

ORDINANCE NO. 5.7

AN ORDINANCE TO REDUCE GROUNDWATER EXTRACTIONS

The Board of Directors of the Fox Canyon Groundwater Management Agency, State of California, hereby repeals Ordinance No. 5. 6 and ordains as follows:

ARTICLE 1. General

Section 1. Title

This ordinance shall be known as the "Groundwater Extraction Limitation and Control Ordinance" of the Fox Canyon Groundwater Management Agency.

Section 2. Purpose and Intent

The purpose and intent of this ordinance is to eliminate overdraft from the aquifer systems within the boundaries of the Agency and bring the groundwater basins to safe yield by the year 2010. This ordinance is only one means by which this goal will be met. It is not the intent or purpose of this ordinance to determine or allocate water right entitlements, including those which may be asserted pursuant to California Water Code sections 1005.1, 1005.2 or 1005.4.

Section 3. Periodic Review Procedure

The Board will periodically review the effectiveness of this ordinance toward meeting its purpose and intent. This review shall occur at least once every five years. If necessary, this ordinance will be amended by the Board to ensure that the goals of the Agency are met.

Section 4. Definitions

As used in this ordinance, the following terms shall have the meanings stated below:

- A. **"Agency"** means the Fox Canyon Groundwater Management Agency.
- B. **"Agency Coordinator"** means the individual appointed by the Board to administer Agency functions.
- C. **"Agricultural extraction facility"** means a facility whose groundwater is used on lands in the production of plant crops or livestock for market, and uses incidental thereto.
- D. **"Annual"** means the calendar year January 1 through December 31.
- E. **"Aquifer"** means a geologic formation or structure that yields water in sufficient quantities to supply pumping wells or springs. A confined aquifer is an aquifer with an overlying less permeable or impermeable layer.

- F. **"Board"** means the Board of Directors of the Fox Canyon Groundwater Management Agency.
- G. **"Developed Acreage"** means that portion of a parcel within the boundaries of the Agency that is receiving water for reasonable and beneficial agricultural, domestic or municipal and industrial (M & I) use.
- H. **"Excess extraction"** means those extractions in excess of an operator's extraction allocation or adjusted extraction allocation.
- I. **"Extraction"** means the act of obtaining groundwater by pumping or other controlled means.
- J. **"Extraction allocation"** means the amount of groundwater that may be obtained from an extraction facility for a given calendar year, before a surcharge is imposed.
- K. **"Extraction facility"** means any device or method (e.g., water well) for extraction of groundwater within a groundwater basin or aquifer.
- L. **"Foreign Water"** means water imported to Ventura County through the State Water Project facilities or other water as approved by the Board.
- M. **"Groundwater"** means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water.
- N. **"Groundwater basin"** means a geologically and hydrologically defined area containing one or more aquifers which store and transmit water yielding significant quantities of water to extraction facilities.
- O. **"Historical extraction"** means the average annual groundwater extraction based on the five (5) calendar years of reported extractions from 1985 through 1989 within the boundaries of the Agency. This average will be expressed in acre-feet per year. **All historical extraction allocations became effective on January 1, 1991.**
- P. **"Injection/storage facility"** means any device or method for injection/storage of water into a groundwater basin or aquifer within the boundaries of the Agency.
- Q. **"Irrigated Agricultural Land"** means lands which are designated as **Prime Agricultural Lands, Agricultural Lands of Statewide Importance, or Unique Agricultural Lands** as described by the Ventura County Agricultural Lands Conservation Program. As an additional qualification to meet this definition, all of the land must have received water for irrigation purposes at some time during the base period of 1985 - 1989.
- R. **"Municipal and Industrial (M & I) Provider"** means a municipality, waterworks district, water company, mutual water company or person which provides water for domestic, industrial, commercial, or fire protection purposes within the boundaries of the Agency.

