

# FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



## BOARD OF DIRECTORS

Lynn E. Maulhardt, Chair, *Director, United Water Conservation District*

David Borchard, Farmer, *Agricultural Representative*

Charlotte Craven, Vice Chair, *Councilperson, City of Camarillo*

John Zaragoza, Supervisor, *County of Ventura*

Dr. Michael Kelley, Director, *Zone Mutual Water Company*

## EXECUTIVE OFFICER

Jeff Pratt, P.E.

## NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the Fox Canyon Groundwater Management Agency (FCGMA) will hold an **Operations Committee Meeting** from **2:00 p.m. to 4:00 p.m.** on **Thursday, February 7, 2013** in the **Atlantic Conference Room**, at the Ventura County Government Center, Hall of Administration, Main Plaza Level at **800 South Victoria Avenue, Ventura, California**.

## FCGMA OPERATIONS COMMITTEE MEETING AGENDA

February 7, 2013

**Members:** Chair Michael Kelley  
Co-Chair John Zaragoza

- A. **Call to Order**
- B. **Introductions**
- C. **Public Comment** – Audience members may speak about FCGMA-related matters not on today's Agenda.
- D. **Meeting Minutes** – Approve the meeting minutes from the January 16, 2013 FCGMA Operations Committee meeting.
- E. **Interest and Late Penalty Calculations** – *(Returning Item)* Staff will describe the Ordinance Code required interest and penalty calculations, discuss the current process of applying those, and describe an approach to simplify it.
- F. **Adjourn the Operations Committee Meeting** – Adjourn until the next Operations Committee meeting to be held on March 20, 2013.

## NOTICES

*The FCGMA Board strives to conduct accessible, orderly, and fair meetings where everyone can be heard on the issues. The Board Chair will conduct the meeting and establish appropriate rules and time limitations for each item. The Board can only act on items designated as Action Items. Action items on the agenda are staff proposals and may be modified by the Board as a result of public comment or Board member input. Additional information about Board meeting procedures is included after the last agenda item.*

**Administrative Record:** *Material presented as part of testimony will be made part of the Agency's record, and 10 copies should be left with the Board Clerk. This includes any photographs, slides, charts, diagrams, etc.*

**ADA Accommodations:** *Persons who require accommodation for any audio, visual, or other disability in order to review an agenda or to participate in the Board of Directors meeting per the Americans with Disabilities Act (ADA), may request such accommodation in writing addressed to the Clerk of the FCGMA Board, 800 South Victoria Avenue, Location #1610, Ventura, CA 93009-1610, or via telephone by calling (805) 654-2014. Any such request should be made at least 48 hours prior to the meeting so staff can make the necessary arrangements.*

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**Availability of Complete Agenda Package:** *A copy of the complete agenda package is available for examination at the FCGMA office during regular working hours (8:00 a.m. to 5:00 p.m. Monday through Friday) beginning five days before the Board meeting. Agenda packet contents are also posted on the FCGMA website as soon as possible, and left there for archival retrieval in case reference is needed on previously considered matters. Questions about specific items on the agenda should be directed to the Agency's Executive Officer.*

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**Continuance of Items:** *The Board will endeavor to consider all matters listed on this agenda. However, time may not allow the Board to hear all matters listed. Matters not heard at this meeting may be carried over to the next Board meeting or to a future Board meeting. Participating individuals or parties will be notified of the rescheduling of their item prior to the meeting. Please contact the FCGMA staff to find out about rescheduled items.*

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**Electronic Information and Updates:** *Our web site addresses are [www.foxcanyongma.org](http://www.foxcanyongma.org) (for weather station data) or [www.fcgma.org](http://www.fcgma.org) (for home page information). Information available online includes the Board's meeting schedule, a list of the Board members and staff, weather station data, general information, and various Agency forms. If you would like to speak to a staff member, please contact Miranda Nobriga, the FCGMA Clerk of the Board at (805) 654-2014, or Sheila Lopez, the FCGMA Engineering Technician at (805) 645-1372.*

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EXECUTIVE OFFICER  
Jeff Pratt, P.E.

## MINUTES

Minutes of the Fox Canyon Groundwater Management Agency's (FCGMA) Operations Committee meeting held **Wednesday, January 16, 2013** in the Atlantic Conference Room at the Ventura County Government Center, Hall of Administration, 800 South Victoria Avenue, Ventura California.

A. **Call to Order** – The meeting commenced at 2:03 p.m.

B. **Introductions** – In attendance were: (1) Dr. Michael Kelley, FCGMA Operations Committee Chair; (2) Supervisor John Zaragoza, FCGMA Operations Committee Co-Chair; (3) Sam McIntyre, FCGMA Operations Committee Alternate Director; (4) Gerhardt Hubner, WPD, Deputy Director; (5) Rick Viergutz, WPD, Groundwater Manager; (6) Kathleen Riedel, WPD, Groundwater Specialist; (7) Jessica Rivera, FCGMA Clerk of the Board; (8) Tracy Gallaher, Office of Supervisor John Zaragoza; (9) Robert Eranio, Crestview Mutual Water Company (CMWC) and Chair of the Las Posas Users Group (LPUG); (10) Rick Dierksen, City of Camarillo; (11) Carol Schoen, Zone Mutual Water Company; (12) Steve Nash, Oxnard resident; (13) Bill Miller, Grower; and (14) Daryl Smith, Adaboy Acres.

C. **Public Comments**

None.

D. **Meeting Minutes**

Chair Kelley made the motion to approve the meeting minutes from the November 14, 2012 Operations Committee meeting, and Co-Chair Zaragoza seconded the motion.

Chair Kelley inquired as to whether previous meeting agenda items could be discussed, and both FCGMA staff and Co-Chair Zaragoza stated the Brown Act would require the item be agendized for discussion.

E. **Interest and Late Penalty Calculations**

Mr. Rick Viergutz, WPD, Groundwater Manager, gave a presentation regarding the current interest and late penalty calculation structure. Mr. Viergutz provided background, noting: (1) the due date terms lacked clarity; (2) caps associated to the charges lacked clarity; and (3) the current process was not consistent with Assembly Bill (AB) 2995.

Mr. Robert Eranio, CMWC and LPUG, provided insight as to why the caps might have been established. He mentioned that approximately six years ago, a case was brought before the

FCGMA Board concerning the Spanish Hills Country Club. He recalled the caps being developed and implemented into the Ordinance Code during that timeframe.

Mr. Gerhardt Hubner, WPD, Deputy Director, responded a settlement was reached with Spanish Hills Country Club; however, it was not the basis for the language and/or caps within the Ordinance Code.

Director Kelley asked if the minutes, from the meeting Mr. Eranio referred to, could be researched to determine the context in which the case was resolved.

Mr. Viergutz responded it could be looked into; however, it appeared to be a moot point as AB 2995 may not give the Agency the authority to enforce the existing penalty structure and caps.

Alternate Director Sam McIntyre asked if the penalties were noted within the legislation. Mr. Viergutz confirmed stating civil penalties were allowed in AB 2995; however, the late penalty interest charge was not.

Mr. Viergutz continued with his presentation, reviewing several proposed approaches, to include: (1) determine one term to be used for due date; (2) use one term for what interest will be charged against; (3) define interest as monthly simple interest; (4) abandon the 100% and 200% caps on interest; and (5) create a reference of Resolutions that set civil penalties, or create a reference to a single Resolution that denotes the civil penalty amounts, which would allow the Executive Officer flexibility in assessing the penalties.

Co-Chair Zaragoza asked if the proposed approaches were the red-lined strikeouts in the Ordinance handout, and Mr. Viergutz confirmed, with the exception of the reference to Board Resolutions.

Mr. Bill Miller, grower, commented the "Payment Due Date" section should read "...no more than (45) forty-five days..." Chair Kelley clarified the section should read as "...must not be postmarked later than (45) forty-five days..."

Mr. Daryl Smith, Adaboy Acres, inquired as to whether flushing of a well was to be charged under non-metered use. Mr. Viergutz responded only those who did not have a required flowmeter would be charged per the non-metered use fee.

Mr. Viergutz continued with his presentation, reporting the Resolution reference section could be added to Chapter 8 of the Ordinance Code; and would reference any resolutions which contained civil penalty fees. He noted staff's preference would be to create a single resolution, encompassing all civil penalties.

Chair Kelley and Co-Chair Zaragoza agreed a consolidation of the penalties into one Resolution would be helpful for ease of locating the penalties; and further noted that a "clean-up" of the Ordinance Code would be needed for clarity.

Mr. Hubner clarified the single Resolution would allow the Executive Officer to waive penalties, not impose them. In addition, Mr. Hubner stated he was cautious about waiving penalties, noting in the equity of fairness, that a threshold should be established, and the Committee agreed.

Mr. Viergutz discussed staff's recommendations. Co-Chair Zaragoza proposed proceeding with Recommendation No. 2: Operations Committee directs staff to bring back the proposed

Ordinance Code (and Resolution changes) to the Operations Committee for a final check prior to seeking full Board approval.

Alternate Director Sam McIntyre made an inquiry as to why this wasn't addressed during legal review of the previous Ordinance Code update, and Agency staff responded County Counsel was not able to anticipate all concerns when Ordinance was first adopted.

Co-Chair Zaragoza noted he would not be able to attend the next Operations Committee meeting, scheduled for March, 20, 2013, and requested to reschedule the meeting to be held sometime in February.

Chair Kelley inquired as to whether they should have outside legal counsel available to review the proposed Ordinance update, and Mr. Hubner responded some stakeholders were lawyers and would have a chance to review and comment when the readings of the Ordinance Code change were brought before the Board.

Alternate Director McIntyre suggested reviewing the entire Ordinance Code for a possible "overhaul". This option was discussed in further detail amongst the group. Chair Kelley decided it would be best to accomplish the task at hand before proceeding with further debate on overhauling the entire Ordinance Code.

Ms. Carol Schoen, Zone Mutual Water Company, commented it would be helpful to have all penalties noted under one section of the Ordinance Code.

Chair Kelly and Co-Chair Zaragoza proposed having the sections "point" to each other. For example, the meter calibration section within the Ordinance Code would make reference to the new Resolution section created in the Ordinance code.

Discussion ensued of future penalties to be added and what the process would be. Mr. Viergutz responded the Resolution could be amended to include future adopted penalties.

Mr. Hubner reviewed for clarity that the Committee's direction was to continue work on the proposed Ordinance Code revisions; and to come back to the Committee sometime in February 2013 with the proposed revision to the Ordinance Code.

Chair Kelley and Co-Chair Zaragoza confirmed. Co-Chair Zaragoza inquired of the timeline to accomplish the revisions, and Mr. Hubner stated Agency staff would like to have the revisions completed during Fiscal Year 2012-13.

Chair Kelley asked if there were any questions or comments from the group, and no questions or comments were made.

