

Fox Canyon Groundwater Management Agency

EXECUTIVE COMMITTEE

**Agenda Packet
of
February 12, 2020**



FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



BOARD OF DIRECTORS

Eugene F. West, Chair, *Director, Camrosa Water District*
David Borchard, Vice Chair, *Farmer, Agricultural Representative*
Steve Bennett, *Supervisor, County of Ventura*
Charlotte Craven, *Councilperson, City of Camarillo*
Michael Mobley, *Director, United Water Conservation District*

EXECUTIVE OFFICER

Jeff Pratt, P.E.

NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the Fox Canyon Groundwater Management Agency (FCGMA) will hold an **Executive Committee Meeting** at **10:00 a.m. on Wednesday, February 12, 2020**, in the **Pacific Conference Room**, Ventura Government Center, Hall of Justice, First Floor, 800 S. Victoria Ave, Ventura, CA 93009.

FCGMA EXECUTIVE COMMITTEE MEETING AGENDA

February 12, 2020

Members: Chair Eugene F. West
Co-Chair David Borchard

- A. Call to Order**
- B. Introductions**
- C. Public Comment** – Audience members may speak about FCGMA-related matters not on today's Agenda.
- D. Approval of Minutes** – Approve the minutes of the July 15, 2019 Executive Committee meeting.
- E. Approval of Minutes** – Approve the minutes of the October 1, 2019 Executive Committee meeting
- F. New Pumping Allocation System Variance Request Process and Penalties** – Discuss variance process and guidelines for assessing civil penalties for non-reporting during allocation base period and provide recommendations (returning item from October 1, 2019, meeting)
- G. New Advisory Committee(s)** – Discuss and provide recommendations on structure of new advisory committee, or committees, to advise the Board and staff regarding basin optimization, projects, replenishment fees, etc. (referred to Executive Committee by Board at January 22, 2020, meeting)
- H. Future Agenda Items and Next Meeting Date**
- I. Adjourn the Executive Committee Meeting**

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 So. 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.*

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 Three 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 address is <http://www.fcgma.org>. Information available online includes the Board's meeting schedule, a list of the Board members and staff, general information, and various Agency forms. If you would like to speak to a staff member, please contact the FCGMA Clerk of the Board at (805) 654-2014.*

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MINUTES

Minutes of the Fox Canyon Groundwater Management Agency's (FCGMA) Executive Committee Meeting held **Monday, July 15, 2019** in the Multi-Purpose Room of the Hall of Administration, 3rd Floor, Ventura, CA 93009.

A. Call to Order

Chair West called the meeting to order at 10:00 a.m.

B. Introductions

In attendance were: (1) Eugene West, Chair; (2) David Borchard, Vice Chair; (3) Kim Loeb, FCGMA; (4) Keely Royas, FCGMA; (5) Arne Anselm, WPD; (6) Bert Perello, City of Oxnard; (7) Glenn Shephard, WPD; (8) Rosemarie Goglin, City of Oxnard; (9) Shiri Klima, City of Oxnard; (10) Jennifer Tribo, Ventura Water; (11) Alden Broome, Broome Ranches; (12) E.J. Remson, The Nature Conservancy (TNC); (13) Jurgen Gramckow, Southland Sod; (14) Dan Detmer, United Water Conservation District (UWCD); (15) Thien Ng, City of Oxnard; (16) Terry Foreman, Camrosa; (17) John Lindquist, UWCD; (18) Martin Gramckow, Southland Sod; (19) Kathleen Riedel, FCGMA.

C. Public Comments

There were no public comments.

D. Proposed Ordinance for a New Pumping Allocation System for the Oxnard and Pleasant Valley Basins

Kim Loeb stated that there were several issues identified at the last Board meeting regarding the proposed new pumping allocation ordinance for the Oxnard and Pleasant Valley (OPV) basins. He said there was three main issues for the Committee's discussion and recommendations. The three issues were the U.S. Navy language for federal reserve water rights, allocation carryover for commonly owned and operated facilities, and the Santa Clara River (SCR) flex allocation.