- S. **"Municipal and Industrial (M & I) Operator"** An owner or operator that supplied groundwater for M & I use during the historical allocation period and did not supply water for agricultural irrigation during the historical period."
- T. **"Municipal and Industrial (M & I) user"** means a person or other entity that used or uses water for any purpose other than agricultural irrigation. **"Municipal and Industrial (M & I) use"** means any use other than agricultural irrigation.
- U. **"Operator"** means a person who either owns or operates a groundwater extraction facility with the written approval of the owner. In the event the Agency is unable to determine who operates a particular extraction facility, then "operator" shall mean the person to whom the extraction facility is assessed by the County Assessor, or, if not separately assessed, the person who owns the extraction facility or the land upon which it is located.
- V. **"Overdraft"** means the condition of a groundwater basin where the average annual amount of water extracted exceeds the average annual supply of water to a basin or aquifer.
- W. **"Person"** includes any state or local governmental agency, private corporation, firm, Partnership, individual, group of individuals, or, to the extent authorized by law, any federal agency.
- X. **"Recharge"** means natural or artificial replenishment of groundwater storage by percolation or injection of one or more sources of water at the surface.
- Y. **"Safe Yield"** means the condition of groundwater basin when the total average annual groundwater extractions are equal to or less than total average annual groundwater recharge, either naturally or artificially.

ARTICLE 2. Extraction Allocations

Section 1 - General

The Agency Coordinator shall establish an operator's extraction allocation for each extraction facility located within the boundaries of the Agency. The extraction allocation shall be the historical extraction as reported to the United Water Conservation District and/or to the Agency pursuant to Agency Ordinance No. 1.3 (or its successor), or as otherwise provided for in Article 6 of this ordinance.

Notwithstanding any provision in this ordinance, the annual allocation shall be an allocation based on 60 percent irrigation efficiency of the current crop or the historical allocation, whichever is less. The irrigation efficiency for the operator's crop shall be determined using the formula described in Paragraph B of Article 6. This 60 percent irrigation efficiency is totally unrelated to the 80 percent efficiency described in Article 6, Paragraph B, "Annual Efficiency Extraction Allocation".

Where an operator operates more than one extraction facility, the extraction allocations for the individual facilities may be combined.

Section 2. Necessity for Extraction Allocations

No extraction facility may be operated or otherwise utilized so as to extract groundwater within the boundaries of the Agency without a valid extraction allocation issued by the Agency or compliance with Article 8 of this Ordinance.

Section 3. Compliance

An operator shall comply with all provisions of this ordinance and all other Agency ordinances prior to receiving an extraction allocation.

Section 4. Violation

Any operator or other person who violates the provisions of this Article is subject to the criminal and civil sanctions set forth in the Agency's enabling act and its ordinances.

ARTICLE 3. Adjustments to Extraction Allocations

Section 1. Purpose

Adjustments to extraction allocations may be necessary to provide some flexibility, while still maintaining the goal of reaching a safe yield condition by the year 2010. Adjustments may be accomplished by a transfer or an assignment of historical extraction allocation from one operator to another.

Section 2. Types of Adjustments

A. **Municipal and Industrial (M & I) Transfer Adjustments** – When irrigated agricultural land(s) changes to M & I use, an extraction allocation shall be transferred from the agricultural extraction facility(ies) to the M & I provider in accordance with the following conditions:

1. Unless the M & I provider complies with the criteria set forth in subsection 2, below, the agricultural extraction facility(ies) shall transfer to the M & I provider and the M & I provider shall receive the historical extraction allocation associated with the respective agricultural extraction facility(ies), up to a maximum of two (2) acre-feet per acre per year. Historical allocation in excess of two (2) acre-feet per acre per year shall be eliminated. Two (2) acre-feet per acre per year represents a reasonable use of water for M & I purposes. The following conditions shall apply to the transfer of allocation:
 - a. The transfer of allocation shall include the mutual consent of the owner(s) of the irrigated agricultural land(s) being transferred and the M & I provider. If the owner(s) of the agricultural extraction facility holding the historical allocation for the land being transferred is not the owner of the land being transferred, then

the owner(s) of that extraction facility must also join the consent to transfer. The responsibility for obtaining all agreements to transfer allocation resides with the owners of the land and/or the M & I provider.

