

Policy Committee North Fork Kings Groundwater Sustainability Agency (NFKGSA)

August 6, 2020
Meeting Convenes at 10:00 a.m.

ZOOM Meeting Link (*Click this link early, as you may need to download software; staff will be on 15min early.*): <https://us02web.zoom.us/j/81662563265?pwd=czRycklRVURNcExCQVR0VGFwVII3dz09>

ZOOM: One Tap Mobile: +16699006833,,81662563265#,,,,,0#,,291489#

ZOOM Call-In Number: +1 669 900 6833 ; Meeting ID: 816 6256 3265 ; Password: 291489

MEETING AGENDA

All items on this agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action by the Committee. The Committee may consider agenda items in any order. Materials related to an item on this agenda submitted to the Committee after distribution of the agenda packet are available for public inspection at the Kings River Conservation District, 4886 E. Jensen Ave., Fresno 93725 during normal business hours.

1. CALL TO ORDER

2. PUBLIC COMMENT

The public may address the Committee on any item relevant to the GSA. At the beginning of the Public Comment Agenda Item, the Technical Moderator will ask each member of the public whether there are items they wish to comment on. The conducting officer will indicate whether speakers are to make their comments before or after any staff comment or report. Public comment shall precede discussion of the item by the Committee. Comments by individuals and entities will be limited to three minutes or as may be reasonable as determined by the conducting officer.

3. ELECTION OF COMMITTEE CHAIR

The Committee will nominate and elect a Chair for Fiscal Year 2020 – 2021.

4. CONSIDER APPROVAL OF MINUTES

The Committee will consider approval of the July 20, 2020 minutes. *Action item: requires simple majority approval.*

5. POLICY IDENTIFICATION AND PRIORITIZATION

The Committee will consider drafts of two policies: a Recharge Policy and a Measurement Policy. *Action may be taken.*

6. NEXT MEETING DATE AND PROPOSED AGENDA ITEMS

7. ADJOURNMENT

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the NFKGSA to provide a disability-related modification or accommodation in order to participate in any public meeting of the NFKGSA. Such assistance includes appropriate alternative formats for the agendas and agenda packets used for any public meetings of the GSA. Requests for such assistance and for agendas and agenda packets shall be made in person, by telephone, facsimile, or written correspondence to the Kings River Conservation District, 4886 E. Jensen Ave, Fresno, CA 93725, telephone 559.237.5567, fax 559.237.5560 at least 48 hours before a public NFKGSA meeting.

Item 7: ADJOURNMENT

Adjourned: 1:52 p.m.

Respectfully submitted,

Stephen Maddox, Jr. – Secretary-Treasurer

_____ approved on _____, 2020
Mark McKean, Meeting Lead

**NORTH FORK KINGS GROUNDWATER SUSTAINABILITY AGENCY
GROUNDWATER BANKING POLICY**

BACKGROUND

California law permits a party who has a separate legal right to surface water developed from a source that is separate and distinct from the natural or native groundwater supplies existing in a common Basin aquifer to use the developed water for beneficial use. A party that owns a developed water supply “may use the supply by commingling the water with the native supplies and may subsequently recapture the developed water.” (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-78.) The recapture right includes the amount equivalent to the augmentation contributed by the water stored (either by direct recharge or return flows from water deliveries) (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 260.) Banking projects are permitted to recharge, store and recover water placed in the Basin aquifer so long as the quantity recovered does not exceed the amount contributed and none of the banking activities cause injury to any Basin resource or the rights of other users of water in the process. If a person entitled to the use of the water fails to use beneficially all or any part of the water for the purpose for which it was appropriated for a period of five years, that unused water shall revert to the public. (*Water Code Section 1241.*)

OBJECTIVES

The objectives in pursuing this groundwater banking and recharge policy on behalf of the NFKGSA include the following:

- Improve groundwater conditions;
- Increase water supplies;
- Assist in meeting GSP objectives;
- Provide flexibility to landowners;
- Ensure no negative impacts to overlying owners; and
- *Other?*

POLICY

This policy shall apply to all lands within the NFKGSA’s jurisdictional boundary.