Mr. Loeb said that the Navy asked to include language regarding federal reserve water rights into the allocation ordinance and the GSPs. He said that the Navy's language was included in the GSPs.

Chair West asked if the language the Navy wanted in the ordinance was the same as what was included in the GSPs. Mr. Loeb said that the language in the GSPs is longer and more involved.

Vice Chair Borchard asked what staff's preference was. Mr. Loeb said that staff does not have a preference, the Navy is a relatively small user and that the Agency does not want to impede Navy readiness. He did say that it could become an issue when reductions come. He said the language is not needed, but the Agency is not against it.

Chair West stated that he didn't think the language was needed at this time because allocation reductions are not in the ordinance.

Vice Chair Borchard agreed with Chair West.

Mr. Loeb moved onto the issue of transfer of carried over allocation. He said that the Board originally directed that carryover transfers not be allowed. He said that Agency staff recommends consideration of allocation carryover transfer be limited to commonly owned and operated wells in the same basin with the same CombCode.

Vice Chair Borchard said that two ranches, which are commonly owned and operated, but with different CombCodes should still be able to share the allocation.

Mr. Loeb said that if that is the case, it makes it much more difficult to track, but there could possibly be an application to transfer so there is a paper trail.

Martin Gramckow asked where the unused allocation would go at the end of the water year, to the well or the CombCode. Mr. Loeb said that it would need to stay with the well.

Jurgen Gramckow said that it could be distributed amongst the wells in the CombCode. Mr. Loeb said that it would be easier to track if it was distributed amongst the wells.

Chair West recommended that any left-over allocation be divided between the wells. Upon further discussion, the Committee recommended any unused allocation be evenly divided among the wells in the CombCode.

Mr. Loeb shifted the discussion to the SCR water flex allocation issue. He said that the United Water Conservation District (UWCD) proposed a "one water" method because they were concerned that the traditional method, based on groundwater extractions could over or under allocate during wetter or drier periods.

Chair West asked if staff had a chance to analyze pumping based on the two methods. Mr. Loeb said that it would most likely cancel out so there wouldn't be over or under pumping.

Chair West stated that the "one water" approach seemed to provide more flexibility and was simpler.

Thien Ng suggested that the Agency sit down with the cities to discuss possible issues.

Dan Detmer asked if the Agency had looked at how future projects with new sources of water would affect allocations.

Alden Broome said that the simpler the better and to look at it further.

Mr. Loeb said that the Agency would run some initial tests and involve stakeholders. Chair West said that he thought that was a sensible approach.

John Lindquist said that he has spoken to Mr. Loeb about a "floor and ceiling" approach and there needs to be more discussion on this item.

Jurgen Gramckow said that he was concerned because a representative of PVCWD has said that

they want to be able to decide whether to take surface water based on whether they have an issue with the cost, quality, and any other undefined parameters, when the understanding was that if SCR water is available, you must take it.

Chair West said that this premise is already in the ordinance. If the water is available, they must take it.

Martin Gramckow said that the ordinance essentially moves groundwater allocations from historical groundwater pumpers to PVCWD. He said that it has the long-term effect of moving it from individual owners to the district.

Chair West stated that the one-water approach looks like it makes sense, but not at a micro level. He asked staff to investigate it further.

E. New Pumping Allocation System Variance Request Processing

Mr. Loeb stated that there are a significant number of wells with one or more years of no extractions in our database. He said that in the database there is no null value and it records a zero if there is no report. He said that about half of the agricultural wells would have 10% or more reduction in allocation because they are missing reports or have reported no extractions. Mr. Loeb stated that the point of today's discussion is to determine what to do with those accounts when it comes to allocations. He went through the reasons why there would be a zero on those accounts. He said that the tough issue is how to determine what to do in the variance process for those who did not file a report.

