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Delta View Water Association Comments on GKGSA 7/22/2022 Draft Rules and Regulations

8/5/2022

To: Eric Osterling and the GKGSA Board and Committee members,

Thank you for allowing time to comment on the 7/22/2022 draft of the Rules and Regulations. This version is a significant rewrite from the previous 1/21/2022 draft version that we had commented on. Understandably with the GSP update occurring simultaneously there was a lot to keep track of for both staff and consultants to the GSA. Due to the significant impact these rules will have on GKGSA stakeholders we ask that the GKGSA Stakeholder Committee be afforded an opportunity to meet and discuss the significant changes that are presented in this update and be able to make recommendations to the board to adopt or amend as they see fit. It would probably be appropriate to include GSA counsel in a Stakeholder Committee workshop as many of the rules have legal impacts for the GSA.

Delta View Water Association has reviewed the Rules and Regulations and has found several Issues with the draft rules in its current form. Blue text is excerpted from the Rules, and black text is Delta View Comments.

Article I. General

Section 1.04 Definitions

"Operator" means an authorized representative of an Owner.

"Owner" means fee title owner of land within the GKGSA boundaries

"Transfer" means a voluntary transfer of an allocation from one Owner to a separate Owner

We did not see any provisions that would allow movement of Sustainable Yield, Tier 1, or Tier 2 allocations on the same "Ranch" or "Farm Unit" across APNs with different "Owners" without triggering the leave behind and transfer restrictions. We feel that some type of landowner authorization form should be made available that gives a farm operator the ability to move water around a single "Farm Unit". Without this provision leased farms, or even farms all in the same family, but with slightly different "fee title owners" would be put at a disadvantage to farms with many APNs with a single "Owner". The term "Owner" should be replaced as appropriate throughout the document to "Owner or Operator" to give this flexibility and relieve this inequality as "Operator" is already defined as being an authorized representative of an Owner.

Article II. Groundwater Monitoring

Section 2.02 Groundwater Use Measurement

"For all wells constructed after the date of the first adoption of the GKGSA Rules and Regulations, flowmeters satisfying the conditions and criteria prescribed by this Section 2.02 shall be the only permissible means for measurement of groundwater extraction."

Forcing the use of flowmeters as the only permissible use of measurement of groundwater extraction is unreasonable. There are many factors in calculating the ET based on flowmeter data. In an ideal farm where only one well services only one field there you must account for the irrigation efficiency of the system and take into consideration soil type. Factoring in meter error, the multiplied effect of errors in each assumption will most likely result in an error in measurement far greater than the potential error of using remotely sensed ET. If all users of groundwater are measured by the same method, e.g. LandIQ, the likelihood of error will be far less. The GSA will also need to consider the amount of staff time it would like to devote to policing meter policy which will be paid for out of the farmers pockets vs LandIQ data that is already being paid for.

Article III. Groundwater Accounting/Online Dashboard
Section 3.03 Categories of Water

Effective Precipitation should be listed as the first category of water. It should be the first water applied to offset ET usage, be non-transferable and have no carryover. It is not listed in the categories, although it is referred to in Section 3.04 Priority of use

Section 3.04 Priority of Use

In order to be effective, Owners must elect priorities no later than thirty (30) days prior to the end of each quarter. If the Owner does not timely elect the priority of allocations to be debited by that date, the default priority will follow in order of Section 3.03(a)-(g) above.

Farmers have enough on their plate that creating a quarterly obligation to another unwanted government agency to select the order of made up categories of water that the well is pumping is ridiculous. This election should be allowed to happen once a year after the end of the irrigation season when the full water year of ET data is available.

Article IV. Allocation of Water
Section 4.03 Greater Kaweah Agricultural Management Area
(b) Temporary Tier 1 and Tier 2 Allocations

The allocations shall be consistent with the objectives of the GKGSA GSP, and will ramp-down pumping overtime calculated by a percentage of total overdraft as follows:

Water Years	Tier 1	Tier 2	Total Allowable Overdraft
2023-2025	40%	50%	90%
2026-2030	30%	20%	70%
2031-2035	20%	20%	40%
2036-2040	20%	0%	20%

This table shows the total allowable overdraft ramping down for each period of water years corresponding to the GSP. The problem here is, that in the first time period for example, The average of 40% Tier 1 and 50% Tier 2 would be 45% total not 90% Either both should be 90% or the 2 together should average 90%. The Math is simply incorrect in this table.

(c) Carryovers and Transfers

(i) Sustainable Yield Allocation

2) Transfer of Sustainable Yield

An Owner may transfer all or a portion of the Sustainable Yield allocation, excepting any portion thereof based upon Precipitation, which has been carried over from a previous year and thereby converted to groundwater credits, provided that the transfer satisfies

the conditions below. Transferred Sustainable Yield shall be credited to the transferee's account as groundwater credits.