**F. Adjourn the Operations Committee Meeting**

The meeting adjourned at 2:56 p.m.

Submitted by:

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Jessica Rivera  
Clerk of the Board

**Fox Canyon Groundwater Management Agency  
Ordinance Code**

Adopted July 27, 2005  
Amended December 7, 2011

**CHAPTER 1.0  
Definitions**

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

- 1.1. **“Actual Applied Water”** – means the total water applied by the grower to the crop over the course of a calendar year without regard to the water source. Examples of actual applied water include the sum of well water, water delivered from a water supplier, and or from surface water diversions. Total applied water does not include precipitation.
- 1.2. **“Agency”** means the Fox Canyon Groundwater Management Agency.
- 1.3. **“Agency Boundary”** shall be as depicted on the map adopted by the Board and recorded as an official record with the County Recorder's Office on January 14, 2002 (Document No. 2002-0009215), and as may be adjusted as provided in the Agency's enabling legislation.
- 1.4. **“Agricultural Extraction Facility”** means a facility from which the groundwater produced is used on lands in the production of plant crops or livestock for market, and uses incidental thereto.
- 1.5. **“Annual”** means the calendar year January 1 through December 31.
- 1.6. **“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.
- 1.7. **“Board”** means the Board of Directors of the Fox Canyon Groundwater Management Agency.
- 1.8. **“County”** means the County of Ventura.
- 1.9. **“Developed Acreage”** means that portion of a parcel within the Agency Boundary that is receiving water for reasonable and beneficial agricultural, domestic or municipal and industrial (M & I) use.

1.10. **“Due Date”** Unless otherwise specifically noted by the Agency, due dates are as follows:

Within the first 45 days of the date of the Agency's mailing the Semi Annual Extraction Statement, and/or the Application for an Efficiency Allocation, the recipient (Well Operator and/or Well Owner) is to return (have postmarked) the completed forms along with any required payment of extraction charges, interest charges, surcharges, and civil penalties.

that shall be adopted by a Resolution. Groundwater basin boundaries may be modified by a Resolution.

4.20.1.23. **“Groundwater Management Plan”** means the 2007 Update to the Fox Canyon Groundwater Management Plan or Board-adopted updates to this plan.

4.21.1.24. **“Historical Extraction”** means the average annual groundwater extraction based on the five (5) calendar years of reported extractions from 1985 through 1989 within the Agency Boundary. This average will be expressed in acre-feet per year. All historical extraction allocations became effective on January 1, 1991.

1.25. “Interest” If any operator of any extraction facility fails to pay the groundwater extraction charge when due, the agency shall charge and collect interest at the rate of 1½ percent each month on the delinquent amount of the groundwater extraction charge.

4.22.1.26. **“Inactive Well”** An inactive well is a well that conforms to the County Water Well Ordinance requirements for an active well, but is being held in an idle status in case of future need. Idle status means the well is pumped no more than 8 hours during any 12-month period. Inactive wells are not required to have a flowmeter. Pumping to maintain status as an active well under the County Water Well Ordinance shall not exceed 8 hours in a 12 month period, shall be for beneficial use, and shall be estimated and reported to the Agency. Prior to removing a well from idle status, the operator shall install a flowmeter in accordance with the requirements in Chapter 3 of the Ordinance Code.

4.23.1.27. **“Injection/Storage Program”** means any device or method for injection/storage of water into a groundwater basin or aquifer within the Agency Boundary, including a program to supply foreign water in lieu of pumping.

4.24.1.28. **“Las Posas Basin-Specific Groundwater Management Plan”** means the Las Posas Basin-Specific Groundwater Management Plan or Board-adopted updates to this plan.

4.25.1.29. **“Las Posas Basin Eastern Management Sub-Area (Las Posas EMSA)”** means the geographic area identified as such in the Las Posas Basin-Specific Groundwater Management Plan.

4.26.1.30. **“Las Posas Basin Management Area”** means the geographic area identified as such in the Las Posas Basin-Specific Groundwater Management Plan, which is comprised of the Las Posas Basin Western Management Sub-Area, Las Posas Basin Eastern Management Sub-Area, and the Las Posas Basin Management Area – Monitor Only Area.

4.27.1.31. **“Las Posas Basin Management Area – Monitor Only Area”** means the geographic area identified as such in the Las Posas Basin-Specific Groundwater Management Plan.

- 4.41.1.44. **“Perched”** or **“Semi-Perched Aquifer”** means the shallow, unconfined aquifer that overlies the Oxnard Aquifer in Sealing Zone III, as described in the California Department of Water Resources Bulletin No. 74-9.
- 4.42.1.45. **“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.
- 4.43.1.46. **“Recharge”** means natural or artificial replenishment of groundwater in storage by percolation or injection of one or more sources of water.
- 4.44.1.47. **“Resolution”** means a formal statement of a decision adopted by the Board.
- 4.45.1.48. **“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.
- 4.46.1.49. **“Section”** as used in this Ordinance Code, is a numbered paragraph of a chapter.
- 4.47.1.50. **“Semi-Annual Groundwater Extraction Statement”** is a form filed by each operator containing the information required by Section 2.2 and 2.3.1 and shall cover the periods from January 1 to June 30 and from July 1 to December 31 annually.
- 4.48.1.51. **“Shall”** as used in this Ordinance Code, is an imperative requirement.
- 4.49.1.52. **“Well Flushing”** means the act of temporarily discharging extracted groundwater through a connection located upstream of the water distribution system at the beginning of an extraction cycle. Well flushing is typically performed until the quality of the extracted water is suitable for beneficial use and/or will not damage the distribution system. In some cases, the flushing flows may be discharged upstream of the distribution system, including the flowmeter. Flushing flows discharged upstream of the flowmeter shall be estimated and reported to the Agency in accordance with the requirements accordance with the requirements in Chapter 2 of the Ordinance Code.
- 4.50.1.53. **“Well Rehabilitation”** means the act of restoring a well to its most efficient condition by various treatments, development, or reconstruction methods. In most cases, groundwater extracted during well rehabilitation is not discharged through the extraction facility piping and, consequently, is not flowmetered. In these cases, the volume of water extracted shall be estimated and reported to the Agency in accordance with the requirements accordance in Chapter 2 of the Ordinance Code.
- 4.51.1.54. **“West Las Posas Basin”** is that part of the former North Las Posas Basin that is west of the subsurface anomaly described by significant changes in groundwater levels, as described in the Groundwater Management Plan and the Las Posas Basin-Specific Groundwater Management Plan, located for record purposes on maps as provided in Section 1.20.



2.2.1.2.4.1. The SAES Statements shall contain the following information ~~on forms provided by the Agency:~~

2.2.1.1-2.4.1.1. The information required under Section 2.1.2 above.

2.2.1.2-2.4.1.2. The method of measuring or computing groundwater extractions.

2.2.1.3-2.4.1.3. The crop types or other uses and the acreage served by the extraction facility.

2.4.1.4. Total extractions from each extraction facility in acre-feet for the preceeding six (6) month period.

#### 2.3-2.5. **Groundwater Extraction Charges**

2.3.1.2.5.1. All persons operating groundwater extraction facilities shall pay a groundwater extraction charge for all groundwater extracted after July 1, 1993, in the amount as established by Resolution. Payments are due semi-annually, and shall accompany the statement required pursuant to Section 2.3.

~~2.5.2. Payment of the Groundwater Extraction Charges are must returned by the Due Date due forty five (45) days after the billing date. P, and payments not received or postmarked by the Due Date by such date due shall be charged simple interest from and after such date due until payment thereof at the rate of 1.5 percent per month, or part of month that the charge remains unpaid.~~

~~2.3.2. Late Penalty. The operator shall pay a late penalty for any extraction charge not satisfied by the due and payable date. The late penalty shall be 1½ percent per month, or any portion thereof, of the amount of the unsatisfied extraction charge. The late penalty shall not exceed 100% of the original charge, provided the penalty is paid within 60 days of the due date. If the fee is not paid within the 60 days, the penalty will continue to accrue at 1.5 percent per month with a final maximum of 200% of the original penalty due.~~

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2.3-3.2.5.3. Owners of extraction facilities are ultimately responsible for payment of groundwater extraction pumping charges and interest, surcharges, and any civil penalties should an operator not pay. Consequently, owners are charged with providing for this liability in agreements entered into with well operators and water users.

2.5. **Collection of Delinquent Extraction Charges and Late Penalties**— The Board may order that any given extraction charge 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,

3.1.4. Flowmeter Readings - Functional flowmeters shall be read and the readings reported semi-annually on the extraction statements required under Section 2.3 above.

3.1.5. Inspection of Flowmeters - The Agency may inspect flowmeter installations for compliance with this Ordinance Code at any reasonable time.

3.2. **Flowmeter Testing and Calibration** - All flowmeters shall be tested for accuracy at a frequency interval determined by the Board to meet specific measurement standards. Calibration methods and procedures approved by the Board shall be detailed in an adopted Resolution.

3.3. **Altering Flowmeters** - Any person who alters, removes, resets, adjusts, manipulates, obstructs, or in any manner interferes or tampers with any flowmeter affixed to any groundwater extraction facility required by this Ordinance Code, resulting in said flowmeter to improperly or inaccurately measure and record groundwater extractions, is guilty of an intentional violation of this Ordinance Code and will be subject to any and all penalties as described in Chapter 8.

3.4. **Costs of Testing and Calibration** - All costs incurred with flowmeter testing or calibration shall be the personal obligation of the well owner. Non-compliance with any provision of the flowmeter calibration requirements will subject the owner to financial penalties and/or liens as described below or in Chapter 8 of the Ordinance Code.

3.5. **Fees and Enforcement** - If any water ~~extraction production~~ facility required to have a flowmeter within the Agency's boundaries is used to produce water without a flowmeter or with a non-operating flowmeter in excess of the allowable timeframe specified in a separate Resolution, the Groundwater Extraction Charge is increased to Agency shall assess at the Non-Metered Water Use Fee ~~against the water production facility owner~~. The amount of the fee shall be calculated as follows:

3.5.1 Groundwater extraction facilities - The fee shall be equal to double the current groundwater extraction charge for all estimated water used. Estimates of water used shall be calculated by the operator and approved by the Executive Officer or calculated by the Agency using best available information about site use and conditions.—Any delinquent Non-Metered Water Use Fee extraction charge obligations shall also be charged interest at the rate of 1.5 percent per month on any unpaid balances.

3.6. Upon violation of any flowmeter provision, the Agency may, as allowed by law, petition the Superior Court of the County for a temporary restraining order or preliminary or permanent injunction prohibiting the well owner from operating the facility or for such other injunctive relief as may be appropriate.