Vice Chair Borchard asked if staff had thought of a processing matrix or flow chart to make it simple to solve. Mr. Loeb said that staff has thought a lot about the mechanics. He said that one of the ideas is to have one or more workshops for people who think they need a variance request and staff would handle them on a case by case basis.

Vice Chair Borchard said that the willful non-reporters would bare the force of the Agency's ordinances.

Shiri Klima asked what we are talking about in numbers. Chair West said that we won't know until variance requests start coming in. Ms. Klima said that if the amount of water not reported is large, the Board might want to be more involved in the variance process.

Bert Perello asked if the Agency knows the exact number of wells in its boundaries. Mr. Loeb said that we know all that have been registered. Mr. Perello asked if the Agency has addresses or know exactly who has not reported or how much an unregistered well is pumping. Mr. Loeb said that we do not, but the burden of proof on how much was pumped will fall on the owner of the well.

Terry Foreman asked for clarification on when Mr. Loeb said that some agricultural accounts would have a 10% or more reduction in allocation. Mr. Loeb said that based on the 10-year base period, if there are zeros factored in when determining the average amount of pumping, they would bring down the allocation amount.

E.J. Remson said that when you talk about willful non-reporters, it should also include under-reporting.

Vice Chair Borchard asked how the Agency will send letters to owners who have never reported. Mr. Loeb said that there is a newer compliance person who will be going to the fullest extent to track down any non-reporters.

Chair West said that there will be priority given to production data where there are explainable gaps. He also said that if someone shows that they pumped, but didn't report it, they need to pay the penalties associated before they get allowed an allocation. He said that it shouldn't apply to circumstances of new owners.

Mr. Loeb suggested developing a matrix of different scenarios with penalty structures to review.

Chair West said that he doesn't see a need to go back further than 2005.

F. Adjourn the Executive Committee Meeting

Chair West adjourned the Executive Committee meeting at 11:39 a.m.

Submitted by:

Keely Royas
Clerk of the Board

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EXECUTIVE OFFICER

Jeff Pratt, P.E.

MINUTES

Minutes of the Fox Canyon Groundwater Management Agency's (FCGMA) Executive Committee Special meeting held Tuesday, October 1, 2019, at 1:30 p.m. in the Pacific Conference Room at the Ventura County Government Center, Hall of Justice, 800 South Victoria Avenue, Ventura California.

Members: Chair Eugene F. West
Co-Chair David Borchard

A. Call to Order

Chair West called the meeting to order at 1:31 p.m.

B. Introductions

Chair West made no introductions. In attendance were: (1) Eugene West, Chair; (2) David Borchard, Vice Chair; (3) Kim Loeb, FCGMA; (4) Glenn Shephard, (5) Kathleen Riedel, FCGMA; (6) Jamie Malos, FCGMA; (7) Terry Foreman, Camrosa Water District; (8) Tony Stafford, Camrosa Water District; (9) Bryan Bondy, Bondy Groundwater Consulting; (10) Jared Bouchard, Pleasant Valley County Water District; (11) Thien Ng, City of Oxnard; (12) Bob Siemak, United Water Conservation District; (13) John Lindquist, United Water Conservation District; (14) Greg Lewis, Duda Farms; (15) Curtis Hopkins, Hopkins Groundwater Consultants; (16) Jennifer Tribo, City of Ventura; (17) Jeanette Lombardo, Global Water Innovations Inc.; (18) Shiri Klima, City of Oxnard.

C. Public Comments

No public comments were made.

D. Proposed Ordinance for a New Pumping Allocation System for the Oxnard and Pleasant Valley Basins

Mr. Loeb began a presentation that continued from the last Executive Committee meeting on the approach to the Santa Clara River (SCR) water. He discussed two approaches for the Santa Clara River water: a groundwater approach and "one-water" approach. He said staff recommended continuing with the groundwater approach also called the SCR Water Flex Allocation, with minor modifications requested by two principal stakeholders, United Water Conservation District (UWCD) and Pleasant Valley County Water District (PVCWD).

