

TRANQUILLITY IRRIGATION DISTRICT

Groundwater Exportation Policy

Adopted: November 18, 2020

1. Background

Tranquillity Irrigation District (the “**District**”) is a California irrigation district duly formed and operating under California Irrigation District Law (Wat. Code §§ 20500 et seq.). The District is located in the southernmost portion of the critically overdrafted Delta-Mendota Subbasin (“**Subbasin**”).¹ Some of the conditions of overdraft the District has experienced include progressively lowering groundwater levels due to long-term depletion of the upper and lower aquifers. These lowered groundwater levels have in turn led to significant land subsidence, with areas – particularly in the southwestern portion of the District’s service area – losing up to 1.5 feet per year during drought years.² Land subsidence also affects the structural integrity of the District’s levees, canals, and other water conveyance and flood protection infrastructure.

Since 2017, the District has developed a program to arrest the groundwater level declines, including restricting lower aquifer pumping, raising its levee freeboard, and implementing groundwater recharge projects using imported water from the federal Central Valley Project (“**CVP**”), from the Kings River, and water it receives from the CVP in settlement of its rights to water from the Fresno Slough (“**Rights Water**”). The District has made these efforts to comply with its statutory responsibility to ensure that it is able to furnish sufficient water for beneficial irrigation and municipal uses within the District³ and to protect and maintain its water delivery⁴ and flood protection systems.⁵

The District is also a member of the Central Delta-Mendota Groundwater Sustainability Agency (“**Central D-M GSA**”). Created pursuant to the Sustainable Groundwater Management Act⁶ (“**SGMA**”) in 2017 as a multi-agency GSA, the Central D-M GSA is now a joint powers authority comprised of nine (9) other water and land use authorities in the Subbasin. The purpose of the Central D-M GSA is to achieve the sustainability goals sought by SGMA – to reduce conditions of groundwater overdraft and eliminate or mitigate the undesirable results caused by overdraft.⁷ The Central D-M GSA will achieve those goals by 2040 by preparing and

¹ Subbasin number 5-22.07 per the Department of Water Resources Bulletin 118.

² Northern & Central Delta-Mendota Region Groundwater Sustainability Plan, p. 5-154 (adopted Jan. 23, 2020) http://sldmwa.org/NDCP_Temporary/DM_NorthCentral_Adopted_GSP.pdf.

³ Wat. Code § 22075.

⁴ *Id.* at § 22429.

⁵ *Id.* at § 22161.

⁶ Wat. Code §§ 10720 et seq.; § 10723, subd. (a) [authority for any combination of local agencies in a subbasin to form a groundwater sustainability agency for that subbasin].

⁷ Wat. Code § 10721, subd. (x). Undesirable results include:

(1) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater

implementing a groundwater sustainability plan, which includes measurable goals and concrete actions to reduce overdraft in the Subbasin.

The Central D-M GSA, in collaboration with other GSAs in the Subbasin, submitted its Northern & Central Delta-Mendota Region GSP (“N&C GSP”) on January 23, 2020.⁸ Pursuant to the N&C GSP, the land within the District’s boundaries has been established as a management zone for land subsidence, and as such will be a key indicator of the N&C GSP’s success in meeting SGMA’s goals.

2. Findings

In light of the District’s many responsibilities to ensure sufficient groundwater is available to District landowners, the District’s Board of Directors have made the following findings:

(a) The District has the broad authority under California Irrigation District Law to “do any act necessary to furnish sufficient water in the district for any beneficial use,” and to “do any act in order to put to any beneficial use any water under its control.”⁹ It can also establish equitable rules regarding the distribution and use of water under its control.¹⁰

(b) While landowners in the District may assign water for uses within the District,¹¹ in compliance with District rules and regulations, there is no accompanying right to assign water outside the District.

(c) As an importer of foreign water and consistent with California Groundwater Law, the District has the power to reclaim imported waters prior to abandonment.¹²

recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.

(2) Significant and unreasonable reduction of groundwater storage.

(3) Significant and unreasonable seawater intrusion.

(4) Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.

(5) Significant and unreasonable land subsidence that substantially interferes with surface land uses.

(6) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

⁸ The Northern & Central Delta-Mendota GSP is available on DWR’s SGMA Portal at <https://sgma.water.ca.gov/portal/gsp/all> or the Delta-Mendota SGMA website at <http://deltamendota.org/learn-more/northern-central-delta-mendota-gsp/>.

⁹ Wat. Code 22075, 22076.

¹⁰ *Id.* at § 22257.

¹¹ Wat. Code § 22251.

¹² Wat. Code § 7075; *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 411.

(d) Land subsidence, lowering of groundwater levels, and decrease in aquifer storage capacity are all undesirable results pursuant to SGMA, and which may continue to occur without proper local management of the groundwater underlying the District.

(e) The District has determined that unregulated groundwater exportation by landowners in the District has the potential to negatively affect the District's ongoing efforts to reduce groundwater overdraft, as a water district, a water importer, and as a member of the Central D-M GSA.