- 4.2.1.2.6. An identification of the source of historical allocation to supply the proposed water use by the well.
- 4.2.1.2.7. An analysis of the potential impacts on the water balance and water quality in the Las Posas Basin Management Area resulting from the proposed use(s).
- 4.2.1.3. Findings - A permit may only be granted if the Executive Officer finds that the proposed groundwater use will result in no net detriment to the Las Posas Basin Management Area by determining that:
  - 4.2.1.3.1. The Las Posas outcrop is not exposed to potential degradation of water quality of any type.
  - 4.2.1.3.2. Recharge to the Las Posas Basin Management Area from the Las Posas outcrop is not diminished.
  - 4.2.1.3.3. Neither baseline nor efficiency allocation will be used, directly or indirectly, to support groundwater use on the Expansion Area (an example of indirect use is using efficiency to supply a demand inside the Agency and using the replaced historical allocation on the outcrop).
  - 4.2.1.3.4. No increased or new uses of groundwater from inside the Agency Boundary will be applied on any area outside the Expansion area (or outside the Las Posas Basin Management Area).
  - 4.2.1.3.5. [Operative Until Adoption of the Las Posas Basin-Specific Groundwater Management Plan] For extraction facilities located in the West Las Posas Basin, the proposed extraction will not interfere with attainment of basin management objectives or implementation of groundwater management strategies for the West Las Posas Basin identified in the Groundwater Management Plan, including, but not limited to, efforts to stabilize or raise groundwater elevations in the pumping depression identified in the Groundwater Management Plan.
  - 4.2.1.3.6. [Operative Upon Adoption of the Las Posas Basin-Specific Groundwater Management Plan] For extraction facilities located in the Las Posas WMSA, the proposed extraction will not interfere with attainment of basin management objectives or implementation of groundwater management strategies for the Las Posas WMSA identified in the Las Posas Basin-Specific Groundwater Management Plan, including, but not limited to, efforts to stabilize or raise groundwater elevations

Information concerning wells shall also include any other use for the water well.

- 4.3.1.2. Location(s) of groundwater use for the well including acreage accurately plotted on a copy of the County Assessor's Parcel Map.
  - 4.3.1.3. The proposed crop type(s) or Municipal and Industrial use(s) at each location.
  - 4.3.1.4. A brief description of the type of irrigation or distribution system and flowmeter in use.
  - 4.3.1.5. The estimated average annual quantity of water use at each location and for each well.
- 4.4. **Monitoring** - The Agency shall monitor compliance with this Chapter by reviewing County well permit applications and reported groundwater extractions and by conducting field surveys as may be necessary.
- 4.5. **Unreasonable Uses** - The Agency may commence and prosecute legal actions to enjoin unreasonable uses or methods of use of water within or without the Agency Boundary to the extent those uses or methods of use adversely affect the groundwater supply within the Agency Boundary.
- 4.6. **Extraction Surcharges** - Notwithstanding an operator's allocation under Chapter 5.0 of this Ordinance Code or the availability of conservation credits, groundwater use within the Las Posas EMSA and the Las Posas WMSA in excess of 4.0 acre-feet per acre per calendar year shall be subject to extraction surcharges pursuant to Section 5.8 of this Ordinance Code.

#### **CHAPTER 4.0** **Reduction of Groundwater Extractions**

- 5.1. **Purpose** - The purpose of this Chapter 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. It is not the purpose of this Chapter 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.
- 5.2. **Extraction Allocations**
- 5.2.1. General Limitations
    - 5.2.1.1. The Executive Officer shall establish an operator's extraction allocation for each extraction facility located within the Agency Boundary. The extraction allocation shall be the historical extraction as reported to the United Water Conservation District and/or to the Agency pursuant to

statement and within 30 days of any change of ownership or operators, together with such other information required by the Executive Officer.

- 5.2.1.9. The Executive Officer may, on written request from a land owner or well operator, waive allocation requirements for the extraction of groundwater from the Perched or Semi-perched aquifer of Sealing Zone III when the pumping of that groundwater is specifically for the purpose of lowering the water table to reduce the high water table threat to property, including the root zone of crops, or for dewatering construction sites. The Executive Officer shall require that the groundwater extraction facility used for this purpose be perforated only in the Perched or Semi-perched zone, and shall also require the landowner and/or the operator to protect the Agency from damage potentially caused by transferring water to another location.
- 5.2.2. General Limitations: Special Board Approval Requirements - Notwithstanding any other provisions of this Ordinance Code, the following uses of water resources associated with the aquifers within the Agency may only be undertaken with prior Board approval of and subject to the conditions and restrictions established by the Board.
  - 5.2.2.1. Direct or indirect export of groundwater extracted from within the Agency Boundary for use outside the Agency Boundary.
  - 5.2.2.2. The direct or indirect use of surface water or Foreign Water from within the Agency outside the Agency in a manner that may adversely affect the groundwater supply within the Agency.
  - 5.2.2.3. Application to the Board - To obtain the approval of the Board for any use provided in Sections 5.2.2.1 and 5.2.2.2, application shall be made to the Agency describing the details of the proposed use, including all the following information:
    - 5.2.2.3.1. The location of each water well to be used, along with the associated state well number, and/or the location of each surface diversion and a description of the associated water right.
    - 5.2.2.3.2. Location(s) of groundwater use, including acreage, accurately plotted on copy of the County Assessor's Parcel Map.
    - 5.2.2.3.3. The proposed crop type(s) or Municipal and Industrial use(s) at each location.
    - 5.2.2.3.4. A brief description of the type of irrigation or distribution system and flowmeter to be used.
    - 5.2.2.3.5. The estimated average annual quantity of water use proposed for each location of use.

acre-feet per acre per year for the acreage transitioning to M & I use. Any historical allocation in excess of 2 acre-feet per acre for the land transitioning to M & I use shall be eliminated.

- 5.3.3.2. When the extraction facility is located on the land transitioning and served other land during the historical allocation determination period, the historical allocation associated with the transitioning property shall be allocated on a pro rata basis by acreage to the total property served. The pro rata share for the property transitioning shall be eliminated. Two acre-feet per acre per year, based upon the acreage being transferred, shall be provided to the M & I provider.
- 5.3.3.3. When the extraction facility serving the lands transitioning is not located on the land transitioning, the Executive Officer shall determine the allocation on an equitable basis for the remaining properties not transitioning to M & I. Two acre-feet per acre per year, based upon the acreage being transferred, shall be provided to the M & I provider.
- 5.3.3.4. The transfer shall be effective upon the approval of the Executive Officer, taking into account the ongoing use of the property.
- 5.3.3.5. Allocation originating from an agricultural extraction facility shall not be transferred to an M & I use except as provided in this Section 5.3.3.
- 5.3.4. Allocation may be transferred between M & I extraction facilities provided there is no net detriment to the aquifer system. In making this determination, the Executive Officer shall, at a minimum, consider the location of extraction facilities, the aquifer system being used and groundwater quality impacts of the transfer.
- 5.3.5. Transfer of Allocation - Upon request, the Executive Officer may transfer allocation from one agricultural operator to another agricultural operator or from one M & I operator to another M & I operator provided there is no net detriment to the basins and the transfer is equitable. The transfer of allocation will be of indefinite duration, approved on a "case-by-case" basis, and the Executive Officer 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 no net detriment to the aquifer systems, transfers of allocation shall be subject to other conditions as approved by the Board. Transfers of allocation from Agricultural use to M & I use shall only be approved as provided by Section 5.3.3.
- 5.3.6. The Executive Officer may approve a temporary assignment of allocation from one operator to another operator when there is no net detriment to the aquifer system. The temporary assignment shall not exceed one year.
- 5.3.7. Adjustments to M & I Allocations - The Board may adjust the historical allocation of an M & I operator when that operator has supplied groundwater to either an agricultural or M & I user during the historical allocation period and discontinues

will be made, except that any outstanding surcharges for non-metered extractions that existed prior to June 26, 2002 will be waived.

## 5.6. Alternative Extraction Allocations

5.6.1. As an alternative to historical extractions, the Executive Officer may establish a Baseline or an Annual Efficiency extraction allocation for an operator, as follows:

5.6.1.1. Baseline Extraction Allocations. If no historical extraction exists, or the historical allocation is less than one acre-foot per acre per year, a Baseline extraction allocation may be established by the Executive Officer at one acre-foot per acre per year.

5.6.1.1.1. A Baseline Extraction Allocation specifically applies to undeveloped acreage that is being developed and once approved shall remain with that developed acreage. A Baseline allocation may be combined with a historical allocation for commonly operated facilities in the same basin. A baseline allocation shall not be used with an efficiency allocation.

5.6.1.1.2. To obtain a Baseline Extraction Allocation, a detailed report must be submitted to the Executive Officer. The report shall describe the historical extraction of groundwater use, if any, during the period between the end of calendar year 1984 and the end of calendar year 1989, the type (crop type or M & I) and the amount of water use 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.

5.6.1.1.3. Application for the initial Baseline Extraction Allocation must be submitted prior to submission of the annual report of pumping. If approved, the Baseline Extraction Allocation shall apply beginning with the current calendar year.

5.6.1.1.4. To facilitate accounting procedures, an operator shall use Baseline Extraction Allocation before using Historical Allocation.

5.6.1.2. Annual Efficiency Allocation - If an operator can demonstrate to the Executive Officer that the Irrigation Allowance Index for agriculturally developed land is 1.0 or less, an Annual Efficiency allocation shall be established for one calendar year. An Irrigation Allowance Index of 1.0 or less than 1.0 has been determined by the Agency to be reasonable on agricultural lands within the Agency's boundaries.

reductions as set forth in Section 5.4.1. Credits, if available, shall be 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 unless extinguished as provided in Section 5.7.2.1.1.1. Except as provided below, credits may be transferred between commonly operated extraction facilities and within the basin where the credits were earned.

5.7.2. The Board may transfer credits between facilities that are not commonly operated within a basin or beyond the basin where such credits were earned, provided that there is no net detriment to the aquifers within the Agency. In determining whether there is no net detriment, the Board may, among other things, consider whether the transfer will help bring the aquifers within the Agency into equilibrium or whether the transfer is a part of an Agency or inter-Agency management plan or program to bring the aquifers of the Agency into balance. Also, in making this determination of no net detriment the Board may consider quality of water as well as the quantity. The transfer of credits will be of indefinite duration, approved on a "case-by-case" basis, and the Executive Officer shall determine the rate of extraction and the point or points of extraction.

5.7.2.1. 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 no net detriment to the aquifer systems, transfers of credits shall be subject to other conditions as approved by the Board. Under no circumstances shall credits earned as a result of agricultural use be transferred to an M & I Provider, M & I Operator or an M & I User unless the transfer is specifically approved by the Board and no net detriment to the aquifer systems involved can be shown. Credits earned by an M & I facility shall remain with that facility unless transferred by the Board or transferred as part of a program such as an Agency or inter-Agency management plan or program approved by the Board. The types of credits are:

5.7.2.1.1. Conservation credits - An operator can obtain conservation credits by extracting less groundwater than the historical extraction allocation. Annual Efficiency, Baseline, or an allocation assigned to an extraction facility that is not required to have a flowmeter shall not earn credits. Credits shall be determined by the Executive Officer after receipt of annual extraction data. Subsequent to determining the amount of credits earned, a confirmation shall be mailed to the operator indicating the current allocation, the groundwater extracted during the previous calendar year, and the credits or surcharges for the previous year.

