

# **Resolution 2013-01**

## **of the**

### **Fox Canyon Groundwater Management Agency**

#### **A RESOLUTION AUTHORIZING THE IMPOSITION OF CIVIL PENALTIES FOR SPECIFIC ORDINANCE CODE**

**WHEREAS**, the Fox Canyon Groundwater Management Agency Ordinance Code requires well operators and owners to regularly respond to reporting and payment requirements for groundwater extraction data (semi-annual extraction statements), flowmeter data, data on current well operators and owners, and payment for groundwater extraction; and

**WHEREAS**, when the Agency does not receive the required reporting and payment information the Agency must conduct significant follow-up work with non-reporting well operators and owners to obtain the required information; and

**WHEREAS**, this follow-up work is very costly to the agency in terms of staff time devoted to well operators and owners that do not comply with the Ordinance Code. This includes the Agency sending multiple certified letters, making numerous phone calls and sending numerous e-mails to well operators and owners that:

- a) fail to report extractions, apply for efficiency allocations, and remit payment, and
- b) fail to comply with flowmeter calibration requirements, and
- c) fail to provide notice that the well operator and/or owner has changed; and

**WHEREAS**, failure to submit the Semi-Annual Groundwater Extraction Statements as required for in the Ordinance Code, makes it nearly impossible for the Agency to fully quantify groundwater extractions, as it is charged to; and is a violation of the Ordinance Code; and

**WHEREAS**, failure to submit the applications for Efficiency Allocations as allowed for in the Ordinance Code, makes it nearly impossible for the Agency to evaluate that agricultural water use is done efficiently, and creates after-the-deadline requests from Operators for "late filing" to avoid paying the required surcharge; and,

**WHEREAS**, failure to submit the proof of flowmeter calibration results, makes it nearly impossible for the Agency to better verify that extracted groundwater is properly measured; and is a violation of the Ordinance Code; and,

**WHEREAS**, failure to submit updated records when well Operators and Owners change causes the Agency to conduct investigatory work to locate the current operators and owners, creating costly delays and gaps in data; and is a violation of the Ordinance Code; and,

**WHEREAS**, failure to submit the required groundwater extraction charges, any interest charges, surcharges as required for in the Ordinance Code, is a violation of the Ordinance Code; and,

**WHEREAS**, failures to comply with the Ordinance Code can create unfair economic advantages to the non compliant well Operators and Owners; and,

**WHEREAS**, the Fox Canyon Groundwater Management Agency Act and Ordinance Code Section 8.3 authorizes the imposition of a civil penalty up to one thousand dollars (\$1,000) per day for negligent or intentional violation of any provision of the Ordinance Code; and

**WHEREAS**, civil penalties are considered a useful tool to help ensure an operator's compliance with the requirement to submit Ordinance Code required information and pay extraction charges when due, taking into consideration appropriate factors, including the seriousness of the violation and the length of time the operator has had to demonstrate compliance but failed to do so;

**WHEREAS**, This Resolution incorporates the existing civil penalty structures laid out in Agency Resolution Numbers 2012-02 and 2012-03, and adds additional civil penalties for failing to provide applications for efficiency allocations by the deadline, and required information for well operator and owner changes

## **SECTION 1.**

**NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED**, that pursuant to the statutory authority granted by the Fox Canyon Groundwater Management Agency Act Section 405 and Section 807, and the Ordinance Code, a Notice of Violation shall be sent to any operator and/or owner who:

- a) Fails to submit a Semi-Annual Groundwater Extraction Statement and/or payment of the extraction charge and/or interest and/or surcharge when due advising that the operator and/or owner shall be liable to the Agency for a civil penalty in the amount of \$50.00 per day.
- b) Fails to submit an application for an efficiency allocation when due advising that the operator and/or owner shall be liable to the Agency for a civil penalty in the amount of \$50.00 per day. This civil penalty will not be in addition to the preceding item a).
- c) Fails to report a change in owner or operator required per Ordinance Code Section 2.2 the owner or operator shall be liable to the Agency for a civil penalty in the amount of \$50.00 per day.
- d) Fails to submit proof of flowmeter accuracy when due advising that the operator and/or owner shall be liable to the Agency for a civil penalty in the amount of \$1,100.00 if the proof of flowmeter accuracy is not submitted within 120 days of the Notice of Violation. If the proof of flowmeter accuracy is submitted after 120 days, the civil penalty will continue at \$20.00 per day up to \$2,300.00.

**SECTION 2.** Resolution Numbers 2012-02 and 2012-03 are hereby rescinded.

**SECTION 3.** The Executive Officer may increase or decrease the basic civil penalty for a given violation set forth in Section I. above at his or her discretion in accordance with any one or combination of the following criteria:

### General Criteria:

- a) The culpability of the violator in causing the violation;
- b) The nature and persistence of the violator's failure to perform or comply with applicable Agency regulations or direction to take corrective action;
- c) The length of time the violation has existed;
- d) The violator's history of past violations, either of a similar or different nature, on the same or different property under the same ownership;

- e) The violator's cooperation with the Agency or other regulatory enforcement agency in resolving the existing and past violations;
- f) The financial burden of immediate compliance or corrective action on the violator;
- g) The extent of harm caused by the violation to the aquifer;
- h) The frequency of past violations, if any; and
- i) Other factors as deemed relevant by the Executive Officer.

Criteria Specific to Typical Agency Operations:

- a) The Executive Officer may reduce the amount of the civil penalty when:
  - 1. The person owing it may not have received the earlier requests leading up to it as a result of an Agency error in noticing. It is not an Agency error if it sends notice to an address on file that was not kept up to date by the well owner or operator.
  - 2. The person who the civil penalty is assessed has mitigating circumstances related to illness.
- b) The Executive Officer is not likely to reduce the amount of the civil penalty when:
  - 1. The person owing it may not have received the earlier requests leading up to it as a result of not updating their contact information with the Agency.
  - 2. The person owing it, according to the most up to date agency records, believed it was someone else's responsibility.
  - 3. The failure to respond to earlier requests leading up to the imposition of the civil penalty was an oversight.

**SECTION 4.** Notices of Violation and civil penalty assessments will be sent via the United States Postal Service using certified mail with a return-receipt requested.

On a motion by Director Craven and seconded by Director Kelley, the foregoing Resolution was duly passed and adopted by the Board of Directors at a regularly scheduled meeting of the Board held on this 22<sup>nd</sup> day of May 2013 in Ventura, California.

By:

  
Lynn E. Maulhardt, Chair, Board of Directors  
Fox Canyon Groundwater Management Agency

ATTEST: I hereby certify that the above is a true and correct copy of Resolution No. 2013-01.

By:   
Miranda Nobriga, Clerk of the Board