Mr. Loeb explained how the SCR Flex Allocation would provide UWCD and PVCWD with conjunctive-use flexibility. Specifically, the flex would allow an increase in extraction allocation when SCR water deliveries are below normal, with a corresponding reduction in extraction allocation in years when SCR water deliveries are above normal. He said UWCD and PVCWD raised the concern that in years with large amount of SCR water deliveries, extraction allocation

would be reduced to zero; however, there would still need to be some extractions for late-season irrigation demand when SCR water was no longer available. Staff proposed a minimum limit 50% of the groundwater allocation. He said that the minimum limit would be subject to the same allocation reduction rate as extraction allocation if the Board implemented this.

Mr. Loeb next discussed annual carryover, the 5-year review of extractions and allocations, the ordinance effectiveness review, net extractions, and that the intent for the SCR Water Flex allocation is to be net-neutral to groundwater extractions. He mentioned that a future land-based system will provide more data to see if the net extractions are below the allocation. He said that FCGMA wants to facilitate using surface water when available as that benefits the basin.

Chair West spoke that maybe FCGMA was asking PVCWD to be responsible for things out of their control. Mr. Loeb responded that the Conejo Creek Project Water was handled differently than the SCR water because the SCR is considered by FCGMA to be the same as groundwater. He said that the reporting will be reviewed to see if the net extractions were less than the total extractions. Chair West asked if Mr. Loeb had a 5-year review available as an example. Mr. Loeb said that he did and that he could show a spreadsheet forecasting the hypothetical situation.

Jared Bouchard of PVCWD spoke about the draft language and the conflict with in-lieu water deliveries that were received during the base period. Mr. Loeb replied that the ordinance currently encourages conjunctive water use, and it would not negatively affect a pumper's allocation if the pumper took SCR water. He said that instead it would generate carryover for the next allocation.

Mr. Loeb presented a spreadsheet model of 5-year reviews showing historical extractions and projections for 20 years. He explained that the charts showed average extractions, minimum limit, carryover for each, less extractions, and potential surcharges. Chair West asked how long it would take to get enough data for a more thorough analysis of the water use. Mr. Loeb replied he thought that FCGMA would have enough information at the 5-year review, but staff would bring updates to the Board at least on an annual basis.

Mr. Loeb concluded his presentation with the next steps to receive the Executive Committee recommendations, consider the adoption of the ordinance at the October 23 Board Meeting, and adopt the ordinance but implement it for October 1, 2020.

Director Borchard asked about the new data system for tracking allocations. Mr. Loeb replied that it would be a long process to develop a new system and it would come to the Board early next year.

Chair West asked if there were questions from the public. Terry Foreman asked about the data that Mr. Loeb showed for the SCR water flex and about SCR's estimated yield of water. Thien Ng asked about Mr. Loeb's spreadsheet, minimum limits, and annual carryover.

Mr. Bouchard showed a chart of the pipeline system for PVWCD. He said that PVWCD was at more risk because the same water was either coming through the ground or through a pipeline to PVWCD. He said that balance could come from tracking the diversions from the Freeman Diversion Dam. Chair West asked what Mr. Bouchard meant about the risk. Mr. Bouchard read Ordinance Section 10.2 aloud to explain. He added that the water in the pipeline could be reduced because of UWCD's changing priorities and to avoid surcharges.

Chair West asked if the carryover allocation allowance was changed to no limits, would that solve some of the problems? Mr. Loeb said that maybe Section 10.2 would need to be revisited, but PVWCD would not lose its allocation. He said that instead it would not pump as much when surface water was unavailable, which was normal operation.

Mr. Bouchard asked if PVWCD would lose water because it would be pumped to the El Rio Spreading Grounds instead. Mr. Loeb said that FCGMA does not control surface water allocations. He replied that UWCD would determine where was best to put the water, and PVWCD would not be penalized for SCR water that was not made available.