- b. The Agency Coordinator must concur that the historical allocation to be eliminated is sufficient to have served the agricultural operation under the circumstances of service.
 - c. The transfer shall be effective when The M & I provider has annexed the irrigated agricultural land(s) to be transferred to M & I use and has provided written intent to provide water service to those land(s), or when the land is taken out of agricultural production.
2. An M & I provider shall receive two (2) acre-feet per acre per year for irrigated agricultural land(s) transferred to M & I use when all of the following conditions have been met:
- a. The irrigated agricultural lands which are the subject of transfer are included in comprehensive water use study prepared by the M & I provider and approved by the Board after consideration in a public hearing. The study shall show the sphere of influence of the M & I provider and must demonstrate that the cumulative allocation transferred to M & I use includes an allocation of two acre feet per acre per year for all agricultural lands reported within the study boundaries and results in a net water savings to the GMA when compared to the historical extraction allocation assigned to wells that provide groundwater to all the agricultural lands reported in the study area. To the extent practical, the study shall rely on the historical water use data available from the GMA and shall include: 1) a clear designation for the study boundaries and the lands included in the analysis; and 2) identification of any data or assumptions relied upon which are not a part of the GMA data base.
 - b. The transfer of allocation shall include the mutual consent of the owner(s) of the irrigated agricultural land(s) being transferred and the M & I provider. If the owner(s) of the agricultural extraction facility holding the historical allocation for the land being transferred is not the owner of the land being transferred, then the owner(s) of that extraction facility must also join the consent to transfer. The responsibility for obtaining all agreements to transfer allocation resides with the owners of the land and/or the M & I provider.
 - c. The Agency Coordinator must concur that the historical allocation to be eliminated is sufficient to have served the agricultural operation under the circumstances of service.
 - d. The transfer shall be effective when The M & I provider has annexed the irrigated agricultural land(s) to be transferred to M & I use and has provided written intent to provide water service to those land(s), or when the land is taken out of agricultural production.

- B. **Assigned Extraction Allocation Adjustments** – Except as provided by other assignment and, or adjustment procedures, an Operator A may assign an extraction allocation to Operator B as long as Operator B provides water to Operator A equal in amount to the full assigned extraction allocation. In order to prevent the creation of a secondary market in extraction allocations, upon the change of ownership of either property, the assigned extraction allocations revert to Operator A. The assigned extraction allocations may subsequently be re-assigned by the new owner.
- C. **Adjustments to M & I Allocations** - The Board may adjust the historical allocation of an M & I operator when that operator has supplied groundwater to a M & I user during the historical allocation period and discontinues service to the M & I user for any reason. This adjustment may be made by transferring the supplied portion of the historical allocation from the M & I operator to the M & I user. This adjustment will avoid increased pumping due to windfall allocations that could otherwise result when the M & I operator discontinues service. To avoid retroactive inequities, where an M & I operator has discontinued service to an M & I user prior to September 1, 1994, the amount of the supplied portion of the historical allocation will be allocated to both the M & I operator and the M & I user.
- D. **Transfer of Allocation** - Upon request, the Board may transfer allocation provided there is a net benefit to the aquifers within the GMA. The transfer of allocation will be of indefinite duration, approved on a "case-by-case" basis, and the GMA Coordinator shall determine the rate of extraction and the point or points of extraction. Requests for the transfer of allocations shall be submitted jointly by the parties involved and shall include the specific details of their proposal. To ensure that there is a net benefit to the aquifer systems, transfers of allocation shall be subject to other conditions as approved by the Board.
- E. Historical allocation is subject to adjustment as provided in Article 4 below.

Section 3. Procedures for Adjustments

Procedures for adjusting extraction allocations will be accomplished using the following procedure:

- a. It shall be necessary for the operator of the extraction facility to file a verified Application for Adjustment with the Agency Coordinator.
- b. Adjustments of extraction allocations, pursuant to the Applications for Adjustment, shall be considered for approval by the Board after reviewing the findings and recommendations of the Agency Coordinator and, if approved, shall be effective for the remainder of the calendar year and for all subsequent calendar years until modified by a subsequent Board approved adjustment.

ARTICLE 4. Reduction of Extraction Allocations

Unless otherwise exempted, historical extraction allocations, adjusted or otherwise, shall be reduced in order to eliminate overdraft from the aquifer systems within the boundaries of the

Agency for agricultural and M & I uses. The reductions shall be as set forth below:

- 1992 - 1994 extraction allocation = 95% of historical extraction, as adjusted.
- 1995 - 1999 extraction allocation = 90% of historical extraction, as adjusted.
- 2000 - 2004 extraction allocation = 85% of historical extraction, as adjusted.
- 2005 - 2009 extraction allocation = 80% of historical extraction, as adjusted.
- After 2009 extraction allocation = 75% of historical extraction, as adjusted.