(f) It is the District's declared continued preference, intent and stated goal that all water underlying the District's service area should, to the maximum extent allowed by law, be available for use by the District and District landowners for beneficial overlying uses on lands within the District.

3. Purpose and Scope

With the express acknowledgment of the District's responsibility to protect and maintain its water and physical resources, and to work towards groundwater sustainability pursuant to SGMA, the purpose of this Groundwater Exportation Policy ("**Policy**") is to address and regulate groundwater exportation outside the District's service area and the Subbasin that may negatively impact the District's limited groundwater resources and/or other water users in the District. This Policy will apply to all existing and future extractions of groundwater within the District's boundaries that are to be exported outside the District's boundaries.

4. District Approval Required for Exports

(a) **Definitions.** For purposes of this Policy, "**exports**" and "**exportation**" means the extraction of groundwater from any groundwater well or extraction facility within the District's boundaries for transport and/or use outside of the District's boundaries. "**Export of groundwater**" includes activities by which groundwater underlying lands within the District's boundaries may, through one or more exchanges and transactions, be directly or indirectly conveyed or transferred for use outside of the District's boundaries. "**Exporter(s)**" shall mean one or more individuals or entities owning land in the District proposing to export groundwater. "**Exporting Land**" shall mean the land within the District's boundaries owned or operated by a District landowner who proposes to or has been exporting groundwater underlying that land. "**Receiving Land**" shall mean the land outside the District's boundaries which is receiving or proposes to receive the groundwater exported from the District.

(b) **Permit Required.** The District finds that existing and future exporters of groundwater may only continue or begin such exportation by applying for and obtaining the written approval of the District's General Manager ("**Permit**").

(i) **Existing Exports.** Promptly upon adoption of this Policy, the District will mail a notice to landowners within the District with a copy of this Policy attached. Any existing exporters have sixty (60) days from the date of mailing of such notice to respond

with a written justification of any such exports in the form included hereto as Exhibit “A” (“**Request Form**”).

(ii) **Future Exports.** After the date of adoption of this Policy, all landowners within the District’s boundaries must seek and obtain the District’s approval prior to initiating any groundwater exports by submitting a Request Form to the District.

(iii) **Request Form.** Consistent with California groundwater law, some exports may be accepted by the District’s General Manager, provided the export meets the following requirements:

- A. The proposed export is a one-time event for a limited time during a single calendar year;
- B. The Receiving Land overlies the Subbasin;
- C. The exportation is compliance with the applicable County Ordinance and any policy or ordinance of the Central D-M GSA;
- D. The applicant must establish 1) a right under California law to pump and export groundwater; 2) that the export will not injure other legal users of water; and 3) that the proposed use of water is reasonable and beneficial.

(iv) **Other Considerations.** In deciding to deny or approve the proposed export, the District General Manager reserves the right to take into account other considerations in his or her sole discretion, including but not limited to whether:

- A. the export will be for agricultural uses;
- B. the Receiving Land is close in proximity to the District;
- C. the applicant will fallow all of the Exporting Land or an area of the Exporting Land that would normally receive a quantity of groundwater proportional to the quantity of the proposed export;
- D. extraordinary conditions exist, such as drought or unexpected well failures on the Receiving Land;
- E. economic conditions require the exportation;
- F. the applicant is the owner of both the Exporting and the Receiving Land that are in the Subbasin; and
- G. other conditions exist necessitating a one-time transfer.

(v) **Limitations.** Individual applicants may export no more than 1,000 acre feet per year (afy) or one acre feet per acre of the exporting lands, whichever is less. All exports shall be consistent with applicable state, federal, and local laws, regulations, and ordinances. Any approval of a proposed export shall be considered null and void if the export is determined by a court of law to be contrary to existing or future law.

(vi) **Charges.** The applicant shall reimburse the District for the total of the total cost per acre-foot that the District would pay the Bureau of Reclamation and the San Luis Delta-Mendota Water Authority for delivery of its CVP water supply that year, plus a fee of \$25 per acre-foot of each acre-foot extracted for export purposes. Said cost is representative of the annual average cost to the District for recharging groundwater.

(c) **District's Determination.** Within ten (10) business days of the District's receipt of a Request Form, the District's General Manager will make a determination in writing whether the applicant's request is approved or denied. If approved, the applicant must sign the Permit with the terms and conditions provided in the determination transmittal to the applicant.

(d) **Appeals.** If the applicant wishes to appeal the General Manager's determination, the applicant must submit a written protest with supporting information to the General Manager within ten (10) business days of receipt of the General Manager's determination. The General Manager shall have five (5) business days to reconsider the applicant's request and come to a second determination. No later than five (5) business days after receipt of the second determination, the applicant may appeal to the District's Board of Directors in writing. The District's Board of Directors will consider the appeal at its next regularly-scheduled meeting, so long as the appeal is received ninety-six (96) hours prior to said meeting, otherwise it will be considered at the following regularly-scheduled meeting of the District's Board of Directors. The Board of Director's determination shall be final.