Bryan Bondy said that Section 10.2 tells the Agency to look back at water use and it would like PVWCD's allocation needs to be reduced because the water went elsewhere. Mr. Loeb replied that he had first heard of this issue earlier that day.

Curtis Hopkins discussed concerns over carryover allocations being sold in the water market, and he thought the Ordinance could not cover all the flexibility needed. Mr. Foreman discussed the Ground Water Sustainability Plans (GSPs) and sustainable yield and he wanted to know UWCD's decisions for the yields.

Jeannette Lombardo asked about UWCD's priorities for water in the pipeline prior to Emergency Ordinance E and if the priorities could become consistent with the allocation plan. Mr. Bouchard said that UWCD needs to have operational flexibility. Mr. Hopkins said that water reduction needed to be equitable. Chair West agreed that conjunctive use needed to be incentivized and everyone needed to be treated the same.

Mr. Foreman asked about people who were not connected to the systems and did not receive surface water. Chair West replied that they would indirectly benefit.

Mr. Lindquist thanked Mr. Loeb and the Committee for addressing UWCD's concerns. He added that UWCD is following the priorities from the State Water Resources Control Board and FCGMA. He also said that moving to a one-water approach could be addressed in the future over time.

Chair West discussed how to change Section 10.2. Mr. Loeb replied that that the Committee could recommend a modification based on PVWCD's concerns. Chair West suggested eliminating language in Section 10.2 that differentiates between conjunctive users all other pumpers.

Director Borchard said that the FCGMA wants to equitably share the hardships and gains. Mr. Loeb replied that the equity issue will be addressed in the Section.

E. New Pumping Allocation System Variance Request Processing

Mr. Loeb began a presentation on the variance request processing that was continued from the previous Committee meeting. He said the FCGMA data management system showed some agricultural operators with one or more years of zero extractions; he added that some growers have legitimate reasons, and some are not conforming with ordinances. He said that how to address non-reported extractions and implement penalties are important considerations with variance processing.

Mr. Loeb presented examples of why someone may not report during the Base Period. He said a consistent system of penalties for different scenarios was needed, such as if there was a well owner change and a well operator change. He reviewed the FCGMA criminal and civil penalties and the recently passed guidance for specific violations. He also reviewed the Board's procedures for the Executive Officer to review appeal and waiver requests for civil penalties such as the history of violations or cooperation from the well owner or operator.

Mr. Loeb said that the civil penalty needs to match the severity of the infraction with several scenarios so to avoid staff discretion for most cases. Director Borchard asked if violations could be put on a property's title for future well owners. Mr. Loeb replied that it made sense but would need to be investigated. He added that currently both well owners and operators are being notified of violations of Agency Code.

Mr. Loeb continued explaining the current penalty schedule and gave an example of an operator who did not report; he said that the end amount was not collectable as it was far too high due to the per-day penalties. He asked for direction on a schedule of reasonable and appropriate penalties; he said that this would lessen staff discretion and then there would be less appeals to the Board regarding the waiver process.

Chair West replied that it was thought that the per-diem penalties would encourage compliance and asked if it had been effective. Mr. Loeb replied that it had been effective in most cases, but it was unclear what would happen with growers who had no pumping records. He added that if a grower submitted a waiver request for the first penalty, the penalty was reduced for one reporting period per Resolution 2019-1,

Chair West asked if these issues were for the base period. Mr. Loeb confirmed this and said that Committee and stakeholder meetings decided that willful violators needed to have significant penalties. Chair West asked about Agency confidence on who did or did not report during the Base Period. Mr. Loeb replied that the Agency had good confidence in its written records; he said that the burden of proof would be on the operator making an appeal.

Chair West suggested there could be a maximum annual penalty and then apply criteria from Resolution 2019-1. He thought that a list could be created to show factors for reducing a penalty, to distinguish between willful and negligent violations, and to help assess what type of penalty should be applied. He said he wanted to avoid harshly penalizing someone who reported most years over someone who didn't report any records. He said he wasn't sure how to define the types of infractions for specific penalties.

