLRP, the Owner must submit an application for an eligible Parcel-Field (Attachment B). The application will contain:

- The Owner's contact information
- Information about the Parcel-Field including the APN and Parcel-Field size in acres
- The bid price expressed as dollars per acre per year
- The number of years they wish to participate. At this time, only applications for Agreement durations ranging from one to five years are accepted.

Owners may submit applications online or by mail. The Madera County GSA will provide links to email submissions and an address for mail submissions as part of the annual solicitation round.

Only one application per Parcel-Field may be submitted. Owners may submit multiple applications, so long as they only submit one per Parcel-Field.

## Selection Process

Participation in the program is subject to a competitive selection process, with application review and selection by the Madera County GSA.

The Madera County GSA will first review applications for eligibility. This will include verifying that the Parcel-Field identifier and acreage is consistent in the application and the Madera County GSA water management system. Applications that are not eligible will be rejected and applicants will be notified of such determination no later than one week before end of the Madera County GSA selection and review period (see Attachment A). If the applicant receives a

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determination of ineligibility but believes this determination to be in error or based on a correctable mistake on the application, the applicant may submit a request for review with supporting documentation within three (3) business days of receiving such determination. For example, if the application contained a typographical error in the Parcel-Field ID or similar information, the applicant would submit documentation correcting the information and the Madera County GSA would review the corrected information.

Eligible applications will first be grouped by Agreement duration (number of years proposed in the application). For purposes of ranking applications with Agreement duration of 2 or more years, the bid price per acre per year in the second and subsequent years will be discounted by 5 percent per year and then averaged across all years to get the overall average bid price. The discounting is for ranking purposes only and will provide a small advantage for bids with longer duration. The discounting will not affect the actual payment for selected applications. Then applications will be ordered from lowest to highest by bid price per acre per year.

Madera County GSA will accept the lowest-bid applications up to the total annual budget available for the VLRP after adjusting for any funds already committed for multi-year Agreements. By accepting the lowest price bids this ensures that the VLRP is implemented at the lowest cost to all Madera County GSA landowners. This process is called a standard reverse auction.

The Madera County GSA is not obligated to expend the entire VLRP budget every year. If some or all bids appear to be excessive based on reasonable, prevailing land prices and lease rates in the Subbasins, Madera County GSA may choose to reject those bids, and reserve and carry over a portion of the budget to a subsequent year. The Madera County GSA will commission an annual report to establish prevailing, reasonable economic values of land prices and lease rates in the Subbasins that considers factors such as allocation, market conditions, and other economic considerations. The economic report will also review the discount rate (initially set at 5 percent) for evaluating longer term agreements, as defined earlier in this section.

Owners will be notified by the Madera County GSA of the status of their applications within 30 days of the application deadline. The notice will indicate whether an application was accepted or not accepted. If an application is accepted, the Owner and Madera County GSA will execute the fixed-term, temporary Repurposed Land Agreement for the respective Parcel-Field.

The Repurposed Land Agreement contains contractual obligations which include some VLRP rules described in this document. In case of any apparent discrepancy between a rule described herein and the same rule stated in the Repurposed Land Agreement, the Repurposed Land Agreement language shall govern.

## **Management Requirements**

Once an Owner application is accepted and the Madera County GSA and Owner execute the Land Repurposing Agreement, the Owner will be considered a "Participant" in the VLRP. The Parcel-Field included in the Land Repurposing Agreement is referred to as "Repurposed Land."



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The Participant serves as the primary point of contact and is responsible for completion of and compliance with all program requirements as described in this document and the Repurposed Land Agreement.

It is the responsibility of the Participant to ensure that farm managers and other applicable employees and contractors are informed that the Repurposed Land is in the VLRP and that all management requirements are followed.

Repurposed Land is subject to Repurposed Land Agreement requirements and program rules, which include but are not limited to the following:

- Forfeiture of Groundwater Allocation. The Sustainable Yield and Transitional Water allocated to the Parcel-Field is forfeited to the VLRP for the duration of the Land Repurposing Agreement and cannot be used on other parcels in the Farm Unit, carried forward to a subsequent year for use on the Parcel-Field or Farm Unit, or otherwise transferred to another use.
- Non-Irrigation. No portion of the Repurposed Land may be irrigated. Repurposed Land may use incidental consumptive use of rainfall, but the Participant cannot implement any practice that would reduce natural groundwater recharge (as would have typically occurred prior to the Participant's application to the VLRP).
- Limited Permitted Uses. Repurposed Land may be used for cattle grazing, dryland production, or other non-irrigated uses that comply with dust control requirements and other Land Repurposing Agreement terms. Any other irrigated crops, including previously irrigated trees and vines on the Parcel-Field, must be fully removed from the Repurposed Land or otherwise incapable of consumptively using water.
- Land Management and Nuisance Mitigation. Repurposed Land must be managed to prevent and mitigate nuisances in accordance with applicable local, state, and federal laws and regulations. These activities include but are not limited to ensuring adequate dust control and weed abatement as described in Attachment C. All land management requirements must be done at the expense of the Participant.
- Verification. All Land Repurposing Agreement requirements are subject to verification, monitoring, and enforcement by Madera County GSA as specified in the Land Repurposing Agreement.
- Compliance with Madera County GSA Rules and Regulations. The Participant must be in compliance with Madera County GSA Rules and Regulations.
- Survivability. The Land Repurposing Agreement for Repurposed Land will survive any changes in ownership or tenancy. It is the responsibility of the Participant to notify any prospective buyers or new tenants of the contract with Madera County GSA.