ARTICLE 5. Exemptions from Reductions

Certain types of extraction allocations are exempt from the reductions set forth in Article 4. They are set forth below:

- A. **Baseline Extraction Allocations** - as set forth in Article 6.
- B. **Annual Efficiency Extraction Allocations** - as set forth in Article 6.
- C. **Non-metered Extraction Facilities.** Reductions in extraction allocations shall not apply to those extraction facilities as identified in Ordinance 3.1 (or its successor) that do not require meters. Neither retroactive adjustments nor refunds will be made, except that any outstanding surcharges for non-metered extractions that have not been paid on the effective date of this ordinance will be waived.

ARTICLE 6. Alternative Extraction Allocations

As an alternative to historical extractions, the Agency Coordinator may establish a Baseline, or Annual Efficiency extraction allocation for an operator, as follows:

- A. **Baseline Extraction Allocations** - If no historical extraction exists, an operator may request that a Baseline extraction allocation be established by the Agency Coordinator at one (1) acre-foot per acre per year for developed acreage that relies solely on groundwater. A Baseline extraction allocation may also be established by the Agency Coordinator at one (1) acre-foot per acre per year for lands which are developed after the effective date of this ordinance, regardless of the source of water.

To obtain a Baseline extraction allocation, an operator must submit a detailed report to the Agency Coordinator. The report shall describe historical extractions, if any, groundwater use during the period between the end of calendar year 1984 and the end of calendar year 1989, future water requirements, type and amount of water use, crop type and acreage involved. The report shall include copies of Assessor's maps identifying the parcels where groundwater is presently being used. For the purpose of this ordinance, one (1) acre-foot per acre per year represents a reasonable use of water for a Baseline extraction allocation.

- B. **Annual Efficiency Extraction Allocation** - If an operator can demonstrate to the Agency Coordinator that water used for agriculturally developed land is at least 80

percent overall irrigation efficient, based on evapotranspiration requirements, an Annual Efficiency extraction allocation shall be established for one calendar year. An 80 percent overall irrigation efficiency has been determined by the Agency to be reasonable on agricultural lands within the Agency's boundaries.

To prove that irrigation efficiency is at least 80 percent, the operator must submit a detailed report covering a minimum period of the immediately preceding calendar year. This report shall be submitted to the Agency Coordinator no later than March 31st of the following year unless otherwise extended by the Board of Directors. The report shall include a complete crop and irrigation history for the extraction facility and acreage involved. The report shall include the reference evapotranspiration (ET_o) rates and crop factors (K_c) for the calendar year period similar to that provided by the California Irrigation Management Information System (CIMIS) as developed and modified by the California Department of Water Resources. The report shall include a summary sheet that compares the water use to the evapotranspiration requirements for each crop and the corresponding acreage covered in the calendar year. The Board may extend the time to apply for an efficiency allocation for any year.

The irrigation efficiency will include an appropriate amount of water necessary to avoid salt build-up based on the quality of irrigation water used.

Irrigation Efficiency (I.E.) will be calculated using the following formula:

$$I.E. = \frac{[ET_o \times K_c] - E.R. \times 100}{\text{Actual Water Applied (inches)}}$$

Where:

ET_o is the reference evapotranspiration measured in inches using turf grass as a standard.

K_c is a crop factor which is a dimensionless number that relates water use by a given plant in comparison to turf grass.

E.R. is the effective rainfall measured in inches as determined by the Agency Coordinator.

- C. **Exceptions** - The Board may grant exceptions to sub-paragraphs A and B of Article 6 on a case-by-case basis. However, individual exceptions shall not become the norm. Where agricultural efficiency cannot be measured as set forth in Paragraph B of Article 6, then the most efficient practices of record for the type of agricultural use shall be the measurement of efficiency utilized by the Board in its deliberations.