PROVISIONS APPLICABLE TO GROUNDWATER BANKING PROJECTS

[Consider exception to defer/follow groundwater policies already established in NFKGSA jurisdictional area]

If a landowner intends to bank his/her own sources of surface water supply in the underground and subsequently transfer that supply to another party, then the landowner shall comply with the following:

*Banking.*¹ A Landowner within the NFKGSA shall be eligible to develop, operate and maintain a groundwater bank within the NFKGSA provided it enters into a written agreement as defined below with the NFKGSA. Landowner may also contract with a third party to develop, operate and maintain a groundwater bank within the NFKGSA, provided such third party enters into a written agreement as defined below with the NFKGSA.

Facilities Report and Groundwater Banking Agreement. Landowner shall first submit a written facilities report (“Facilities Report”) to NFKGSA staff containing the following information:

- a. The banking site location (Assessor Parcel Number, legal description, and GIS map).
- b. The conveyance and distribution facilities and manner and method of operation.
- c. The recharge facilities and the manner and method of operation.
- d. The recovery facilities (landowner and/or project extraction wells) and the manner and method of operation.
- e. The energy facilities (electric, diesel, solar, etc.).
- f. The schedule for permitting, construction and commencement of operation.
- g. The plan of operation, maintenance, repair and replacement of banking facilities.
- h. The intended source of all banking water supplies (e.g., Central Valley Project, local surface waters, third party exchange/transfer supplies, other).
- i. The banking accounting, measurement, monitoring and reporting procedure.
- j. A Monitoring and Operational Constraint Plan (MOCP) to ensure that unacceptable impacts to neighboring crops, well flow rates, water levels and quality are prevented and/or adequately mitigated.

Once NFKGSA staff has determined the Facilities Report is complete, Landowner and NFKGSA shall enter into a Groundwater Banking Agreement.

California Environmental Policy Act & Project Approval. Prior to NFKGSA’s approval of the proposed Banking project, and prior to commencement of construction or operation of banking facilities, Landowner shall comply with any applicable California Environmental Policy Act (Public Resources Code §21000, et. seq., “CEQA”) requirements. NFKGSA shall act as the lead agency under CEQA regarding the preparation of documents required to carry out or approve a groundwater banking project authorized pursuant to this policy. Implementation of this policy and the approval of any groundwater banking project pursuant to this policy are subject to compliance with CEQA and the Landowner shall be responsible for the payment of all costs and expenses incurred by the NFKGSA and the Landowner relating to such compliance.

Surface Water Available for Banking. Landowner is solely responsible for locating, purchasing, accessing, or otherwise acquiring, surface water for purposes of banking in the NFKGSA.

Banking Leave Behind. In order to insure that a groundwater banking project will protect the health of the basin and benefit the NFKGSA, its landowners and water users, Landowner shall

¹ The NFKGSA does not currently intend to directly develop, operate and maintain a groundwater bank itself, but does expressly reserve its authority to revise these principles to include NFKGSA groundwater banking in the future should it be deemed necessary and proper.

leave in storage in the Basin aquifer to the credit of the NFKGSA’s Sustainable Yield² the percentage amount of the total water reported, based on the type of water banked, on an annual basis according to the following table:

WATER SUPPLY	PLACE OF USE		
	NFK GSA		
LOCAL SURFACE WATER SUPPLIES ³	10%		
IMPORTED SURFACE WATER SUPPLIES ⁴	5%		

Procedure. Upon diversions to the bank, Landowner shall report total quantities of water diverted into the underground to the NFKGSA. NFKGSA staff shall then deduct the applicable leave behind percentage, and credit the remaining quantity of water to the Landowner’s surface water bank account.

Place of Use. Any water banked by Landowner shall only be extracted and beneficially used within the boundaries of the North Fork Kings Groundwater Sustainability Agency, or the Kings Subbasin (Bulletin 118, 5-22.08) to the extent provided in the leave behind requirements stated above.

Transfers. Any water banked by Landowner may be transferred, provided the transferee will use the transferred water within the boundaries of the North Fork Kings Groundwater Sustainability Agency, or the Kings Subbasin (Bulletin 118, 5-22.08).