## Monitoring and Verification

Madera County GSA will monitor and verify that the Participant is complying with VLRP rules, including forgoing the use of irrigation on the Repurposed Lands. The Madera County GSA may use a combination of water tracking technology, reports, staff time and site visits, and other

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resources to monitor and verify compliance of Land Repurposing Agreement performance. Verification is performed by Madera County GSA and/or its contractors to check that the land is being managed as outlined in the contract terms, which include weed abatement, dust management, and not irrigating or otherwise watering the Repurposed Land.

The Participant shall make reasonable accommodations to allow access for compliance monitoring.

### **Payment Terms**

The annual payment is defined in the Land Repurposing Agreement. It is calculated as the accepted bid price per acre multiplied by the number of acres of the Repurposed Lands. The number of acres will be defined by the Parcel-Field in the Madera County GSA's water tracking system. Payment by Madera County GSA to the Participant will be made in two installments per year and is subject to verification of Land Repurposing Agreement performance.

No escalation or adjustments to payments will be made for multi-year agreements. Participants will need to factor in any expectations of future conditions into their bid price.

Repurposed Land must be eligible for Sustainable Yield and Transitional Water allocation and pay the GSP Fee. The Participant will continue to pay the GSP Fee for the duration of the Repurposed Land Agreement.

VLRP payments will be issued in March and November of each calendar year. The Madera County GSA will issue the Participant a Form 1099 or other appropriate income reporting documents for tax purposes. Participants are responsible for tax payments and should consult their tax professional(s).

### **Termination**

An executed Repurposed Land Agreement is a binding commitment on the part of both the Madera County GSA and the Participant and can be terminated at the discretion of the Madera County GSA if the Madera County GSA determines that a violation of one or more terms of the Agreement has occurred or is threatened to occur. If the Madera County GSA identifies a violation or potential violation the Participant will have seven (7) days after receipt of notice to the Participant by Madera County GSA of such violation to remedy the violation.

Termination of the Repurposed Land Agreement will result in forfeiture of all remaining payments due under the Repurposed Land Agreement and will incur a penalty of up to 125% percent of the payments the Participant received in years in which the violation occurred. For example, if a three-year Agreement is terminated at the end of the first year (i.e., with two years remaining), the Participant would forfeit payments for the following two years and owe a penalty of up to 125% percent of the payments they received in the first year. Such penalty shall be charged to the Participant through mechanisms allowed under the Madera County GSA's authority.

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Termination will further result in being deemed non-compliant with Madera County GSA rules and regulations. As a result, the Owner and Parcel-Fields within the respective farm unit will be ineligible to participate in VLRP during the following year.

### Allocation of VLRP Water

The VLRP effectively creates water through Participant's forfeited groundwater allocations. This water provides a benefit to all other eligible lands in the Subbasins and will be allocated back to these lands.

Forfeited groundwater allocations will be considered "VLRP Water" and reallocated to acres that are enrolled for a Sustainable Yield allocation, and pay the GSP Fee, but that are not Repurposed Land.

VLRP Water is defined as the quantity of Sustainable Yield and Transitional Water from Repurposed Lands. It is calculated as follows:

- After the Participants and Madera County GSA execute Land Repurposing Agreements, the Madera County GSA will calculate the total acreage of Repurposed Lands that are in the VLRP for the upcoming year.
- The total Repurposed Land acreage will be multiplied by the per acre allocation of Sustainable Yield and Transitional Water in the next calendar year. This quantity is defined as the total VLRP Water available for allocation.
- This calculation will be completed by December of each calendar year.