5.7.2.1.1.1. The Executive Officer shall extinguish all accumulated conservation credits obtained by an operator with a destroyed or abandoned well of record who fails to submit extraction data for five (5) consecutive years. Notice of the action



5.8. **Extraction Surcharges  
and Late Penalty**

5.8.1. Necessity for Surcharges

5.8.1.1. 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.

5.8.2. At the discretion of the Board, the extraction surcharge may be structured, tiered, and varied between basins and or aquifers.

5.8.3. 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.

5.8.4. Surcharge for No Allocation - 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 that 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.

5.8.5. For calendar year 2013 (January 1, 2013 through December 31, 2013), Section 5.8.5 of Chapter 5.0, Reduction of Groundwater Extractions, is hereby amended to read as follows:

Efficiency Surcharge - 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 an Irrigation Allowance Index (index) of 1.0 or less as defined in 5.6.1.2 of this ordinance. Extraction surcharges will be applied to the water extracted greater than index of 1.2. For example, an index of 1.3 would be subject to surcharges on the difference between the amount of water used at an index of 1.3 and the amount of water that would have been used at an index of 1.2. If the index is greater than 1.4, 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

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.

5.8.6.4 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.

#### **CHAPTER 6.0 Appeals**

- 6.1. Any person aggrieved by a decision or determination made by the Executive Officer may appeal to the Board within forty-five (45) calendar days thereof by filing with the Clerk, or Deputy Clerk, of the Board a written request that the Board review the decision of the Executive Officer. The Board shall equitably act on the appeal within 120 days after all relevant information has been provided by the appellant.

#### **CHAPTER 7.0 Severability**

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

#### **CHAPTER 8.0 Penalties**

- 8.1. Any operator or other person who violates the provisions of this Ordinance Code is subject to the criminal and civil sanctions set forth in the Agency's enabling act and its Ordinances.
- 8.2. Any person who intentionally violates any provision of this Ordinance Code 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).

Discussion document for February 7, 2013 Operations Committee Meeting

**SUBJECT: PROPOSED RESOLUTION TO INCORPORATE CIVIL PENALTIES FOR VIOLATIONS OF THE ORDINANCE CODE FAILURE TO SUBMIT REQUIRED PAPERWORK/PAYMENT**

To encourage compliance with the Ordinance Code the Agency has determined that assessing civil penalties is necessary in certain cases. Examples include:

- Via a Board decision the Agency assessed a \$500.00 civil penalty on well operators that failed to file Applications for Irrigation Efficiency for the period 2006-2008. This is no longer enforced by Agency Staff, though the failure to file problem persists.
- The Agency adopted Resolution No. 2012-02 setting a tiered civil penalty structure for failure to comply with the requirements of the Meter Calibration Program.
- The Agency adopted Resolution No. 2012-03 setting a \$500 civil penalty for failure to submit Semi Annual Extraction Statements and/or payment. This applies for each occurrence.

Staff are also recommending that an additional civil penalty be put on the books to encourage Owners and Operators to notify the Agency when Operator and Owner data change.

Following the direction from the last Operations Committee Meeting, staff prepared a single resolution incorporating the above civil penalties into one Draft Resolution, and added in a description of the Executive Officer's ability/criteria to modify civil penalties.

Agency Counsel reviewed and provided verbal comments. They are summarized below:

1. The purpose of Civil Penalties is to encourage compliance. Actual harm to the aquifer for failure to comply with the OC is not well understood, but what is well understood is that the Agency hours devoted to following up are a significant cost to the Agency.
2. The existing civil penalties could be seen as set-to-high for what are generally considered to be paperwork violations. It may be better to use a daily rate.
3. The criteria for the Executive Officer to modify the civil penalties will require discussion. Counsel proposed some language.

The following two tables are approaches for setting the Civil Penalties

**Proposed Civil Penalty Structure in the Draft Resolution**

**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 and civil penalty assessment shall be sent via United States Postal Service certified return-receipt requested 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 by the due date the operator shall be liable to the Agency for a civil penalty in the amount of \$500.00.
- b) Fails to submit an application for irrigation efficiency by the due date, but then asks to file the application after its due date, the operator shall be liable to the Agency for a civil penalty in the amount of \$500.00. 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 operator or owner shall be liable to the Agency for a civil penalty in the amount of \$500.00.
- d) Fails to submit proof of flowmeter accuracy within 120 days after a Notice of Violation is sent, the operator shall be liable to the Agency for a civil penalty in the amount of \$1,100.00;
- e) Fails to submit proof of flowmeter accuracy within 150 days after Notice of Violation is sent, the operator shall be liable to the Agency for a civil penalty in the amount of an additional \$600.00 (a total of \$1,700.00).
- f) Fails to submit proof of flowmeter accuracy within 210 days after Notice of Violation is sent, the operator shall be liable to the Agency for a civil penalty in the amount of an additional \$600.00 (a total of \$2,300.00).

*new*

## **Alternative Proposed Civil Penalty Structure**

### **II. Penalty Types and Basic Penalty Amounts**

Civil Penalties ("Penalties") shall be based on the nature and impact of the subject violation. Each violation shall be evaluated and assigned to one of the following violation categories. The violation categories themselves are based on: (1) the extent, seriousness or gravity of the violation; (2) the likelihood of the violation to cause detriment to the aquifer; and (3) whether or not the violation can be cured by obtaining the applicable permit from the Agency and if so, what type of permit. Each violation category has a basic penalty amount which can be increased or decreased in accordance with the "Penalty Adjustment Criteria" outlined in Section III.

#### **Major Violation -**

*(\$250/day)*

A violation which either: 1) poses a major threat to the aquifer; 2) involves a prohibited use as set forth in the Ordinance Code; or 3) does both.

#### **Moderate Violation –**

*(\$100/day)*

A violation which either: 1) poses a moderate risk to the aquifer; 2) involves a use that is subject to a discretionary permit approval; or 3) does both.

#### **Minor Violation -**

*(\$50/day)*

A violation which either: 1) poses no immediate threat to the aquifer; 2) involves a use that is subject to ministerial permit approval; or 3) does both.

See Attachment "A" for examples of common types of violations.

Note- Attachment A has not been developed.

The following two tables are approaches to describing the Executive Officer's discretion in setting civil penalties.

**Proposed Executive Officer Discretion Approach in the Draft Resolution**

The Executive Officer shall not have discretion in assessing the civil penalties above, but does have discretion in the amount of the civil penalty. 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.

The Executive Officer is not authorized 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 on the Operator or Owner's part.

**Alternative Approach to Executive Officer Discretion based on the County Planning Department's approach**

**III. Penalty Adjustment Criteria**

The Executive Officer may increase or decrease the basic civil penalty for a given violation set forth in Section II. above in accordance with any one or combination of the following 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.

Depending on the facts and circumstances of the violation case and the applicability of the criteria listed above, the Board of Directors following an appeal hearing, may either increase or decrease the basic penalty amount anywhere from zero percent (0%) up to one hundred percent (100%) per day per violation.

**IV. Application of Penalties**

Penalties, as they may be adjusted pursuant to Section III. above, are applied in accordance with the following provisions:

1. The penalties shall begin to accrue from the date specified in the Notice of Imposition of Civil Penalties.
2. Each day during any portion of which a violation occurs is a separate violation subject to the applicable per day penalty amount.

**V. Executive Officer's Enforcement Discretion**

Although these Guidelines are intended to assist the Executive Officer in the enforcement of the provisions of the Ordinance Code, these Guidelines cannot address all possible violation cases. Therefore, the Executive Officer, as the designated enforcing agent, retains all of his authority to exercise his enforcement discretion, where specific direction is not expressly provided by the Ordinance Code or these Guidelines, to protect the aquifer.

# FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



## BOARD OF DIRECTORS

Lynn E. Maulhardt, *Chair, Director, United Water Conservation District*

Charlotte Craven, *Vice Chair, Councilperson, City of Camarillo*

David Borchard, *Farmer, Agricultural Representative*

Steve Bennett, *Supervisor, County of Ventura*

Dr. Michael Kelley, *Director, Zone Mutual Water Company*

## EXECUTIVE OFFICER

Jeff Pratt, P.E.

## MINUTES

Minutes of the Fox Canyon Groundwater Management Agency's (FCGMA) Operations Committee meeting held **Thursday, February 7, 2013** in the Atlantic Conference Room at the Ventura County Government Center, Hall of Administration, 800 South Victoria Avenue, Ventura California.

A. **Call to Order** – The meeting commenced at 2:06 p.m.

B. **Introductions** – In attendance were: (1) Dr. Michael Kelley, FCGMA Operations Committee Chair; (2) Supervisor Steve Bennett, FCGMA Operations Committee Co-Chair; (3) Gerhardt Hubner, WPD, Deputy Director; (4) Rick Viergutz, WPD, Groundwater Manager; (5) Jessica Rivera, FCGMA Interim Clerk of the Board; (6) Robert Eranio, Crestview Mutual Water Company (CMWC) and Chair of the Las Posas Users Group (LPUG); and (7) Rick Dierksen, City of Camarillo.

C. **Public Comments**

Mr. Robert Eranio, CMWC and LPUG, spoke on domestic well exemptions. He provided examples to the Committee and stated he would like the opportunity to review the Ordinance Code language with Agency staff to allow exemption for wells. After some discussion, the Committee stated the item would need to be agendized if further review was requested.

D. **Meeting Minutes**

Chair Kelley made the motion to approve the meeting minutes from the January 16, 2013 Operations Committee meeting, and Co-Chair Bennett seconded the motion.

E. **Interest and Late Penalty Calculations**

Mr. Rick Viergutz, WPD, Groundwater Manager, provided an overview of this returning item and reviewed the potential revisions to the Ordinance Code. Discussions included: (1) Agency Counsel recommendations; (2) comparisons between current and proposed processes; (3) penalty tiers, to include daily and/or monthly charges; (4) process if there were changes in property ownership; and (5) the Executive Officer's discretion. Agency staff noted they would return with a final proposed resolution change at the next scheduled Committee date.

The Committee recommended circulating the final proposed document via e-mail, rather than holding the Committee meeting, to allow the item to be agendized on the upcoming March regular Board meeting agenda, and Agency staff agreed.

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800 South Victoria Avenue, Ventura, CA 93009-1610  
(805) 654-2014 FAX: (805) 654-3350  
Website: [www.fcgma.org](http://www.fcgma.org)

Item D – Page 1 of 2



**F. Adjourn the Operations Committee Meeting**

The meeting adjourned at 3:18 p.m.