Banking Accounting, Measurement, Monitoring and Reporting Procedure. Landowner shall be responsible for developing and implementing a procedure to accurately account for all banking activities on a monthly and annual basis, including the following: the source of all water delivered to each turnout, recharge discharges, percolation rates, recharge losses to evaporation and soil profile, net augmentation to storage in the Basin, pumping extractions, amounts of water in storage and recovery, the place of use of all banked water deliveries, and changes in local groundwater conditions (including depth to groundwater, water quantity, quality, groundwater gradient and migration).

² Sustainable Yield has the same meaning and effect as that defined in the NFKGSA’s Groundwater Sustainability Plan.

³ “Local surface water supplies” shall include all water derived from local surface tributaries naturally occurring in the Kings Subbasin.

⁴ “Imported surface water supplies” shall include all other surface waters other than those defined as “Local Surface Water Supplies” and shall include, but not be limited to, waters from: the Central Valley Project, and neighboring subbasins.

PROVISIONS APPLICABLE TO GROUNDWATER RECHARGE AND GROUNDWATER BANKING PROJECTS

Term. Landowner must beneficially use the water within five years from sinking it in the underground. Failure to do so will result in said unused waters reverting to the native supply, as defined in the NFKGSA Groundwater Sustainability Plan, of the NFKGSA.

Water Quality Standards. Landowner shall insure that all water diverted into the underground does not result in unacceptable deterioration of groundwater quality contrary to applicable NFKGSA GSP water quality objectives or as required in any MOCP approved by the NFKGSA.

Legal Compliance. Landowner shall be solely responsible for complying with all applicable Federal, State and local laws, and rules and regulations, including but not limited to CEQA. At the NFKGSA's discretion, Landowner shall provide the NFKGSA with a copy of any permit, order, agreement, environmental document, judgment or other record requested indicating Landowner's compliance with applicable laws.

Facilities. Landowner shall be solely responsible for determining the nature, location and extent of the necessary facilities for recharge and/or banking. All costs of design, permitting, construction, operation, maintenance, repair and replacement and all other costs and expenses of a groundwater banking facility shall be the sole responsibility of Landowner.

Indemnification. Landowner shall indemnify, defend and hold harmless the NFKGSA, its board of directors, officers, employees, agents, assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death, and including attorneys' fees and other costs of litigation, arising out of or connected with the development, operation and maintenance of a groundwater bank.

Administration. Landowner shall reimburse the NFKGSA for its reasonable costs and expenses incurred, as determined by the NFKGSA, to prepare or review the agreements, reports, plans and other documents and materials relating to the administration of this Policy.

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Article I. General

Section 1.01 Purpose

These rules and regulations are established by the Board of Directors of the North Fork Kings Groundwater Sustainability Agency (“NFKGSA”) in order to provide for the sustainable management of groundwater within the NFKGSA jurisdictional boundaries.

Section 1.02 Authority

Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section 10725.2 expressly states as follows:

“A groundwater sustainability agency may adopt 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.”

Section 1.03 Groundwater Sustainability Plan

Pursuant to Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section 10725, a groundwater sustainability agency may exercise the powers described in Chapter 5 provided the groundwater sustainability agency adopts and submits a groundwater sustainability plan to the Department of Water Resources. These rules and regulations are designed to implement the provisions of the NFKGSA GSP, and may be amended at any time if necessary to achieve consistency with the groundwater sustainability plan and steps needed to achieve sustainability.

Pursuant to Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section 10720.5(b), however, nothing in the NFKGSA GSP, or these rules or regulations, is intended to determine or alter surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

Section 1.04 Definitions

“De minimis” means a person who extracts, for domestic purposes, two acre-feet or less per year, as defined in SGMA.

“NFKGSA” means North Fork Kings Groundwater Sustainability Agency.

“NFKGSA GSP” means the NFKGSA Groundwater Sustainability Plan developed and submitted to the Department of Water Resources pursuant to Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section 10727, *et al.*

“Operator” means an authorized representative of an owner.

“Owner” means fee title owner of land within the NFKGSA boundaries.