ARTICLE 7. Credits

Credits can be obtained by operators, but are not considered as extraction allocations or adjustments to extraction allocations. Credits are not subject to any reductions as set forth in Article 4. However, at the operator's option, credits can be saved or used to avoid paying extraction surcharges. Credits shall be accounted for through the normal reporting and accounting procedure and are carried forward from year to year. Credits can be transferred, but only between commonly operated extraction facilities with the approval of the GMA Coordinator. Upon request, the Board may transfer credits provided there is a net benefit to the aquifers within the GMA. The transfer of credits will be of indefinite duration, approved on a "case-by-case" basis, and the GMA Coordinator shall determine the rate of extraction and the point or points of extraction. Requests for the transfer of Credits shall be submitted jointly by the parties involved and shall include the specific details of their proposal. To ensure that there is a benefit to the aquifer systems, transfers of credits shall be subject to other conditions as approved by the Board. The types of credits are:

- A. **Conservation credits** - An operator can obtain conservation credits by extracting less groundwater than the historical extraction allocation. No conservation credits will be given to an operator with an Annual Efficiency, Baseline, or for an extraction facility that is not required to have a meter. Credits shall be determined by the Agency Coordinator after submission of annual extraction data. Subsequent to determining the amount of credits earned, a confirmation shall be mailed to the pumper showing the current allocation, the groundwater extracted during the previous calendar year, and the credits or surcharges for the previous year. This confirmation must be signed by the owner/operator and returned to the GMA with any surcharge payment within thirty days (30) of the date the confirmation was mailed to the owner/operator by the GMA. Proof of the date of return will be by the postmark of the returned confirmation. If the confirmation is not returned within 30 calendar days, the credits earned for the previous year will no longer be available, or interest shall begin to accrue on surcharges due.
- B. **Storage credits** - An operator can obtain storage credits for foreign water injected or spread and percolated in a Board approved injection/storage facility.

The Agency Coordinator will determine the amount of storage credits based upon documentation of expected losses provided by the operator seeking the storage credit.

A written application for approval of an injection/storage facility shall include:

1. Operator of proposed project.
2. Purpose of proposed project.
3. Location, depth, casing diameter, perforated interval and other information regarding proposed injection/extraction facilities, if applicable;

4. Method of operation including source, quantity and quality of water, planned scheduling of injection/extraction or percolation operations and proposed use of extracted water;
5. Any other information deemed necessary by the Agency Coordinator.

Following Board approval of the application, successful injection of water and reporting of results, an operator will obtain credit as determined by the Agency Coordinator.

ARTICLE 8. Extraction Surcharges and Late Penalty

Section 1. Extraction Surcharges

Extraction surcharges are necessary to achieve safe yield from the groundwater basins within the Agency and shall be assessed annually when annual extractions exceed the historical and/or baseline allocation for a given extraction facility or the combined sum of historical allocation and baseline allocation for combined facilities. The extraction surcharge shall be fixed by the Board and shall be based upon: 1) the cost to import potable water from the Metropolitan Water District of Southern California, or other equivalent water sources that can or do provide non-native water within the Agency jurisdiction, and 2) the current groundwater conditions within the Agency jurisdiction. The Board shall fix the surcharge by resolution at a cost sufficiently high to discourage extraction of groundwater in excess of the approved allocation when that extraction will adversely affect achieving safe yield of any basin within the Agency and may adjust the surcharge by resolution; provided however, that the then existing extraction surcharge shall remain in effect until adjusted by the Board.

In circumstances where an individual or entity extracts groundwater from a facility(s) having no valid extraction allocation, the extraction surcharge shall be applied to the entire quantity of water extracted. Imposition and acceptance of payment of the surcharge imposed on an individual or entity who extracts water from a facility(s) that holds no extraction allocation shall not be deemed a waiver of the Agency's authority to limit or enjoin the unauthorized extractions.

Facilities relying on the annual, efficiency, allocation shall also be subject to surcharge for inefficient use. The extraction allocation for efficiency is the amount of water used at 80% efficiency as defined in Article 6 of this ordinance. Extraction surcharges will be applied to the difference between the water extracted which correlates with the actual efficiency achieved and the water that would have been extracted to attain the 80% efficiency allocation. For example, an actual efficiency of 70% would be subject to surcharges on the difference between the amount of water used at 70% efficiency and the amount of water that would have been used at 80% efficiency. If an efficiency of less than 60% is achieved, no efficiency allocation will be available, and the operator shall revert to a historical, baseline or to no allocation whichever applies to that facility. Extraction surcharges would then apply to the difference between actual water used and the applicable allocation, if any. For example, a facility operating at an actual efficiency of 59%) with no historical or baseline allocation, would be subject to surcharges on all water used.