Submitted by:

  
\_\_\_\_\_  
Jessica Rivera  
Clerk of the Board

# FOX CANYON GROUNDWATER MANAGEMENT AGENCY

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David Borchard, Farmer, *Agricultural Representative*

Charlotte Craven, Vice Chair, *Councilperson, City of Camarillo*

John Zaragoza, Supervisor, *County of Ventura*

Dr. Michael Kelley, Director, *Zone Mutual Water Company*

## EXECUTIVE OFFICER

Jeff Pratt, P.E.

## NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the Fox Canyon Groundwater Management Agency (FCGMA) will hold an **Operations Committee Meeting** from **2:00 p.m. to 4:00 p.m.** on **Thursday, February 7, 2013** in the **Atlantic Conference Room**, at the Ventura County Government Center, Hall of Administration, Main Plaza Level at **800 South Victoria Avenue, Ventura, California**.

## FCGMA OPERATIONS COMMITTEE MEETING AGENDA

February 7, 2013

**Members:** Chair Michael Kelley  
Co-Chair John Zaragoza

- A. **Call to Order**
- B. **Introductions**
- C. **Public Comment** – Audience members may speak about FCGMA-related matters not on today's Agenda.
- D. **Meeting Minutes** – Approve the meeting minutes from the January 16, 2013 FCGMA Operations Committee meeting.
- E. **Interest and Late Penalty Calculations** – *(Returning Item)* Staff will describe the Ordinance Code required interest and penalty calculations, discuss the current process of applying those, and describe an approach to simplify it.
- F. **Adjourn the Operations Committee Meeting** – Adjourn until the next Operations Committee meeting to be held on March 20, 2013.

## NOTICES

*The FCGMA Board strives to conduct accessible, orderly, and fair meetings where everyone can be heard on the issues. The Board Chair will conduct the meeting and establish appropriate rules and time limitations for each item. The Board can only act on items designated as Action Items. Action items on the agenda are staff proposals and may be modified by the Board as a result of public comment or Board member input. Additional information about Board meeting procedures is included after the last agenda item.*

**Administrative Record:** *Material presented as part of testimony will be made part of the Agency's record, and 10 copies should be left with the Board Clerk. This includes any photographs, slides, charts, diagrams, etc.*

**ADA Accommodations:** *Persons who require accommodation for any audio, visual, or other disability in order to review an agenda or to participate in the Board of Directors meeting per the Americans with Disabilities Act (ADA), may request such accommodation in writing addressed to the Clerk of the FCGMA Board, 800 South Victoria Avenue, Location #1610, Ventura, CA 93009-1610, or via telephone by calling (805) 654-2014. Any such request should be made at least 48 hours prior to the meeting so staff can make the necessary arrangements.*

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**Availability of Complete Agenda Package:** *A copy of the complete agenda package is available for examination at the FCGMA office during regular working hours (8:00 a.m. to 5:00 p.m. Monday through Friday) beginning five days before the Board meeting. Agenda packet contents are also posted on the FCGMA website as soon as possible, and left there for archival retrieval in case reference is needed on previously considered matters. Questions about specific items on the agenda should be directed to the Agency's Executive Officer.*

\*\*\*

**Continuance of Items:** *The Board will endeavor to consider all matters listed on this agenda. However, time may not allow the Board to hear all matters listed. Matters not heard at this meeting may be carried over to the next Board meeting or to a future Board meeting. Participating individuals or parties will be notified of the rescheduling of their item prior to the meeting. Please contact the FCGMA staff to find out about rescheduled items.*

\*\*\*

**Electronic Information and Updates:** *Our web site addresses are [www.foxcanyongma.org](http://www.foxcanyongma.org) (for weather station data) or [www.fcgma.org](http://www.fcgma.org) (for home page information). Information available online includes the Board's meeting schedule, a list of the Board members and staff, weather station data, general information, and various Agency forms. If you would like to speak to a staff member, please contact Miranda Nobriga, the FCGMA Clerk of the Board at (805) 654-2014, or Sheila Lopez, the FCGMA Engineering Technician at (805) 645-1372.*

# FOX CANYON GROUNDWATER MANAGEMENT AGENCY

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John Zaragoza, *Supervisor, County of Ventura*  
Dr. Michael Kelley, *Director, Zone Mutual Water Company*

EXECUTIVE OFFICER  
Jeff Pratt, P.E.

## MINUTES

Minutes of the Fox Canyon Groundwater Management Agency's (FCGMA) Operations Committee meeting held **Wednesday, January 16, 2013** in the Atlantic Conference Room at the Ventura County Government Center, Hall of Administration, 800 South Victoria Avenue, Ventura California.

A. **Call to Order** – The meeting commenced at 2:03 p.m.

B. **Introductions** – In attendance were: (1) Dr. Michael Kelley, FCGMA Operations Committee Chair; (2) Supervisor John Zaragoza, FCGMA Operations Committee Co-Chair; (3) Sam McIntyre, FCGMA Operations Committee Alternate Director; (4) Gerhardt Hubner, WPD, Deputy Director; (5) Rick Viergutz, WPD, Groundwater Manager; (6) Kathleen Riedel, WPD, Groundwater Specialist; (7) Jessica Rivera, FCGMA Clerk of the Board; (8) Tracy Gallaher, Office of Supervisor John Zaragoza; (9) Robert Eranio, Crestview Mutual Water Company (CMWC) and Chair of the Las Posas Users Group (LPUG); (10) Rick Dierksen, City of Camarillo; (11) Carol Schoen, Zone Mutual Water Company; (12) Steve Nash, Oxnard resident; (13) Bill Miller, Grower; and (14) Daryl Smith, Adaboy Acres.

C. **Public Comments**

None.

D. **Meeting Minutes**

Chair Kelley made the motion to approve the meeting minutes from the November 14, 2012 Operations Committee meeting, and Co-Chair Zaragoza seconded the motion.

Chair Kelley inquired as to whether previous meeting agenda items could be discussed, and both FCGMA staff and Co-Chair Zaragoza stated the Brown Act would require the item be agendized for discussion.

E. **Interest and Late Penalty Calculations**

Mr. Rick Viergutz, WPD, Groundwater Manager, gave a presentation regarding the current interest and late penalty calculation structure. Mr. Viergutz provided background, noting: (1) the due date terms lacked clarity; (2) caps associated to the charges lacked clarity; and (3) the current process was not consistent with Assembly Bill (AB) 2995.

Mr. Robert Eranio, CMWC and LPUG, provided insight as to why the caps might have been established. He mentioned that approximately six years ago, a case was brought before the

FCGMA Board concerning the Spanish Hills Country Club. He recalled the caps being developed and implemented into the Ordinance Code during that timeframe.

Mr. Gerhardt Hubner, WPD, Deputy Director, responded a settlement was reached with Spanish Hills Country Club; however, it was not the basis for the language and/or caps within the Ordinance Code.

Director Kelley asked if the minutes, from the meeting Mr. Eranio referred to, could be researched to determine the context in which the case was resolved.

Mr. Viergutz responded it could be looked into; however, it appeared to be a moot point as AB 2995 may not give the Agency the authority to enforce the existing penalty structure and caps.

Alternate Director Sam McIntyre asked if the penalties were noted within the legislation. Mr. Viergutz confirmed stating civil penalties were allowed in AB 2995; however, the late penalty interest charge was not.

Mr. Viergutz continued with his presentation, reviewing several proposed approaches, to include: (1) determine one term to be used for due date; (2) use one term for what interest will be charged against; (3) define interest as monthly simple interest; (4) abandon the 100% and 200% caps on interest; and (5) create a reference of Resolutions that set civil penalties, or create a reference to a single Resolution that denotes the civil penalty amounts, which would allow the Executive Officer flexibility in assessing the penalties.

Co-Chair Zaragoza asked if the proposed approaches were the red-lined strikeouts in the Ordinance handout, and Mr. Viergutz confirmed, with the exception of the reference to Board Resolutions.

Mr. Bill Miller, grower, commented the "Payment Due Date" section should read "...no more than (45) forty-five days..." Chair Kelley clarified the section should read as "...must not be postmarked later than (45) forty-five days..."

Mr. Daryl Smith, Adaboy Acres, inquired as to whether flushing of a well was to be charged under non-metered use. Mr. Viergutz responded only those who did not have a required flowmeter would be charged per the non-metered use fee.

Mr. Viergutz continued with his presentation, reporting the Resolution reference section could be added to Chapter 8 of the Ordinance Code; and would reference any resolutions which contained civil penalty fees. He noted staff's preference would be to create a single resolution, encompassing all civil penalties.

Chair Kelley and Co-Chair Zaragoza agreed a consolidation of the penalties into one Resolution would be helpful for ease of locating the penalties; and further noted that a "clean-up" of the Ordinance Code would be needed for clarity.

Mr. Hubner clarified the single Resolution would allow the Executive Officer to waive penalties, not impose them. In addition, Mr. Hubner stated he was cautious about waiving penalties, noting in the equity of fairness, that a threshold should be established, and the Committee agreed.

Mr. Viergutz discussed staff's recommendations. Co-Chair Zaragoza proposed proceeding with Recommendation No. 2: Operations Committee directs staff to bring back the proposed

Ordinance Code (and Resolution changes) to the Operations Committee for a final check prior to seeking full Board approval.

Alternate Director Sam McIntyre made an inquiry as to why this wasn't addressed during legal review of the previous Ordinance Code update, and Agency staff responded County Counsel was not able to anticipate all concerns when Ordinance was first adopted.

Co-Chair Zaragoza noted he would not be able to attend the next Operations Committee meeting, scheduled for March, 20, 2013, and requested to reschedule the meeting to be held sometime in February.

Chair Kelley inquired as to whether they should have outside legal counsel available to review the proposed Ordinance update, and Mr. Hubner responded some stakeholders were lawyers and would have a chance to review and comment when the readings of the Ordinance Code change were brought before the Board.

Alternate Director McIntyre suggested reviewing the entire Ordinance Code for a possible "overhaul". This option was discussed in further detail amongst the group. Chair Kelley decided it would be best to accomplish the task at hand before proceeding with further debate on overhauling the entire Ordinance Code.

Ms. Carol Schoen, Zone Mutual Water Company, commented it would be helpful to have all penalties noted under one section of the Ordinance Code.

Chair Kelly and Co-Chair Zaragoza proposed having the sections "point" to each other. For example, the meter calibration section within the Ordinance Code would make reference to the new Resolution section created in the Ordinance code.

Discussion ensued of future penalties to be added and what the process would be. Mr. Viergutz responded the Resolution could be amended to include future adopted penalties.

Mr. Hubner reviewed for clarity that the Committee's direction was to continue work on the proposed Ordinance Code revisions; and to come back to the Committee sometime in February 2013 with the proposed revision to the Ordinance Code.