Mr. Loeb presented different types of culpability that staff developed. He said that the highest level of culpability was the same owner and same operator over time and the next lower level of culpability was a different operator that the owner was not in contact with. He said that the next lower level of culpability was a new owner who did not know if the records were filed. Chair West said that it depended on the new owner's responsibility, and if he really did not know, then maybe he should be judged by a different standard.

Director Borchard asked about how many growers had problems with reporting in their base period. Mr. Loeb replied that staff found that there were many zeros in the reporting for the 10-year period, but the database report does not differentiate between reports of zero extractions and missing reports. Some could be replacement wells. He added that The Nature Conservancy first brought up the issue of the "innocent" new owner.

Director Borchard said that the rules were in place for a long time and landowners have responsibilities. He said that landowners should go after their leaseholders for failure to report. He said they should be penalized but not lose allocation. Chair West wondered if perhaps a small number of non-reporting could be forgiven.

Mr. Loeb said that if a well owner or operator has missing years, they may ask how to get their full allocation back and pay the penalty. He said that the extraction could be averaged over the years reported, but there needed to be a penalty. He added that staff proposed waiting a year for the

ordinance to take effect so that people had time to review their allocation based on their history of reporting in the base period. Director Borchard discussed about giving every operator the history so they have fair notice to fix any problems. Mr. Loeb said staff planned to send out extraction histories to operators.

Director Borchard added that the ordinance had been in place for a long time to report annually and the Agency had a duty to enforce its ordinances. Mr. Loeb explained the waiver process for the first penalty of not reporting. Chair West discussed the issue of not reporting for five or more years in the base period and how it is unfair to get an allocation at the expense of other pumpers.

Mr. Loeb clarified that if an operator can provide evidence of pumping that is not in the Agency records, then it is not in the sustainable yield estimate. He gave an example. He added that this assumes that a well is registered with the Agency; if the well was not registered, there would be surcharges on all pumping. Mr. Loeb said it would depend on if past or current surcharges would be applied. He said that this situation could be handled on a case-by-case basis.

Chair West suggested that if a grower has pumped a certain volume in a year, he would need to pay pumping charges for the years unreported multiplied by a pumping charge multiple. He said this was common in many regulations, but it was different than a nonreporting penalty and the pumping charge multiple should not be variable or appealable.

Mr. Loeb replied that the pumping charges were nominal, but the surcharge allows a late penalty per month. He said that he could get a legal opinion on a flat fee rather than calculating interest. He said that they would need to return to the Committee another time to discuss this before going to the Board. He added that this process could be developed in parallel with adoption of the new ordinance.

Director Borchard reiterated that the pumpers should receive their allocation information early to work on any issues and avoid a lot of variance requests. Mr. Loeb said that information could be provided in a relatively short timeframe after passage of the ordinance.

Chair West asked if there were questions from the public. Greg Lewis discussed Chair West's question on the reporting inventory that the Agency has from before the Base Period and his knowledge of why the base period is not past the last 15 years.

Mr. Loeb replied that the allocation system starts out as wellhead allocation system and that there were not many wells that were missing 5 or more years of data. Mr. Lewis discussed the Oxnard/Pleasant Valley (OPV) group's white paper and its proposal to have a committee of people to oversee the variance process. Mr. Loeb answered that the variance process outlined in the OPV white paper came from the Las Posas Users Group (LPUG), white paper which came from the FCGMA code. He said that variance requests and any other process have always been decided by the Executive Officer, but any decision by the Executive Officer can be appealed to the Board.

Director Borchard asked if the Agency has GIS data to show all Assessor Parcel Numbers (APN) that have pumped and if enforcement has been implemented. Mr. Loeb said that enforcement has focused on getting flowmeters registered for wells to help with AMI compliance. He said that soon staff could focus on other areas for enforcement. He said that the problem with APN data is that it was provided as PDFs, not as data that could be queried. Director Borchard stated that it would be helpful to have a map of the parcels.