(e) **District Access.** In order to ensure compliance with any granted Permit, the applicant shall grant to the District, its agents, employees, and representatives, access to the Exporting Land and the well facilities located thereon.

2. Penalties for Failure to Comply With This Policy or an Approved Permit

(a) **Restriction of Surface Water.** The District may restrict surface water deliveries in proportion to the quantity of groundwater being exported outside the District by an Exporter.

(b) **Legal Action.** The District may take any action in law or equity, including a civil action seeking injunctive relief to stop groundwater exports in violation of this Policy.

3. Amendment

This Policy is subject to changes in the regular operation of the District, as it may be revised from time to time by the Board of Directors.

4. Policy Review

This Policy shall be reviewed by the District regularly, but in no event less than once every three (3) years.

EXPORTATION REQUEST FORM

Instructions – Please fully complete and return this original application to:
 TRANQUILLITY IRRIGATION DISTRICT
 c/o Danny Wade, General Manager
 25398 West Silveira Street
 P.O. Box 487
 Tranquillity, CA 93638
 (559) 698-7225

The District may take into consideration any supporting documentation or description of circumstances supporting the proposed export – please attach a separate page if necessary.

Exporting Land and Contact Information

| | |
|---|---|
| Exporting Landowner Name(s): _____ | |
| Name(s) on Title: _____ | |
| ** All landowners on title of Exporting Property must sign this form ** | |
| Designated Representative (if applicable): _____ | |
| E-mail address: _____ | Phone #: _____ |
| Exporting Property Address: _____ _____ | Mailing Address (if different): _____ _____ |
| Fresno County APN(s): _____ _____ | Total Exporting Land Acreage: _____ |
| Crops grown: _____ | |
| Acreage currently fallowed (if any): _____ Acreage proposed to be fallowed (if any): _____ | |

Existing Pumping Information

| | |
|---|--|
| # of Wells on Exporting Property: _____ Metered? Y / N (circle one) If so, provide meter make and model of each Well: _____ _____ | Total annual quantity pumped (afy): _____ |
| | During Growing Season: |
| | Provide range of months: _____ Estimated pumping (afy): _____ |

Receiving Land Information

| | |
|--|---|
| Receiving Landowner Name(s): _____ | |
| Name(s) on Title (if different): _____ | |
| Property Address: _____ | |
| County: _____ APN(s): _____ | Total Receiving Land Acreage: _____ |
| Does Receiving Land overlie the Delta-Mendota Subbasin? Y / N (circle one) | |
| Crops currently grown: _____ Acreage currently fallowed (if any): _____ | Acreage to Receive Exported Water _____ |

EXPORTATION REQUEST FORM

| Proposed Exportation | |
|--|---|
| Is this a New Export? Y / N (circle one) Amount Proposed to be Exported: _____ <small>** Amount may be no more than 1,000 afy or 1 acre feet per acre of the exporting lands, whichever is less **</small> Proposed Duration of Export: _____ <small>** May be no longer than 1 calendar year, subject to District's discretion **</small> | |
| <i>Purpose of Exportation Request:</i> | <input type="checkbox"/> To export groundwater to land owned by the <u>same</u> landowner in the Delta-Mendota Subbasin for irrigation purposes; <input type="checkbox"/> To export groundwater to land owned by a <u>different</u> landowner in the Delta-Mendota Subbasin for irrigation purposes <input type="checkbox"/> To export groundwater to land owned by any person or party in the Delta-Mendota Subbasin for <u>non-irrigation</u> purposes <input type="checkbox"/> Other; please describe: _____ <small>(Include additional pages and documentation to support proposed exportation, if necessary)</small> |

I/We, the undersigned, hereby request a Permit to export of the above-quantified groundwater from the Tranquillity Irrigation District ("District") boundaries for a limited time as identified above. At the District's request, I/we agree to provide any additional documentation necessary in order to complete the exportation request. If approved, I/we agree, upon the District's demand, to pay the District for any the total cost-per acre foot that the District would pay the Bureau of Reclamation and the San Luis Delta-Mendota Water Authority for delivery of its surface water supply that year, plus a fee of \$25 per acre-foot of each acre-foot extracted for export purposes. I/we understand the District may deny this application in its sole discretion, or if the District finds this application is inconsistent with all applicable state, federal, and local laws, regulations, and ordinances. If the exportation is approved, I/we agree to grant to the District, its agents, employees, and representatives, access to the Exporting Land and the well facilities located thereon to ensure compliance with the Permit.

I/We further declare that I/we are the legal owners of the Exporting Land, and that I/we have a right under California law to pump and export groundwater. I/we declare that the proposed export will not injure other legal users of water and that the proposed use of water on the Receiving Land is reasonable and beneficial. I/we declare that the foregoing information is true and correct to the best of my/our knowledge and belief.

Date

Exporting Property Owner

Date

Exporting Property Owner

| Office Use Only | | |
|-----------------|-----|-------------------------|
| Date Received: | By: | Accepted?: Y/N Date: |