Chair Kelley and Co-Chair Zaragoza confirmed. Co-Chair Zaragoza inquired of the timeline to accomplish the revisions, and Mr. Hubner stated Agency staff would like to have the revisions completed during Fiscal Year 2012-13.

Chair Kelley asked if there were any questions or comments from the group, and no questions or comments were made.

**F. Adjourn the Operations Committee Meeting**

The meeting adjourned at 2:56 p.m.

Submitted by:

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Jessica Rivera  
Clerk of the Board

**Fox Canyon Groundwater Management Agency  
Ordinance Code**

Adopted July 27, 2005  
Amended December 7, 2011

**CHAPTER 1.0  
Definitions**

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

- 1.1. **“Actual Applied Water”** – means the total water applied by the grower to the crop over the course of a calendar year without regard to the water source. Examples of actual applied water include the sum of well water, water delivered from a water supplier, and or from surface water diversions. Total applied water does not include precipitation.
- 1.2. **“Agency”** means the Fox Canyon Groundwater Management Agency.
- 1.3. **“Agency Boundary”** shall be as depicted on the map adopted by the Board and recorded as an official record with the County Recorder's Office on January 14, 2002 (Document No. 2002-0009215), and as may be adjusted as provided in the Agency's enabling legislation.
- 1.4. **“Agricultural Extraction Facility”** means a facility from which the groundwater produced is used on lands in the production of plant crops or livestock for market, and uses incidental thereto.
- 1.5. **“Annual”** means the calendar year January 1 through December 31.
- 1.6. **“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.
- 1.7. **“Board”** means the Board of Directors of the Fox Canyon Groundwater Management Agency.
- 1.8. **“County”** means the County of Ventura.
- 1.9. **“Developed Acreage”** means that portion of a parcel within the Agency Boundary that is receiving water for reasonable and beneficial agricultural, domestic or municipal and industrial (M & I) use.

1.10. **“Due Date”** Unless otherwise specifically noted by the Agency, due dates are as follows:

Within the first 45 days of the date of the Agency's mailing the Semi Annual Extraction Statement, and/or the Application for an Efficiency Allocation, the recipient (Well Operator and/or Well Owner) is to return (have postmarked) the completed forms along with any required payment of extraction charges, interest charges, surcharges, and civil penalties.

that shall be adopted by a Resolution. Groundwater basin boundaries may be modified by a Resolution.

4.20.1.23. **“Groundwater Management Plan”** means the 2007 Update to the Fox Canyon Groundwater Management Plan or Board-adopted updates to this plan.

4.21.1.24. **“Historical Extraction”** means the average annual groundwater extraction based on the five (5) calendar years of reported extractions from 1985 through 1989 within the Agency Boundary. This average will be expressed in acre-feet per year. All historical extraction allocations became effective on January 1, 1991.

1.25. “Interest” If any operator of any extraction facility fails to pay the groundwater extraction charge when due, the agency shall charge and collect interest at the rate of 1½ percent each month on the delinquent amount of the groundwater extraction charge.

4.22.1.26. **“Inactive Well”** An inactive well is a well that conforms to the County Water Well Ordinance requirements for an active well, but is being held in an idle status in case of future need. Idle status means the well is pumped no more than 8 hours during any 12-month period. Inactive wells are not required to have a flowmeter. Pumping to maintain status as an active well under the County Water Well Ordinance shall not exceed 8 hours in a 12 month period, shall be for beneficial use, and shall be estimated and reported to the Agency. Prior to removing a well from idle status, the operator shall install a flowmeter in accordance with the requirements in Chapter 3 of the Ordinance Code.

4.23.1.27. **“Injection/Storage Program”** means any device or method for injection/storage of water into a groundwater basin or aquifer within the Agency Boundary, including a program to supply foreign water in lieu of pumping.

4.24.1.28. **“Las Posas Basin–Specific Groundwater Management Plan”** means the Las Posas Basin–Specific Groundwater Management Plan or Board-adopted updates to this plan.

4.25.1.29. **“Las Posas Basin Eastern Management Sub-Area (Las Posas EMSA)”** means the geographic area identified as such in the Las Posas Basin–Specific Groundwater Management Plan.

4.26.1.30. **“Las Posas Basin Management Area”** means the geographic area identified as such in the Las Posas Basin–Specific Groundwater Management Plan, which is comprised of the Las Posas Basin Western Management Sub-Area, Las Posas Basin Eastern Management Sub-Area, and the Las Posas Basin Management Area – Monitor Only Area.

4.27.1.31. **“Las Posas Basin Management Area – Monitor Only Area”** means the geographic area identified as such in the Las Posas Basin–Specific Groundwater Management Plan.



- 4.41.1.44. **“Perched”** or **“Semi-Perched Aquifer”** means the shallow, unconfined aquifer that overlies the Oxnard Aquifer in Sealing Zone III, as described in the California Department of Water Resources Bulletin No. 74-9.
- 4.42.1.45. **“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.
- 4.43.1.46. **“Recharge”** means natural or artificial replenishment of groundwater in storage by percolation or injection of one or more sources of water.
- 4.44.1.47. **“Resolution”** means a formal statement of a decision adopted by the Board.
- 4.45.1.48. **“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.
- 4.46.1.49. **“Section”** as used in this Ordinance Code, is a numbered paragraph of a chapter.
- 4.47.1.50. **“Semi-Annual Groundwater Extraction Statement”** is a form filed by each operator containing the information required by Section 2.2 and 2.3.1 and shall cover the periods from January 1 to June 30 and from July 1 to December 31 annually.
- 4.48.1.51. **“Shall”** as used in this Ordinance Code, is an imperative requirement.
- 4.49.1.52. **“Well Flushing”** means the act of temporarily discharging extracted groundwater through a connection located upstream of the water distribution system at the beginning of an extraction cycle. Well flushing is typically performed until the quality of the extracted water is suitable for beneficial use and/or will not damage the distribution system. In some cases, the flushing flows may be discharged upstream of the distribution system, including the flowmeter. Flushing flows discharged upstream of the flowmeter shall be estimated and reported to the Agency in accordance with the requirements accordance with the requirements in Chapter 2 of the Ordinance Code.
- 4.50.1.53. **“Well Rehabilitation”** means the act of restoring a well to its most efficient condition by various treatments, development, or reconstruction methods. In most cases, groundwater extracted during well rehabilitation is not discharged through the extraction facility piping and, consequently, is not flowmetered. In these cases, the volume of water extracted shall be estimated and reported to the Agency in accordance with the requirements accordance in Chapter 2 of the Ordinance Code.
- 4.51.1.54. **“West Las Posas Basin”** is that part of the former North Las Posas Basin that is west of the subsurface anomaly described by significant changes in groundwater levels, as described in the Groundwater Management Plan and the Las Posas Basin-Specific Groundwater Management Plan, located for record purposes on maps as provided in Section 1.20.

2.2.1.2.4.1. The SAES Statements shall contain the following information ~~on forms provided by the Agency:~~

2.2.1.1.2.4.1.1. The information required under Section 2.1.2 above.

2.2.1.2.2.4.1.2. The method of measuring or computing groundwater extractions.

2.2.1.3.2.4.1.3. The crop types or other uses and the acreage served by the extraction facility.

2.4.1.4. Total extractions from each extraction facility in acre-feet for the preceding ~~six (6) month~~ period.

#### 2.3.2.5. **Groundwater Extraction Charges**

2.3.1.2.5.1. All persons operating groundwater extraction facilities shall pay a groundwater extraction charge for all groundwater extracted after July 1, 1993, in the amount as established by Resolution. Payments are due semi-annually, and shall accompany the statement required pursuant to Section 2.3.

~~2.5.2. Payment of the Groundwater Extraction Charges are must returned by the Due Date due forty-five (45) days after the billing date. P, and payments not received or postmarked by the Due Date by such date due shall be charged simple interest from and after such date due until payment thereof at the rate of 1.5 percent per month, or part of month that the charge remains unpaid.~~

~~2.3.2. Late Penalty. The operator shall pay a late penalty for any extraction charge not satisfied by the due and payable date. The late penalty shall be 1½ percent per month, or any portion thereof, of the amount of the unsatisfied extraction charge. The late penalty shall not exceed 100% of the original charge, provided the penalty is paid within 60 days of the due date. If the fee is not paid within the 60 days, the penalty will continue to accrue at 1.5 percent per month with a final maximum of 200% of the original penalty due.~~

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2.3.3.2.5.3. Owners of extraction facilities are ultimately responsible for payment of groundwater extraction pumping charges ~~and, interest, surcharges, and any civil penalties~~ should an operator not pay. Consequently, owners are charged with providing for this liability in agreements entered into with well operators and water users.

2.5. **Collection of Delinquent Extraction Charges and Late Penalties**— The Board may order that any given extraction charge ~~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,

3.1.4. Flowmeter Readings - Functional flowmeters shall be read and the readings reported semi-annually on the extraction statements required under Section 2.3 above.

3.1.5. Inspection of Flowmeters - The Agency may inspect flowmeter installations for compliance with this Ordinance Code at any reasonable time.

3.2. **Flowmeter Testing and Calibration** - All flowmeters shall be tested for accuracy at a frequency interval determined by the Board to meet specific measurement standards. Calibration methods and procedures approved by the Board shall be detailed in an adopted Resolution.

3.3. **Altering Flowmeters** - Any person who alters, removes, resets, adjusts, manipulates, obstructs, or in any manner interferes or tampers with any flowmeter affixed to any groundwater extraction facility required by this Ordinance Code, resulting in said flowmeter to improperly or inaccurately measure and record groundwater extractions, is guilty of an intentional violation of this Ordinance Code and will be subject to any and all penalties as described in Chapter 8.

3.4. **Costs of Testing and Calibration** - All costs incurred with flowmeter testing or calibration shall be the personal obligation of the well owner. Non-compliance with any provision of the flowmeter calibration requirements will subject the owner to financial penalties and/or liens as described below or in Chapter 8 of the Ordinance Code.

3.5. **Fees and Enforcement** - If any water ~~extraction production~~ facility required to have a flowmeter within the Agency's boundaries is used to produce water without a flowmeter or with a non-operating flowmeter in excess of the allowable timeframe specified in a separate Resolution, the Groundwater Extraction Charge is increased to Agency shall assess at the Non-Metered Water Use Fee ~~against the water production facility owner~~. The amount of the fee shall be calculated as follows:

3.5.1 Groundwater extraction facilities - The fee shall be equal to double the current groundwater extraction charge for all estimated water used. Estimates of water used shall be calculated by the operator and approved by the Executive Officer or calculated by the Agency using best available information about site use and conditions.—Any delinquent Non-Metered Water Use Fee extraction charge obligations shall also be charged interest at the rate of 1.5 percent per month on any unpaid balances.