Chair West said that penalties needed to be used to improve the basin. Mr. Loeb replied that some of the penalties cover staff time for processing. Chair West asked about the administrative cost of

a variance request and staff time. Mr. Loeb said there was no current appeal filing fee for the Executive Officer but there was a fee to appeal to the Board. He didn't recommend a variance filing fee, but staff time should be tracked to be recovered from a penalty if incurred. Chair West said that the proposed use of penalty revenues should be identified.

F. Future Agenda Items and Next Meeting Date

Chair West said that a future Committee meeting would be scheduled on another date.

G. Adjourn Operations Committee Meeting

Chair West adjourned the Operations Committee meeting at 3:51 p.m.

Submitted by:

Jamie Malos
Acting Assistant Clerk of the Board

DRAFT

FCGMA Executive Committee Meeting

February 12, 2020



E. New Pumping Allocation System Variance Request Processing

Background

- Develop parameters for processing new OPV extraction allocation ordinance variance requests
- Anticipate requests from well owners/operators missing years of reported extractions
- Establish appropriate penalties for variance requests due to extractions non-reporting violations

Oct. 1, 2019, Committee Discussion

- Establish a maximum annual penalty
- Don't reward ignorance – difference between “new” and “innocent” owner / operator
- Allocation can be averaged if 5 or more years reported
- Portion of penalty should go to benefit of basin
- Consider administrative fee to file a variance request
- Is change of crop an acceptable variance request?

OPV Ordinance Article 11. Variances

11.1 Variance Purpose and Standards – The sole purpose of any variance shall be to enable an owner or operator to make reasonable use of groundwater in the same manner as other users of groundwater in the Basins. Before any variance may be granted, the owner or operator must establish and the Agency must determine that all of the following standards are met:

11.1.1 That there are special circumstances or exceptional characteristics applicable to the owner or operator which do not apply generally to comparable owners or operators in the Basins; and

11.1.2 That granting a variance will not confer a special privilege inconsistent with the limitations upon other owners and operators in the Basins; and

OPV Ordinance Article 11. Variances

- 11.1.3 That denial of a variance will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of this ordinance; and
- 11.1.4 That the granting of a variance will not be inconsistent with the groundwater sustainability plan or the provisions of SGMA or with other regulations or ordinances of the Agency or detrimental to the Agency's ability to improve and protect the quantity or quality of groundwater supplies within the Basins; and
- 11.1.5 That the granting of a variance will not substantially impede the Agency's ability to achieve sustainable groundwater management or the actual sustainability of groundwater in the Basins.

Non-Reported Extractions during Base Period

- Not really an ordinance variance
- Registered wells
 - Less than 5 years not reported
 - More than 5 years not reported
- Unregistered wells

5 or Less Years Non-Reported Extractions

- Calculate average annual extraction based on reported years
- Pumping fees plus interest due for non-reported semi-annual extraction reports
- Civil penalty due for each violation for not filing semi-annual extract report
- Staff recommends tiered penalty based on average annual extractions