To allocate the VLRP Water the following process is used:

- At the start of each new allocation year for the new allocation period, the total acreage of Repurposed Lands for the coming year will be subtracted from the total acres paying the GSP Fee (i.e., eligible to receive Sustainable Yield and Transitional Water). This is the acres eligible for VLRP Water and will be calculated for each farm unit.
- The VLRP Water allocation per acre will be calculated by dividing the total VLRP Water available for allocation by the acres eligible for VLRP Water. That is:

$$(\text{VLRP Water} / \text{acres eligible for VLRP Water}) = \text{VLRP Water per acre}$$

- The VLRP Water per acre will then be multiplied by the number of acres eligible for VLRP Water in each Farm Unit. This generates the total volume of VLRP Water available to Farm Unit. This VLRP Water quantity will be in addition to Sustainable Yield and Transitional Water specified in the Allocation Approach for each defined Farm Unit for the new allocation year.
- The VLRP Water is subject to the same rules as Transitional Water specified in the Allocation Approach, including carry over provisions and order of use.

The Madera County GSA may amend the definition and allocation of VLRP Water in the future.

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### Modification Process

The Madera County GSA is responsible for the implementation of the VLRP. It will commission an annual assessment of the VLRP to review program performance, adjust rules, and support the outreach process during the solicitation period. VLRP rules will be updated over time to ensure the program meets GSP objectives and helps achieve groundwater sustainability in the Madera County GSA Subbasins.

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# ATTACHMENT A

### Schedule of Activities

The following is the schedule of activities, including solicitation, contract selection and execution, and payment installments. For the allocation period for 2023, the schedule of activities will be condensed to account for program development in late 2022. The schedule for the 2023 period is therefore:

<b>2023 Allocation Period</b>	<b>Activity</b>
December 2022	Applications open
January 2023	Selection and Land Repurposing Agreement execution
January 1, 2023	Allocation period begins
March 2023	First installment of incentive payment
November 2023	Pending verification, second installment of incentive payment

In subsequent years, applications will be open in October preceding the allocation period. The Madera County GSA will select and execute Land Repurposing Agreements between November and December preceding the allocation period. The allocation will begin on January 1 of each year. The first installment of the incentive payment will be made in March of the allocation period. Pending verification of Land Repurposing Agreement performance, the second installment of the incentive payment will be made in November of the allocation period.

For example, for the allocation period for 2024, the schedule of activities is:

<b>2024 Allocation Period</b>	<b>Activity</b>
October 2023	Applications open
November - December 2023	Selection and Land Repurposing Agreement execution
January 1, 2024	Allocation period begins
March 2024	First installment of incentive payment
November 2024	Pending verification, second installment of incentive payment

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# ATTACHMENT B

**Madera County GSA Voluntary Land Repurposing Program  
Application for Participation**

This application is for the Voluntary Land Repurposing Program. More information about the program, including the program rules and template contract, can be found on the Madera County GSA website at: <https://www.maderacountywater.com/land-repurposing/>. Please note the following:

- Participation in this program is voluntary, compensated, and competitive.
- If your application is selected, you must further enter into a Land Repurposing Agreement with the Madera County GSA in order to participate in the Voluntary Land Repurposing Program.
- The Parcel-Field identification number and exact number of acres for the Parcel-Field will be verified by the Madera County GSA prior to execution of an Agreement. Incorrect information is grounds for disqualification.
- The individual submitting the application must be the owner or owner designee for the Parcel-Field for which this application is being submitted.
- Only one application per Parcel-Field may be submitted. Eligible individuals may submit multiple applications, so long as they only submit one per Parcel-Field.

**OWNER OR OWNER DESIGNEE CONTACT INFORMATION**

First Name:	
Last Name:	
Business/ Organization Name:	
Email Address:	
Phone Number:	
Mailing Address:	

**PARCEL-FIELD INFORMATION**

Parcel-Field Identifier:	
Farm Unit Name or ID:	
Number of Acres:	
Bid Price Per Acre (\$/acre):	
Number of Years Desired:	

# **ATTACHMENT C**

## **Dust Mitigation and Weed Abatement Requirements**

In order to satisfy dust mitigation and weed abatement requirements, the landowner shall be responsible for and comply with the following requirements.

### **DUST MITIGATION REQUIREMENTS**

In order to mitigate air quality impacts on land that is repurposed (fallowed), the landowner must follow only the Best Management Practices ("BMPs") recommended by the U.S. Department of Agriculture Natural Resources Conservation Service and listed below.

- Plan ahead to start with plenty of vegetation residue, and maintain as much residue on fallowed fields as possible. Residue is more effective for wind erosion protection if left standing.
- Avoid any tillage.
- Avoid any traffic on the field or tillage when fields are extremely dry to avoid pulverization.
- If residues are not adequate, either small grain can be seeded around the first of the year to take advantage of winter rains or soil stabilization chemicals may be applied to fallowed lands.

### **WEED ABATEMENT REQUIREMENTS**

The landowner is responsible for and must undertake the timely control of all weeds on the land that is fallowed as required by the Madera County Ordinance, § 7.26.040 "WEED ABATEMENT."