- 1. The proposed transferee will put the allocation to use within the GKGSA;*
- 2. The place of use is no further than three zones from where the transferor's location of allocation; The transfer agreement is memorialized in writing, using a form provided by the GKGSA; and*
- 3. Owner has elected to use flowmeters to calculate groundwater consumptive use.*

The term "Owner" should be replaced with "Owner or Operator". "Operator" is already defined and this goes to the point that was made Regarding Article I. *"Operator" means an authorized representative of an Owner.*

The portion of the Sustainable Yield that is precipitation should also be allowed to be transferred. This is the portion of precipitation that has passed the root zone and is part of the landowners overlying right to pump groundwater. This portion of the Sustainable Yield would not be included in the 1st category of water that we are calling Effective Precipitation. By definition the Effective Precipitation category would not be transferable.

Number 3 states that to transfer Sustainable Yield the owner must elect to use flowmeters. We feel that this creates undue hardship on both the "Owner" and the GSA which would have to police the meters. It would make much more sense to replace the word "flowmeters" with "Dashboard" and require that transfers be made via the Dashboard to simplify and automate GSA accounting.

Seems to be a formatting error here there should be 4 bullet points as there are below.

(ii) Temporary Tier 1 and Tier 2 Allocations

2) Transfer of Tier 1 and Tier 2 Allocations An Owner may transfer 80% of his or her Tier 1 Allocation to another Owner, or 60% of his or her Tier 2 Allocation, if all of the following conditions apply:

- 1. The proposed transferee will put the allocation to use within the GKGSA;*
- 2. The proposed transferee will extract the transferred water within three miles of where the transferor would have extracted the water had he not transferred; and*
- 3. The transfer agreement is memorialized in writing, using a form provided by the GKGSA identifying the quantity and signed by both parties.*
- 4. Owner has elected to use flowmeters to calculate groundwater consumptive use.*

The same comments apply here as were mentioned above in regards to Sustainable Yield transfers.

Article V. Fees & Penalties

Section 5.02 Groundwater Extraction Fees

The Board may propose fees, including groundwater extraction fees, consistent with Division 6 Conservation, Development and Utilization of State Water Resources Part 2.74, Chapter 5, Section Sections 10730 through 10730.6, and the California Constitution. The Owner shall pay to the GKGSA all Groundwater Extraction Fees within 30 days of the date of any invoice submitted by the GKGSA.

Forcing the Invoice to be paid within 30 days of invoice date will not give the growers the flexibility necessary to choose which tax year that the bill is paid in. This should be changed to reflect that the bill should be paid by the due date.

Article VI. Surface Water Recharge in the Underground

Section 6.01 Groundwater Recharge

Owners may use existing facilities to store surface water underground within the GKGSA boundaries. An Owner who stores surface water pursuant to this Section may subsequently put such water to his or her own beneficial use within the GKGSA boundaries, or may transfer the water to another Owner for use within the GKGSA boundaries. The use of stored water pursuant to this Section must be achieved utilizing on-farm activities. All water stored pursuant to this Section must be used within the GKGSA boundaries. Each Owner who stores surface water pursuant to this Section shall provide accurate, verifiable records of the quantity and source of surface water stored for recharge, confirmed by the district or entity that supplied the surface water. The Owner shall adhere to any rules promulgated by any district or entity supplying the surface water. Surface water stored and documented in compliance with the requirements of this Section shall be credited to the relevant Owner's account as a surface water credit. Each Owner shall be solely responsible for locating, purchasing, accessing, or otherwise acquiring surface water for the purposes of recharge pursuant to this Section. This policy applies to all non-districted lands and districted lands which choose to adhere to this Article VI.

This water recharge policy allows for any water recharged in GKGSA to be used anywhere in GKGSA without being subject to Zone distance penalties, leave behind penalties or any other penalties associated with the Carryover and Transfer provisions of the Sustainable Yield. Although this may seem like an incentive to encourage groundwater recharge, it in fact gives huge advantages to those who have access to surface water. Those reliant on groundwater only even if they spend enormous sums on creating water banking projects will legally only have access to refused floodwater to bank. This only occurs every 3 to 5 years on average as you all well know. On the other hand surface water importers and appropriators have access to water every year and could take advantage of this to sell groundwater credits to those who have been pumping that same groundwater for generations. The rules as drafted are clearly in favor of those who "Have" vs. those who "Have Not"!

Either the Sustainable Yield Transfers and Carryover provisions should reflect the same restrictions as the Surface Water Recharged in the underground, or the Surface Water Recharged in the underground Should have the same restrictions on transfer and carryover as the Sustainable Yield. I would say that Landowners with Overlying rights to the Sustainable Yield should have the same rules as Appropriators who recharge that water.

Should these Rules and Regulations not be adjusted to balance these inequalities I would call on all directors who have interests in Foreign Water or Appropriated Water in the Kaweah subbasin to abstain from voting on these Rules and Regulations as it would clearly be a Conflict of Interest in its current form!

Sincerely

A handwritten signature in blue ink that reads "John A. Gailey III". The signature is written in a cursive style with a large initial 'J' and 'G'.

John A. Gailey III
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