

Amended Resolution No. 2020-03
of the
Fox Canyon Groundwater Management Agency

A RESOLUTION ESTABLISHING POLICIES AND PROCEDURES FOR GRANTING VARIANCES FROM THE INITIAL EXTRACTION ALLOCATION UNDER THE ORDINANCE TO ESTABLISH AN ALLOCATION SYSTEM FOR THE OXNARD AND PLEASANT VALLEY GROUNDWATER BASINS

WHEREAS, Fox Canyon Groundwater Management Agency (Agency) adopted an ordinance to establish an allocation system for the Oxnard and Pleasant Valley Groundwater Basins (ordinance); and

WHEREAS, the ordinance provides that an operator's initial allocation will be based on reported average annual groundwater extractions during a base period of 2005 to 2014 (base period); and

WHEREAS, the Agency anticipates receiving requests for additional allocation for non-reported extractions during the base period and for other reasons and that such requests will come in the form of an application for a variance; and

WHEREAS, the ordinance provides that variances, if granted, may include conditions based on the purpose and standards for granting such variances; and

WHEREAS, non-reported extractions are a violation of one or more provisions of the Agency Ordinance Code; and

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

WHEREAS, the Agency Executive Committee discussed the variance process and appropriate penalties for unreported extractions at meetings on July 15, 2019, October 1, 2019, and February 12, 2020, at which it received presentations from staff, comments from stakeholders, and provided guidance and direction; and

WHEREAS, the Agency will incur certain administrative costs to process variance request applications; and

WHEREAS, the Board finds that consistent and fair application of the ordinance requires that any variance based on non-reported extractions or other reasons be processed according to the guidelines provided in this Resolution.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED as follows:

Section 1. Variances Based on Non-Reported Extractions

An owner or operator with unreported extractions during the base period may seek a variance to obtain an increased allocation to reflect actual extractions.

- a. If the Agency has 5 or more years of reported extractions from an operator's extraction facility during the base period, then it will be presumed that extractions during the unreported periods were equivalent to reported extractions and any new initial allocation will be determined by calculating the annual average extractions for the years that were reported. In addition to meeting all other standards for obtaining a variance and complying with any other conditions, the applicant shall remit a civil penalty for failure to file the semi-annual extraction statements(s). The penalties shall be tiered based on the amount of average extractions as shown in Table 1 to this Resolution.
- b. If the Agency has fewer than 5 years of reported extractions during the base period, applicants will have their variances determined on a case-by-case basis. The burden of proof shall be on the applicant to provide evidence of base period extractions through submittal of pumping records, SCE billing records, crop records, and/or other records. In addition to meeting all other standards for obtaining a variance and complying with any other conditions, payment of a civil penalty of \$50 per day for each violation shall be included as a condition of any variance.
- c. The Executive Officer may decrease the civil penalty amount on a showing of extenuating circumstances or othermitigating factors, including the applicant's lack of culpability in causing the violation, the absence of past violations, either of a similar or different nature, on the same or different property under the same ownership, the financial burden on the applicant and other factors as deemed relevant by the Executive Officer.

Section 2. Variances Based on Extractions from Unregistered Wells

In addition to the requirements of Section 1 of this Resolution, an applicant for a variance seeking an allocation for base period extractions from an unregistered well shall obtain Board approval and have as a condition of any variance the payment of a daily civil penalty for each Ordinance Code violation and a surcharge on all base period extractions. The Board may adjust these amounts based on the factors set forth in Section 1 of this Resolution.

Section 3. Other Variance Requests

An applicant for a variance seeking additional allocation related to change in crops, change in land use, or receipt of water from a water purveyor shall have the request submitted to a variance review committee representative of the groundwater extractors in the basins. The recommendation of the committee shall be provided to the Board for its consideration of the variance request.

Section 4. Payment of Extraction Charges and Late Fees on Non-Reported Extractions

Any variance which increases an allocation as a result of unreported extractions during the base period shall include a condition that the applicant remit all unpaid extraction charges with interest thereon for late payment as provided in the Agency Ordinance Code

Section 5. Variance Application Fee

Each application for a variance under the ordinance shall be accompanied by a processing fee of \$250, which amount shall be refunded in the event that the variance process identifies an error in Agency records.

On motion by Director Borchard, and seconded by Director Ramirez, the foregoing amended resolution was passed and adopted on February 23, 2022, by the following vote.

AYES – 5
NOES – 0
ABSTAINS – 0
ABSENT – 0

By: 

Eugene F. West, 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. 2020-03.

By: Keely Royas
Keely Royas, Clerk of the Board

Table 1 of Resolution No. 2020-03

Number of Unreported Periods	Average Annual Extraction (AF)					
	0- 5.000	5.001- 15.000	15.001- 25.000	25.001- 50.000	50.001- 99.999	>100.000
1	\$ 1,500	\$ 3,000	\$ 9,000	\$ 18,250	\$ 36,500	\$ 91,250
2	\$ 3,000	\$ 6,000	\$ 18,000	\$ 36,500	\$ 73,000	\$ 182,500
3	\$ 4,500	\$ 9,000	\$ 27,000	\$ 54,750	\$ 109,500	\$ 273,750
4	\$ 6,000	\$ 12,000	\$ 36,000	\$ 73,000	\$ 146,000	\$ 365,000
5	\$ 7,500	\$ 15,000	\$ 45,000	\$ 91,250	\$ 182,500	\$ 456,250
6	\$ 9,000	\$ 18,000	\$ 54,000	\$ 109,500	\$ 219,000	\$ 547,500
7	\$ 10,500	\$ 21,000	\$ 63,000	\$ 127,750	\$ 255,500	\$ 638,750
5	\$ 12,000	\$ 24,000	\$ 72,000	\$ 146,000	\$ 292,000	\$ 730,000
9	\$ 13,500	\$ 27,000	\$ 81,000	\$ 164,250	\$ 328,500	\$ 821,250
10	\$ 15,000	\$ 30,000	\$ 90,000	\$ 182,500	\$ 365,000	\$ 912,500