“SGMA” means the Sustainable Groundwater Management Act.

“Water year” means October 1 through September 30.

Section 1.05 Effective Date and Changes

These rules and regulations shall become effective upon adoption and may be added to, amended and/or repealed at any time by resolution of the Board of Directors of the NFKGSA and such additions, amendments, and/or repeals shall become effective upon their adoptions or as otherwise specified by the Board of Directors.

Section 1.06 Actions Against the NFKGSA

Nothing contained in these rules and regulations shall constitute a waiver by the NFKGSA or estop the NFKGSA from asserting any defenses or immunities from liability as provided in law, including, but not limited to, those provided in Division 3.6 of Title 1 of the Government Code.

Section 1.07 Rights of Access

The NFKGSA staff and/or those others authorized by the NFKGSA’s General Manager shall have access at all times to all lands within the NFKGSA for the purpose of conducting NFKGSA business. Except in cases of emergency or where otherwise considered impractical, the owner of the property shall be contacted before entrance onto their property.

Section 1.08 Severability of Provisions

If any provision of these rules and regulations, or the application thereof to any person or circumstance, is held invalid, the remainder of these rules and regulations, and the application of its provisions to other persons or circumstances, shall not be affected thereby.

Article II. Groundwater Monitoring

Section 2.01 Well Registration

(a) Registration Requirement

Any new groundwater extraction facilities permitted after January 31, 2020, excluding de minimis extractions, shall be registered with the NFKGSA within 30 days of the completion of drilling activities. In addition, any owner selecting to use meters to report groundwater use, shall register with the NFKGSA. The owner of an extraction facility shall register the extraction facility and provide, in full, the information required to complete the form provided by the NFKGSA that includes the following:

- i. Name and address of the operator(s).
- ii. Name and address of the owner(s) of the land upon which the extraction facility is located.
- iii. Well Completion Report, filed with the Department of Water Resources, pursuant to California Water Code section 13751, or [i]f not available, a description of the equipment associated with the extraction facility, including pump size (horsepower), estimated depth of the well casing and size of the well casing.
- iv. Location, parcel number and state well number of the water extraction facility.

(b) Registration Fee

An administrative fee shall be paid to the NFKGSA, in an amount determined by the NFKGSA board of directors, for each groundwater extraction facility registered with the NFKGSA.

(c) Water Quality Testing

[Discuss water quality testing requirements, if any]

(d) Change in Owner or Operator

The name of the owner of each extraction facility, the parcel number on which the facility is located, along with the names of all operators for each extraction facility shall be reported to the NFKGSA within 60 days upon any change of ownership or operators, together with such other information required by the General Manager.

Section 2.02 Authority Regarding Measurement of Consumed Groundwater

Pursuant to authority granted under Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section 10725.8, NFKGSA shall require: (a) except as otherwise provided in Section 2.03 below, the use of every groundwater extraction facility within NFKGSA boundaries be measured by flowmeters; and (b) that all costs associated with the purchase and installation of flowmeters shall be borne by the owner or operator of each groundwater extraction facility, and the flowmeters shall be installed by the owner or operator of each such groundwater extraction facility.

Section 2.03 Consumed Groundwater Use Measurement

This Section outlines two methodologies for measuring or estimating groundwater extraction by each owner: (1) information provided from flowmeters which have been connected to the relevant well continuously for the preceding period or (2) evapotranspiration information obtained via satellite technology.

If the owner does not (1) communicate an election to use flowmeters to the NFKGSA by October 1 of each water year; and (2) provide all relevant information needed for the NFKGSA to verify measurements from each flowmeter 30 days from the end of the prior month, then the NFKGSA will default to utilize the evapotranspiration data to determine groundwater consumption for that period with a correction factor applied to the total crop consumption.

Notwithstanding the foregoing, beginning [DATE], NFKGSA shall require the use of every groundwater extraction facility within NFKGSA boundaries be measured exclusively by flowmeters.