Potential Penalties up to 5 Years Not Reported

Number of Periods Not Reported	Average Annual Extraction (AFY)						Resolution 2019-1 (11 yrs) 4,015 days
	0-5.000	5.001-15.000	15.001-25.000	25.001-50.000	50.001-99.999	>100.000	
	30 days	60 days	180 days	365 days	730 days	1,825 days	
1	\$ 1,500	\$ 3,000	\$ 9,000	\$ 18,250	\$ 36,500	\$ 91,250	\$ 200,750
2	\$ 3,000	\$ 6,000	\$ 18,000	\$ 36,500	\$ 73,000	\$ 182,500	\$ 401,500
3	\$ 4,500	\$ 9,000	\$ 27,000	\$ 54,750	\$ 109,500	\$ 273,750	\$ 602,250
4	\$ 6,000	\$ 12,000	\$ 36,000	\$ 73,000	\$ 146,000	\$ 365,000	\$ 803,000
5	\$ 7,500	\$ 15,000	\$ 45,000	\$ 91,250	\$ 182,500	\$ 456,250	\$ 1,003,750
6	\$ 9,000	\$ 18,000	\$ 54,000	\$ 109,500	\$ 219,000	\$ 547,500	\$ 1,204,500
7	\$ 10,500	\$ 21,000	\$ 63,000	\$ 127,750	\$ 255,500	\$ 638,750	\$ 1,405,250
5	\$ 12,000	\$ 24,000	\$ 72,000	\$ 146,000	\$ 292,000	\$ 730,000	\$ 1,606,000
9	\$ 13,500	\$ 27,000	\$ 81,000	\$ 164,250	\$ 328,500	\$ 821,250	\$ 1,806,750
10	\$ 15,000	\$ 30,000	\$ 90,000	\$ 182,500	\$ 365,000	\$ 912,500	\$ 2,007,500

- Penalty based on average annual extractions and number of days at \$50/day
- In addition to unpaid pump charges of \$4.00 or \$6.00 plus 1.5% per month interest (\$0.72 or \$1.08/yr)

More Than 5 Years Non-Reported Extractions

- Burden on applicant to provide proof of water use
 - Pumping records
 - SCE records
 - Crop records
- Full civil penalty of \$50 per day

Unregistered Wells

- Extraction from non-registered wells had no allocation
- All extractions subject to surcharges
- Full penalties for failing to register well, meter, filing extraction statements
- Burden on applicant to provide proof of water use
 - Pumping records
 - SCE records
 - Crop records
- For Board action

Extenuating Circumstances

- How should civil penalties be applied based on situation?
- Defining an “innocent” landowner versus a “new” landowner
- Other extenuating circumstances that should be considered

Other Variance Requests

- Following types of requests that may need to be evaluated on a case-by-case basis against variance purpose and standards:
 - Change in crops
 - Receipt of water from a water purveyor

Consideration of a Variance Application Fee

- Executive Committee suggested consideration of a variance application fee
- Should a fee be established?
- If so, an appropriate fee might be \$250
- Staff recommends fee be refunded if variance process identifies error in FCGMA records

Use of Civil Penalties Collected

- Executive Committee recommended portion of civil penalties collected during variance request processing be used for benefit of basin
- Portion to cover administrative costs of variance request processing
- Portion for benefit of basin can be held in designated account similar to surcharges
- May be simplest to designate a specific percent of civil penalties collected during variance request processing to designated account

Executive Committee Recommendations

- Civil penalties for extractions not reported for 5 or fewer years during base period
- Identification of extenuating circumstances (e.g., “innocent landowner”)
- Variance requests for change of crop or receipt of water from water purveyor
- Consideration of variance application fee
- Use of civil penalties collected during variance request processing
- Other recommendations regarding variance processing

E. New Advisory Committee(s)

Summary

- Agency needs new advisory committee, or committees, to advise Board and staff regarding GSP implementation including basin optimization, projects, and replenishment fees
- Board tasked Executive Committee with evaluating and making recommendations on composition of committee(s)
- Board recommended committee(s) be chartered with limited terms

Committee Structure

- Separate committees for different basins or scope?
- Seats for representatives of different sectors, e.g., agricultural, M&I, environmental? Other sectors?
- Seats for multiple disciplines, e.g., hydrogeology, engineering, economic? Other disciplines?
- Conflict of interest code and CFPPC Form 700?
- Considerations:
 - Approx. 8 hours of Board Clerk time per committee meeting
 - Additional staff time for meeting preparation and attendance

Executive Committee Recommendations

- One committee or multiple
- Committee seats
- Conflict of interest code
- Other recommendations regarding new advisory committee(s)