Section 2. Payment of Extraction Surcharges

Payment of any extraction surcharges shall be assessed annually and shall become due and payable by the owner/operator within 30 days of date the confirmation of credits form was postmarked. Payments shall normally be made with credits, if available. Credits may be retained if a special arrangement is made to pay with cash. The Board may extend the 30-day time allowed to pay surcharges for a period of up to twelve months when circumstances exist that in the opinion of the Board warrant such extension. The Board may also approve the payment of surcharges in installments of up to 24 months with terms suitable to the Board.

The Agency Coordinator may waive surcharges when a situation requires immediate action to repair a well when the repair of the well requires pumping for dewatering purposes.

Surcharges that are less than \$50.00 will be deferred until the total accumulated surcharge owed reaches \$50.00. No interest will be charged until the account has accumulated to the \$50.00 minimum. When the \$50.00 minimum has been reached, the surcharge will be billed and interest will start to accrue when the bill is due and payable.

Section 3. Late Penalty

The operator shall pay a late penalty for any extraction surcharge not satisfied by the due and payable date. The late penalty shall be 1 1/2 percent per month, or any portion thereof, of the amount of the unsatisfied extraction surcharge.

Section 4. Collection of Delinquent Extraction Surcharges and Late Penalties

The Board may order that any given extraction surcharge and/or late penalty shall be a personal obligation of the operator or shall be an assessment against the property on which the extraction facility is located. Such assessment constitutes a lien upon the property, which lien attaches upon recordation in the office of the County Recorder. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes are collected, and shall be subject to the same penalties and the same procedure and sale, in case of delinquency as provided for such taxes. All laws applicable to the levy, collection and enforcement of ad valorem taxes shall be applicable to such assessment, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and an assessment relating to such property shall be transferred to the unsecured roll for collection.

Section 5. Use of Extraction Surcharges and Late Penalties

Revenues generated from extraction surcharges and late penalties shall be used exclusively for authorized Agency purposes, including financial assistance to support Board approved water supply, conservation, monitoring programs and water reclamation projects that demonstrate significant reductions in overdraft.

ARTICLE 9. Appeals

Any operator aggrieved by a decision or determination made by the Agency Coordinator may appeal to the Board within thirty (30) calendar days thereof by filing with the Agency Coordinator a written request that the Board review the decision of the Agency Coordinator. The Board shall act on the appeal within 120 days after the filing.

ARTICLE 10. Severability

If any section, part, clause or phrase in this ordinance is for any reason held invalid or unconstitutional, the remaining portion of this ordinance shall not be affected but shall remain in full force and effect.

ARTICLE 11. Penalties

Any operator or person who intentionally violates any provision of this ordinance shall be guilty of an infraction and may be required to pay a fine to the Agency in an amount not to exceed five hundred dollars (\$500).

Any operator or person who negligently or intentionally violates any provision of this ordinance may also be liable civilly to the Agency for a sum not to exceed one thousand dollars (\$1000) per day for each day of such violation, in addition to any other penalties that may be prescribed by law.

Upon the failure of any operator or person to comply with any provision of this ordinance, the Agency may petition the Superior Court for a temporary restraining order, preliminary or permanent injunction, or such other equitable relief as may be appropriate. The right to petition for injunctive relief is an additional right to those which may be provided elsewhere in this ordinance or otherwise allowed by law. The Agency may petition the Superior Court of the County to recover any sums due the Agency.

ARTICLE 12. Effective Date

This ordinance shall become effective on the thirty-first day after adoption.

ADOPTED this 23rd day of September, 1998 by the following vote:


AYES: Lynn Maulhardt, John Flynn, Sam McIntyre, Mike Conroy, and Bernardo Perez

NOES: None

ABSENT: None



Chair, Board of Directors
Fox Canyon Groundwater Management Agency

ATTEST: 
Clerk of the Board