(a) Criteria for Using Meters

The following criteria and information shall be provided to the NFKGSA at any time any owner is using flowmeters to report groundwater use:

- i. Manufacturer and Model of flowmeter;
- ii. Date Flow Meter Installed;
- iii. Diameter of Pipe and Size of Flow Meter;
- iv. Identification of who installed flowmeter and calibrated flowmeter per manufacturer specifications;
- v. Inspection Records will be required to submit to NFKGSA per schedule outlined in the manufacturer specifications.
- vi. Pictures to identify flowmeter installed correctly (e.g. adequate straight pipe sections before and after the flowmeter);

- vii. Type of crop, age of crop (if perennial), single/double/triple crop (if annual), irrigation methodology (e.g. flood, drip, sprinkler) for the irrigated acres serviced by the water from the flow meter; and
- viii. If multiple flowmeters on a farm, a map identifying the locations of the various flowmeters and lands serviced collectively by these flowmeters.
- ix. Meter must have telemetric capability.

Additionally, as described in Section 1.07, the owner of the flowmeter will allow access to staff from the NFKGSA to physically inspect the flowmeter, if needed.

For each month following an election under this subsection, the owner shall report to the NFKGSA, no later than 30 days following the last day of the month, the quantity of groundwater extracted at each parcel for which the election is made, as measured by the flowmeter(s). Failure to timely report the quantity of groundwater extraction to the NFKGSA, in accordance with this section, for any parcel to which the election applies for any month shall be deemed a withdrawal of the election as to those parcels for those months, in which case groundwater extraction shall be measured for those parcels for those months in accordance with the evapotranspiration method described in subsection (b) below.

(b) Criteria for Using Evapotranspiration Method

Groundwater extraction shall be measured according to the evapotranspiration method described in this subsection for any parcels to which a valid election under subsection (a) above has not been made, or for which that election is deemed withdrawn in accordance with subsection (a).

Crop evapotranspiration (ET) is estimated using remote sensing data from LandSAT satellites. The satellite data is entered into a model, which is used to estimate the ET rate and ET spatial distribution of an area in any given time period. When appropriately calibrated to land-based ET and/or climate stations and validated with crop surveys, the satellite-based model provides an estimate of crop ET (i.e. consumptive use).

Article III. Groundwater Accounting/Data Management System

Section 3.01 Surface Water Reporting

Any owner within the NFKGSA which utilizes surface water shall report, or cause to be reported, the irrigation diversion of surface water.

Section 3.02 Groundwater Recharge and Banking Reporting

An owner within the NFKGSA which is performing recharge or groundwater banking activities shall report, or cause to be reported, the diversion of surface water to underground storage to the NFKGSA. Prior to crediting or debiting the owner's account, the NFKGSA shall ensure the

request is consistent with any applicable groundwater banking or recharge policy, including but not limited to, Article V below.

Article IV. Fees

Section 4.01 Groundwater Extraction Fees

(a) Groundwater Extraction Fees.

The Board may propose fees, including groundwater extraction fees, consistent with Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section Sections 10730 through 10730.6, and the California Constitution.

(b) De Minimis Extractors.

No extraction fees shall be charged to any *de minimis* extractor.

Section 4.02 Real Property Assessments

The Board may propose land-based assessments consistent with Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section 10730, and the California Constitution.

Article V. Surface Water Recharge in the Underground

Section 5.01 Groundwater Recharge

Owners may use existing facilities to store surface water underground within the NFKGSA boundaries. An owner who stores surface water pursuant to this Section may subsequently put such water to his or her own beneficial use within the NFKGSA boundaries, or may transfer the water to another owner for use within the NFKGSA boundaries. The use of stored water pursuant to this Section must be achieved utilizing existing facilities. All water stored pursuant to this Section must be used within the NFKGSA boundaries, and must be used within five (5) years of the date of storage. Each owner who stores surface water pursuant to this Section shall provide accurate, verifiable records of the quantity and source of surface water stored for recharge, confirmed by the district or entity that supplied the surface water. The owner shall adhere to any rules promulgated by any district or entity supplying the surface water. Each owner shall be solely responsible for locating, purchasing, accessing, or otherwise acquiring surface water for the purposes of recharge pursuant to this Section.

[end of document]

DRAFT