3.6. Upon violation of any flowmeter provision, the Agency may, as allowed by law, petition the Superior Court of the County for a temporary restraining order or preliminary or permanent injunction prohibiting the well owner from operating the facility or for such other injunctive relief as may be appropriate.

- 4.2.1.2.6. An identification of the source of historical allocation to supply the proposed water use by the well.
- 4.2.1.2.7. An analysis of the potential impacts on the water balance and water quality in the Las Posas Basin Management Area resulting from the proposed use(s).
- 4.2.1.3. Findings - A permit may only be granted if the Executive Officer finds that the proposed groundwater use will result in no net detriment to the Las Posas Basin Management Area by determining that:
  - 4.2.1.3.1. The Las Posas outcrop is not exposed to potential degradation of water quality of any type.
  - 4.2.1.3.2. Recharge to the Las Posas Basin Management Area from the Las Posas outcrop is not diminished.
  - 4.2.1.3.3. Neither baseline nor efficiency allocation will be used, directly or indirectly, to support groundwater use on the Expansion Area (an example of indirect use is using efficiency to supply a demand inside the Agency and using the replaced historical allocation on the outcrop).
  - 4.2.1.3.4. No increased or new uses of groundwater from inside the Agency Boundary will be applied on any area outside the Expansion area (or outside the Las Posas Basin Management Area).
  - 4.2.1.3.5. [Operative Until Adoption of the Las Posas Basin-Specific Groundwater Management Plan] For extraction facilities located in the West Las Posas Basin, the proposed extraction will not interfere with attainment of basin management objectives or implementation of groundwater management strategies for the West Las Posas Basin identified in the Groundwater Management Plan, including, but not limited to, efforts to stabilize or raise groundwater elevations in the pumping depression identified in the Groundwater Management Plan.
  - 4.2.1.3.6. [Operative Upon Adoption of the Las Posas Basin-Specific Groundwater Management Plan] For extraction facilities located in the Las Posas WMSA, the proposed extraction will not interfere with attainment of basin management objectives or implementation of groundwater management strategies for the Las Posas WMSA identified in the Las Posas Basin-Specific Groundwater Management Plan, including, but not limited to, efforts to stabilize or raise groundwater elevations

Information concerning wells shall also include any other use for the water well.

- 4.3.1.2. Location(s) of groundwater use for the well including acreage accurately plotted on a copy of the County Assessor's Parcel Map.
  - 4.3.1.3. The proposed crop type(s) or Municipal and Industrial use(s) at each location.
  - 4.3.1.4. A brief description of the type of irrigation or distribution system and flowmeter in use.
  - 4.3.1.5. The estimated average annual quantity of water use at each location and for each well.
- 4.4. **Monitoring** - The Agency shall monitor compliance with this Chapter by reviewing County well permit applications and reported groundwater extractions and by conducting field surveys as may be necessary.
- 4.5. **Unreasonable Uses** - The Agency may commence and prosecute legal actions to enjoin unreasonable uses or methods of use of water within or without the Agency Boundary to the extent those uses or methods of use adversely affect the groundwater supply within the Agency Boundary.
- 4.6. **Extraction Surcharges** - Notwithstanding an operator's allocation under Chapter 5.0 of this Ordinance Code or the availability of conservation credits, groundwater use within the Las Posas EMSA and the Las Posas WMSA in excess of 4.0 acre-feet per acre per calendar year shall be subject to extraction surcharges pursuant to Section 5.8 of this Ordinance Code.

#### CHAPTER 4.0 Reduction of Groundwater Extractions

- 5.1. **Purpose** - The purpose of this Chapter 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. It is not the purpose of this Chapter 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.
- 5.2. **Extraction Allocations**
- 5.2.1. General Limitations
    - 5.2.1.1. The Executive Officer shall establish an operator's extraction allocation for each extraction facility located within the Agency Boundary. The extraction allocation shall be the historical extraction as reported to the United Water Conservation District and/or to the Agency pursuant to

statement and within 30 days of any change of ownership or operators, together with such other information required by the Executive Officer.

5.2.1.9. The Executive Officer may, on written request from a land owner or well operator, waive allocation requirements for the extraction of groundwater from the Perched or Semi-perched aquifer of Sealing Zone III when the pumping of that groundwater is specifically for the purpose of lowering the water table to reduce the high water table threat to property, including the root zone of crops, or for dewatering construction sites. The Executive Officer shall require that the groundwater extraction facility used for this purpose be perforated only in the Perched or Semi-perched zone, and shall also require the landowner and/or the operator to protect the Agency from damage potentially caused by transferring water to another location.

5.2.2. General Limitations: Special Board Approval Requirements - Notwithstanding any other provisions of this Ordinance Code, the following uses of water resources associated with the aquifers within the Agency may only be undertaken with prior Board approval of and subject to the conditions and restrictions established by the Board.

5.2.2.1. Direct or indirect export of groundwater extracted from within the Agency Boundary for use outside the Agency Boundary.

5.2.2.2. The direct or indirect use of surface water or Foreign Water from within the Agency outside the Agency in a manner that may adversely affect the groundwater supply within the Agency.

5.2.2.3. Application to the Board - To obtain the approval of the Board for any use provided in Sections 5.2.2.1 and 5.2.2.2, application shall be made to the Agency describing the details of the proposed use, including all the following information:

5.2.2.3.1. The location of each water well to be used, along with the associated state well number, and/or the location of each surface diversion and a description of the associated water right.

5.2.2.3.2. Location(s) of groundwater use, including acreage, accurately plotted on copy of the County Assessor's Parcel Map.

5.2.2.3.3. The proposed crop type(s) or Municipal and Industrial use(s) at each location.

5.2.2.3.4. A brief description of the type of irrigation or distribution system and flowmeter to be used.

5.2.2.3.5. The estimated average annual quantity of water use proposed for each location of use.

acre-feet per acre per year for the acreage transitioning to M & I use. Any historical allocation in excess of 2 acre-feet per acre for the land transitioning to M & I use shall be eliminated.

- 5.3.3.2. When the extraction facility is located on the land transitioning and served other land during the historical allocation determination period, the historical allocation associated with the transitioning property shall be allocated on a pro rata basis by acreage to the total property served. The pro rata share for the property transitioning shall be eliminated. Two acre-feet per acre per year, based upon the acreage being transferred, shall be provided to the M & I provider.
- 5.3.3.3. When the extraction facility serving the lands transitioning is not located on the land transitioning, the Executive Officer shall determine the allocation on an equitable basis for the remaining properties not transitioning to M & I. Two acre-feet per acre per year, based upon the acreage being transferred, shall be provided to the M & I provider.
- 5.3.3.4. The transfer shall be effective upon the approval of the Executive Officer, taking into account the ongoing use of the property.
- 5.3.3.5. Allocation originating from an agricultural extraction facility shall not be transferred to an M & I use except as provided in this Section 5.3.3.
- 5.3.4. Allocation may be transferred between M & I extraction facilities provided there is no net detriment to the aquifer system. In making this determination, the Executive Officer shall, at a minimum, consider the location of extraction facilities, the aquifer system being used and groundwater quality impacts of the transfer.
- 5.3.5. Transfer of Allocation - Upon request, the Executive Officer may transfer allocation from one agricultural operator to another agricultural operator or from one M & I operator to another M & I operator provided there is no net detriment to the basins and the transfer is equitable. The transfer of allocation will be of indefinite duration, approved on a "case-by-case" basis, and the Executive Officer 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 no net detriment to the aquifer systems, transfers of allocation shall be subject to other conditions as approved by the Board. Transfers of allocation from Agricultural use to M & I use shall only be approved as provided by Section 5.3.3.
- 5.3.6. The Executive Officer may approve a temporary assignment of allocation from one operator to another operator when there is no net detriment to the aquifer system. The temporary assignment shall not exceed one year.
- 5.3.7. Adjustments to M & I Allocations - The Board may adjust the historical allocation of an M & I operator when that operator has supplied groundwater to either an agricultural or M & I user during the historical allocation period and discontinues

will be made, except that any outstanding surcharges for non-metered extractions that existed prior to June 26, 2002 will be waived.

## 5.6. Alternative Extraction Allocations

5.6.1. As an alternative to historical extractions, the Executive Officer may establish a Baseline or an Annual Efficiency extraction allocation for an operator, as follows:

5.6.1.1. Baseline Extraction Allocations. If no historical extraction exists, or the historical allocation is less than one acre-foot per acre per year, a Baseline extraction allocation may be established by the Executive Officer at one acre-foot per acre per year.

5.6.1.1.1. A Baseline Extraction Allocation specifically applies to undeveloped acreage that is being developed and once approved shall remain with that developed acreage. A Baseline allocation may be combined with a historical allocation for commonly operated facilities in the same basin. A baseline allocation shall not be used with an efficiency allocation.

5.6.1.1.2. To obtain a Baseline Extraction Allocation, a detailed report must be submitted to the Executive Officer. The report shall describe the historical extraction of groundwater use, if any, during the period between the end of calendar year 1984 and the end of calendar year 1989, the type (crop type or M & I) and the amount of water use 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.

5.6.1.1.3. Application for the initial Baseline Extraction Allocation must be submitted prior to submission of the annual report of pumping. If approved, the Baseline Extraction Allocation shall apply beginning with the current calendar year.

5.6.1.1.4. To facilitate accounting procedures, an operator shall use Baseline Extraction Allocation before using Historical Allocation.

5.6.1.2. Annual Efficiency Allocation - If an operator can demonstrate to the Executive Officer that the Irrigation Allowance Index for agriculturally developed land is 1.0 or less, an Annual Efficiency allocation shall be established for one calendar year. An Irrigation Allowance Index of 1.0 or less than 1.0 has been determined by the Agency to be reasonable on agricultural lands within the Agency's boundaries.



reductions as set forth in Section 5.4.1. Credits, if available, shall be 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 unless extinguished as provided in Section 5.7.2.1.1.1. Except as provided below, credits may be transferred between commonly operated extraction facilities and within the basin where the credits were earned.

5.7.2. The Board may transfer credits between facilities that are not commonly operated within a basin or beyond the basin where such credits were earned, provided that there is no net detriment to the aquifers within the Agency. In determining whether there is no net detriment, the Board may, among other things, consider whether the transfer will help bring the aquifers within the Agency into equilibrium or whether the transfer is a part of an Agency or inter-Agency management plan or program to bring the aquifers of the Agency into balance. Also, in making this determination of no net detriment the Board may consider quality of water as well as the quantity. The transfer of credits will be of indefinite duration, approved on a "case-by-case" basis, and the Executive Officer shall determine the rate of extraction and the point or points of extraction.

5.7.2.1. 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 no net detriment to the aquifer systems, transfers of credits shall be subject to other conditions as approved by the Board. Under no circumstances shall credits earned as a result of agricultural use be transferred to an M & I Provider, M & I Operator or an M & I User unless the transfer is specifically approved by the Board and no net detriment to the aquifer systems involved can be shown. Credits earned by an M & I facility shall remain with that facility unless transferred by the Board or transferred as part of a program such as an Agency or inter-Agency management plan or program approved by the Board. The types of credits are:

5.7.2.1.1. Conservation credits - An operator can obtain conservation credits by extracting less groundwater than the historical extraction allocation. Annual Efficiency, Baseline, or an allocation assigned to an extraction facility that is not required to have a flowmeter shall not earn credits. Credits shall be determined by the Executive Officer after receipt of annual extraction data. Subsequent to determining the amount of credits earned, a confirmation shall be mailed to the operator indicating the current allocation, the groundwater extracted during the previous calendar year, and the credits or surcharges for the previous year.

5.7.2.1.1.1. The Executive Officer shall extinguish all accumulated conservation credits obtained by an operator with a destroyed or abandoned well of record who fails to submit extraction data for five (5) consecutive years. Notice of the action

5.8. **Extraction Surcharges  
and Late Penalty**

5.8.1. Necessity for Surcharges

5.8.1.1. 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.

5.8.2. At the discretion of the Board, the extraction surcharge may be structured, tiered, and varied between basins and or aquifers.

5.8.3. 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.

5.8.4. Surcharge for No Allocation - 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 that 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.

5.8.5. For calendar year 2013 (January 1, 2013 through December 31, 2013), Section 5.8.5 of Chapter 5.0, Reduction of Groundwater Extractions, is hereby amended to read as follows:

Efficiency Surcharge - 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 an Irrigation Allowance Index (index) of 1.0 or less as defined in 5.6.1.2 of this ordinance. Extraction surcharges will be applied to the water extracted greater than index of 1.2. For example, an index of 1.3 would be subject to surcharges on the difference between the amount of water used at an index of 1.3 and the amount of water that would have been used at an index of 1.2. If the index is greater than 1.4, 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

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.

5.8.6.4 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.

#### **CHAPTER 6.0 Appeals**

- 3.1. Any person aggrieved by a decision or determination made by the Executive Officer may appeal to the Board within forty-five (45) calendar days thereof by filing with the Clerk, or Deputy Clerk, of the Board a written request that the Board review the decision of the Executive Officer. The Board shall equitably act on the appeal within 120 days after all relevant information has been provided by the appellant.

#### **CHAPTER 7.0 Severability**

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

#### **CHAPTER 8.0 Penalties**

- 8.1. Any operator or other person who violates the provisions of this Ordinance Code is subject to the criminal and civil sanctions set forth in the Agency's enabling act and its Ordinances.
- 8.2. Any person who intentionally violates any provision of this Ordinance Code 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).

Discussion document for February 7, 2013 Operations Committee Meeting

**SUBJECT: PROPOSED RESOLUTION TO INCORPORATE CIVIL PENALTIES FOR VIOLATIONS OF THE ORDINANCE CODE FAILURE TO SUBMIT REQUIRED PAPERWORK/PAYMENT**

To encourage compliance with the Ordinance Code the Agency has determined that assessing civil penalties is necessary in certain cases. Examples include:

- Via a Board decision the Agency assessed a \$500.00 civil penalty on well operators that failed to file Applications for Irrigation Efficiency for the period 2006-2008. This is no longer enforced by Agency Staff, though the failure to file problem persists.
- The Agency adopted Resolution No. 2012-02 setting a tiered civil penalty structure for failure to comply with the requirements of the Meter Calibration Program.
- The Agency adopted Resolution No. 2012-03 setting a \$500 civil penalty for failure to submit Semi Annual Extraction Statements and/or payment. This applies for each occurrence.

Staff are also recommending that an additional civil penalty be put on the books to encourage Owners and Operators to notify the Agency when Operator and Owner data change.

Following the direction from the last Operations Committee Meeting, staff prepared a single resolution incorporating the above civil penalties into one Draft Resolution, and added in a description of the Executive Officer's ability/criteria to modify civil penalties.

Agency Counsel reviewed and provided verbal comments. They are summarized below:

1. The purpose of Civil Penalties is to encourage compliance. Actual harm to the aquifer for failure to comply with the OC is not well understood, but what is well understood is that the Agency hours devoted to following up are a significant cost to the Agency.
2. The existing civil penalties could be seen as set-to-high for what are generally considered to be paperwork violations. It may be better to use a daily rate.
3. The criteria for the Executive Officer to modify the civil penalties will require discussion. Counsel proposed some language.

The following two tables are approaches for setting the Civil Penalties

**Proposed Civil Penalty Structure in the Draft Resolution**

**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 and civil penalty assessment shall be sent via United States Postal Service certified return-receipt requested 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 by the due date the operator shall be liable to the Agency for a civil penalty in the amount of \$500.00.
- b) Fails to submit an application for irrigation efficiency by the due date, but then asks to file the application after its due date, the operator shall be liable to the Agency for a civil penalty in the amount of \$500.00. 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 operator or owner shall be liable to the Agency for a civil penalty in the amount of \$500.00.
- d) Fails to submit proof of flowmeter accuracy within 120 days after a Notice of Violation is sent, the operator shall be liable to the Agency for a civil penalty in the amount of \$1,100.00;
- e) Fails to submit proof of flowmeter accuracy within 150 days after Notice of Violation is sent, the operator shall be liable to the Agency for a civil penalty in the amount of an additional \$600.00 (a total of \$1,700.00).
- f) Fails to submit proof of flowmeter accuracy within 210 days after Notice of Violation is sent, the operator shall be liable to the Agency for a civil penalty in the amount of an additional \$600.00 (a total of \$2,300.00).

*new*

## **Alternative Proposed Civil Penalty Structure**

### **II. Penalty Types and Basic Penalty Amounts**

Civil Penalties ("Penalties") shall be based on the nature and impact of the subject violation. Each violation shall be evaluated and assigned to one of the following violation categories. The violation categories themselves are based on: (1) the extent, seriousness or gravity of the violation; (2) the likelihood of the violation to cause detriment to the aquifer; and (3) whether or not the violation can be cured by obtaining the applicable permit from the Agency and if so, what type of permit. Each violation category has a basic penalty amount which can be increased or decreased in accordance with the "Penalty Adjustment Criteria" outlined in Section III.

#### **Major Violation -**

*(\$250/day)*

A violation which either: 1) poses a major threat to the aquifer; 2) involves a prohibited use as set forth in the Ordinance Code; or 3) does both.

#### **Moderate Violation –**

*(\$100/day)*

A violation which either: 1) poses a moderate risk to the aquifer; 2) involves a use that is subject to a discretionary permit approval; or 3) does both.

#### **Minor Violation -**

*(\$50/day)*

A violation which either: 1) poses no immediate threat to the aquifer; 2) involves a use that is subject to ministerial permit approval; or 3) does both.

See Attachment "A" for examples of common types of violations.

Note- Attachment A has not been developed.

The following two tables are approaches to describing the Executive Officer's discretion in setting civil penalties.

**Proposed Executive Officer Discretion Approach in the Draft Resolution**

The Executive Officer shall not have discretion in assessing the civil penalties above, but does have discretion in the amount of the civil penalty. 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.

The Executive Officer is not authorized 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 on the Operator or Owner's part.

**Alternative Approach to Executive Officer Discretion based on the County Planning Department's approach**

**III. Penalty Adjustment Criteria**

The Executive Officer may increase or decrease the basic civil penalty for a given violation set forth in Section II. above in accordance with any one or combination of the following 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.

Depending on the facts and circumstances of the violation case and the applicability of the criteria listed above, the Board of Directors following an appeal hearing, may either increase or decrease the basic penalty amount anywhere from zero percent (0%) up to one hundred percent (100%) per day per violation.

**IV. Application of Penalties**

Penalties, as they may be adjusted pursuant to Section III. above, are applied in accordance with the following provisions:

1. The penalties shall begin to accrue from the date specified in the Notice of Imposition of Civil Penalties.
2. Each day during any portion of which a violation occurs is a separate violation subject to the applicable per day penalty amount.

**V. Executive Officer's Enforcement Discretion**

Although these Guidelines are intended to assist the Executive Officer in the enforcement of the provisions of the Ordinance Code, these Guidelines cannot address all possible violation cases. Therefore, the Executive Officer, as the designated enforcing agent, retains all of his authority to exercise his enforcement discretion, where specific direction is not expressly provided by the Ordinance Code or these Guidelines, to protect the aquifer.



# FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



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## EXECUTIVE OFFICER

Jeff Pratt, P.E.

## MINUTES

Minutes of the Fox Canyon Groundwater Management Agency's (FCGMA) Operations Committee meeting held **Thursday, February 7, 2013** in the Atlantic Conference Room at the Ventura County Government Center, Hall of Administration, 800 South Victoria Avenue, Ventura California.

A. **Call to Order** – The meeting commenced at 2:06 p.m.

B. **Introductions** – In attendance were: (1) Dr. Michael Kelley, FCGMA Operations Committee Chair; (2) Supervisor Steve Bennett, FCGMA Operations Committee Co-Chair; (3) Gerhardt Hubner, WPD, Deputy Director; (4) Rick Viergutz, WPD, Groundwater Manager; (5) Jessica Rivera, FCGMA Interim Clerk of the Board; (6) Robert Eranio, Crestview Mutual Water Company (CMWC) and Chair of the Las Posas Users Group (LPUG); and (7) Rick Dierksen, City of Camarillo.

C. **Public Comments**

Mr. Robert Eranio, CMWC and LPUG, spoke on domestic well exemptions. He provided examples to the Committee and stated he would like the opportunity to review the Ordinance Code language with Agency staff to allow exemption for wells. After some discussion, the Committee stated the item would need to be agendized if further review was requested.

D. **Meeting Minutes**

Chair Kelley made the motion to approve the meeting minutes from the January 16, 2013 Operations Committee meeting, and Co-Chair Bennett seconded the motion.

E. **Interest and Late Penalty Calculations**

Mr. Rick Viergutz, WPD, Groundwater Manager, provided an overview of this returning item and reviewed the potential revisions to the Ordinance Code. Discussions included: (1) Agency Counsel recommendations; (2) comparisons between current and proposed processes; (3) penalty tiers, to include daily and/or monthly charges; (4) process if there were changes in property ownership; and (5) the Executive Officer's discretion. Agency staff noted they would return with a final proposed resolution change at the next scheduled Committee date.

The Committee recommended circulating the final proposed document via e-mail, rather than holding the Committee meeting, to allow the item to be agendized on the upcoming March regular Board meeting agenda, and Agency staff agreed.

**F. Adjourn the Operations Committee Meeting**

The meeting adjourned at 3:18 p.m.

Submitted by:

  
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Jessica Rivera  
Clerk of the Board